



# Balance Billing Protection Act

*Use of Washington State's APCD to support implementation*

August 2020



OFFICE of the  
**INSURANCE  
COMMISSIONER**  
WASHINGTON STATE

# BBPA Application

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BBPA applies to:

- All fully insured health plans sold in Washington State (as defined in RCW 48.43.005)
- Washington State employee health plans (PEBB)
- New Washington State school employee health plans (SEBB)
- Self-funded group health plans that “opt-in” to the balance billing prohibition, arbitration, and consumer protections

Provider can check whether consumer’s plan is covered via HIPAA Standard 271 (Health Care Eligibility Benefit Inquiry and Response)

# Self-Funded Health Plans Opt-in

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A self-funded group health plan can elect to participate in two parts of the act:

1. The surprise billing prohibition and related consumer protections
2. The out-of-network provider payment and dispute resolution process

Web-based process: To opt-in, the self-funded group health plan:

- Makes this decision on an annual basis (annual or “evergreen”)
- Attests to the plan’s participation and willingness to be bound by the law

More than 200 plans have opted-in to date. List is on OIC website:

<https://www.insurance.wa.gov/how-self-funded-group-health-plans-can-protect-their-enrollees-surprise-billing>

# Scope of Balance Billing Protection

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As of January 1, 2020, surprise/balance billing is prohibited for:

- Emergency services
- Non-emergency surgical or ancillary services provided by an out-of-network (OON) provider at an in-network hospital or ambulatory surgical center. Surgical or ancillary services include surgery, anesthesiology, pathology, radiology, laboratory, or hospitalist services.

# Consumer Protections

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When surprise billing is *not* allowed, the following protections also apply:

- Insurers must pay OON providers and facilities directly
- Consumer cost-sharing based on “median in-network contracted rate for the same or similar service in the same or similar geographic area”
- Explanation of benefits must show how much is the patient’s responsibility
- Any amount that the patient pays must be applied to their deductible and out-of-pocket limit

# Consumer Protections

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- A provider must refund, within 30 business days, any amount that the patient overpaid an out-of-network provider
- No provider, hospital, or outpatient surgical facility can ask a patient to limit or give up these rights

# Consumer Protections

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How will consumers be informed of their rights under the BBPA?

- OIC Consumer Notice of Surprise Billing Rights:  
<https://www.insurance.wa.gov/sites/default/files/documents/final-consumer-notice-of-surprise-billing-rights.pdf>
  - Has been translated into multiple languages
- Notice from provider/facility when a procedure is scheduled
- Explanation of Benefits notes whether claim is subject to BBPA protection (effective July 1, 2020)

