

July 21, 2023

Ms. Jane Beyer & Ms. Sydney Rogalla
Office of the Insurance Commissioner

Submitted via email: janeb@oic.wa.gov; sydney.rogalla@oic.wa.gov; policy@oic.wa.gov

Re: Ground Ambulance Balance Billing Recommendations (first round)

Dear Ms. Beyer and Ms. Rogalla:

Thank you for the opportunity to provide comments as the Office of the Insurance Commissioner (OIC) considers how to best protect consumers from ground ambulance service balance billing. We are pleased to participate in the Ground Ambulance Advisory Workgroup and offer these comments as the Workgroup begins to consider recommendations.

Northwest Health Law Advocates is a nonprofit legal organization working to expand affordable, accessible health care for all Washington residents. In light of this mission, **we strongly support OIC's efforts to protect consumers from surprise medical bills**, while establishing appropriate back-end mechanisms to resolve provider-carrier contract and price dispute issues.

OIC's past efforts on surprise medical bills are working. The success of the state's Balance Billing Protection Act (BBPA)¹ helped inspire the federal No Surprises Act.² The two laws are now working in concert to protect hundreds of thousands of Washington consumers from previously-common egregious billing practices related to care in emergency settings and in-network facilities. OIC reports indicate the laws are working as intended to dramatically reduce consumer complaints and manage price disputes.³

Despite this progress, there are still gaps in our current legal framework. Most notably, neither state nor federal law currently protect consumers from surprise billing by ground ambulance providers. But both the Washington Legislature and Congress have recognized the need for a solution to this problem, given the parallel charges to OIC's Ground Ambulance Advisory Workgroup and the federal Advisory Committee on Ground Ambulance and Patient Billing to develop recommendations.

Washington consumers continue to suffer serious harm because of the gap in balance billing protections for ground ambulance services. A study conducted in 2019 found that between 2013 and 2017, the probability of receiving a surprise bill for ground ambulance services in

¹ Ch. 247, Laws of 2019, as amended by Ch. 263, Laws of 2022.

² Title I, Consolidated Appropriations Act, Public Law 116-260 (Dec.27, 2020).

³ See, e.g., 2022 BBPA Arbitration Proceedings Annual Report (July 1, 2023), at: <https://www.insurance.wa.gov/sites/default/files/documents/bbpa-annual-arbitration-report-2023.pdf>; "Progress on Ending Medical Debt & Balance Billing," Presentation of Jane Beyer at Northwest Health Law Advocates Continuing Legal Education Seminar (Oct. 21, 2022), on file.

Washington was a staggering 89%, with a median amount of \$480.⁴ OIC's analysis of more recent Washington claims data from 2019 to 2022 appear to show some improvement or methodology differences, but indicate that substantial burdens persist for consumers utilizing ground ambulance services in the state.⁵ The preliminary OIC data shows:

- **In emergency situations, Washington residents face a 15% chance of receiving a surprise bill for ground ambulance services.**⁶ Public providers account for 51% of ground ambulance services provided in an emergency situation. Half of those services are for individuals that are out-of-network and there was a 16% probability of getting a surprise bill of \$142.31 in 2022. Private providers provide 46% of emergency ground ambulance services. There is a slightly lower chance, 13%, of getting a surprise bill from these providers, but for a significantly higher median amount of \$383.58. This means on average; consumers have the likelihood of getting a surprise bill of \$262.95 in an emergency.
- **In non-emergency situations, the probability of receiving a surprise bill is 10%.** Private providers handle a substantial 91% of non-emergency services with more than 32% of these services being out of network. Consequently, there is a 9% probability of receiving a surprise bill when utilizing these services. Although publicly funded providers only handle 6% of non-emergency ground ambulance services, there is still a 13% probability of consumers receiving a surprise bill for these services.

The harm that arises from these surprise medical bills is substantial. When consumers face unexpected medical bills, they experience:

- **Fear and uncertainty.** We hear from Washington residents who are afraid to use ambulances, even in an emergency, because of the likelihood of balance billing. It is appalling to consider that 15% of Washington residents who need to call an ambulance for an emergency will face bills they did not expect and could not have prevented. For example, we are aware of a Washington patient with a seizure disorder who was so frightened of unexpected ambulance bills if bystanders called 9-1-1 while she seized that she sought legal advice to prevent this outcome. This is contradictory to the public policy direction the Washington Legislature and Congress have established for other kinds of emergency care. Even if care is planned, Washington consumers often have no reliable way of knowing how much they will be charged when they need to transfer between facilities.

