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**SUBSTITUTE SENATE BILL 6493**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

**By** Senate Committee on Health & Long-Term Care (originally sponsored by Senators Moyer, Wood, Thibaudeau, Prentice, Kohl, Deccio, Fairley and McAuliffe)

Read first time 02/02/96.

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. Upon request by an enrollee or prospective enrollee,  
24 all health care payors subject to the jurisdiction of the state of  
25 Washington shall provide the following:

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

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

30 (3) 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 (4) 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 NEW SECTION. **Sec. 7.** ENROLLEE RIGHT TO JOIN APPEAL OF TERMINATION  
4 OF PRACTITIONER BY INSURER. An enrollee may join in the appeal of a  
5 practitioner regarding the denial, nonrenewal, limitation, or  
6 termination of his or her participating agreement, or substantial  
7 equivalent, by a health care payor subject to the jurisdiction of the  
8 state of Washington in accordance with a procedure created by rules  
9 adopted by the insurance commissioner pursuant to RCW 48.43.055 and  
10 this section. The rules must apply uniformly to all health care payors  
11 subject to the jurisdiction of the state of Washington, including the  
12 state health care authority, and must state on what grounds a payor  
13 decision can be overturned by the process created.

14 NEW SECTION. **Sec. 8.** UTILIZATION REVIEW BY INSURERS. All health  
15 care payors subject to the jurisdiction of the state of Washington  
16 shall perform their utilization reviews in compliance with the  
17 following:

18 (1) A doctor of medicine or osteopathy licensed pursuant to chapter  
19 18.57 or 18.71 RCW shall be responsible for all final recommendations  
20 regarding the health plan administrative review of medical necessity or  
21 appropriateness of services or the site at which the services are to be  
22 provided and shall consult with licensed health care providers in  
23 making such recommendations. Nothing in this section prohibits  
24 delegation of the recommendations through written protocols by a doctor  
25 of medicine or osteopathy licensed pursuant to chapter 18.57 or 18.71  
26 RCW to other health care professionals licensed under Title 18 RCW.

27 (2) Any enrollee, or provider at the request of an enrollee, who  
28 has had a request for treatment or payment for services denied as not  
29 medically necessary, or its equivalent, or as experimental, must be  
30 provided an opportunity for a timely appeal before an appropriate  
31 licensed health care consultant or peer review committee.

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

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

5 For purposes of this section, "utilization review" includes all  
6 programs of health care payors subject to the jurisdiction of the state  
7 of Washington customarily included or identified as programs of  
8 utilization review, quality assurance, quality improvement, or  
9 management and similar programs if they involve or affect any payment  
10 or related decision or other function specified in this section.

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

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

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