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**SUBSTITUTE SENATE BILL 5833**

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**State of Washington**

**56th Legislature**

**1999 Regular Session**

**By** Senate Committee on Health & Long-Term Care (originally sponsored by Senators Wojahn, Heavey, Fairley and Thibaudeau)

Read first time 03/03/1999.

1 AN ACT Relating to decisions about health care services; amending  
2 RCW 4.16.350; adding a new section to chapter 4.24 RCW; adding a new  
3 section to chapter 7.70 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that health carrier  
6 practices that unjustly delay or deny medically appropriate care and  
7 treatment to consumers are unconscionable. When consumers are facing  
8 serious, even life-threatening diseases or conditions, they are least  
9 able to fight with their health carrier in order to get access to  
10 needed health care and treatment. In order to protect Washington  
11 residents in need of medically necessary care and treatment, and to  
12 prevent inappropriate treatment delays or denials, the legislature  
13 finds it is necessary to enact the consumer protections set out in this  
14 act.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 4.24 RCW  
16 to read as follows:

17 (1) The definitions in this subsection apply throughout this  
18 section.

1 (a) "Appropriate and medically necessary" means the standard for  
2 health care services as determined by physicians and health care  
3 providers in accordance with the prevailing practice and standards of  
4 the medical profession and community.

5 (b) "Enrollee" means an individual covered by a health plan,  
6 including dependents.

7 (c) "Health care provider" means the same as defined in RCW  
8 48.43.005.

9 (d) "Health care treatment decision" means a determination made  
10 regarding whether a health care service or services are actually  
11 provided by the health plan and a decision that affects the quality of  
12 the diagnosis, care, or treatment provided to the plan's enrollees.

13 (e) "Health carrier" means the same as defined in RCW 48.43.005.

14 (f) "Health plan" means the same as defined in RCW 48.43.005,  
15 except that it includes a policy, contract, or agreement offered by any  
16 person, not just a health carrier.

17 (g) "Managed care entity" means an entity other than a health  
18 carrier that delivers, administers, or assumes risk for health care  
19 services with systems or techniques to control or influence the  
20 quality, accessibility, utilization, or costs and prices of the  
21 services to a defined enrollee population, but does not include an  
22 employer purchasing coverage or acting on behalf of its employees or  
23 the employees of one or more subsidiaries or affiliated corporations of  
24 the employer or a pharmacy under chapter 18.64 RCW.

25 (h) "Ordinary care" means, for a health carrier or managed care  
26 entity, that degree of care that a health carrier or managed care  
27 entity of ordinary prudence would use under the same or similar  
28 circumstances. For a person who is an employee, agent, ostensible  
29 agent, or representative of a health carrier or managed care entity,  
30 "ordinary care" means that degree of care that a person of ordinary  
31 prudence in the same profession, specialty, or area of practice as the  
32 person would use in the same or similar circumstances.

33 (2)(a) A health carrier or a managed care entity for a health plan  
34 shall exercise ordinary care when making health care treatment  
35 decisions and is liable for damages for harm to an enrollee proximately  
36 caused by its failure to exercise ordinary care.

37 (b) A health carrier or a managed care entity for a health plan is  
38 also liable for damages for harm to an enrollee proximately caused by  
39 health care treatment decisions made by its:

1 (i) Employees;  
2 (ii) Agents;  
3 (iii) Ostensible agents; or  
4 (iv) Representatives who are acting on its behalf and over whom it  
5 has the right to exercise influence or control or has actually  
6 exercised influence or control which result in the failure to exercise  
7 ordinary care.

8 (3) It is a defense to any action asserted under this section  
9 against a health carrier or managed care entity for a health plan that:

10 (a) Neither the health carrier or managed care entity, nor any  
11 employee, agent, ostensible agent, or representative for whose conduct  
12 the health carrier or managed care entity is liable under subsection  
13 (2)(b) of this section, controlled, influenced, or participated in the  
14 health care decision; or

15 (b) The health carrier or managed care entity did not deny or delay  
16 payment for treatment prescribed or recommended by a provider to the  
17 enrollee.

18 (4) The standards in subsection (2) of this section do not create  
19 an obligation on the part of the health carrier or managed care entity  
20 to provide to an enrollee treatment that is not covered by the health  
21 plan.

22 (5) This section does not create any liability on the part of an  
23 employer or an employer group purchasing organization that purchases  
24 coverage or assumes risk on behalf of its employers.

25 (6) Nothing in any law of this state prohibiting a health carrier  
26 or managed care entity from practicing medicine or being licensed to  
27 practice medicine may be asserted as a defense by the health carrier or  
28 managed care entity in an action brought against it under this section.

29 (7)(a) A person may not maintain a cause of action under this  
30 section against a health carrier or managed care entity unless the  
31 affected enrollee or the enrollee's representative:

32 (i) Has exhausted any applicable reasonable grievance procedures  
33 provided for in the health plan; or

34 (ii) Has participated in the grievance process in good faith for  
35 ninety days.

36 (b) The enrollee is not required to comply with (a) of this  
37 subsection and no abatement or other penalty for failure to comply  
38 shall be imposed if the enrollee has filed a pleading alleging in  
39 substance that:

1 (i) Harm to the enrollee has already occurred because of the  
2 conduct of the health carrier or managed care entity or because of an  
3 act or omission of an employee, agent, ostensible agent, or  
4 representative of the carrier or entity for whose conduct it is liable;  
5 or

6 (ii) The review would not be beneficial to the enrollee, unless the  
7 court, upon motion by a defendant carrier or entity, finds after  
8 hearing that the pleading was not made in good faith.

