
SENATE BILL 5833

State of Washington

56th Legislature

1999 Regular Session

By Senators Wojahn, Heavey, Fairley and Thibaudeau

Read first time 02/11/1999. Referred to Committee on Health & Long-Term Care.

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 the 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, and the court may in its discretion, upon a finding of
24 bad faith on the part of the health carrier, increase the award of
25 damages to an amount not to exceed three times the actual damages
26 sustained.

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

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

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

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

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

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

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

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

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

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

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

36 based upon alleged professional negligence shall be commenced within
37 three years of the act or omission alleged to have caused the injury or
38 condition, or one year of the time the patient or his representative

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

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

19 For purposes of this (~~section~~) subsection, with respect to care
20 provided after June 25, 1976, and before August 1, 1986, the knowledge
21 of a custodial parent or guardian shall be imputed as of April 29,
22 1987, to persons under the age of eighteen years.

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

28 (2) Any action under section 2 of this act shall be commenced
29 within three years of the completion of the grievance process, if
30 applicable, under section 2(7) of this act, within three years of the
31 accrual of the cause of action if the grievance process under section
32 2(7) of this act is not applicable, but in no event shall an action be
33 commenced more than eight years after the relevant act or omission
34 occurred.

35 NEW SECTION. **Sec. 5.** If any provision of this act or its
36 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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