

**WAC 284-43B-020 Balance billing prohibition and consumer cost-sharing.** (1) If an enrollee receives any emergency services from a nonparticipating facility, provider, or behavioral health emergency services provider, any nonemergency health care services performed by a nonparticipating provider at certain participating facilities, or any air ambulance services from a nonparticipating provider:

(a) The enrollee satisfies their obligation to pay for the health care services if they pay the in-network cost-sharing amount specified in the enrollee's or applicable group's health plan contract. The enrollee's obligation must be calculated as if the total amount charged for the services were equal to:

(i) For emergency services other than services provided by emergency behavioral health services providers, for nonemergency health care services performed by a nonparticipating provider at certain participating facilities, and for air ambulance services, the lesser of the qualifying payment amount, as determined in accordance with 45 C.F.R. Sec. 149.140, or billed charges; and

(ii) For services provided by emergency behavioral health services providers, the qualifying payment amount, as determined in accordance with 45 C.F.R. Sec. 149.140. The carrier must provide an explanation of benefits to the enrollee and the nonparticipating provider, facility, emergency behavioral health services provider or air ambulance provider that reflects the cost-sharing amount determined under this subsection.

(b) The carrier, nonparticipating provider, nonparticipating facility, nonparticipating behavioral health emergency services provider or nonparticipating air ambulance provider and any agent, trustee, or assignee of the carrier, nonparticipating provider, nonparticipating facility, nonparticipating emergency behavioral health services provider or nonparticipating air ambulance provider must ensure that the enrollee incurs no greater cost than the amount determined under (a) of this subsection.

(c) (i) For emergency services provided to an enrollee, the nonparticipating provider, nonparticipating facility, or nonparticipating emergency behavioral health services provider and any agent, trustee, or assignee of the nonparticipating provider, nonparticipating facility or nonparticipating behavioral health emergency services provider may not balance bill or otherwise attempt to collect from the enrollee any amount greater than the amount determined under (a) of this subsection. This does not impact the provider's, facility's, or behavioral health emergency services provider's ability to collect a past due balance for an applicable in-network cost-sharing amount with interest;

(ii) For nonemergency health care services performed by nonparticipating providers at certain participating facilities, the nonparticipating provider and any agent, trustee, or assignee of the nonparticipating provider may not balance bill or otherwise attempt to collect from the enrollee any amount greater than the amount determined under (a) of this subsection. This does not impact the provider's ability to collect a past due balance for an applicable in-network cost-sharing amount with interest.

(d) For emergency services, nonemergency health care services performed by nonparticipating providers at certain participating facilities and air ambulance services, the carrier must treat any cost-sharing amounts determined under (a) of this subsection paid or incurred by the enrollee for a nonparticipating provider's, facility's, behavioral health emergency services provider's or air ambulance provid-

er's services in the same manner as cost-sharing for health care services provided by a participating provider, facility, behavioral health emergency services provider, or air ambulance services provider and must apply any cost-sharing amounts paid or incurred by the enrollee for such services toward the enrollee's deductible and maximum out-of-pocket payment obligation.

(e) If the enrollee pays a nonparticipating provider, nonparticipating facility, nonparticipating behavioral health emergency services provider or nonparticipating air ambulance services provider an amount that exceeds the in-network cost-sharing amount determined under (a) of this subsection, the nonparticipating provider, nonparticipating facility, nonparticipating behavioral health emergency services provider or nonparticipating air ambulance services provider must refund any amount in excess of the in-network cost-sharing amount to the enrollee within 30 business days of the nonparticipating provider, nonparticipating facility, nonparticipating behavioral health emergency services provider or nonparticipating air ambulance services provider's receipt of the enrollee's payment. Simple interest must be paid to the enrollee for any unrefunded payments at a rate of 12 percent beginning on the first calendar day after the 30 business days.

(2) The carrier must make payments for health care services described in RCW 48.49.020, provided by a nonparticipating provider, nonparticipating facility, nonparticipating behavioral health emergency services provider or nonparticipating air ambulance services provider directly to the provider or facility, rather than the enrollee.

(3) A health care provider, health care facility, behavioral health emergency services provider or air ambulance service provider may not request or require a patient at any time, for any procedure, service, or supply, to sign or otherwise execute by oral, written, or electronic means, any document that would attempt to avoid, waive, or alter any provision of RCW 48.49.020 and 48.49.030 or sections 2799A-1 et seq. of the Public Health Service Act and federal regulations adopted to implement those sections of P.L. 116-260. This prohibition supersedes any provision of sections 2799A-1 et seq. of the Public Health Service Act and federal regulations adopted to implement those sections of P.L. 116-260 that would authorize a provider or facility to ask a patient to consent to waive their balance billing protections.

[Statutory Authority: RCW 48.43.820, 48.49.180, 48.49.110, and 48.02.060. WSR 23-01-110 (Matter R 2022-02), § 284-43B-020, filed 12/19/22, effective 1/19/23. Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-020, filed 11/2/20, effective 12/3/20. Statutory Authority: RCW 48.02.060, 48.49.060, and 48.49.110. WSR 19-23-085, § 284-43B-020, filed 11/19/19, effective 12/20/19.]