
HOUSE BILL 2724

State of Washington 60th Legislature 2008 Regular Session

By Representatives Green, Hinkle, and Morrell

Read first time 01/16/08. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to health care contracts; and adding a new section
2 to chapter 48.43 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.43 RCW
5 to read as follows:

6 (1) Effective January 1, 2009, a person or entity that contracts
7 with a health care provider shall comply with this section and shall
8 include the provisions required by this section in the contract. A
9 contract in existence prior to January 1, 2009, that is renewed or
10 renews by its terms, shall comply with this section no later than
11 December 31, 2009.

12 (2) As used in this section, unless the context otherwise requires:

13 (a) "Category of coverage" means one of the following types of
14 coverage offered by a person or entity:

15 (i) Health maintenance organization plans;

16 (ii) Any commercial plan or contract that is not a health
17 maintenance organization plan;

18 (iii) Medicare;

19 (iv) Medicaid; or

1 (v) Workers' compensation.

2 (b) "Edit" means a practice or procedure pursuant to which one or
3 more adjustments are made regarding procedure codes, including the
4 American medical association's current procedural terminology code and
5 the centers for medicare and medicaid services health care common
6 procedure coding system that results in:

7 (i) Payment for some, but not all, of the codes;

8 (ii) Payment for a different code;

9 (iii) A reduced payment as a result of services provided to a
10 patient that are claimed under more than one code on the same service
11 date;

12 (iv) A reduced payment related to a modifier used with a procedure
13 code; or

14 (v) A reduced payment based on multiple units of the same code
15 billed for a single date of service.

16 (c) "Health care contract" or "contract" means a contract entered
17 into or renewed between a person or entity and a health care provider
18 for the delivery of health care services to others.

19 (d) "Health care provider" means a person licensed or certified in
20 this state to practice medicine, pharmacy, chiropractic, nursing,
21 physical therapy, podiatry, dentistry, optometry, occupational therapy,
22 or other healing arts. "Health care provider" also means an ambulatory
23 surgical center, a licensed pharmacy or provider of pharmacy services,
24 and a professional corporation or other corporate entity consisting of
25 licensed health care providers as permitted by the laws of this state.

26 (e)(i) "Material change" means a change to a contract that
27 decreases the health care provider's payment or compensation, changes
28 the administrative procedures in a way that may reasonably be expected
29 to significantly increase the provider's administrative expense,
30 replaces the maximum allowable cost list used with a new and different
31 maximum allowable cost list by a person or entity for reimbursement of
32 generic prescription drug claims, or adds a new category of coverage.
33 "Material change" does not include:

34 (A) A decrease in payment or compensation resulting solely from a
35 change in a published fee schedule upon which the payment or
36 compensation is based and the date of applicability is clearly
37 identified in the contract;

1 (B) A decrease in payment or compensation resulting from a change
2 in the fee schedule specified in a contract for pharmacy services such
3 as a change in a fee schedule based on average wholesale price or
4 maximum allowable cost;

5 (C) A decrease in payment or compensation that was anticipated
6 under the terms of the contract, if the amount and date of
7 applicability of the decrease is clearly identified in the contract;

8 (D) An administrative change that may significantly increase the
9 provider's administrative expense, the specific applicability of which
10 is clearly identified in the contract;

11 (E) Changes to an existing prior authorization, precertification,
12 notification, or referral program that do not substantially increase
13 the provider's administrative expense; or

14 (F) Changes to an edit program or to specific edits; however, the
15 health care provider shall be provided notice of the changes pursuant
16 to (e)(ii) of this subsection, and the notice shall include information
17 sufficient for the health care provider to determine the effect of the
18 changes.

19 (ii) If a change to the contract is administrative only and is not
20 a material change, the change shall be effective upon at least fifteen
21 days' notice to the health care provider. All other notices shall be
22 provided pursuant to the contract.

23 (f) "Person or entity" means a person or entity that has a primary
24 business purpose of contracting with health care providers for the
25 delivery of health care services.

26 (3)(a) Each contract shall have provided with it a summary
27 disclosure form disclosing, in plain language, the following:

28 (i) The terms governing compensation and payment;

29 (ii) Any category of coverage for which the health care provider is
30 to provide service;

31 (iii) The duration of the contract and how the contract may be
32 terminated;

33 (iv) The identity of the person or entity responsible for the
34 processing of the health care provider's claims for compensation or
35 payment;

36 (v) Any internal mechanism required by the person or entity to
37 resolve disputes that arise under the terms or conditions of the
38 contract; and

1 (vi) The subject and order of addenda, if any, to the contract.

