

Balance Billing Protection Act Arbitration Proceedings

Annual Report

July 1, 2021

Mike Kreidler, *Insurance Commissioner*
www.insurance.wa.gov

Table of contents

Balance Billing Protection Act Arbitration Proceedings.....	1
Balance Billing Protection Act Background	3
Implementation of the Arbitration Provisions under the Balance Billing Protection Act	5
2021 Arbitration Report.....	6
Attachment A.....	8

Balance Billing Protection Act

Background

The Washington State Legislature enacted the Balance Billing Protection Act ([Chapter 427, Laws of 2019](#)) to protect consumers from balance billing, also called surprise billing, when they receive out-of-network emergency medical services and out-of-network surgical or ancillary services at an in-network hospital or ambulatory surgical facility. The Balance Billing Protection Act (BBPA) went into effect on January 1, 2020.

For services subject to the BBPA, when an out-of-network health care provider or health care facility (hereinafter “provider”) submits a claim to a carrier, the allowed amount paid to that provider must be a commercially reasonable amount, based on payments for the same or similar services provided in a similar geographic area ([RCW 48.49.030\(2\)](#)). The BBPA includes a process for out-of-network providers to dispute an initial payment from a carrier. If, after a 30-day period of informal negotiation, the carrier and provider cannot resolve the dispute, the provider or carrier can initiate arbitration proceedings. The BBPA sets out timelines for each of the steps in the dispute resolution and arbitration process. ([RCW 48.49.030](#) and [RCW 48.49.040](#)).

The BBPA is structured to allow providers to address multiple claims in a single arbitration proceeding. These “bundled” claims must:

- Involve identical carrier or facility parties.
- Involve claims with the same or related billing codes.
- Occur within a period of two months of one another.

Under [RCW 48.49.040](#), once an arbitrator has been chosen, each party must submit its written materials to the arbitrator within 30 days. The arbitrator’s decision is made based upon the written materials submitted by the parties. Within 30 days of receiving the parties’ submissions, the arbitrator must issue a written decision requiring payment of the final offer amount of either the party that initiated the arbitration or the party that responded to the arbitration, i.e. the final offer amount of the carrier or the provider, and notify the parties of their decision. The arbitrator must provide the decision and information required for this report to OIC.

The BBPA directed OIC to contract with the Office of Financial Management to develop the All Payer Claims Database (APCD) to inform provider and carrier negotiations related to “commercially reasonable amount” and to assist arbitrators in evaluating the final offer amounts of the parties.

[RCW 48.49.050](#) requires the insurance commissioner to submit an annual report to the Legislature during the first five years the BBPA is in effect, 2020 through 2024. The report must summarize

information from the arbitrators' decisions and provide the following information for each dispute resolved through arbitration:

- The name of the carrier.
- The name of the health care provider.
- The health care provider's employer or the business entity in which the provider has an ownership interest.
- The health care facility where the services were provided.
- The type of health care services at issue.

Implementation of the Arbitration Provisions under the Balance Billing Protection Act

The Office of the Insurance Commissioner (OIC) adopted rules to implement the Balance Billing Protection Act (BBPA) in November 2019 ([Chapter 284-43B WAC](#)) and amended those rules in 2020 in response to initial implementation experience. The OIC consulted extensively with stakeholders regarding rulemaking and additional implementation activities, including minimum qualifications for arbitrators and other aspects of the arbitration process.

In addition, the OIC developed a [website on BBPA](#) that makes the information about the BBPA easily accessible to consumers, providers, carriers, and self-funded group health plans that have elected to extend the protections of the BBPA to their plan members.

The [arbitration page](#) of the OIC's website includes an online application for individuals and entities to apply to serve as arbitrators and a list of approved arbitrators and arbitration entities. As of May 2021, there are 15 individual arbitrators and four arbitration entities that have been approved as BBPA arbitrators.

The BBPA website also includes forms for submitting a request to initiate arbitration and for arbitrators to submit to the OIC along with their decisions. Both forms were adopted during rulemaking in 2020. The website includes a link to the surprise billing dataset, drawn from the APCD as well as extensive explanatory information and instructions on how to use the database.

