
SUBSTITUTE SENATE BILL 5419

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Fairley and Quigley; by request of Department of Social and Health Services)

Read first time 02/13/95.

1 AN ACT Relating to federal financial participation related to
2 health insurer's and children's health care; amending RCW 48.01.180,
3 and 48.41.100, and 26.18.170; adding new sections to chapter 48.01 RCW;
4 and adding a new section to chapter 74.09 RCW.

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

6 NEW SECTION. **Sec. 1.** "Issuer" as used in this title and chapter
7 26.18 RCW means insurer, fraternal benefit society, certified health
8 plan, health maintenance organization, and health care service
9 contractor.

10 NEW SECTION. **Sec. 2.** An issuer and an employee welfare benefit
11 plan, whether insured or self funded, as defined in the employee
12 retirement income security act of 1974, 29 U.S.C. Sec. 1101 et seq. may
13 not consider the availability of eligibility for medical assistance in
14 this state under medical assistance, RCW 74.09.500, or any other state
15 under 42 U.S.C. Sec. 1396a, section 1902 of the social security act, in
16 considering eligibility for coverage or making payments under its plan
17 for eligible enrollees, subscribers, policyholders, or certificate
18 holders.

1 NEW SECTION. **Sec. 3.** (1) An issuer and an employee welfare
2 benefit plan, whether insured or self funded, as defined in the
3 employee retirement income security act of 1974, 29 U.S.C. Sec. 1101 et
4 seq. may not deny enrollment of a child under the health plan of the
5 child's parent on the grounds that:

6 (a) The child was born out of wedlock;

7 (b) The child is not claimed as a dependent on the parent's federal
8 tax return; or

9 (c) The child does not reside with the parent or in the issuer's,
10 or insured or self funded employee welfare benefit plan's service area.

11 (2) Where a child has health coverage through an issuer, or an
12 insured or self funded employee welfare benefit plan of a noncustodial
13 parent the issuer, or insured or self funded employee welfare benefit
14 plan, shall:

15 (a) Provide such information to the custodial parent as may be
16 necessary for the child to obtain benefits through that coverage;

17 (b) Permit the provider or the custodial parent to submit claims
18 for covered services without the approval of the noncustodial parent.
19 If the provider submits the claim, the provider will obtain the
20 custodial parent's assignment of insurance benefits or otherwise secure
21 the custodial parent's approval.

22 For purposes of this subsection the department of social and health
23 services as the state medicaid agency under RCW 74.09.500 may reassign
24 medical insurance rights to the provider for custodial parents whose
25 children are eligible for services under RCW 74.09.500; and

26 (c) Make payments on claims submitted in accordance with (b) of
27 this subsection directly to the custodial parent, to the provider, or
28 to the department of social and health services as the state medicaid
29 agency under RCW 74.09.500.

30 (3) Where a child does not reside in the issuer's service area, an
31 issuer shall cover no less than urgent and emergent care. Where the
32 issuer offers broader coverage, whether by policy or reciprocal
33 agreement, the issuer shall provide such coverage to any child
34 otherwise covered that does not reside in the issuer's service area.

35 (4) Where a parent is required by a court order to provide health
36 coverage for a child, and the parent is eligible for family health
37 coverage, the issuer, or insured or self funded employee welfare
38 benefit plan, shall:

1 (a) Permit the parent to enroll, under the family coverage, a child
2 who is otherwise eligible for the coverage without regard to any
3 enrollment season restrictions;

4 (b) Enroll the child under family coverage upon application of the
5 child's other parent, department of social and health services as the
6 state medicaid agency under RCW 74.09.500, or child support enforcement
7 program as defined under RCW 26.18.170, if the parent is enrolled but
8 fails to make application to obtain coverage for such child; and

9 (c) Not disenroll, or eliminate coverage of, such child who is
10 otherwise eligible for the coverage unless the issuer or insured or
11 self funded employee welfare benefit plan is provided satisfactory
12 written evidence that:

13 (i) The court order is no longer in effect; or

14 (ii) The child is or will be enrolled in comparable health coverage
15 through another issuer, or insured or self funded employee welfare
16 benefit plan, which will take effect not later than the effective date
17 of disenrollment.

18 (5) An issuer, or insured or self funded employee welfare benefit
19 plan, that has been assigned the rights of an individual eligible for
20 medical assistance under medicaid and coverage for health benefits from
21 the issuer, or insured or self funded employee welfare benefit plan,
22 may not impose requirements on the department of social and health
23 services that are different from requirements applicable to an agent or
24 assignee of any other individual so covered.

25 **Sec. 4.** RCW 48.01.180 and 1986 c 140 s 1 are each amended to read
26 as follows:

27 (1) A child of an insured, subscriber, or enrollee shall be
28 considered a dependent child for insurance purposes under this title~~((+~~
29 ~~(1) Upon being physically placed with the insured, subscriber, or~~
30 ~~enrollee for the purposes of adoption under the laws of the state in~~
31 ~~which the insured, subscriber, or enrollee resides; and (2))~~) upon
32 assumption by the insured, subscriber, or enrollee of ((the financial
33 responsibility for the medical expenses)) a legal obligation for total
34 or partial support of a child in anticipation of adoption of the child.
35 Upon the termination of such legal obligations, the child shall not be
36 considered a dependent child for insurance purposes.