2 (b) The summary disclosure form required (a) of this subsection
3 shall be for informational purposes only and shall not be a term or
4 condition of the contract. However, such disclosure shall reasonably
5 summarize the applicable contract provisions.

6 (c) If the contract provides for termination for cause by either
7 party, the contract shall state the reasons that may be used for
8 termination for cause, the terms of which are not unreasonable, and
9 when and to whom notice of termination for cause shall be provided.

10 (d) The person or entity shall identify any utilization review or
11 management, quality improvement, or similar program the person or
12 entity uses to review, monitor, evaluate, or assess the services
13 provided pursuant to a contract. The policies, procedures, or
14 guidelines of such program applicable to a provider shall be disclosed
15 upon request of the health care provider within fourteen days after the
16 date of the request.

17 (4)(a) The disclosure of payment and compensation terms pursuant to
18 subsection (3) of this section shall include information sufficient for
19 the health care provider to determine the compensation or payment for
20 the health care services and shall include the following:

21 (i) The manner of payment, such as fee-for-service, capitation, or
22 risk sharing;

23 (ii)(A) The methodology used to calculate any fee schedule, such as
24 relative value unit system and conversion factor, percentage of
25 medicare payment system, or percentage of billed charges. As
26 applicable, the methodology disclosure shall include the name of any
27 relative value system; its version, edition, or publication date; any
28 applicable conversion or geographic factor; and any date by which
29 compensation or fee schedules may be changed by such methodology if
30 allowed for in the contract.

31 (B) The fee schedule for codes reasonably expected to be billed by
32 the health care provider for services provided pursuant to the
33 contract, and, upon request, the fee schedule for other codes used by
34 or which may be used by the health care provider. Such fee schedule
35 shall include, as may be applicable, service or procedure codes such as
36 current procedural terminology codes or health care common procedure
37 coding system codes and the associated payment or compensation for each
38 service code.

1 (C) The fee schedule required in (a)(ii)(B) of this subsection may
2 be provided electronically.

3 (D) A fee schedule for the codes described by (a)(ii)(B) of this
4 subsection shall be provided when a material change related to payment
5 or compensation occurs. Additionally, a health care provider may
6 request that a written fee schedule be provided up to twice per year,
7 and the person or entity must provide such fee schedule promptly.

8 (iii) The person or entity shall state the effect of edits, if any,
9 on payment or compensation. A person or entity may satisfy this
10 requirement by providing a clearly understandable, readily available
11 mechanism, such as through a web site, that allows a health care
12 provider to determine the effect of edits on payment or compensation
13 before service is provided or a claim is submitted.

14 (b) Notwithstanding any provision of this subsection (4) to the
15 contrary, disclosure of a fee schedule or the methodology used to
16 calculate a fee schedule is not required:

17 (i) From a person or entity if the fee schedule is for a plan for
18 dental services, its providers include licensed dentists, the fee
19 schedule is based upon fees filed with the person or entity by dental
20 providers, and the fee schedule is revised from time to time based upon
21 such filings. Specific numerical parameters are not required to be
22 disclosed; or

23 (ii) If the fee schedule is for pharmacy services or drugs such as
24 a fee schedule based on use of national drug codes.

25 (5) Upon completion of processing of a claim, the person or entity
26 shall provide information to the health care provider stating how the
27 claim was adjudicated and the responsibility for any outstanding
28 balance of any party other than the person or entity.

29 (6) When a proposed contract is presented by a person or entity for
30 consideration by a health care provider, the person or entity shall
31 provide in writing or make reasonably available the information
32 required in subsection (4) of this section. If the information is not
33 disclosed in writing, it shall be disclosed in a manner that allows the
34 health care provider to timely evaluate the payment or compensation for
35 services under the proposed contract. The disclosure obligations in
36 this section shall not prevent a person or entity from requiring a
37 reasonable confidentiality agreement regarding the terms of a proposed
38 contract.

1 (7)(a) A material change to a contract shall occur only if the
2 person or entity provides in writing to the health care provider the
3 proposed change and gives ninety days' notice before the effective date
4 of the change. The writing shall be conspicuously entitled "notice of
5 material change to contract."

6 (b) If the health care provider objects in writing to the material
7 change within fifteen days and there is no resolution of the objection,
8 either party may terminate the contract upon written notice of
9 termination provided to the other party not later than sixty days
10 before the effective date of the material change.

11 (c) If the health care provider does not object to the material
12 change pursuant to (b) of this subsection, the change shall be
13 effective as specified in the notice of material change to the
14 contract.

15 (d) If a material change is the addition of a new category of
16 coverage and the health care provider objects, the addition shall not
17 be effective as to the health care provider, and the objection shall
18 not be a basis upon which the person or entity may terminate the
19 contract.