The BBPA website includes an online form for use by [self-funded group health plans that elect to participate](#) in the act, as well as an [updated list of the plans that are participating](#). To date, approximately 230 self-funded group health plans have elected to offer BBPA protections to their enrollees.

2021 Arbitration Report

This report summarizes information from the arbitrators' decisions, and provides the following information for each dispute resolved through arbitration in calendar year 2020:

- The name of the carrier.
- The name of the health care provider.
- The health care provider's employer or the business entity in which the provider has an ownership interest.
- The health care facility where the services were provided.
- The type of health care services at issue.

The BBPA statute includes specific timelines that must be met to initiate arbitration. The OIC reviews each request to determine whether the statutory timelines have been met. Requests that were rejected for not meeting timelines occurred during the first half of 2020.

Claims for self-funded group health plans that did not elect to participate in the BBPA are not subject to arbitration under the Act. Any questions regarding the inclusion of such claims in an arbitration request would have been resolved through either discussion between the parties or arbitration. These claims are included in the count in the table below.

Throughout 2020, the OIC responded to inquiries from provider groups, provider practice management, and billing entities, as well as carriers, regarding the arbitration process.

In summary, a total of 71 Arbitration Initiation Request Forms (AIRFs) were submitted to the OIC in 2020. Of these, 19 were rejected by OIC due to noncompliance with timelines established in the BBPA and its implementing rules. 18 of the requests were withdrawn or settled by the parties prior to proceeding to arbitration. 29 cases to date have resulted in an arbitration decision.

Disposition	Number of AIRFs	Total claims at issue
Rejected	19	263
Settled/Withdrawn	18	335
Arbitrator decision	29	221
Pending resolution or unknown	5	58
Total	71	835

Most providers initiating arbitration utilized the bundled claims option in RCW 48.49.040. Of the 71 arbitration initiation requests, 55 included multiple or “bundled” claims. The following types of services were in dispute: anesthesiology, emergency medicine and radiology.

Attachment A provides greater detail regarding the disputes that proceeded to arbitration. The services at issue in these disputes were anesthesia and emergency medicine. In all these proceedings, the arbitrator ordered that the provider’s final offer be paid by the non-initiating party.

Attachment A

Attachment to the Balance Billing Protection Act Arbitration Proceedings Annual Report for calendar year 2020.

AIRF #	Carrier	Provider	Provider employer/business entity	Facility(ies) where services provided	Type of health care services	Number of Claims	Prevailing party
20A-001	United Health Care (UHC)	Not reported	Anesthesia Associates	Not reported	Anesthesiology	42	Provider
20A-0019	UHC	Evelyn Lindenthaler, M.D.	Physicians Anesthesia Services/U.S. Anesthesia Partners of WA (USAP)	Not reported	Anesthesiology	19	Provider
20A-0020	UHC	Marta Anna Strutynska-Longawa, M.D.	USAP	Not reported	Anesthesiology	1	Provider
20A-0021	UHC	Richard Snyder, M.D.	USAP	Not reported	Anesthesiology	1	Provider
20A-0022	UHC	Mark P. Fritz, M.D., Benjamin J. Geiman M.D., Hassan Aijazi, M.D.	USAP	Swedish Issaquah, Swedish First Hill	Anesthesiology	1	Provider
20A-0023	UHC	David A. Bruck, M.D.	USAP	Swedish Cherry Hill	Anesthesiology	3	Provider
20A-0024	UHC	Not reported	USAP	Swedish Issaquah	Anesthesiology	1	Provider
20A-0025	UHC	Sharma M.D. Park, M.D. Merrill, M.D. Baquero-Young, M.D.	USAP	Swedish First Hill, Issaquah and Ballard	Anesthesiology	4	Provider
20A-0026	UHC	Not reported	USAP	Seattle Surgery Center	Anesthesiology	1	Provider

