

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5436

Chapter 552, Laws of 2009
(partial veto)

61st Legislature
2009 Regular Session

DIRECT PATIENT-PROVIDER PRIMARY CARE PRACTICES

EFFECTIVE DATE: 07/26/09

Passed by the Senate April 25, 2009
YEAS 29 NAYS 18

BRAD OWEN

President of the Senate

Passed by the House April 24, 2009
YEAS 57 NAYS 36

FRANK CHOPP

Speaker of the House of Representatives

Approved May 19, 2009, 10:48 a.m., with
the exception of Sections 4 and 5 which
are vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of
the Senate of the State of
Washington, do hereby certify that
the attached is **SUBSTITUTE SENATE
BILL 5436** as passed by the Senate
and the House of Representatives
on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 20, 2009

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5436

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Senate Health & Long-Term Care (originally sponsored by Senators Murray, Keiser, Pflug, Marr, Parlette, Kastama, and Roach)

READ FIRST TIME 02/13/09.

1 AN ACT Relating to payment arrangements involving direct practices;
2 and amending RCW 48.150.010, 48.150.040, 48.150.050, 48.41.030, and
3 48.150.110.

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

5 **Sec. 1.** RCW 48.150.010 and 2007 c 267 s 3 are each amended to read
6 as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Direct patient-provider primary care practice" and "direct
10 practice" means a provider, group, or entity that meets the following
11 criteria in (a), (b), (c), and (d) of this subsection:

12 (a)(i) A health care provider who furnishes primary care services
13 through a direct agreement;

14 (ii) A group of health care providers who furnish primary care
15 services through a direct agreement; or

16 (iii) An entity that sponsors, employs, or is otherwise affiliated
17 with a group of health care providers who furnish only primary care
18 services through a direct agreement, which entity is wholly owned by
19 the group of health care providers or is a nonprofit corporation exempt

1 from taxation under section 501(c)(3) of the internal revenue code, and
2 is not otherwise regulated as a health care service contractor, health
3 maintenance organization, or disability insurer under Title 48 RCW.
4 Such entity is not prohibited from sponsoring, employing, or being
5 otherwise affiliated with other types of health care providers not
6 engaged in a direct practice;

7 (b) Enters into direct agreements with direct patients or parents
8 or legal guardians of direct patients;

9 (c) Does not accept payment for health care services provided to
10 direct patients from any entity subject to regulation under Title 48
11 RCW((~~7~~)) or plans administered under chapter 41.05, 70.47, or 70.47A
12 RCW((~~7~~, ~~or self-insured plans~~)); and

13 (d) Does not provide, in consideration for the direct fee,
14 services, procedures, or supplies such as prescription drugs,
15 hospitalization costs, major surgery, dialysis, high level radiology
16 (CT, MRI, PET scans or invasive radiology), rehabilitation services,
17 procedures requiring general anesthesia, or similar advanced
18 procedures, services, or supplies.

19 (2) "Direct patient" means a person who is party to a direct
20 agreement and is entitled to receive primary care services under the
21 direct agreement from the direct practice.

22 (3) "Direct fee" means a fee charged by a direct practice as
23 consideration for being available to provide and providing primary care
24 services as specified in a direct agreement.

25 (4) "Direct agreement" means a written agreement entered into
26 between a direct practice and an individual direct patient, or the
27 parent or legal guardian of the direct patient or a family of direct
28 patients, whereby the direct practice charges a direct fee as
29 consideration for being available to provide and providing primary care
30 services to the individual direct patient. A direct agreement must (a)
31 describe the specific health care services the direct practice will
32 provide; and (b) be terminable at will upon written notice by the
33 direct patient.

34 (5) "Health care provider" or "provider" means a person regulated
35 under Title 18 RCW or chapter 70.127 RCW to practice health or health-
36 related services or otherwise practicing health care services in this
37 state consistent with state law.

1 (6) "Health carrier" or "carrier" has the same meaning as in RCW
2 48.43.005.

3 (7) "Primary care" means routine health care services, including
4 screening, assessment, diagnosis, and treatment for the purpose of
5 promotion of health, and detection and management of disease or injury.

6 (8) "Network" means the group of participating providers and
7 facilities providing health care services to a particular health
8 carrier's health plan or to plans administered under chapter 41.05,
9 70.47, or 70.47A RCW.

10 **Sec. 2.** RCW 48.150.040 and 2007 c 267 s 6 are each amended to read
11 as follows:

12 (1) Direct practices may not:

13 (a) Enter into a participating provider contract as defined in RCW
14 48.44.010 or 48.46.020 with any carrier or with any carrier's
15 contractor or subcontractor, or plans administered under chapter 41.05,
16 70.47, or 70.47A RCW, to provide health care services through a direct
17 agreement except as set forth in subsection (2) of this section;

18 (b) Submit a claim for payment to any carrier or any carrier's
19 contractor or subcontractor, or plans administered under chapter 41.05,
20 70.47, or 70.47A RCW, for health care services provided to direct
21 patients as covered by their agreement;

22 (c) With respect to services provided through a direct agreement,
23 be identified by a carrier or any carrier's contractor or
24 subcontractor, or plans administered under chapter 41.05, 70.47, or
25 70.47A RCW, as a participant in the carrier's or any carrier's
26 contractor or subcontractor network for purposes of determining network
27 adequacy or being available for selection by an enrollee under a
28 carrier's benefit plan; or

29 (d) Pay for health care services covered by a direct agreement
30 rendered to direct patients by providers other than the providers in
31 the direct practice or their employees, except as described in
32 subsection (2)(b) of this section.