⁴ Karan R. Chhabra, Keegan McGuire, Kyle H. Sheetz, John W. Scott, Ushaporna Nuliyalu, and Andrew M. Ryan, "Most Patients Undergoing Ground And Air Ambulance Transportation Receive Sizable Out-Of-Network Bills" supplemental material (Apr 15, 2020), at www.healthaffairs.org/doi/suppl/10.1377/hlthaff.2019.01484/suppl_file/2019-01484_suppl_appendix.pdf

⁵ Office of the Insurance Commissioner Washington State, "Ground Ambulance Advisory Group Meeting, (Apr 3, 2023), available at: www.insurance.wa.gov/sites/default/files/documents/oic-presentation.pdf

⁶ *Supra* note v. All data referenced in this section is from the OIC survey.

- **Medical debt.** Unexpected medical bills often lead to debt, even when the amounts might be considered relatively small by the standards of wealthier people. According to the Federal Reserve Board, 37 percent of U.S. adults are unable to pay an unexpected \$400 expense without borrowing, selling something, or going into debt.⁷ Five percent of Washington residents currently face medical debt in collections, and the incidence is higher for communities of color.⁸ We are not aware of state-specific data that discusses the share of medical debt attributable to ground ambulance services, but we expect the share is substantial, given that ground ambulance services are not subject to the same kinds of charity care or sliding-scale requirements that are present for other critical health care infrastructure, such as hospitals and community health centers. Unlike in these other settings, there are virtually no existing protections for consumers against high medical bills.
- **Lasting economic instability.** Health care debt can have significant financial consequences, including bills sent to collections, lower credit scores, and even bankruptcy, home foreclosures, or evictions. The Kaiser Family Foundation described the economic consequences of medical debt in a 2022 survey of U.S. households. When asked about specific problems the surveyed households experienced in the past five years as a result of their health care debt, six in ten adults with health care debt say they cut back spending on food, clothing, and basic household items (63%). Nearly half say they used all or most of their savings (48%) and about four in ten say they increased their credit card debt for other purchases (41%), took on an extra job or worked more hours (40%), or skipped or delayed paying other bills or debt (37%) due to their health care debt. Lower-income, Black, and Hispanic adults were more likely to report severe changes in their circumstances related to medical debt, such as needing to move in with family or friends.

In future Workgroup meetings, consumer organizations expect to raise more details of the harm we observe related to ground ambulance surprise billing.

Based on this data and the Legislature’s charge, we look forward to working with OIC and other Workgroup members to develop a recommendation to ban balance billing for ground ambulance services.

We recognize there are problems in the ground ambulance landscape that contribute to the prevalence of balance billing. We have reviewed some of this information in the Workgroup to date, including a patchwork delivery system, reimbursement challenges, and changing care needs as people seek more community-based or home-based care. These problems are not an excuse for inaction. As Washington has done with our past balance billing efforts, we should

⁷ Board of Governors of the Federal Reserve System, “Report on the Economic Well-being of U.S. Households in 2022” (May 2023), at www.federalreserve.gov/publications/2023-economic-well-being-of-us-households-in-2022-expenses.htm

⁸ Urban Institute, “Debt in America: An Interactive Map” (last updated June 23, 2022), at <https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=totcoll&state=53>

“take consumers out of the middle” by protecting them from surprise bills, even as we work in parallel to identify and resolve other challenges.

We are confident solutions are possible. At least 10 other states have acted to protect consumers from ground ambulance balance billing, as summarized by the Georgetown Center on Consumer Health Insurance Reforms:⁹

