



OFFICE OF
INSURANCE COMMISSIONER

September 13, 2019

Dear Interested Persons;

The Balanced Billing Protection Act ([Chap. 427, Laws of 2019](#)) was recently enacted by the Washington State Legislature and goes into effect on January 1, 2020.

This legislation prohibits certain health care facilities and providers from balance billing patients when they receive medical care for an emergency at a hospital and when they have surgery or a procedure at an in-network hospital or ambulatory surgical center but receive surgical, anesthesiology, pathology, radiology, hospitalist or laboratory services from a provider who is out-of-network. In these situations, patients will only pay the amount of cost-sharing, such as a copayment or coinsurance, which they would pay if they had been treated by an in-network health care facility or provider.

Self-funded group health plan option to participate in the Balance Billing Protection Act

Consumers enrolled in fully insured health plans, and in the state's public employee and school employee health benefit programs are protected under the Act. Under federal law (the Employee Retirement Income Security Act of 1974 (ERISA)), states cannot regulate self-funded group health plans. However, the act provides an opportunity for self-funded group health plans to elect to participate in critical provisions of the act – the prohibition on balance billing (Sec. 6), additional consumer protections (Sec.7) and the out-of-network provider dispute resolution process (Sec. 8).

Under Section 23 of the act, to elect to participate in these provisions, a self-funded group health plan must provide notice to the Office of the Insurance Commissioner (OIC) attesting to the plan's participation and agreeing to be bound by Sections 6 through 8 of the act. If a self-funded group health plan elects to participate in the act and administers its plan through a contract with a third party administrator, that administrator also must comply with the provisions of Sections 6 through 8 of the act.

OIC is seeking your input on:

- 1. The content and design of the forms intended to serve as the election to participate and to terminate participation, and**
- 2. The processes related to submission of the forms and participation.**

Please submit any comments to rulescoordinator@oic.wa.gov on or before October 4, 2019.

As noted above, under the act, each self-funded group health plan that chooses to elect to participate in the Act must complete and submit a form and attestation to the Office of the Insurance Commissioner.

The draft election to participate form is Appendix A to this letter.

As currently envisioned, the process and advance notice requirements for submission of the forms would be as follows:

1. The election to participate form/attestation and termination of election to participate form/attestation would be available the OIC website and would be submitted electronically by the self-funded group health plan or its third party administrator.
2. A self-funded group health plan could choose to begin its participation on January 1st of any year or in any year on the first day of the self-funded group health plan's plan year.
3. A self-funded group health plan would indicate on its election to participate form whether it chooses to affirmatively renew its election on an annual basis or whether it should be presumed to have renewed on an annual basis until OIC receives advance notice from the plan that it is terminating its election to participate as of either December 31st of a calendar year or the last day of its plan year.
4. Notices to elect to participate or to terminate participation would have to be submitted to the OIC at least thirty days in advance of the effective date of the election to initiate participation or the effective date of the termination of participation. The plan would receive electronic verification of receipt of a notice by OIC.
5. A self-funded group health plan could delegate submission of its forms/attestation to its third party administrator, with an attestation that such authority has been delegated by the plan.
6. Self-funded group health plan sponsors and their third party administrators would be free to develop their own internal processes related to member notification, member appeals and other functions associated with their fiduciary duty to enrollees under the Employee Retirement Income Security Act of 1974 (ERISA).
7. OIC would maintain on its website a list of self-funded group health plans that have elected to participate in the act. The list would include the name of the self-funded group health plan, the name of the plan's third party administrator (if applicable) and contact information for the plan. The list would be available to the public, including health care facilities and providers.

Thank you for your interest in the Balance Billing Protection Act.

APPENDIX A

Page 1

Self-funded group health plan opt-in form/attestation

The Balanced Billing Protection Act ([Chap. 427, Laws of 2019](#)), enacted by the Washington State Legislature, goes into effect on Jan. 1, 2020.

This legislation prohibits certain health care facilities and providers from balance billing patients when they receive medical care for an emergency at a hospital. It also prohibits balance billing if a patient has an approved surgery or procedure at an in-network hospital or ambulatory surgical center but receives surgical, anesthesiology, pathology, radiology, hospitalist or lab services from a provider who is out-of-network. In these situations patients will only pay cost-sharing, such as copayments or coinsurance, which applies when they receive services from an in-network health care facility or provider.

Consumers enrolled in fully insured health plans or in the state's public employee and school employee health benefit programs are protected under the Balanced Billing Protection Act. Under federal law (ERISA), states do not have the authority to regulate self-funded group health plans. However, the Balance Billing Protection Act provides an opportunity for self-funded group health plans to opt-in and participate in critical provisions of the act. These include the prohibition on balance billing (Sec. 6), additional consumer protections (Sec.7) and out-of-network provider dispute resolution process (Sec. 8).

To participate in these provisions, a self-funded group health plan must provide notice to the commissioner, attest to the plan's participation and agree to be bound by sections 6 through 8 of the Balance Billing Protection Act.

Each self-funded group health plan that elects to participate in the Balance Billing Protection Act must complete and submit this form and attestation to the Office of the Insurance Commissioner.

* Required field

Your contact information

Name*

Address*

City*

State*

Zip code*

Phone*

Email*

Are you a Third-party administrator of a self-funded health plan? *

- Yes
- No

DRAFT

Self-funded health plan information

Plan name*

Sponsor name*

Address*

City*

State*

Zip code*

Phone*

Email*

Name of designated contact for inquires*

Phone*

Email*

Federal tax identification number *

Plan identification number*

Plan opt-in for:*

- Calendar year (select single year, dropdown menu)
- Plan year (select multiple years, calendar select date range example - Jul. 1, 2020 – Jun. 30, 2021)

Does the self-funded health plan sponsor contract with a third-party administrator? *

- Yes (show Page 3 TPA information)
- No (skip Page 3 TPA information)

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Third-party administrator information

Administrator name*

Address*

City*

State*

Zip code*

Phone*

Email*

Name of designated contact for inquires*

Phone*

Email*

Show if "Yes" Are you a Third-party administrator of a self-funded health plan?

By this submission, I, [Name](#) attest that [Name of Self-Funded Group Health Plan sponsor](#), has directed and delegated [Name of Third Party Administrator](#) to submit this election to participate in Sections 6 through 8 of Chapter 427, Laws of 2019.

By this submission, I, [Name](#) attest that [Name of Third Party Administrator](#), on behalf of [Name of Self-Funded Group Health Plan sponsor](#), hereby elects to participate in, and to be bound by sections 6 through 8 of [Chapter 427, Laws of 2019](#)) and consents to have the information included in this submission appear in a directory of self-funded group health plans that have elected to participate in the Balance Billing Protection Act published on the website of the Washington State Office of the Insurance Commissioner.

Show if “No” Are you a Third-party administrator of a self-funded health plan?

By this submission, [Name of Self-Funded Group Health Plan](#), hereby elects to participate in, and to be bound by Sections 6 through 8 of [Chapter 427, Laws of 2019](#)) and consents to have the information included in this submission appear in a directory of self-funded group health plans that have elected to participate in the Balance Billing Protection Act published on the website of the Washington State Office of the Insurance Commissioner.”

Submit

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