# Out-of-Network Provider Payment

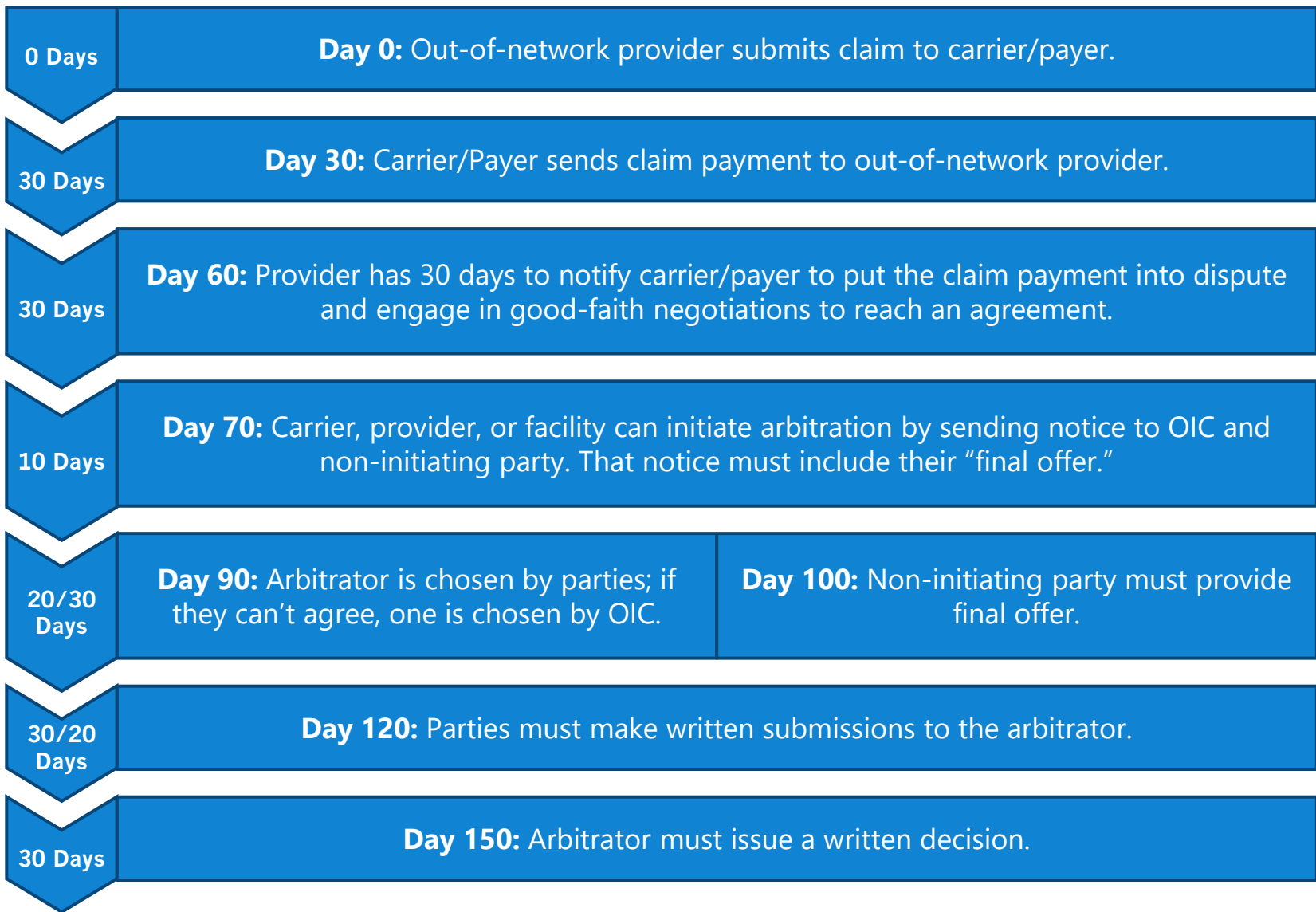
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The OON provider will be paid a “commercially reasonable amount based on payments for the same or similar services provided in the same or a similar geographic area”

If the provider and health insurer cannot agree on this amount after a 30-day informal negotiation period, they can proceed to arbitration

- OIC provides parties with list of arbitrators / arbitration entities
- Providers can “bundle” same or similar claims that occurred within two months of each other if same insurer and same provider
- Arbitrator chooses one party’s “best and final offer”; parties split the cost of arbitration; each pays its own attorney’s fees





# APCD Data Set

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- Parties and arbitrators will have access to a data set from the state's all-payer claims database (WA-APCD)
- Data set serves as a source of neutral, credible information on payment for services subject to the BBPA
- Developed through a partnership between OFM (then WA-APCD lead agency), Onpoint, and OIC, with close involvement of health insurers and health care providers/facilities

# APCD Data Set

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- Based on 2018 commercial fee-for-service health insurance claims
- Provides median in-network, median out-of-network, and median billed charges
- Updated annually based on the Medical Consumer Price Index (CPI)
- More information:  
<https://www.insurance.wa.gov/arbitration-and-using-balance-billing-protection-act-data-set>

# Data Set Key Components

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- Most recent and available full calendar year of data (2018)
- Commercial fee-for-service data (excludes Medicaid, Medicare, and managed care data)
- Median in-network and out-of-network allowed amounts, and median billed charges for the following:
  - Emergency services
  - Non-emergency services provided at an in-network hospital or in-network ambulatory surgical facility if the services
    - a) Involve surgical or ancillary services and
    - b) Are provided by out-of-network providers

