

Balance or “Surprise” Billing — E2SHB 1688 (Chap. 263, Laws of 2022)

Background

In 2019, the Washington state legislature enacted the [Balance Billing Protection Act](#) (BBPA) which took effect on Jan. 1, 2020. This law prohibits balance billing for emergency services and for non-emergency “surgical and ancillary services” provided at in-network hospitals and ambulatory surgical facilities. Under the law, a consumer cannot be asked by any health care provider, facility or insurer to waive their balance billing protections. The BBPA applies to state-regulated health plans as well as the Public Employee and School Employee Benefits programs. It also applies to self-funded group health plans (employer sponsored plans and Taft/Hartley plans) that have chosen to “opt-in” to follow the BBPA and offer balance billing protections to their enrollees. Over 350 self-funded group health plans have opted to participate in the BBPA.

Since the BBPA took effect, the number of consumer complaints regarding surprise billing has decreased considerably. Also, we have had [limited use](#) of the arbitration system established to resolve disputes between out-of-network health care providers and insurers.

In December 2020, Congress enacted the [No Surprises Act](#) (NSA), as part of the Consolidated Appropriations Act of 2021 ([P.L. 116-260](#)). This law took effect on January 1, 2022 and applies to health plans issued or renewed on or after January 1, 2022. It overlaps with and is similar to Washington’s Balance Billing Protection Act.

The NSA sets minimum or baseline standards for protecting consumers from balance billing and expands coverage of emergency services by insurers. It also provides increased transparency to consumers on their health plan’s provider networks and potential costs of services. While the NSA sets a minimum standard, states are free to have consumer protections in their laws that exceed those of federal law. The NSA applies to all health plans, including health plans offered before the Affordable Care Act went into effect, fully insured health plans that OIC regulates, self-funded group health plans and the Federal Employees Health Benefits program.

What is balance or “surprise” billing?

Balance or “surprise” billing occurs when you receive a bill from a provider that is not in your health plan’s network. Typically, this happens when you received emergency services or when you had a scheduled procedure at a hospital or ambulatory surgical facility.

E2SHB 1688 (Chap. 263, Laws of 2022) — Aligning the BBPA and the NSA

Due to the overlap between provisions of the BBPA and the NSA, failure to align the laws would have resulted in two different laws applying to a single episode of care – for example, the BBPA would apply to a consumer’s emergency care until they are stabilized, and then the NSA would apply to services the consumer receives after they are stabilized. Or the BBPA would apply to a set of “surgical and ancillary services” provided during a planned surgery, but the NSA would apply to additional services received by the consumer during that same procedure. This would have resulted in unnecessary confusion for consumers, providers and insurers, as well as increased administrative costs for providers and insurers.

E2SHB 1688, which went into effect on March 31, 2022, aligns state and federal law, while preserving critical consumer protections in Washington’s Balance Billing Protection Act.

Key provisions of the new law include:

- Adds behavioral health emergency services, such as crisis triage centers and evaluation and treatment facilities, as emergency services providers. Behavioral health emergency and crisis services will be covered without prior authorization and regardless of whether a provider is contracted with a consumer’s health plan.
- Expands the scope of services protected from balance billing to align with those of the NSA, including services provided following an emergency once a consumer has been stabilized and a broader set of non-emergency services provided at in-network hospitals or facilities.
- Preserves the BBPA’s prohibition on asking consumers to waive their balance billing protections.
- Retains the BBPA dispute resolution process (i.e. arbitration) until July 1, 2023 or a later date determined by the Commissioner. After that date, aligns the BBPA with the NSA’s system for independent dispute resolution.
- Clarifies that an insurer cannot use the BBPA or the NSA’s out-of-network provider payment provisions to meet OIC’s provider network access standards. The insurer must have sufficient numbers and types of providers in their contracted provider networks to meet OIC’s standards. In limited circumstances, if an insurer and provider group are unable to reach agreement on a contract, the BBPA arbitration process could be used to establish an interim rate until the parties reach agreement on a contract.
- Clarifies OIC’s authority to enforce all provisions of the NSA and the Consolidated Appropriations Act that apply to or regulate the conduct of insurers.
- Includes an emergency effective date, given that this legislation was enacted after the NSA had already gone into effect. The new law is effective March 31, 2022. OIC has issued a [Technical Assistance Advisory](#) regarding our enforcement of the BBPA and the NSA until new rules are adopted by OIC.