
SUBSTITUTE HOUSE BILL 1741

State of Washington

67th Legislature

2022 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Cody, Macri, Bateman, Chopp, Tharinger, Pollet, Riccelli, and Harris-Talley)

READ FIRST TIME 01/28/22.

1 AN ACT Relating to addressing affordability through health care
2 provider contracting; adding a new section to chapter 48.43 RCW;
3 creating new sections; and providing an expiration date.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

6 (a) The health care system is a comprehensive and interconnected
7 entity;

8 (b) Health care costs and spending continue to rise and
9 significantly outgrow inflation and the United States gross domestic
10 product per capita;

11 (c) According to the health care cost institute, from 2015 to
12 2019 the average health care spending per person reached \$6,000, an
13 increase of 21 percent. Health care prices accounted for nearly two-
14 thirds of this increase in spending after adjusting for inflation;

15 (d) According to a Milbank memorial fund issue brief, mitigating
16 the price impacts of health care provider consolidation,
17 consolidation of health care providers into health systems with
18 market power is a primary driver of high health care prices. Further,
19 the issue brief explains, competition in the health care market
20 exists in three areas: (i) Competition between health care providers
21 for inclusion in health plan networks; (ii) competition between

1 health carriers in health plan enrollment; and (iii) competition
2 between health care providers for in-network patients;

3 (e) A 2020 report to congress on medicare payment policy from the
4 medicare payment advisory commission found "the preponderance of
5 evidence suggests that hospital consolidation leads to higher prices.
6 These findings imply that hospitals seek higher prices from insurers
7 and will get them when they have greater bargaining power." Further,
8 the review noted that "a recent study found that hospital and insurer
9 concentration both increase premiums in the affordable care act
10 marketplace;" and

11 (f) Significant vertical and horizontal consolidation has already
12 occurred in the health care market. In 2010, the five largest
13 hospital systems in Washington state had 30 hospitals, which grew to
14 49 hospitals by 2021. According to a 2020 American medical
15 association survey, nearly 40 percent of patient care physicians were
16 employed directly by a hospital or a practice owned at least
17 partially by a hospital or health system, an increase from just 23.5
18 percent in 2012. According to a 2020 study published in health
19 affairs, 72 percent of hospitals were affiliated with a hospital
20 system in 2018.

21 (2) Therefore, the legislature intends to prohibit the use of
22 certain contractual provisions often used by providers, hospitals,
23 health systems, and carriers with significant market power and to
24 direct the insurance commissioner to study other states' regulatory
25 approaches to address affordability of health plan rates with the
26 goal of increasing health care competition, lowering health care
27 prices, and increasing affordability for consumers.

28 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.43
29 RCW to read as follows:

30 (1) Except as provided in subsections (2), (3), and (4) of this
31 section, for private health plans issued or renewed on or after
32 January 1, 2023, a provider contract between a hospital or any
33 affiliate of a hospital and a health carrier may not directly include
34 any of the following provisions:

35 (a) An all-or-nothing clause;

36 (b) An antisteering clause;

37 (c) An antitiering clause; or

1 (d) Any clause that sets provider compensation agreements or
2 other terms for affiliates of the hospital that will not be included
3 as participating providers in the agreement.

4 (2) Subsection (1)(a) of this section does not prohibit a health
5 carrier from voluntarily agreeing to contract with other hospitals
6 owned or controlled by the same single entity. If a health carrier
7 voluntarily agrees to contract with other hospitals owned or
8 controlled by the same single entity under subsection (1)(a) of this
9 section, the health carrier must file an attestation with the office
10 of the insurance commissioner that complies with the filing
11 requirements of RCW 48.43.730.

12 (3) Subsection (1)(a) and (d) of this section does not apply to
13 the limited extent that it would prevent a hospital, provider, or
14 health carrier from participating in:

15 (a) A state-sponsored health care program, federally funded
16 health care program, or state or federal grant opportunity; or

17 (b) A value-based purchasing arrangement structured to reduce
18 unnecessary utilization, improve health outcomes, and contain health
19 care costs.

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

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

37 (6) For the purposes of this section:

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

1 (b) An "all-or-nothing clause" means a provision of a provider
2 contract that requires a health carrier to contract with multiple
3 hospitals owned or controlled by the same single entity.

4 (c) "Antisteering clause" means a provision of a provider
5 contract that restricts the ability of a health carrier to encourage
6 an enrollee to obtain a health care service from a competitor of the
7 hospital, including offering incentives to encourage enrollees to
8 utilize specific health care providers.

9 (d) "Antitiering clause" means a provision in a provider contract
10 that requires a health carrier to place a hospital or any affiliate
11 of the hospital in a tier or a tiered provider network reflecting the
12 lowest or lower enrollee cost-sharing amounts.

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

17 (f) "Provider" has the same meaning as in RCW 48.43.730.

18 (g) "Provider compensation agreement" has the same meaning as in
19 RCW 48.43.730.

20 (h) "Provider contract" has the same meaning as in RCW 48.43.730.

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

27 NEW SECTION. **Sec. 3.** (1) The insurance commissioner shall study
28 regulatory approaches used by other states' insurance regulators to
29 address affordability of health plan rates. The study should focus on
30 approaches outside of the traditional health plan rate review such as
31 that required by the affordable care act, and shall include, for each
32 state reported on:

33 (a) The statutory and regulatory authority for the state's
34 affordability activities;

35 (b) A description of the activities and processes developed by
36 the state; and

37 (c) Any available research or other findings related to the
38 impact or outcomes of the state's affordability activities.

1 (2) The insurance commissioner may contract with a third party to
2 conduct all or any portion of the study.

3 (3) The insurance commissioner shall submit a report and any
4 recommendations to the relevant policy and fiscal committees of the
5 legislature by December 1, 2022.

6 (4) This section expires July 1, 2023.

7 NEW SECTION. **Sec. 4.** The insurance commissioner may adopt rules
8 necessary to implement this act.

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