Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Health Care & Wellness Committee

SSB 5986

Brief Description: Protecting consumers from out-of-network health care services charges.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Cleveland, Muzzall, Hasegawa, Kuderer, Mullet, Nobles, Randall, Salomon, Valdez and Wellman).

Brief Summary of Substitute Bill

- Establishes balance billing protections for certain ground ambulance services.
- Requires health carriers to provide coverage for ground ambulance transport services to behavioral health emergency services providers for enrollees who are experiencing an emergency medical condition.
- Requires the Washington State Institute for Public Policy to conduct a study on the extent to which other states fund or have considered funding emergency medical services (EMS) substantially or entirely through federal, state, or local governmental funding and the current landscape of EMS in Washington.

Hearing Date: 2/14/24

Staff: Kim Weidenaar (786-7120).

Background:

Balance Billing Protection Act.
In 2019 the Legislature passed the Balance Billing Protection Act (BBPA), which prohibited balance billing for emergency services and certain nonemergency services. In 2020 Congress passed the federal No Surprises Act (NSA), which establishes federal protections against balance billing for emergency services, including air ambulance services, and certain other services

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provided at in-network facilities beginning January 1, 2022. In 2022 the Legislature amended the BBPA to align provisions with the NSA. Under the BBPA as amended, a nonparticipating provider or facility may not balance bill an enrollee for:

- emergency services provided to an enrollee;
- nonemergency health care services performed by a nonparticipating provider at certain participating facilities; or
- air ambulance services.

This includes covered services provided by a behavioral health emergency services provider. A behavioral health emergency services provider means emergency services provided in the following settings: a crisis stabilization unit, an evaluation and treatment facility, an agency certified to provide outpatient crisis services, a triage facility, an agency certified to provide medically managed or monitored withdrawal management services, and a mobile rapid response crisis team contracted with a behavioral health administrative services organization (BHASO) to provide crisis response services in the BHASO's area.

Nonemergency health care services performed by nonparticipating providers at certain participating facilities are the covered items or services other than emergency services with respect to a visit at a participating facility as provided in the NSA.

A health care provider, health care facility, or air ambulance service may not request or require a patient at any time, for any procedure, service, or supply to sign or otherwise execute any document that would attempt to avoid, waive, or alter the balance billing provisions. If an enrollee pays a nonparticipating provider, facility, or air ambulance service more than the in-network cost-sharing amount determined under the NSA and the implementing regulations, the provider must refund the excess amount within 30 days. If an enrollee receives emergency services from a behavioral health emergency services provider, the enrollee satisfies the obligation to pay if the enrollee pays the in-network cost-sharing amount specified in the enrollee's group health plan contract.

Payment and dispute resolution between carriers and providers for services covered by the balance billing prohibitions, except for emergency services provided by behavioral health emergency services providers, are governed by the NSA and implementing regulations. For covered services provided by a behavioral health emergency services provider the payment must be a commercially reasonable amount based on the same or similar service provided in a similar geographic region. If the parties fail to agree to a commercially reasonable amount, the dispute must be resolved under the state's arbitration process.

The Office of the Insurance Commissioner (OIC) must develop a template to notify consumers of their rights under the Balancing Billing Protection Act, and the NSA and its implementing federal regulations. Hospitals, ambulatory surgical facilities, and behavioral health emergency service providers must post a list of the carrier health plan networks with which they are in-network on the facility's website, and if they do not have a website this information must be available upon request.

Ground Ambulance Balance Billing Report.
The amended BBPA directed the OIC, in collaboration with the Health Care Authority (HCA) and the Department of Health (DOH), to submit a report and any recommendations to the appropriate legislative committees detailing how balance billing for ground ambulance services can be prevented and if ground ambulance services should be subject to the balance billing prohibitions.

Ground Ambulance Balance Billing Advisory Group.
As part of its work, the OIC convened an advisory group of stakeholders to review the types of ground ambulance providers in the state, the funding structures, and issues that would need to be addressed to eliminate balance billing. In October 2023 the OIC released its report, which included the following policy recommendations:

- a prohibition on balance billing for emergency and nonemergency transports and applying the prohibition to public and private providers;
- reimbursing ground ambulance services at applicable local jurisdiction fixed rate, or if no local rate exists, at the lesser of a fixed percentage of Medicare or billed charges; and
- requiring coverage for emergency transport to alternative sites, which are behavioral health emergency services providers, including crisis stabilization facilities, evaluation and treatment facilities, medical withdrawal management facilities, and other crisis providers.

Summary of Bill:

Ground Ambulance Balance Billing.
For health plans issued or renewed on or after January 1, 2025, a nonparticipating ground ambulance services organization may not balance bill an enrollee for covered ground ambulance services. For the purposes of this act, ground ambulance services mean:

- the rendering of medical treatment and care at the scene of a medical emergency or while transporting a patient to an appropriate emergency services provider when the services are provided by one or more ground ambulance vehicles; and
- ground ambulance transport between emergency services providers, emergency services providers, and medical facilities, and between medical facilities when the services are medically necessary and are provided by one or more ground ambulance vehicles.

A ground ambulance services organization is a public or private organization licensed by the DOH to provide ground ambulance services.