37 ~~((Eligibility for coverage of an adopted child is governed by~~
38 ~~applicable contract, policy, or agreement provisions with respect to~~

1 dependent children, including any established underwriting
2 guidelines.)) (2) Every policy or contract providing coverage for
3 health benefits to a resident of this state shall provide coverage for
4 dependent children placed for adoption under the same terms and
5 conditions as apply to the natural, dependent children of the insured,
6 subscriber, or enrollee whether or not the adoption has become final.

7 (3) No policy or contract may restrict coverage of any dependent
8 child adopted by, or placed for adoption with, an insured, subscriber,
9 or enrollee solely on the basis of a preexisting condition of the child
10 at the time that the child would otherwise become eligible for coverage
11 under the plan if the adoption or placement for adoption occurs while
12 the insured, subscriber, or enrollee is eligible for coverage under the
13 plan.

14 **Sec. 5.** RCW 48.41.100 and 1989 c 121 s 7 are each amended to read
15 as follows:

16 (1) Any individual person who is a resident of this state is
17 eligible for coverage upon providing evidence of rejection for medical
18 reasons, a requirement of restrictive riders, an up-rated premium, or
19 a preexisting conditions limitation on health insurance, the effect of
20 which is to substantially reduce coverage from that received by a
21 person considered a standard risk, by at least one member within six
22 months of the date of application. Evidence of rejection may be waived
23 in accordance with rules adopted by the board.

24 (2) The following persons are not eligible for coverage by the
25 pool:

26 (a) ~~((Any person who is at the time of pool application eligible
27 for medical assistance;~~

28 ~~(b))~~ Any person having terminated coverage in the pool unless (i)
29 twelve months have lapsed since termination, or (ii) that person can
30 show continuous other coverage which has been involuntarily terminated
31 for any reason other than nonpayment of premiums;

32 ~~((e))~~ (b) Any person on whose behalf the pool has paid out five
33 hundred thousand dollars in benefits;

34 ~~((d))~~ (c) Inmates of public institutions and persons whose
35 benefits are duplicated under public programs.

36 (3) Any person whose health insurance coverage is involuntarily
37 terminated for any reason other than nonpayment of premium may apply
38 for coverage under the plan.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 74.09 RCW
2 to read as follows:

3 To the extent that payment for covered expenses has been made under
4 medical assistance for health care items or services furnished to an
5 individual, in any case where a third party has a legal liability to
6 make payments, the state is considered to have acquired the rights of
7 the individual to payment by any other party for those health care
8 items or services. Recovery pursuant to the subrogation rights,
9 assignment, or enforcement of the lien granted to the department by
10 this section shall not be reduced, prorated, or applied to only a
11 portion of a judgment, award, or settlement, except as provided in RCW
12 43.20B.050 and 43.20B.060. The doctrine of equitable subrogation shall
13 not apply to defeat, reduce, or prorate recovery by the department as
14 to its assignment, lien, or subrogation rights.

15 **Sec. 7.** RCW 26.18.170 and 1994 c 230 s 7 are each amended to read
16 as follows:

17 (1) Whenever an obligor parent who has been ordered to provide
18 health insurance coverage for a dependent child fails to provide such
19 coverage or lets it lapse, the department or the obligee may seek
20 enforcement of the coverage order as provided under this section.

21 (2)(a) If the obligor parent's order to provide health insurance
22 coverage contains language notifying the obligor that failure to
23 provide such coverage or proof that such coverage is unavailable may
24 result in direct enforcement of the order and orders payments through,
25 or has been submitted to, the Washington state support registry for
26 enforcement, then the department may, without further notice to the
27 obligor, send a notice of enrollment to the obligor's employer or union
28 by certified mail, return receipt requested.

29 The notice shall require the employer or union to enroll the child
30 in the health insurance plan as provided in subsection (3) of this
31 section.

32 (b) If the obligor parent's order to provide health insurance
33 coverage does not order payments through, and has not been submitted
34 to, the Washington state support registry for enforcement:

35 (i) The obligee may, without further notice to the obligor send a
36 certified copy of the order requiring health insurance coverage to the
37 obligor's employer or union by certified mail, return receipt
38 requested; and

1 (ii) The obligee shall attach a notarized statement to the order
2 declaring that the order is the latest order addressing coverage
3 entered by the court and require the employer or union to enroll the
4 child in the health insurance plan as provided in subsection (3) of
5 this section.

