

2 **ESSB 6392** - H COMM AMD
3 By Committee on Health Care

4 ADOPTED AS AMENDED 3/2/96

5 Strike everything after the enacting clause and insert the
6 following:

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

17 NEW SECTION. **Sec. 2.** CENSORING PROVIDER INFORMATION TO PATIENTS
18 BY CARRIERS. (1) No health carrier subject to the jurisdiction of the
19 state of Washington may in any way preclude or discourage their
20 providers from informing patients of the care they require, including
21 various treatment options, and whether in their view such care is
22 consistent with medical necessity, medical appropriateness, or
23 otherwise covered by the patient's service agreement with the health
24 carrier. No health carrier may prohibit, discourage, or penalize a
25 provider otherwise practicing in compliance with the law from
26 advocating on behalf of a patient with a health carrier. Nothing in
27 this section shall be construed to authorize providers to bind health
28 carriers to pay for any service.

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

34 (3) The insurance commissioner is prohibited from adopting rules
35 regarding this section.

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

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

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

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

20 (c) A full description of the procedures to be followed by an
21 enrollee for consulting a provider other than the primary care provider
22 and whether the enrollee's primary care provider, the carrier's medical
23 director, or another entity must authorize the referral;

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

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

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

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

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

1 (i) Descriptions and justifications for provider compensation
2 programs, including any incentives or penalties that are intended to
3 encourage providers to withhold services or minimize or avoid referrals
4 to specialists.

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

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

11 (4) The insurance commissioner is prohibited from adopting rules
12 regarding this section.

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

18 (2)(a) There is absolute immunity to civil liability from claims
19 based on such a comparison document and its contents if the information
20 was provided by the carrier, was substantially accurately presented,
21 and contained the effective date of the information that the carrier
22 supplied, if any.

23 (b) Where due diligence efforts to obtain accurate information have
24 been taken, there is immunity from claims based on such a comparison
25 document and its contents if the publisher of the comparison document
26 asked for such information from the carrier, was refused, and relied on
27 any usually reliable source for the information including, but not
28 limited to, carrier enrollees, customers, agents, brokers, or
29 providers. The carrier enrollees, customers, agents, brokers, or
30 providers are likewise immune from civil liability on claims based on
31 information they provided if they believed the information to be
32 accurate and had exercised due diligence in their efforts to confirm
33 the accuracy of the information provided.

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

37 This comparison is based on information believed to be reliable
38 by its publisher, but the accuracy of the information cannot be

1 guaranteed. Caution is suggested to all readers who are
2 encouraged to confirm data of importance to the reader before
3 any purchasing or other decisions are made.

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

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

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

10 NEW SECTION. **Sec. 8.** EFFECTIVE DATE. This act shall take effect
11 July 1, 1996."

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15 On page 1, line 1 of the title, after "entities;" strike the
16 remainder of the title and insert "adding new sections to chapter 48.43
17 RCW; creating a new section; and providing an effective date."

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