AIRF #	Carrier	Provider	Provider employer/business entity	Facility(ies) where services provided	Type of health care services	Number of Claims	Prevailing party
20A-0027	UHC	Not reported	USAP	Seattle Surgery Center	Anesthesiology	1	Provider
20A-0028	UHC	Not reported	USAP	Seattle Orthopedic Center Surgery	Anesthesiology	1	Provider
20A-0029	UHC	Andrew Chang, M.D. and Arooj Simmonds, M.D.	USAP	Not reported	Anesthesiology	2	Provider
20A-0036	UHC	Not reported	Anesthesia Assoc.	Not reported	Anesthesiology	13	Provider
20A-0037	UHC	Not reported	Anesthesia Assoc.	Not reported	Anesthesiology	25	Provider
20A-0043	UHC	Not reported	Anesthesia Assoc.	Not reported	Anesthesiology	31	Provider
20A-0053	UHC	Not reported	USAP	Not reported	Anesthesiology	4	Provider
20A-0057	UHC	Stephen M. Jacobs, M.D. Deyan Milligan, M.D. Young H. Kim, M.D. Robin V. Woodland, M.D.	USAP	Seattle Hand Surgery Seattle Surgery Center Swedish First Hill Swedish Issaquah	Anesthesiology	4	Provider
20A-0058	UHC	Jennifer Coursen, M.D. Michael Bart, M.D. Susan Michelle Baquero-Young, M.D. Peter Muetig-Nelsen, M.D. Michelle Margaret Barnes, M.D.	USAP	Swedish First Hill Swedish Ballard Gateway Ambulatory Surgery Center	Anesthesiology	5	Provider
20A-0059	UHC	Not reported	USAP	Swedish First Hill Swedish Ballard Swedish Cherry Hill	Anesthesiology	5	Provider
20A-0060	UHC	Hatkesh Joshi, M.D. Thomas Minh-Tri Nguyen, M.D. Duy Hoang Nguyen, M.D. Michael Bart, M.D.	USAP	Swedish Issaquah Swedish First Hill Gateway Ambulatory Surgery Center	Anesthesiology	4	Provider

AIRF #	Carrier	Provider	Provider employer/business entity	Facility(ies) where services provided	Type of health care services	Number of Claims	Prevailing party
20A-0061	UHC	Park, M.D. Kutteruf, M.D. Ang-Lee, M.D. Schmitt, M.D. Pabich, M.D.	USAP	Swedish Issaquah Swedish First Hill Swedish Cherry Hill Gateway ASC, Everett	Anesthesiology	5	Insurer
20A-0062	UHC	Not reported	USAP	Minor and James Surgery Center, Seattle Swedish Issaquah	Anesthesiology	4	Insurer
20A-0063	UHC	Cara Lukin-Williams, M.D. Jin Young Kim, M.D. Michael Ang-Lee, M.D. Edmond Lee, M.D.	USAP	Not reported	Anesthesiology	4	Provider
20A-0065	Kaiser Permanente	Not reported	Olympia Emergency Services	413 Lilly Rd. NE Olympia, WA	Emergency services	16	Provider
20A-0067	UHC	Not reported	USAP	Swedish Issaquah Swedish First Hill Swedish Ballard	Anesthesiology	4	Provider
20A-0068	UHC	Andrew Rice, M.D., Francis Tamburine, M.D., Michael Podell, M.D., Michael Bart M.D., Duy Hoang Nguyen M.D.	USAP	Not reported	Anesthesiology	5	Provider
20A-0069	UHC	Paul Park, M. D., Yuko Yano, M.D., Joshua Kohtz, M.D., Francis Salinas, M.D., David Bruck, M.D.	USAP	Not reported	Anesthesiology	5	Provider

AIRF #	Carrier	Provider	Provider employer/business entity	Facility(ies) where services provided	Type of health care services	Number of Claims	Prevailing party
20A-0070	UHC	Steven Crooks, M.D., Lisa Miller, M.D., Jennifer Coursen, M.D., Kevin Fung, M.D., Boris Grin, M.D.	USAP	Swedish Ballard	Anesthesiology	5	Provider
20A-0071	UHC	Not reported	USAP	First Hill Surgery Center, Seattle Swedish Issaquah Swedish First Hill	Anesthesiology	5	Provider