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**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1160**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Cody, Macri, and Pollet)

AN ACT Relating to health provider contracts; adding new sections to chapter 48.43 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 48.43 RCW to read as follows:

(1) Beginning January 1, 2022, a contract between a hospital or any affiliate of a hospital and a health carrier may not, directly or indirectly, do any of the following:

(a) Set provider compensation agreements or other terms for affiliates of the hospital that are out of the carrier's network;

(b) Require the health carrier to contract with multiple hospitals owned or controlled by the same single entity. This subsection (1)(b) does not prohibit a health carrier from voluntarily agreeing to contract with other hospitals owned or controlled by the same single entity. If a health carrier voluntarily agrees to contract with other hospitals owned or controlled by the same single entity under this subsection (1)(b), the health carrier must file an attestation with the office of the insurance commissioner that complies with the filing requirements of RCW 48.43.730;

(c) To the extent that a health plan varies enrollee cost-sharing based upon placing participating providers into tiered provider networks, require health carriers to place the hospital or any affiliate in the tier reflecting the lowest or lower enrollee cost-sharing amounts;

(d) Require the health carrier to keep the contract's payment rates confidential from any existing or potential payor that is or may become financially responsible for the payments. This subsection (1)(d) does not prohibit a requirement that any communication of the contract's payment rates to an existing or potential payor be subject to a reasonable nondisclosure agreement.

(2) The attorney general may enforce this section under the consumer protection act, chapter 19.86 RCW. For actions brought by the attorney general to enforce this section, the legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW, and that a violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(3) This section does not prohibit a hospital certified as a critical access hospital by the centers for medicare and medicaid services or an independent hospital certified as a sole community hospital by the centers for medicare and medicaid services from negotiating payment rates and methodologies on behalf of an individual health care practitioner or a medical group that the hospital is affiliated with.

(4) This section does not apply to the extent that it impairs the ability of a hospital, provider, or health carrier to participate in a state-sponsored, federally funded program, or grant opportunity.

(5) For the purposes of this section:

(a) "Affiliate" means a person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another specified person.

(b) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, membership rights, by contract, or otherwise.

(c) "Provider" means:

(i) A health care provider as defined in RCW 48.43.005;

(ii) A participating provider as defined in RCW 48.44.010;

(iii) A health care facility as defined in RCW 48.43.005; and

(iv) Intermediaries that have agreed in writing with a carrier to provide access to providers as defined under this subsection (5)(c) who render covered services to enrollees of a carrier.

(d) "Provider compensation agreement" means any written agreement that includes specific information about payment methodology, payment rates, and other terms that determine the remuneration a carrier will pay to a provider.

(e) "Tiered provider network" means a network that identifies and groups providers and facilities into specific groups to which different provider reimbursement, enrollee cost sharing, or provider access requirements, or any combination thereof, apply as a means to manage cost, utilization, quality, or to otherwise incentivize enrollee or provider behavior.

NEW SECTION. **Sec.**  A new section is added to chapter 48.43 RCW to read as follows:

(1) Beginning January 1, 2022, health provider contracts between a health carrier and a provider, may not contain a provision that prohibits the disclosure of health care service claims data to employers providing the coverage. However, any disclosure of claims data must comply with state and federal health privacy laws.

(2) The attorney general may enforce this section under the consumer protection act, chapter 19.86 RCW. For actions brought by the attorney general to enforce this section, the legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW, and that a violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(3) For the purposes of this section, "provider" means:

(a) A health care provider as defined in RCW 48.43.005;

(b) A participating provider as defined in RCW 48.44.010;

(c) A health care facility as defined in RCW 48.43.005; and

(d) Intermediaries that have agreed in writing with a carrier to provide access to providers as defined under this subsection who render covered services to enrollees of a carrier.

NEW SECTION. **Sec.**  The insurance commissioner may adopt rules necessary to implement this act.

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