

2022 Balance Billing Protection Act arbitration proceedings

Annual report

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Balance Billing Protection Act background

The Washington state Legislature passed the Balance Billing Protection Act (BBPA) ([Chapter 427, Laws of 2019](#)) to protect consumers from balance billing, also called surprise billing. Balance billing is when a patient receives out-of-network emergency services and out-of-network services (such as lab testing, radiology and anesthesia services) at an in-network hospital or outpatient surgical facility. The BBPA went into effect on Jan. 1, 2020.

In December 2020, Congress enacted the federal [No Surprises Act](#), which addressed many of the same consumer protections as the BBPA. To avoid conflicts between state and federal law, in 2022, the Legislature enacted a law amending the BBPA to largely align with the federal No Surprises Act ([Chapter 263, Laws of 2022](#)). The new state law went into effect on March 31, 2022.

For services subject to the BBPA, when an out-of-network health care provider or health care facility (hereinafter called “provider”) submits a claim to a health insurer, the allowed amount paid to that provider must be a commercially reasonable amount. It also must be based on payments for the same or similar services provided in a similar geographic area ([RCW 48.49.160](#)). The BBPA includes a process for out-of-network providers to dispute an initial payment from an insurer. If, after a 30-day period of informal negotiation, the insurer and provider cannot resolve the dispute, the provider or insurer can initiate arbitration proceedings. The BBPA specifies timelines for each of the steps in the dispute resolution and arbitration process ([RCW 48.49.160](#) and [RCW 48.49.040](#)).

The BBPA is structured to allow providers to address multiple claims in a single arbitration proceeding. These “bundled” claims must:

- Involve identical insurer and provider or facility parties.
- Involve claims with the same or related billing codes.
- Occur within the same 30-business day period.

Under the law ([RCW 48.49.040](#)), once an arbitrator is chosen, each party must submit its written materials to the arbitrator within 30 days. The arbitrator’s decision is made based upon the written materials submitted by the parties. Within 30 days of receiving the parties’ submissions, the arbitrator must issue a written decision requiring payment of the final offer amount of either party (i.e., the final offer amount of the insurer or the provider) and notify the parties of their decision. The arbitrator’s decision must include an explanation of the elements of the parties’ submissions the arbitrator relied upon to make their decision and why those elements were relevant to their decision. The arbitrator must provide the decision and information required for this report to the Office of the Insurance Commissioner (OIC).

The BBPA directed the OIC to develop a [surprise billing data set](#), based upon claims information in the Washington state All Payer Claims Database (APCD). This data set provides information on amounts that insurers paid to providers for services protected from balance billing under the BBPA. It is a source

of objective information for providers and insurers to use during negotiation and helps arbitrators evaluate final offers made by the parties.

[RCW 48.49.050](#) requires the insurance commissioner to submit an annual report to the Legislature through 2022.¹ The report must summarize information from the arbitrators' decisions and provide the following information for each dispute resolved through arbitration:

- The name of the insurer.
- The name of the health care provider.
- The health care provider's employer or the business entity in which the provider has an ownership interest.
- The health care facility where the services were provided.
- The type of health care services at issue.

¹ E2SHB 1688 amends RCW 48.49.050 such that the reporting obligation expires on Jan. 1, 2023.
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Implementation of the arbitration provisions under the Balance Billing Protection Act

The OIC has adopted rules to implement the BBPA ([Chapter 284-43B WAC](#)). The OIC consulted extensively with interested organizations and parties about rulemaking and additional implementation activities. This included minimum qualifications for arbitrators and other aspects of the arbitration process.

In addition, the OIC developed a [BBPA section on its website](#) that makes the information about the BBPA easily accessible to consumers, providers, insurers, and self-funded group health plans that have elected to extend the protections of the BBPA to their plan members.

The OIC [arbitration webpages](#) include:

- An online application for individuals and entities to apply to serve as arbitrators and a list of approved arbitrators and arbitration entities. As of May 2023, there are 32 individual arbitrators and five arbitration entities approved as BBPA arbitrators.
- Links to required forms for submitting a request to initiate arbitration and for arbitrators to submit to the OIC along with their decisions.
- A link to the surprise billing dataset, drawn from the APCD, as well as extensive explanatory information and instructions on how to use the database.
- The [online form for self-funded group health plans that elect to participate](#) in the BBPA.
- An [updated list of participating self-funded group health plans](#). To date, approximately 390 self-funded group health plans have elected to offer BBPA protections to their enrollees.