State (Year of Enactment)	Protects Consumers from Surprise Bills	Regulates Reimbursement Rates for Out-of-Network Providers	Rate Reimbursement Guidance	Protections Apply to Public/Private Providers?	Notes
Colorado (2019)	Yes	Yes	(1) 325% of Medicare; or (2) a negotiated independent reimbursement rate	Private only	
Delaware (2001)	Yes	No	N/A	Both	Does not apply to volunteer fire departments
Florida (2016)	Yes	Yes	Lesser of: (1) the provider's billed charges; (2) the usual and customary provider charges for similar services in the community where services were provided;* or (3) the charge mutually agreed to by the insurer and provider within 60 days of claim submittal.	Both	Applies only to HMO plans
Illinois (2011)	Yes	No	N/A	Both	
Maine** (2020)	Yes	Yes	Out-of-network provider's rate	Both	Reimbursement rate sunsets October 1, 2021
Maryland (2015)^	Yes	No	Sets minimum payment at amount paid to an ambulance service provider under contract with the carrier for the same service in the same geographic region	Public only	Balance billing protections only apply if the ambulance service provider obtains an assignment of benefits from the insured
New York (2015)	Yes	Yes	Usual and customary rate, which cannot be excessive or unreasonable*	Both	- Does not apply to inter-facility transportation -Usual and customary rate is not defined in law or regulation, and is set forth in insurance contract
Ohio (2020)	Yes, for emergency services	Yes; Reimbursement at the greatest of three rates and provides for negotiation/arbitration process.	Insurer must reimburse at based on greatest of: (1) median in network rate; (2) Usual, customary and reasonable amount;* (3) Medicare rate; or (4) Provider may negotiate reimbursement. If not successful in 30 days, may proceed to arbitration.	Both	
Vermont (1994)	Yes, for emergency services	No	N/A	Both	
West Virginia (1997)	Yes	Yes	Provider's normal charges	Both	Does not apply to PPO plans

⁹ Madeline O'Brien, Jack Hoadley, Manaasa Kona, "Filling a Gap in the No Surprises Act: What are States Doing to Protect Consumers from Out-of-Network Ground Ambulance Bills?" (Nov. 15, 2021) at <https://chirblog.org/filling-gap-no-surprises-act-states-protect-consumers-network-ground-ambulance-bills/>

We can draw from these other states and our own BBPA experience in developing tangible recommendations. The OIC Workgroup has substantial industry expertise and we expect it will be possible for the Workgroup to develop solutions in our next two meetings. We have the following preliminary recommendations:

- **Ban balance billing for ground ambulance services, as broadly as possible.** The experiences of several other states show that this is feasible. We recognize that there may be implementation issues that could suggest a phased approach for particular sectors of the ground ambulance industry. But such considerations should be balanced against what we have learned from the BBPA and NSA – it is extremely difficult for consumers and regulated entities alike to understand balance billing protections when there are carve-outs. The closer we can get to uniformity in our policy approach, the easier it will be for all stakeholders to understand and adapt to the new landscape.
- **Develop a fair reimbursement model that manages prices appropriately.** From our Workgroup meetings to date, it appears that some of the issues in the ground ambulance landscape are attributable to a wide range of reimbursement models, as well as concerns that carriers/payers are unable to reach reasonable terms with providers. Other states have addressed these issues by developing more standardized reimbursement approaches. We suggest exploration of this topic in our Workgroup. It will be critical to ensure that any standardized approach has levers to manage price trends over time, rather than allowing prices to balloon without a reasonable tether.
- **Allow self-insured groups to opt-in to any protections.** Due to federal ERISA law, there may be constraints in the state’s ability to protect consumers in self-insured plans from balance billing. Conventional wisdom suggests about 2/3 of our state residents receive coverage through a self-insured plan. The Workgroup should keep this group in mind as conversations proceed and consider the possibility of a self-insured opt-in. This model worked well in the BBPA: to date, 390 groups have opted in to the state’s BBPA protections, and many continue to do so even after the implementation of the NSA.¹⁰
- **Offer the possibility of OIC Workgroup “findings” as well as “recommendations.”** As noted above, the Workgroup has explored a number of features of the ground ambulance delivery system that could stand to be improved. Some of this information is directly relevant to the problem of balance billing for consumers and some of it is not, but it may offer helpful information to policymakers seeking to identify other ways to improve the ground ambulance landscape.

¹⁰ See 2022 BBPA Arbitration Proceedings Annual Report (July 1, 2023), at: <https://www.insurance.wa.gov/sites/default/files/documents/bbpa-annual-arbitration-report-2023.pdf>

Thank you again for the opportunity to provide initial feedback on this effort. We look forward to working with you and other stakeholders to ensure that Washington residents are afforded robust consumer protections against balance billing for ground ambulance services.

Sincerely,

Emily Brice, Deputy Director
Kabitanjali Amatya, Legal Intern

Northwest Health Law Advocates