33 (2) Direct practices and providers may:

34 (a) Enter into a participating provider contract as defined by RCW
35 48.44.010 and 48.46.020 or plans administered under chapter 41.05,
36 70.47, or 70.47A RCW for purposes other than payment of claims for
37 services provided to direct patients through a direct agreement. Such

1 providers shall be subject to all other provisions of the participating
2 provider contract applicable to participating providers including but
3 not limited to the right to:

4 (i) Make referrals to other participating providers;

5 (ii) Admit the carrier's members to participating hospitals and
6 other health care facilities;

7 (iii) Prescribe prescription drugs; and

8 (iv) Implement other customary provisions of the contract not
9 dealing with reimbursement of services;

10 (b) Pay for charges associated with the provision of routine lab
11 and imaging services (~~(provided in connection with wellness physical~~
12 ~~examinations)~~). In aggregate such payments per year per direct patient
13 are not to exceed fifteen percent of the total annual direct fee
14 charged that direct patient. Exceptions to this limitation may occur
15 in the event of short-term equipment failure if such failure prevents
16 the provision of care that should not be delayed; and

17 (c) Charge an additional fee to direct patients for supplies,
18 medications, and specific vaccines provided to direct patients that are
19 specifically excluded under the agreement, provided the direct practice
20 notifies the direct patient of the additional charge, prior to their
21 administration or delivery.

22 **Sec. 3.** RCW 48.150.050 and 2007 c 267 s 7 are each amended to read
23 as follows:

24 (1) Direct practices may not decline to accept new direct patients
25 or discontinue care to existing patients solely because of the
26 patient's health status. A direct practice may decline to accept a
27 patient if the practice has reached its maximum capacity, or if the
28 patient's medical condition is such that the provider is unable to
29 provide the appropriate level and type of health care services in the
30 direct practice. So long as the direct practice provides the patient
31 notice and opportunity to obtain care from another physician, the
32 direct practice may discontinue care for direct patients if: (a) The
33 patient fails to pay the direct fee under the terms required by the
34 direct agreement; (b) the patient has performed an act that constitutes
35 fraud; (c) the patient repeatedly fails to comply with the recommended
36 treatment plan; (d) the patient is abusive and presents an emotional or

1 physical danger to the staff or other patients of the direct practice;
2 or (e) the direct practice discontinues operation as a direct practice.

3 (2) Subject to the restrictions established in this chapter, direct
4 practices may accept payment of direct fees directly or indirectly from
5 ((nonemployer)) third parties. A direct practice may accept a direct
6 fee paid by an employer on behalf of an employee who is a direct
7 patient. However, a direct practice shall not enter into a contract
8 with an employer relating to direct practice agreements between the
9 direct practice and employees of that employer, other than to establish
10 the timing and method of the payment of the direct fee by the employer.

11 *Sec. 4. RCW 48.41.030 and 2004 c 260 s 25 are each amended to read
12 as follows:

13 The definitions in this section apply throughout this chapter
14 unless the context clearly requires otherwise.

15 (1) "Accounting year" means a twelve-month period determined by the
16 board for purposes of record-keeping and accounting. The first
17 accounting year may be more or less than twelve months and, from time
18 to time in subsequent years, the board may order an accounting year of
19 other than twelve months as may be required for orderly management and
20 accounting of the pool.

21 (2) "Administrator" means the entity chosen by the board to
22 administer the pool under RCW 48.41.080.

23 (3) "Board" means the board of directors of the pool.

24 (4) "Commissioner" means the insurance commissioner.

25 (5) "Covered person" means any individual resident of this state
26 who is eligible to receive benefits from any member, or other health
27 plan.

28 (6) "Health care facility" has the same meaning as in RCW
29 70.38.025.

30 (7) "Health care provider" means any physician, facility, or health
31 care professional, who is licensed in Washington state and entitled to
32 reimbursement for health care services.

33 (8) "Health care services" means services for the purpose of
34 preventing, alleviating, curing, or healing human illness or injury.

35 (9) "Health carrier" or "carrier" has the same meaning as in RCW
36 48.43.005.

1 (10) "Health coverage" means any group or individual disability
2 insurance policy, health care service contract, and health maintenance
3 agreement, except those contracts entered into for the provision of
4 health care services pursuant to Title XVIII of the Social Security
5 Act, 42 U.S.C. Sec. 1395 et seq. The term does not include short-term
6 care, long-term care, dental, vision, accident, fixed indemnity,
7 disability income contracts, limited benefit or credit insurance,
8 coverage issued as a supplement to liability insurance, insurance
9 arising out of the worker's compensation or similar law, automobile
10 medical payment insurance, or insurance under which benefits are
11 payable with or without regard to fault and which is statutorily
12 required to be contained in any liability insurance policy or
13 equivalent self-insurance.

