
HOUSE BILL 2486

State of Washington 54th Legislature 1996 Regular Session

By Representatives Backlund, Hymes, Skinner, Cody, Dyer and Murray

Read first time 01/11/96. Referred to Committee on Health Care.

1 AN ACT Relating to consumer health information; adding new sections
2 to chapter 48.43 RCW; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS. The legislature finds
5 that:

6 (1) The pace of health care reforms initiated by both the public
7 and private sectors can result in unforeseen consequences in the
8 delivery system unless safeguards are put in place. These undesired
9 consequences can include negative effects on the quality of patient
10 care, reducing the options open to patients to receive the kind of care
11 they desire, depriving the patients of information that is necessary
12 for an informed choice, regulation that decreases the competition in
13 the delivery system, and concentration in the marketplace, the effect
14 of which is to achieve market power in relation to consumers and to
15 disrupt established and historically useful relationships in the
16 delivery system.

17 (2) Preserving the best of what already exists in the delivery
18 system, while providing for sufficient flexibility so the system can

1 evolve into a more cost-effective one, requires careful balancing among
2 competing objectives.

3 NEW SECTION. **Sec. 2.** INSURER DISCLAIMING LIABILITY TO PATIENTS.

4 (1) No public or private health care payor subject to the jurisdiction
5 of the state of Washington may propose, issue, sign, or renew an
6 agreement of any kind, including an enrollee service agreement, that
7 contains a clause or language whose effect, in any way, is to disclaim
8 liability for the care delivered or not delivered to an enrollee
9 because of a decision of the health care payor as to whether the care
10 was a covered service, medically necessary, economically provided,
11 medically appropriate, or similar consideration.

12 (2) No public or private health care payor subject to the
13 jurisdiction of the state of Washington may propose, issue, sign, or
14 renew an agreement of any kind, including an enrollee service
15 agreement, that contains a clause or language whose effect, in any way,
16 is to shift liability to the provider or the patient, or both, for the
17 care delivered or not delivered in material part because of a payment
18 or other related decision of the payor. A clause is a violation of
19 this subsection if, by way of illustration and not limitation, it says
20 that the decision to obtain care is between the provider and the
21 patient, failing to acknowledge the role of payment in such decisions.

22 (3) Nothing in this section shall be construed to create new
23 liability on anyone for the payor's payment or related decisions. The
24 intent of this section is only to prevent payors from disclaiming or
25 shifting any existing liability to either providers or patients, or
26 both.

27 NEW SECTION. **Sec. 3.** CENSORING PROVIDER INFORMATION TO PATIENTS

28 BY INSURERS. (1) No health care payor subject to the jurisdiction of
29 the state of Washington may in any way preclude or discourage their
30 providers from informing patients of the care they require, including
31 various treatment options, and whether in their view such care is
32 consistent with medical necessity, medical appropriateness, or
33 otherwise covered by the patient's service agreement with the health
34 care payor. No health care payor may prohibit, discourage, or penalize
35 a provider otherwise practicing in compliance with the law from
36 advocating on behalf of a patient with a health care payor. Nothing in

1 this section shall be construed to authorize providers to bind health
2 care payors to pay for any service.

3 (2) No health care payor may preclude or discourage patients or
4 those paying for their coverage from discussing the comparative merits
5 of different health care payors with their providers. This prohibition
6 specifically includes prohibiting or limiting providers participating
7 in those discussions even if critical of a payor.

8 NEW SECTION. **Sec. 4.** PATIENT AND PROVIDER MANAGED CARE OPT-OUT
9 PROVISION. Notwithstanding any other provision of law, no health care
10 payor subject to the jurisdiction of the state of Washington may
11 prohibit directly or indirectly its enrollees from freely contracting
12 at any time to obtain any health care services outside the health care
13 plan on any terms or conditions the enrollees choose.

14 NEW SECTION. **Sec. 5.** PLAIN PLAN LANGUAGE. All health care payors
15 subject to the jurisdiction of the state of Washington shall, to the
16 maximum extent consistent with precision of expression necessary in
17 legal documents, adopt a style of prose in their enrollee service
18 agreements that is understandable to a person with an average
19 comprehension of the relevant language. Nothing in this section shall
20 be construed to create an obligation on health care payors to have
21 their service agreements in languages other than English.