# Calculating Data Set Values

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- Included claims processed as primary
- Excluded denied and orphaned claims
- Billed charge amount (when charge > 0)
- Total paid (allowed) amount (when allowed > 0)
  - Sum of paid, copay, coinsurance, and deductible amounts

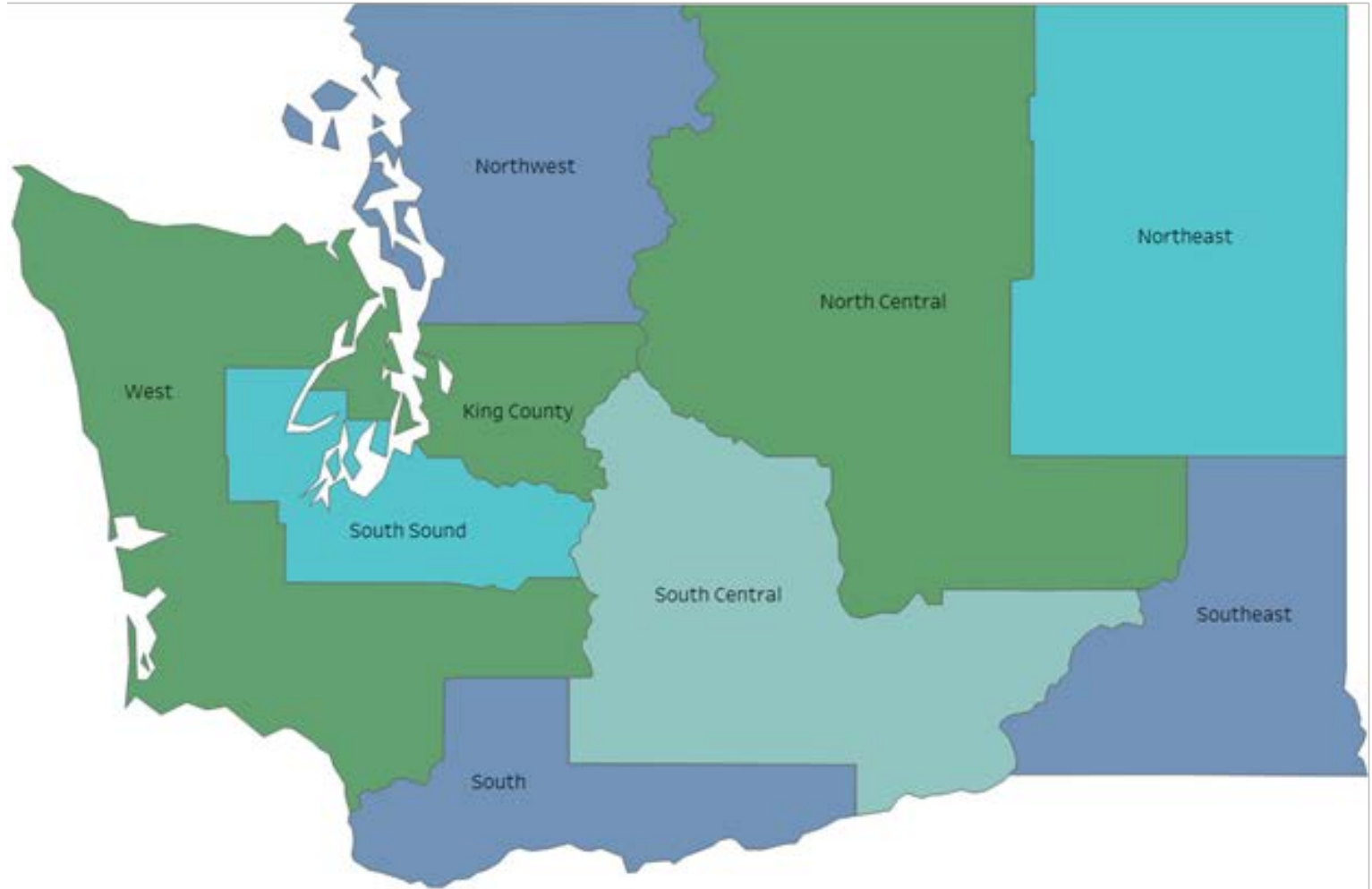
# Calculating Data Set Values – Geographic Areas

