

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6392

54th Legislature
1996 Regular Session

Passed by the Senate March 7, 1996
YEAS 46 NAYS 2

President of the Senate

Passed by the House March 1, 1996
YEAS 97 NAYS 0

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6392** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6392

AS AMENDED BY THE HOUSE

Passed Legislature - 1996 Regular Session

State of Washington

54th Legislature

1996 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Wood, Quigley, Roach, Cantu, Deccio, Prince and Moyer)

Read first time 02/02/96.

1 AN ACT Relating to disclosure by managed care entities; adding new
2 sections to chapter 48.43 RCW; creating a new section; and providing an
3 effective date.

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

5 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS. It is the intent of
6 the legislature to ensure that all enrollees in managed care settings
7 have access to adequate information regarding health care services
8 covered by health carriers' health plans, and provided by health care
9 providers and health care facilities. It is only through such
10 disclosure that Washington state citizens can be fully informed as to
11 the extent of health insurance coverage, availability of health care
12 service options, and necessary treatment. With such information,
13 citizens are able to make knowledgeable decisions regarding their
14 health care.

15 NEW SECTION. **Sec. 2.** CENSORING PROVIDER INFORMATION TO PATIENTS
16 BY CARRIERS. (1) No health carrier subject to the jurisdiction of the
17 state of Washington may in any way preclude or discourage their
18 providers from informing patients of the care they require, including

1 various treatment options, and whether in their view such care is
2 consistent with medical necessity, medical appropriateness, or
3 otherwise covered by the patient's service agreement with the health
4 carrier. No health carrier may prohibit, discourage, or penalize a
5 provider otherwise practicing in compliance with the law from
6 advocating on behalf of a patient with a health carrier. Nothing in
7 this section shall be construed to authorize providers to bind health
8 carriers to pay for any service.

9 (2) No health carrier may preclude or discourage patients or those
10 paying for their coverage from discussing the comparative merits of
11 different health carriers with their providers. This prohibition
12 specifically includes prohibiting or limiting providers participating
13 in those discussions even if critical of a carrier.

14 (3) The insurance commissioner is prohibited from adopting rules
15 regarding this section.

16 NEW SECTION. **Sec. 3.** PATIENT AND PROVIDER MANAGED CARE OPT-OUT
17 PROVISION. Notwithstanding any other provision of law, no health
18 carrier subject to the jurisdiction of the state of Washington may
19 prohibit directly or indirectly its enrollees from freely contracting
20 at any time to obtain any health care services outside the health care
21 plan on any terms or conditions the enrollees choose. Nothing in this
22 section shall be construed to bind a carrier for any services delivered
23 outside the health plan. The provisions of this section shall be
24 disclosed pursuant to section 4(2) of this act. The insurance
25 commissioner is prohibited from adopting rules regarding this section.

26 NEW SECTION. **Sec. 4.** CARRIER DISCLOSURE TO PATIENTS REGARDING
27 CARRIER POLICIES. (1) Upon the request of an enrollee or a prospective
28 enrollee, a health carrier, as defined in RCW 48.43.005, and the
29 Washington state health care authority, established by chapter 41.05
30 RCW, shall provide the following information:

31 (a) The availability of a point-of-service plan and how the plan
32 operates within the coverage;

33 (b) Any documents, instruments, or other information referred to in
34 the enrollment agreement;

35 (c) A full description of the procedures to be followed by an
36 enrollee for consulting a provider other than the primary care provider

1 and whether the enrollee's primary care provider, the carrier's medical
2 director, or another entity must authorize the referral;

3 (d) Whether a plan provider is restricted to prescribing drugs from
4 a plan list or plan formulary, what drugs are on the plan list or
5 formulary, and the extent to which enrollees will be reimbursed for
6 drugs that are not on the plan's list or formulary;

7 (e) Procedures, if any, that an enrollee must first follow for
8 obtaining prior authorization for health care services;

9 (f) A written description of any reimbursement or payment
10 arrangements, including, but not limited to, capitation provisions,
11 fee-for-service provisions, and health care delivery efficiency
12 provisions, between a carrier and a provider;

13 (g) Circumstances under which the plan may retrospectively deny
14 coverage for emergency and nonemergency care that had prior
15 authorization under the plan's written policies;

16 (h) A copy of all grievance procedures for claim or service denial
17 and for dissatisfaction with care; and

18 (i) Descriptions and justifications for provider compensation
19 programs, including any incentives or penalties that are intended to
20 encourage providers to withhold services or minimize or avoid referrals
21 to specialists.

22 (2) Each health carrier, as defined in RCW 48.43.005, and the
23 Washington state health care authority, established by chapter 41.05
24 RCW, shall provide to all enrollees and prospective enrollees a list of
25 available disclosure items.

26 (3) Nothing in this section shall be construed to require a carrier
27 to divulge proprietary information to an enrollee.

28 (4) The insurance commissioner is prohibited from adopting rules
29 regarding this section.

30 NEW SECTION. **Sec. 5.** LIABILITY IMMUNITY FOR PLAN COMPARISON
31 ACTIVITIES. (1) A public or private entity who exercises due diligence
32 in preparing a document of any kind that compares health carriers of
33 any kind is immune from civil liability from claims based on the
34 document and the contents of the document.

35 (2)(a) There is absolute immunity to civil liability from claims
36 based on such a comparison document and its contents if the information
37 was provided by the carrier, was substantially accurately presented,

1 and contained the effective date of the information that the carrier
2 supplied, if any.

3 (b) Where due diligence efforts to obtain accurate information have
4 been taken, there is immunity from claims based on such a comparison
5 document and its contents if the publisher of the comparison document
6 asked for such information from the carrier, was refused, and relied on
7 any usually reliable source for the information including, but not
8 limited to, carrier enrollees, customers, agents, brokers, or
9 providers. The carrier enrollees, customers, agents, brokers, or
10 providers are likewise immune from civil liability on claims based on
11 information they provided if they believed the information to be
12 accurate and had exercised due diligence in their efforts to confirm
13 the accuracy of the information provided.

14 (3) The immunity from liability contained in this section applies
15 only if the comparison document contains the following in a conspicuous
16 place and in easy to read typeface:

17 This comparison is based on information believed to be reliable
18 by its publisher, but the accuracy of the information cannot be
19 guaranteed. Caution is suggested to all readers who are
20 encouraged to confirm data of importance to the reader before
21 any purchasing or other decisions are made.

22 (4) The insurance commissioner is prohibited from adopting rules
23 regarding this section.

24 NEW SECTION. **Sec. 6.** CAPTIONS. Captions used in this act do not
25 constitute part of the law.

26 NEW SECTION. **Sec. 7.** CODIFICATION. Sections 1 through 5 of this
27 act are each added to chapter 48.43 RCW.

28 NEW SECTION. **Sec. 8.** EFFECTIVE DATE. This act shall take effect
29 July 1, 1996.

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