22 NEW SECTION. **Sec. 6.** INSURER DISCLOSURE TO PATIENTS REGARDING
23 INSURER POLICIES. (1) Upon request by an enrollee or prospective
24 enrollee, all health care payors subject to the jurisdiction of the
25 state of Washington shall provide the following:

26 (a) Whether a point-of-service plan is available and how it is
27 structured;

28 (b) Any documents, instruments, or other information referred to in
29 the enrollee's service agreement;

30 (c) A full description of the procedures to be followed by an
31 enrollee for consulting a practitioner other than the primary care
32 practitioner, and whether the enrollee's practitioner, the plan's
33 medical director, or someone else must first authorize the referral;

34 (d) Whether a plan practitioner is restricted to prescribing drugs
35 from a plan list or plan formulary, what drugs are on the plan list or

1 formulary, and the extent to which enrollees will be reimbursed for
2 drugs that are not on that list or formulary.

3 (2)(a) A public or private entity who in good faith prepares a
4 document of any kind that compares health care payors of any kind is
5 immune from civil liability from claims based on the document and the
6 contents of the document.

7 (b)(i) There is absolute immunity to civil liability from claims
8 based on such a comparison document and its contents if the information
9 was provided by the payor, was substantially accurately presented, and
10 contained the effective date of the information that the payor
11 supplied, if any.

12 (ii) In the absence of reckless disregard for the truth proven by
13 clear and convincing evidence, there is immunity from claims based on
14 such a comparison document and its contents if the publisher of the
15 comparison document asked for such information from the payor, was
16 refused, and relied on any usually reliable source for the information
17 including, but not limited to, payor enrollees, customers, agents,
18 brokers, or providers. The payor enrollees, customers, agents,
19 brokers, or providers are likewise immune from civil liability on
20 claims based on information they provided if they believed the
21 information to be accurate and had reasonable grounds for doing so.

22 (c) The immunity from liability contained in this section applies
23 only if the comparison document contains the following in a conspicuous
24 place and in easy to read typeface:

25 This comparison is based on information believed to be reliable
26 by its publisher, but the accuracy of the information cannot be
27 guaranteed. Caution is suggested to all readers who are
28 encouraged to confirm data of importance to the reader before
29 any purchasing or other decisions are made.

30 NEW SECTION. **Sec. 7.** ENROLLEE RIGHT TO JOIN APPEAL OF TERMINATION
31 OF PRACTITIONER BY INSURER. An enrollee may join in the appeal of a
32 practitioner regarding the denial, nonrenewal, limitation, or
33 termination of his or her participating agreement, or substantial
34 equivalent, by a health care payor subject to the jurisdiction of the
35 state of Washington in accordance with a procedure created by rules
36 adopted by the insurance commissioner pursuant to RCW 48.43.055 and
37 this section. The rules must apply uniformly to all health care payors

1 subject to the jurisdiction of the state of Washington, including the
2 state health care authority, and must state on what grounds a payor
3 decision can be overturned by the process created.

4 NEW SECTION. **Sec. 8.** UTILIZATION REVIEW BY INSURERS. All health
5 care payors subject to the jurisdiction of the state of Washington
6 shall perform their utilization reviews in compliance with the
7 following:

8 (1) A doctor of medicine or osteopathy licensed pursuant to chapter
9 18.57 or 18.71 RCW shall be responsible for all final recommendations
10 regarding the medical necessity or appropriateness of services or the
11 site at which the services are to be provided and shall consult with
12 medical and mental health specialists in making such recommendations.

13 (2) Any enrollee, or provider at the request of an enrollee, who
14 has had a request for treatment or payment for services denied as not
15 medically necessary, or its equivalent, or as experimental, must be
16 provided an opportunity for a timely appeal before an appropriate
17 medical consultant or peer review committee.

18 (3) An enrollee request or one by a provider at the request of an
19 enrollee for prior authorization of nonemergency service must be
20 answered within two business days, and qualified health care personnel
21 must be available for same-day telephone responses to inquiries
22 concerning certification of continued length of stay.

23 (4) When prior approval for a service or other covered item is
24 required and obtained, unless there is a material misrepresentation or
25 omission of relevant facts, the approval shall be final and may not be
26 rescinded after the service or other covered item has been approved.

27 For purposes of this section, "utilization review" includes all
28 programs of health care payors subject to the jurisdiction of the state
29 of Washington customarily included or identified as programs of
30 utilization review, quality assurance, quality improvement, or
31 management and similar programs if they involve or affect any payment
32 or related decision or other function specified in this section.

33 NEW SECTION. **Sec. 9.** CAPTIONS. Captions used in this act do not
34 constitute part of the law.

1 NEW SECTION. **Sec. 10.** CODIFICATION. Sections 1 through 8 of this
2 act are each added to chapter 48.43 RCW.

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