9 (c) This subsection (7) does not prohibit an enrollee from pursuing  
10 other appropriate remedies, including injunctive relief, a declaratory  
11 judgment, or other relief available under law, if its requirements  
12 place the enrollee's health in serious jeopardy.

13 (8) In an action against a health carrier, a finding that a  
14 physician or other health care provider is an employee, agent,  
15 ostensible agent, or representative of such a health carrier shall not  
16 be based solely on proof that the person's name appears in a listing of  
17 approved physicians or health providers made available to enrollees  
18 under a health plan.

19 (9) A person who is injured by a violation of this section may  
20 bring a civil action in superior court to either enjoin further  
21 violations, to recover the actual damages sustained by him or her, or  
22 both, together with the costs of the suit, including reasonable  
23 attorneys' fees.

24 (10) This section does not apply to workers' compensation insurance  
25 under Title 51 RCW.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 7.70 RCW  
27 to read as follows:

28 This chapter does not apply to actions under section 2 of this act  
29 for injuries resulting from health care treatment decisions made by or  
30 on behalf of health carriers or managed care entities, including  
31 entities listed in RCW 7.70.020(3). For purposes of this section:

32 (1) "Health care treatment decision" means a determination made  
33 regarding whether a health care service or services are actually  
34 provided by the health plan and a decision that affects the quality of  
35 the diagnosis, care, or treatment provided to the plan's enrollees;

36 (2) "Health carrier" means the same as defined in RCW 48.43.005;  
37 and

1 (3) "Managed care entity" means an entity other than a health  
2 carrier that delivers, administers, or assumes risk for health care  
3 services with systems or techniques to control or influence the  
4 quality, accessibility, utilization, or costs and prices of the  
5 services to a defined enrollee population, but does not include an  
6 employer purchasing coverage or acting on behalf of its employees or  
7 the employees of one or more subsidiaries or affiliated corporations of  
8 the employer or a pharmacy under chapter 18.64 RCW.

9 **Sec. 4.** RCW 4.16.350 and 1998 c 147 s 1 are each amended to read  
10 as follows:

11 (1) Except as otherwise provided in subsection (2) of this section,  
12 any civil action for damages for injury occurring as a result of health  
13 care which is provided after June 25, 1976 against:

14 ~~((1))~~ (a) A person licensed by this state to provide health care  
15 or related services, including, but not limited to, a physician,  
16 osteopathic physician, dentist, nurse, optometrist, podiatric physician  
17 and surgeon, chiropractor, physical therapist, psychologist,  
18 pharmacist, optician, physician's assistant, osteopathic physician's  
19 assistant, nurse practitioner, or physician's trained mobile intensive  
20 care paramedic, including, in the event such person is deceased, his  
21 estate or personal representative;

22 ~~((2))~~ (b) An employee or agent of a person described in (a) of  
23 this subsection ~~((1) of this section)),~~ acting in the course and scope  
24 of his employment, including, in the event such employee or agent is  
25 deceased, his estate or personal representative; or

26 ~~((3))~~ (c) An entity, whether or not incorporated, facility, or  
27 institution employing one or more persons described in (a) of this  
28 subsection ~~((1) of this section)),~~ including, but not limited to, a  
29 hospital, clinic, health maintenance organization, or nursing home; or  
30 an officer, director, employee, or agent thereof acting in the course  
31 and scope of his employment, including, in the event such officer,  
32 director, employee, or agent is deceased, his estate or personal  
33 representative;

34 based upon alleged professional negligence shall be commenced within  
35 three years of the act or omission alleged to have caused the injury or  
36 condition, or one year of the time the patient or his representative  
37 discovered or reasonably should have discovered that the injury or  
38 condition was caused by said act or omission, whichever period expires

1 later, except that in no event shall an action be commenced more than  
2 eight years after said act or omission: PROVIDED, That the time for  
3 commencement of an action is tolled upon proof of fraud, intentional  
4 concealment, or the presence of a foreign body not intended to have a  
5 therapeutic or diagnostic purpose or effect, until the date the patient  
6 or the patient's representative has actual knowledge of the act of  
7 fraud or concealment, or of the presence of the foreign body; the  
8 patient or the patient's representative has one year from the date of  
9 the actual knowledge in which to commence a civil action for damages.

10 For purposes of this (~~section~~) subsection, notwithstanding RCW  
11 4.16.190, the knowledge of a custodial parent or guardian shall be  
12 imputed to a person under the age of eighteen years, and such imputed  
13 knowledge shall operate to bar the claim of such minor to the same  
14 extent that the claim of an adult would be barred under this  
15 (~~section~~) subsection. Any action not commenced in accordance with  
16 this (~~section~~) subsection shall be barred.

17 For purposes of this (~~section~~) subsection, with respect to care  
18 provided after June 25, 1976, and before August 1, 1986, the knowledge  
19 of a custodial parent or guardian shall be imputed as of April 29,  
20 1987, to persons under the age of eighteen years.

21 This (~~section~~) subsection does not apply to a civil action based  
22 on intentional conduct brought against those individuals or entities  
23 specified in this (~~section~~) subsection by a person for recovery of  
24 damages for injury occurring as a result of childhood sexual abuse as  
25 defined in RCW 4.16.340(5).

26 (2) Any action under section 2 of this act shall be commenced  
27 within three years of the completion of the grievance process, if  
28 applicable, under section 2(7) of this act, within three years of the  
29 accrual of the cause of action if the grievance process under section  
30 2(7) of this act is not applicable.

31 NEW SECTION. **Sec. 5.** If any provision of this act or its  
32 application to any person or circumstance is held invalid, the  
33 remainder of the act or the application of the provision to other  
34 persons or circumstances is not affected.

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