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On behalf of the Washington State Medical Association, representing more than 12,500 physicians and physician assistants, as well as our undersigned physician partner organizations, thank you for the opportunity to provide comment on the request for information related to balance billing dispute resolution. Our organizations urge the Office of the Insurance Commissioner to maintain the arbitration system

under the Balance Billing Protection Act until at least July 1, 2024.

As noted in the OIC's request for information, the implementation of the Independent Dispute Resolution system under the No Surprises Act has been subject to repeated successful legal challenges on the grounds of being inconsistent with the underlying law. Last week a federal judge again sided with the Texas Medical Association in invalidating portions of a final rule which itself was revised due to a prior successful legal challenge¹.

Subsequently CMS has paused use of the IDR system while federal regulators evaluate and update the IDR process to make it consistent with the latest TMA decision². And meanwhile other lawsuits against the IDR system are still pending. Its prudent for the state to maintain its arbitration system under the BBPA while the legal challenges play out and the federal law continues to coalesce.

The practical experience of the IDR system has faced its own challenges. Limitations on claims batching/bundling and inaccurate projections by federal regulators of the number of disputes that would be submitted through IDR have contributed to a backlog of tens of thousands of claims. Delays in the system mean that clinicians often must wait over 200 days for reimbursement, which does not include the additional mandatory 90-day cooling off period following a ruling.

By contrast to IDR, the BBPA arbitration system has been operating as intended, and in some circumstances has helped facilitate successful negotiations with carriers to return to network status. We do not have confidence that the IDR system as currently constituted will have the same effect.

¹ https://www.acr.org/-/media/ACR/Files/Advocacy/TMA-II-District-Court-Opinion February-2023.pdf

² Payment disputes between providers and health plans | CMS

For these reasons we again urge the OIC to maintain the BBPA arbitration system through at least July 1, 2024. Thank you for your consideration and please let us know if there's additional information we can provide.

Sincerely,

Sean Graham

Director of Government Affairs

Washington State Medical Association

Washington Chapter - American College of Emergency Physicians

Washington State Radiological Society

Washington State Society of Anesthesiologists

Washington State Society of Pathologists

Emergency Department Practice Management Association

Anesthesia Associates, PS

Associated Emergency Physicians

Bellingham Anesthesia Associates, PS

Evergreen Emergency Services

Evergreen Eye Anesthesia, PLLC

Longview Anesthesiology Group, PC

Monroe Anesthesia, PLLC

Matrix Anesthesia, PS

Olympia Emergency Services

Olympic Anesthesia Services

Paceline Anesthesia, PLLC

Pacific Anesthesia, PC

Providence Health and Services – Washington (Providence Anesthesia Services)

Puget Sound Physicians

Rainier Anesthesia Associated, PC

RAYUS Radiology

Seattle Emergency Physician Services

Surgical Center Anesthesiologists

South Sound Anesthesia Associates, PLLC

TRA Medical Imaging

US Anesthesia Partners

Valley Anesthesia Associates, PLLC