2022 arbitration report

This report summarizes information from the arbitrators’ decisions, and provides the following information for each dispute resolved through arbitration in calendar year 2022:

- The name of the carrier.
- The name of the health care provider.
- The health care provider's employer or the business entity in which the provider has an ownership interest.
- The health care facility where the services were provided.
- The type of health care services at issue.

The BBPA law includes specific timelines that a provider or carrier must meet to initiate arbitration. The OIC reviews each request to determine whether the statutory timelines have been met.

Claims for self-funded group health plans that did not elect to participate in the BBPA are not subject to arbitration under the act. Any questions about the inclusion of such claims in an arbitration request are resolved either through discussion between the parties or are brought to the appointed arbitrator. If the claims are indeed for self-funded plans that have not elected to participate in the BBPA, then the arbitrator will dismiss the matter. These claims are included in the count in the table below.

The OIC has previously reported on arbitration cases in calendar years 2020 and 2021. The OIC received substantially more arbitration cases in 2022 than in 2021. In 2022, a total of 208 Arbitration Initiation Request Forms (AIRFs) were submitted to the OIC. Of these, five were rejected by the OIC due to noncompliance with timelines established in the BBPA and its implementing rules. Eighty-five arbitration requests filed in 2022 resulted in an arbitration decision. The vast majority of arbitration initiation requests were filed by Physicians Anesthesia Services, PLLC against Kaiser Foundation Health Plan of Washington.

Disposition (2022)	Number of AIRFs	Total claims at issue
Rejected	5	20
Settled/withdrawn	117	426
Arbitrator decision	85	336
Pending resolution or unknown	1	12
Total	208	794

In 2021, the OIC received a total of 11 AIRFs. Of these, the OIC rejected two due to noncompliance with timelines established in the BBPA and its implementing rules. As of June 2022, nine cases resulted in an arbitration decision.

Disposition (2021)	Number of AIRFs	Total claims at issue
Rejected	2	506
Settled/withdrawn	0	0
Arbitrator decision	9	698
Pending resolution or unknown	0	0
Total	11	1204

The OIC received 71 AIRFs in 2020. Of these, the OIC rejected 19 due to noncompliance with timelines established in the BBPA and its implementing rules. Eighteen of the requests were withdrawn or settled by the parties prior to proceeding to arbitration and 29 cases resulted in an arbitration decision.

Disposition (2020)	Number of AIRFs	Total claims at issue
Rejected	19	263
Settled/withdrawn	18	335
Arbitrator decision	29	221
Pending resolution or unknown	5	58
Total	71	877

Like 2020 and 2021, most providers initiating arbitration used the bundled claims option in [RCW 48.49.040](#). Of the 203 arbitration initiation requests that were accepted, 116 included multiple or “bundled” claims. The services in dispute were almost exclusively emergency and anesthesiology.

Attachment A provides greater detail about the disputes that proceeded to arbitration and resulted in an arbitrator’s decision in 2022. In these proceedings, the arbitrator decided in favor of the carrier in 32 cases and in favor of the provider in 51 cases. One of the bundled claims cases, involving a total of five claims, resulted in two claims being decided in favor of the carrier and three in favor of the provider. One case, with a single claim, was dismissed, with the decision noting “[t]he arbitrator was not provided any information from the Provider to contradict the Plan’s assertion.” Given the large volume of cases that involved Physicians Anesthesia Services LLP and the Kaiser Foundation Health Plan of Washington, a portion of those cases have been combined and reported in total in the first two rows of the table in Attachment A.

Attachment A

Attachment to the Balance Billing Protection Act Arbitration Proceedings Annual Report for calendar year 2022.

AIRF #	Carrier	Provider	Provider employer/business entity	Facility(ies) where services provided	Type of health care services	Number of claims	Prevailing party
22A-0005, 22A-0018, 22A-0019, 22A-0021, 22A-0022, 22A-0025 thru -0030, 22A-0032, 22A-0033, 22A-0036, 22A-0037, 22A-0040, 22A-0042, 22A-0044, 22A-0045, 22A-0049, 22A-0051, 22A-0053, 22A-0054, 22A-0056, 22A-0058, 22A-0060, 22A-0061	Kaiser Fdn. Health Plan of WA (KPWA)	Multiple providers	Physicians Anesthesia Services, LLP (PAS)	Not reported	Anesthesiology	139	Provider: 101 claims Carrier: 38 claims
22A-0007, 22A-0008, 22A-0020, 22A-0023, 22A-0043, 22A-0046, 22A-0057, 22A-0064, 22A-0067 thru -0069, 22A-0071 thru -0074, 22A-0077 thru -0079, 22A-0081, 22A-0083 thru -0086, 22A-0088 thru -0089, 22A-0091, 22A-0094 thru -0096, 22A-0098, 22A-0100, 22A-0103, 22A-0107 thru -0111, 22A-0113, 22A-0115, 22A-0118, 22A-0120, 22A-0126,	KPWA	Multiple providers	PAS	Swedish Cherry Hill Campus (Seattle); Swedish First Hill Campus (Seattle); First Hill Surgery Center (Seattle); Swedish Issaquah Campus (Issaquah)	Anesthesiology	153	Provider: 80 claims Carrier: 72 claims Dismissed: 1 claim