If an enrollee receives covered ground ambulance services, the enrollee satisfies their obligation to pay for the ground ambulance services if they pay the in-network cost-sharing amount specified in the enrollee's or applicable group's health plan contract. The amount paid by the enrollee must be applied toward the enrollee's maximum out-of-pocket payment obligation.

The allowed amount paid to a nonparticipating ground ambulance services organization for covered ground ambulance services must be one of the following amounts:

- if a local governmental entity has submitted a rate to the OIC in the form and manner prescribed by the OIC, the rate set by the local governmental entity in the jurisdiction in which the covered health care services originated will be used; or
- if a local governmental entity has not submitted a rate, the rate will be the lesser of:
  - 325 percent of the current published rate for ambulance services as established by the Centers for Medicare and Medicaid Services for the same service provided in the same geographic area; or
  - the ground ambulance services organization's billed charges.

The carrier must make payments for ground ambulance services provided by nonparticipating ground ambulance services organizations directly to the organization, rather than the enrollee. A ground ambulance services organization may not request or require a patient at any time, for any procedure, service, or supply, to sign or otherwise execute any document that would attempt to avoid, waive, or alter any of these requirements. Carriers must make available through electronic and other methods of communication used by a ground ambulance services organization to verify enrollee eligibility and benefits information regarding whether an enrollee's health plan is subject to these requirements.

Behavioral health emergency services providers and ground ambulance services organizations are added to the providers that OIC must consult with when developing a template to notify consumers of their rights under the BBPA. Ground ambulance service organizations are also added to the list of providers that must post a list of the carrier health plan networks with which they are in-network and the notice of consumer rights developed by the OIC on the provider's website, if the provider has a website, and if they do not have a website this information must be available upon request.

A carrier must provide enrollees with a notification that if the enrollee receives services from an out-of-network ground ambulance service organization for services not covered under this act, the enrollee will have financial responsibility for those services.

Self-funded group health plans may opt-in to the provisions of this act.

A local governmental entity may submit to the OIC the rate set by the local government entity for purposes of the allowed amount. The Insurance Commissioner (Commissioner) must establish and maintain a publicly accessible database for the rates. A carrier may rely in good faith on the rates shown on the website. Local governmental entities are solely responsible for submitting any updates to their rates to the Commissioner.

If the Commissioner has cause to believe that any ground ambulance services organization has engaged in a pattern of unresolved violations of the balance billing requirements, the Commissioner may submit information to the DOH. If the report is substantiated after investigation, the DOH may levy a fine upon the ground ambulance services organization up to $1,000 per violation and take other formal or informal disciplinary action as authorized.

Health Insurance Coverage.
For health plans issued or renewed on or after January 1, 2025, a health carrier must provide coverage for ground ambulance transports to behavioral health emergency services providers for enrollees who are experiencing an emergency medical condition. A health carrier may not require prior authorization of ground ambulance services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed.

Reports and Analyses.
The Commissioner must undertake a process to review the reasonableness of the percentage of the Medicare rate and any trends in changes to ground ambulance service rates set by local governmental entities. The Commissioner should consider the relationship of the rates of the cost of providing ground ambulance services and any impacts on health plan enrollees. The results of the review must be submitted to the Legislature the earlier of October 1, 2027, or October 1st following any update in Medicare ground ambulance services rates.

The OIC, in consultation with the HCA, must contract for an actuarial analysis of the cost, potential cost savings, and total net costs or savings of covering services provided by ground ambulance services organizations when a ground services ambulance organization is dispatched to the scene of an emergency and the patient is treated but not transported. The analysis must calculate costs or savings for different health plan markets and consider the proportion of dispatches that do not result in transport, appropriate payment rates for these services, any potential impact of covering these services on the number or types of transports and costs or savings. The report must be submitted to the Legislature by October 1, 2025, and must include the findings of the analysis and recommendations on whether the services should be covered.

The Washington State Institute for Public Policy (WSIPP), in collaboration with the DOH, the HCA, and the OIC, must conduct a study on the extent to which other states fund or have considered funding emergency medical services (EMS) substantially or entirely through federal, state, or local governmental funding and the current landscape of EMS in Washington. The WSIPP must consider:

- trends in the number and types of EMS available, the volume of 911 responses, and interfacility transports provided by EMS organizations in Washington;
- projections of the need for EMS over the next two years;
- identification of geographic areas without access to EMS within an average 25-minute response time;
- estimates for the cost to address gaps in EMS;
- models for funding EMS in other states; and
- existing research and literature related to funding models for EMS.

In conducting the study, the WSIPP must consult with EMS organizations, local governmental entities, hospitals, labor organizations, and other interested entities in consultation with the other state agencies. A report of the study's results must be submitted to the DOH and the Legislature by June 1, 2026. The DOH, in consultation with these same entities, must develop recommendations based on the completed report on whether EMS should be treated as an

essential health service provided by state and local governmental entities and funded exclusively by federal, state, and local governmental entities as a public health service. The report must be submitted to the Legislature by December 1, 2026.

The statutory provision requiring a report on ground ambulance balance billing, which has been completed, is repealed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.