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- Median allowed amounts for procedures were calculated at two levels:
  - OIC Geographic Rating Region
  - Statewide
- Service was assigned to geography based on the ZIP code of the rendering provider for the service
- Out-of-state services or unknown provider ZIP codes were excluded

# Calculating Data Set Values – Geographic Areas

## Geographic Rating Regions



# Calculating Data Set Values – Modifiers

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- Current Procedural Terminology (CPT) modifiers serve multiple purposes
  - Add detail (e.g., indicating left or right side in bilateral procedures)
  - Determine pricing (e.g., indicating whether the bill is for an assistant surgeon)
- Calculations removed records with modifiers affecting pricing
  - AS, FX, FY, SA, UE, 22, 23, 25, 47, 50–56, 62, 66, 73, 78, 80–82, SG
- Values were calculated for claims for three modifier groups:
  1. 26: Professional component of a procedure such as for radiology claims
  2. TC: Technical component of a procedure such as for radiology claims
  3. Other: Records with modifiers not impacting pricing or no modifier



# Calculating Data Set Values – ED Services

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## ED professional services

- Identified using Onpoint Health Data's service flag indicating the record was an ED service. The flag evaluates services using:
  - Place of Service codes
  - Procedure codes
  - Revenue codes

# Calculating Data Set Values – ED Services

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## ED facility services

- Paid in a variety of ways – Ambulatory Payment Classifications (APCs), percent of charges, case rates / set rates, etc.
- Applied APC grouper to WA APCD study data
- Calculated median allowed amount by APC stratified by geography (statewide and OIC rating region)
- Created a ratio of the median value by APC grouper to Medicare by APC (statewide) and overall (regions)

# Calculating Data Set Values – Non-Emergency Services

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Identifying claims for non-emergency services

- Restricted to claims where:
  - Type of Setting is inpatient or outpatient *OR*
  - Place of Service is inpatient hospital, outpatient hospital, or ambulatory surgical center
- CPT groupings
  - Surgery (10004–69990)
  - Hospitalists (99217–99226 and 99231–99239, excluding 99237)
  - Laboratory & Pathology (80047–89398)
  - Radiology (70010–79999)
  - Anesthesiology (00100–01999)\*

# Specifications in Development

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## Anesthesiology services

- Methodology provides a conversion factor by geographic area
- Requires base units, quantity, and physical status units
- Quantity for these services was not sufficient in APCD
  - The WA-APCD Data Submission Guide was updated (effective 1/1/2020) to provide more detailed instructions for the values reported using the Quantity field

# Resources

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- 2SHB 1065: <http://lawfilesexternal.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/House/1065-S2.SL.pdf>
- Chap. 48.49 RCW: <https://app.leg.wa.gov/RCW/default.aspx?cite=48.49>
- BBPA Rules: <https://apps.leg.wa.gov/WAC/default.aspx?cite=284-43B>
- OIC BBPA website: <https://www.insurance.wa.gov/surprise-billing-and-balance-billing-protection-act>
- Table summarizing BBPA: <https://www.insurance.wa.gov/sites/default/files/documents/Chart%20of%20%202019%20surprise%20billing%20law.pdf>

# Questions?

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## **Washington State Office of the Insurance Commissioner (OIC)**

Jane Beyer

Senior Health Policy Advisor

[JaneB@oic.wa.gov](mailto:JaneB@oic.wa.gov)

(360) 725-7043

## **Washington State Office of Financial Management (OFM)**

Thea Mounts

Senior Forecast & Research Manager

[thea.mounts@ofm.wa.gov](mailto:thea.mounts@ofm.wa.gov)

(360) 688-3839

## **Connect with the OIC!**

- OIC BBPA website: [Surprise medical billing](#)
- Twitter: [https://twitter.com/WA\\_OIC](https://twitter.com/WA_OIC)
- [www.insurance.wa.gov](http://www.insurance.wa.gov)

## **Onpoint Health Data**

Joanna Duncan

Senior Director of Data & Analytic Operations

[jduncan@onpointhealthdata.org](mailto:jduncan@onpointhealthdata.org)

(207) 430-0640

