
HOUSE BILL 1741

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67th Legislature

2022 Regular Session

By Representatives Cody, Macri, Bateman, Chopp, Tharinger, Pollet, Riccelli, and Harris-Talley

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1 AN ACT Relating to addressing affordability through health care
2 provider contracting; amending RCW 48.43.730; adding new sections to
3 chapter 48.43 RCW; creating new sections; and providing an effective
4 date.

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

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

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

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

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

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

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

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

12 (f) Significant vertical and horizontal consolidation has already
13 occurred in the health care market. In 2010, the five largest
14 hospital systems in Washington state had 30 hospitals, which grew to
15 49 hospitals by 2021. According to a 2020 American medical
16 association survey, nearly 40 percent of patient care physicians were
17 employed directly by a hospital or a practice owned a least partially
18 by a hospital or health system, an increase from just 23.5 percent in
19 2012. According to a 2020 study published in health affairs, 72
20 percent of hospitals were affiliated with a hospital 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
24 provide oversight to the insurance commissioner to implement
25 affordability standards in provider compensation agreements 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 health plans issued or renewed on or after January 1,
32 2023, a provider contract between a hospital or any affiliate of a
33 hospital and a health carrier may not, directly or indirectly,
34 include any of the following provisions:

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

36 (b) An antisteering clause;

37 (c) An antitiering clause; or

38 (d) Any clause that sets provider compensation agreements or
39 other terms for affiliates of the hospital that have not contracted

1 with a carrier or a carrier's contractor or subcontractor to provide
2 health care services to enrollees.

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

11 (3) Subsection (1)(a) and (d) of this section does not apply to
12 the limited extent that it impairs the ability of a hospital,
13 provider, or health carrier to participate in a state-sponsored
14 health care program, federally funded health care program, or state
15 or federal grant opportunity.

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

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

33 (6) For the purposes of this section:

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

37 (b) "Antisteering clause" means a provision of a provider
38 contract that restricts the ability of a health carrier to encourage
39 an enrollee to obtain a health care service from a competitor of the

1 hospital, including offering incentives to encourage enrollees to
2 utilize specific health care providers.

3 (c) "Antitiering clause" means a provision in a provider contract
4 that requires a health carrier to place a hospital or any affiliate
5 of the hospital in a tier or a tiered provider network reflecting the
6 lowest or lower enrollee cost-sharing amounts.

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

11 (e) "Provider" has the same meaning as in RCW 48.43.730.

12 (f) "Provider compensation agreement" has the same meaning as in
13 RCW 48.43.730.

14 (g) "Provider contract" has the same meaning as in RCW 48.43.730.

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

21 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.43
22 RCW to read as follows:

23 When determining whether to approve, disapprove, or take any
24 other action authorized under RCW 48.43.730 with respect to provider
25 compensation agreements, the insurance commissioner may consider
26 whether the health carrier's provider compensation agreements are
27 affordable and whether the carrier has implemented effective
28 strategies to enhance the affordability of its health plans.

29 NEW SECTION. **Sec. 4.** A new section is added to chapter 48.43
30 RCW to read as follows:

31 When determining whether a provider compensation agreement is
32 affordable under section 3 of this act, the insurance commissioner
33 shall consider whether the provider compensation agreement:

34 (1) Protects the public interest and the interests of consumers;

35 (2) Encourages the fair treatment of providers;

36 (3) Considers the health care system as a comprehensive entity;

1 (4) Advances the welfare of the public through overall
2 efficiency, affordability, improved health care quality, and
3 appropriate access; and

4 (5) Meets or aims to meet the health care cost transparency
5 board's health care cost growth benchmarks established pursuant to
6 RCW 70.390.020.

7 **Sec. 5.** RCW 48.43.730 and 2019 c 427 s 30 are each amended to
8 read as follows:

9 (1) For the purposes of this section:

10 (a) "Carrier" means a:

11 (i) Health carrier as defined in RCW 48.43.005; and

12 (ii) Limited health care service contractor that offers limited
13 health care service as defined in RCW 48.44.035.

14 (b) "Provider" means:

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

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

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

18 (iv) Intermediaries that have agreed in writing with a carrier to
19 provide access to providers under this subsection (1)(b) who render
20 covered services to enrollees of a carrier.

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

25 (d) "Provider contract" means a written contract between a
26 carrier and a provider for any health care services rendered to an
27 enrollee.

28 (2) A carrier must file all provider contracts and provider
29 compensation agreements with the commissioner thirty calendar days
30 before use. When a carrier and provider negotiate a provider contract
31 or provider compensation agreement that deviates from a filed
32 agreement, the carrier must also file that specific contract or
33 agreement with the commissioner thirty calendar days before use.

34 (a) Any provider contract and related provider compensation
35 agreements not affirmatively disapproved by the commissioner are
36 deemed approved, except the commissioner may extend the approval date
37 an additional fifteen calendar days upon giving notice before the
38 expiration of the initial thirty-day period.

1 (b) Changes to previously filed and approved provider
2 compensation agreements modifying the compensation amount or related
3 terms that help determine the compensation amount must be filed and
4 are deemed approved upon filing if no other changes are made to the
5 previously approved provider contract or compensation agreement.

6 (3) ~~((The))~~ Except as provided in sections 3 and 4 of this act,
7 the commissioner may not base a disapproval of a provider
8 compensation agreement on the amount of compensation or other
9 financial arrangements between the carrier and the provider, unless
10 that compensation amount causes the underlying health benefit plan to
11 otherwise be in violation of state or federal law. This subsection
12 does not grant the commissioner the authority to regulate provider
13 reimbursement amounts.

14 (4) The commissioner may withdraw approval of a provider contract
15 or provider compensation agreement at any time for cause.

16 (5) Provider compensation agreements are confidential and not
17 subject to public inspection under RCW 48.02.120(2), or public
18 disclosure under chapter 42.56 RCW, if filed in accordance with the
19 procedures for submitting confidential filings through the system for
20 electronic rate and form filings and the general filing instructions
21 as set forth by the commissioner. In the event the referenced filing
22 fails to comply with the filing instructions setting forth the
23 process to withhold the compensation agreement from public
24 inspection, and the carrier indicates that the compensation agreement
25 is to be withheld from public inspection, the commissioner shall
26 reject the filing and notify the carrier through the system for
27 electronic rate and form filings to amend its filing to comply with
28 the confidentiality filing instructions.

29 (6) In the event a provider contract or provider compensation
30 agreement is disapproved or withdrawn from use by the commissioner,
31 the carrier has the right to demand and receive a hearing under
32 chapters 48.04 and 34.05 RCW.

33 (7) Provider contracts filed pursuant to subsection (2) of this
34 section shall identify the network or networks to which the contract
35 applies.

36 (8) The commissioner may adopt rules to implement this section.

37 NEW SECTION. **Sec. 6.** The insurance commissioner may adopt rules
38 necessary to implement this act.

1 NEW SECTION. **Sec. 7.** Sections 3 and 4 of this act take effect
2 January 1, 2024.

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