



Washington State  
**Medical Association**

Physician Driven Patient Focused

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Olympia, WA 98504

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Washington State House of Representatives  
303 John L. O'Brien Building  
Olympia, WA 98504

Sen. Cleveland and Rep. Cody:

On behalf of the Washington State Medical Association and our more than 11,000 physician and physician assistant members across the state, as well as the undersigned physician organizations and specialty societies, we appreciate your continued consideration of balance billing legislation. As you know, this is a priority issue for the physician community and one we are hopeful that can be resolved this session in a manner that protects patients from balance bills, is fair for physicians, and maintains incentives to contract for insurance carriers.

Per our testimony on House Bill 1065 in the House Health Care & Wellness Committee on January 23, we feel the bill (and its companion, Senate Bill 5031) comes closer than those that have been considered in recent years to striking a balance that will resolve the issue without unintended consequences. Inclusion of provisions such as claims bundling and strengthened network adequacy protections in particular are important and necessary to help avoid overutilization of arbitration.

There are, however, several minor changes we see as necessary to improve the bill, as we have shared with you previously. These suggested changes are reflected in Senate Bill 5699, which along with SB 5031 will receive a public hearing on Monday, February 4, in the Senate Health & Long Term Care Committee.

- Remove Medicare as arbitration criterion
  - Medicare rates should not be referenced as factor for arbitrators, who are charged with determining what is a “commercially reasonable” payment for out-of-network services. Medicare reimbursement is a public payment rate that is not reflective of commercial contracting. Further, it impacts specialties varying and is subject to the whims of Washington D.C.
  - Amendment:
    - Strike Section 8 (3) (b) (iii) of SB 5031.

- Initial reimbursement language
  - Language in the bill directing an insurer’s initial payment to a physician for care that is provided is unnecessarily biased. Insurers should simply be required to reimburse at a neutral, “commercially reasonable” standard.
  - Amendment:
    - Revise Section 7 (2) of SB 5031 to read: “The allowed amount paid to an out-of-network provider for health care services described under section 6 of this act shall be ~~limited to~~ a commercially reasonable amount.”
- ERISA solution
  - More than half the state’s commercial health insurance market is comprised of self-insured plans – which will be exempted from this bill due to federal preemption. Physicians need to know whether their patients are enrolled in self-insured or fully-insured plans, so that they know whether the bill applies to their patient’s health plan.
  - Amendment:
    - Include a requirement for health plans subject to RCW 48.43 to include on enrollee identification cards and on explanation of benefits that the plan is fully-insured.
    - If the self-insured plans are allowed to opt-in to participating in the bill, then those that do opt-in should also be required to identify themselves, as New Jersey requires ([here](#) on page 14).
- Transparency
  - The requirement for physician groups delineate the health plan provider networks we contract with isn’t workable as a physician group would know what carriers they contract with, but would not necessarily know all of the plans that the carrier has included them in.
  - Amendment:
    - Strike Subsections (1) and (2) of Section 12 of SB 5031.
- Non-disclosure
  - Arbitration decisions should be sealed so that there’s not a concerted effort on the part of carriers to create a floor.
  - Amendment:
    - Add the following language to Section 8 of SB 5031: “A nondisclosure agreement must be executed by both parties prior to engaging an arbitrator in accordance with this section.”

Currently, the vast majority of physician groups in Washington are contracted with insurers – meaning that patients are protected from out-of-network bills. These amendments are intended to maintain a level playing field with regard to incentives to contract. They are also intended to provide predictability with regard to impact on reimbursement, and certainty with where the bill applies.

We appreciate your consideration of these requested amendments. As always, please feel free to let us know if you have questions or if there is additional information we can provide.

Sincerely,

Sean Graham  
Director of Legislative & Political Affairs  
Washington State Medical Association

American College of Emergency Physicians

American Society of Plastic Surgeons

Center for Diagnostic Imaging

Emergency Department Practice Management Association

Olympia Emergency Services

Physicians for Fair Coverage

United State Anesthesia Partners

Washington Academy of Eye Physicians & Surgeons

Washington Ambulatory Surgery Center Association

Washington Chapter - American College of Emergency Physicians

Washington State Orthopaedic Association

Washington State Radiological Society

Washington State Society of Anesthesiologists

Washington State Society of Pathologists