6 (3) Upon receipt of an order that provides for health insurance
7 coverage, or a notice of enrollment:

8 (a) The obligor's employer or union shall answer the party who sent
9 the order or notice within thirty-five days and confirm that the child:

10 (i) Has been enrolled in the health insurance plan;

11 (ii) Will be enrolled (~~(in the next open enrollment period)~~); or

12 (iii) Cannot be covered, stating the reasons why such coverage
13 cannot be provided;

14 (b) The employer or union shall withhold any required premium from
15 the obligor's income or wages;

16 (c) If more than one plan is offered by the employer or union, and
17 each plan may be extended to cover the child, then the child shall be
18 enrolled in the obligor's plan. If the obligor's plan does not provide
19 coverage which is accessible to the child, the child shall be enrolled
20 in the least expensive plan otherwise available to the obligor parent;

21 (d) The employer or union shall provide information about the name
22 of the health insurance coverage provider or (~~(insurer)~~) issuer and the
23 extent of coverage available to the obligee or the department and shall
24 make available any necessary claim forms or enrollment membership
25 cards.

26 (4) If the order for coverage contains no language notifying the
27 obligor that failure to provide health insurance coverage or proof that
28 such coverage is unavailable may result in direct enforcement of the
29 order, the department or the obligee may serve a written notice of
30 intent to enforce the order on the obligor by certified mail, return
31 receipt requested, or by personal service. If the obligor fails to
32 provide written proof that such coverage has been obtained or applied
33 for or fails to provide proof that such coverage is unavailable within
34 twenty days of service of the notice, the department or the obligee may
35 proceed to enforce the order directly as provided in subsection (2) of
36 this section.

37 (5) If the obligor ordered to provide health insurance coverage
38 elects to provide coverage that will not be accessible to the child
39 because of geographic or other limitations when accessible coverage is

1 otherwise available, the department or the obligee may serve a written
2 notice of intent to purchase health insurance coverage on the obligor
3 by certified mail, return receipt requested. The notice shall also
4 specify the type and cost of coverage.

5 (6) If the department serves a notice under subsection (5) of this
6 section the obligor shall, within twenty days of the date of service:

7 (a) File an application for an adjudicative proceeding; or

8 (b) Provide written proof to the department that the obligor has
9 either applied for, or obtained, coverage accessible to the child.

10 (7) If the obligee serves a notice under subsection (5) of this
11 section, within twenty days of the date of service the obligor shall
12 provide written proof to the obligee that the obligor has either
13 applied for, or obtained, coverage accessible to the child.

14 (8) If the obligor fails to respond to a notice served under
15 subsection (5) of this section to the party who served the notice, the
16 party who served the notice may purchase the health insurance coverage
17 specified in the notice directly. The amount of the monthly premium
18 shall be added to the support debt and be collectible without further
19 notice. The amount of the monthly premium may be collected or accrued
20 until the obligor provides proof of the required coverage.

21 (9) The signature of the obligee or of a department employee shall
22 be a valid authorization to the coverage provider or (~~insurer~~) issuer
23 for purposes of processing a payment to the child's health services
24 provider. An order for health insurance coverage shall operate as an
25 assignment of all benefit rights to the obligee or to the child's
26 health services provider, and in any claim against the coverage
27 provider or (~~insurer~~) issuer, the obligee or the obligee's assignee
28 shall be subrogated to the rights of the obligor. Notwithstanding the
29 provisions of this section regarding assignment of benefits, this
30 section shall not require a health care service contractor authorized
31 under chapter 48.44 RCW or a health maintenance organization authorized
32 under chapter 48.46 RCW to deviate from their contractual provisions
33 and restrictions regarding reimbursement for covered services. If the
34 coverage is terminated, the employer shall mail a notice of termination
35 to the department or the obligee at the obligee's last known address
36 within thirty days of the termination date.

37 (10) This section shall not be construed to limit the right of the
38 obligor or the obligee to bring an action in superior court at any time
39 to enforce, modify, or clarify the original support order.

1 (11) ~~((Nothing in this section shall be construed to require a~~
2 ~~health maintenance organization, or health care service contractor, to~~
3 ~~extend coverage to a child who resides outside its service area.))~~
4 Where a child does not reside in the issuer's service area, an issuer
5 shall cover no less than urgent and emergent care. Where the issuer
6 offers broader coverage, whether by policy or reciprocal agreement, the
7 issuer shall provide such coverage to any child otherwise covered that
8 does not reside in the issuer's service area.

9 (12) If an obligor fails to pay his or her portion of any
10 deductible required under the health insurance coverage or fails to pay
11 his or her portion of medical expenses incurred in excess of the
12 coverage provided under the plan, the department or the obligee may
13 enforce collection of the obligor's portion of the deductible or the
14 additional medical expenses through a wage assignment order. The
15 amount of the deductible or additional medical expenses shall be added
16 to the support debt and be collectible without further notice if the
17 obligor's share of the amount of the deductible or additional expenses
18 is reduced to a sum certain in a court order.

19 NEW SECTION. **Sec. 8.** Sections 1 through 3 of this act are each
20 added to chapter 48.01 RCW.

--- END ---