14 (11) "Health plan" means any arrangement by which persons,
15 including dependents or spouses, covered or making application to be
16 covered under this pool, have access to hospital and medical benefits
17 or reimbursement including any group or individual disability insurance
18 policy; health care service contract; health maintenance agreement;
19 uninsured arrangements of group or group-type contracts including
20 employer self-insured, cost-plus, or other benefit methodologies not
21 involving insurance or not governed by Title 48 RCW; coverage under
22 group-type contracts which are not available to the general public and
23 can be obtained only because of connection with a particular
24 organization or group; and coverage by medicare or other governmental
25 benefits. This term includes coverage through "health coverage" as
26 defined under this section, and specifically excludes those types of
27 programs excluded under the definition of "health coverage" in
28 subsection (10) of this section.

29 (12) "Medical assistance" means coverage under Title XIX of the
30 federal Social Security Act (42 U.S.C., Sec. 1396 et seq.) and chapter
31 74.09 RCW.

32 (13) "Medicare" means coverage under Title XVIII of the Social
33 Security Act, (42 U.S.C. Sec. 1395 et seq., as amended).

34 (14) "Member" means any commercial insurer which provides
35 disability insurance or stop loss insurance, any health care service
36 contractor, any health maintenance organization licensed under Title 48
37 RCW, and any self-funded multiple employer welfare arrangement as
38 defined in RCW 48.125.010. "Member" also means the Washington state

1 health care authority as issuer of the state uniform medical plan.
2 "Member" shall also mean, as soon as authorized by federal law,
3 employers and other entities, including a self-funding entity and
4 employee welfare benefit plans that provide health plan benefits in
5 this state on or after May 18, 1987. "Member" also means a direct
6 practice as defined in RCW 48.150.010. "Member" does not include any
7 insurer, health care service contractor, or health maintenance
8 organization whose products are exclusively dental products or those
9 products excluded from the definition of "health coverage" set forth in
10 subsection (10) of this section.

11 (15) "Network provider" means a health care provider who has
12 contracted in writing with the pool administrator or a health carrier
13 contracting with the pool administrator to offer pool coverage to
14 accept payment from and to look solely to the pool or health carrier
15 according to the terms of the pool health plans.

16 (16) "Plan of operation" means the pool, including articles, by-
17 laws, and operating rules, adopted by the board pursuant to RCW
18 48.41.050.

19 (17) "Point of service plan" means a benefit plan offered by the
20 pool under which a covered person may elect to receive covered services
21 from network providers, or nonnetwork providers at a reduced rate of
22 benefits.

23 (18) "Pool" means the Washington state health insurance pool as
24 created in RCW 48.41.040.

*Sec. 4 was vetoed. See message at end of chapter.

25 *Sec. 5. RCW 48.150.110 and 2007 c 267 s 13 are each amended to
26 read as follows:

27 (1) A direct agreement must include the following disclaimer:
28 "This agreement does not provide comprehensive health insurance
29 coverage. It provides only the health care services specifically
30 described." The direct agreement may not be sold to a group and may
31 not be entered with a group of subscribers. It must be an agreement
32 between a direct practice and an individual direct patient. Nothing
33 prohibits the presentation of marketing materials to groups of
34 potential subscribers or their representatives. All marketing
35 materials must be filed for approval with the commissioner prior to
36 use. All advertising and marketing materials must be filed with the
37 commissioner at least thirty days prior to use.

1 (2) A comprehensive disclosure statement shall be distributed to
2 all direct patients with their participation forms. Such disclosure
3 must inform the direct patients of their financial rights and
4 responsibilities to the direct practice as provided for in this
5 chapter, encourage that direct patients obtain and maintain insurance
6 for services not provided by the direct practice, and state that the
7 direct practice will not bill a carrier for services covered under the
8 direct agreement. The disclosure statement shall include contact
9 information for the office of the insurance commissioner.

**Sec. 5 was vetoed. See message at end of chapter.*

Passed by the Senate April 25, 2009.

Passed by the House April 24, 2009.

Approved by the Governor May 19, 2009, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 20, 2009.

Note: Governor's explanation of partial veto is as follows:

"I have approved, except for Sections 4 and 5, Substitute Senate Bill
5436 entitled:

"AN ACT Relating to payment arrangements involving direct
practices."

Section 4 would subject direct patient-provider primary care
practices to the assessments used to fund the Washington State Health
Insurance Pool. I am concerned that this requirement would increase
the cost of such practices at the very time businesses and individuals
are badly in need of more affordable health care options.

Section 5 would require a direct practice to submit its advertising
and marketing materials to the Insurance Commissioner for approval at
least thirty days prior to use. The bill fails to indicate, however,
the criteria against which these materials would be reviewed. This
section also duplicates protections existing in current law, imposing
needless administrative expenses on both these practices and the
Commissioner's Office.

For these reasons, I have vetoed Sections 4 and 5 of Substitute Senate
Bill 5436.

With the exception of Sections 4 and 5, Substitute Senate Bill 5436 is
approved."