22A-0127, 22A-0129							
22A-0041	KPWA	Evelyn Lindenthaler, MD	PAS	Seattle Surgery Center (Seattle)	Anesthesiology	1	Provider
22A-0075	United Health Care (UHC)	Aditya Dash, MD	Sunnyside Emergency Group (SEG)	Swedish Cherry Hill Campus (Seattle)	Emergency	2	Carrier
22A-0090	KPWA	Sean J. Nabar, MD; Daniel A. Bailes, MD	PAS	Gateway Ambulatory Surgery Center (Everett); Swedish First Hill Campus, (Seattle)	Anesthesiology	2	Provider
22A-0097	KPWA	Ross Frohn, MD; Craig J. Johnson, MD, Melissa L. Brooke, CRNA; Minna Wang, MD	PAS	Polyclinic Plastic Surgery Center (Seattle); Swedish First Hill Campus (Seattle)	Anesthesiology	4	Carrier
22A-0101	KPWA	Young H. Kim, MD; Deyan Z. Milligan, MD	PAS	Seattle Surgery Center (Seattle)	Anesthesiology	2	Provider
22A-0105	KPWA	Grant I Shibuya, MD; Erin K. Parker, DO; Grant Dylan Aakre, MD	PAS	Polyclinic Plastic Surgery Center (Seattle); Swedish First Hill Campus (Seattle)	Anesthesiology	3	Carrier
22A-0112	KPWA	Jennifer P. Coursen, MD; Nicholas V. Bishop, MD	PAS	Polyclinic Plastic Surgery Center (Seattle); Swedish First Hill Campus (Seattle)	Anesthesiology	4	Carrier

221A-0114	KPWA	Matthew W. Hill, MD; Yuko Yano, MD; Jaime Sanchez, MD; Deyan Z. Milligan, MD	PAS	Seattle Surgery Center (Seattle); Swedish First Hill Campus (Seattle)	Anesthesiology	4	Provider
22A-0116	KPWA	Lisa F. Miller, MD; Thomas Minh-Tri Nguyen, MD; Christine H. Price, MD; Sarah C. Baldrige, MD; Matthew W. Hill, MD; Katlyn F. Flaherty, CRNA; Caleb M. Brown, MD; Austin H. McKinley, CRNA; Fan Ye, MD; Wendy G. Carlyle, MD	PAS	Polyclinic Plastic Surgery Center (Seattle); Swedish First Hill Campus (Seattle); First Hill Surgery Center (Seattle); Swedish Issaquah Campus (Issaquah)	Anesthesiology	10	Carrier
22A-0119	KPWA	Lori B. Heller, MD; Anna M. Cornea, MD, Janet K. Chen, MD	PAS	Polyclinic Plastic Surgery Center (Seattle); Swedish First Hill Campus (Seattle)	Anesthesiology	3	Provider
22A-0131	KPWA	Matthew P. Kutz, MD; Cameron C. Cartier, DO; Danielle N. Welch, DO; Ross H. Frohn, MD; Lori B. Heller, MD; Gregory B. Marsh, MD	PAS	Seattle Surgery Center (Seattle); Polyclinic Plastic Surgery Center (Seattle); Swedish Cherry Hill Campus (Seattle); Swedish First Hill Campus (Seattle); Swedish Issaquah Campus (Issaquah)	Anesthesiology	6	Provider

22A-0207	UHC	Alfred S. Roller, MD	SEG	Not reported	Emergency	1	Provider
22A-0209	UHC	Jeffrey K. Holen, MD	Thurston Emergency Group	Multicare Capital Medical Center	Emergency	1	Provider
22A-0210	Premera	Not reported	Natera, Inc.	NSTX, Inc.	Laboratory	1	Carrier