20 (8) Notwithstanding subsection (6) of this section, a contract may
21 be modified by operation of law as required by any applicable state or
22 federal law or regulation, and the person or entity may disclose this
23 change by any reasonable means.

24 (9) Nothing in this section shall be construed to require the
25 renegotiation of a contract in existence before the applicable
26 compliance date in this section, and any disclosure required by this
27 section for such contracts may be by notice to the health care
28 provider.

29 (10) A person or entity shall not assign, allow access to, sell,
30 rent, or give the person's or entity's rights to the health care
31 provider's services pursuant to the person's or entity's contract
32 unless he or she complies with (a) through (e) of this subsection as
33 follows:

34 (a) The third party accessing the health care provider's services
35 under the contract is an employer or other entity providing coverage
36 for health care services to its employees or members and such employer
37 or entity has, with the person or entity contracting with the health

1 care provider, a contract for the administration or processing of
2 claims for payment or service provided pursuant to the contract with
3 the health care provider;

4 (b) The third party accessing the health care provider's services
5 under the contract is an affiliate of, subsidiary of, or is under
6 common ownership or control with the person or entity; or, is providing
7 or receiving administrative services from the person or entity or an
8 affiliate of, or subsidiary of, or is under common ownership or control
9 with the person or entity;

10 (c) The health care contract specifically provides that it applies
11 to network rental arrangements and states that it is for the purpose of
12 assigning, allowing access to, selling, renting, or giving the person's
13 or entity's rights to the health care provider's services;

14 (d) The individuals receiving services under the health care
15 provider's contract are provided with appropriate identification
16 stating where claims should be sent and where inquiries should be
17 directed; and

18 (e) The third party accessing the health care provider's services
19 through the health care provider's contract is obligated to comply with
20 all applicable terms and conditions of the contract; except that a
21 self-funded plan receiving administrative services from the person or
22 entity or its affiliates shall be solely responsible for payment to the
23 provider.

24 (11) Except as permitted by this section, a person or entity shall
25 not require, as a condition of contracting, that a health care provider
26 waive or forego any right or benefit to which the health care provider
27 may be entitled under state or federal law or regulation that provides
28 legal protections to a person solely based on the person's status as a
29 health care provider providing services in this state.

30 (12) Upon sixty days' notice, a health care provider may decline to
31 provide service pursuant to a contract to new patients covered by the
32 person or entity. The notice shall state the reason or reasons for
33 this action. For the purposes of this subsection, "new patients" means
34 those patients who have not received services from the health care
35 provider in the immediately preceding three years. A patient shall not
36 become a "new patient" solely by changing coverage from one person or
37 entity to another person or entity.

1 (13) A term for compensation or payment shall not survive the
2 termination of a contract, except for a continuation of coverage
3 required by law or with the agreement of the health care provider.

4 (14) A contract shall not preclude its use or disclosure to a third
5 party for the purpose of enforcing the provisions of this section or
6 enforcing other state or federal law. The third party shall be bound
7 by the confidentiality requirements set forth in the contract or
8 otherwise.

9 (15) In addition to the provisions of subsection (2)(e) of this
10 section, a contract with a duration of less than two years shall
11 provide to each party a right to terminate the contract without cause,
12 which termination shall occur with at least ninety days' written
13 notice. For contracts with a duration of two or more years,
14 termination without cause may be as specified in the contract.

15 (16) This section shall not apply to:

16 (a) An exclusive contract with a single medical group in a specific
17 geographic area to provide or arrange for health care services;
18 however, this section shall apply to contracts for health care services
19 between the medical group and other medical groups;

20 (b) A contract or agreement for the employment of a health care
21 provider or a contract or agreement between health care providers;

22 (c) A contract or arrangement entered into by a hospital or health
23 care facility that is licensed or certified under Title 70 RCW;

24 (d) A contract between a health care provider and the state or
25 federal government or their agencies for health care services provided
26 through a program for workers' compensation, medicaid, or medicare;

27 (e) Contracts for pharmacy benefit management, except that this
28 exclusion shall not apply to a contract for health care services
29 between a person or entity and a pharmacy, pharmacist, or professional
30 corporation or corporate entity consisting of pharmacies or pharmacists
31 as permitted by the laws of this state; or

32 (f) A contract or arrangement entered into by a hospital or health
33 care facility that is licensed or certified under Title 70 RCW, or any
34 outpatient service provider that has entered into a joint venture with
35 the hospital or is owned by the hospital or health care facility.

36 (17) A contract between a pharmacist or a pharmacy and a pharmacy
37 benefit manager shall be terminated if the federal drug enforcement

1 agency or other federal law enforcement agency ceases the operations of
2 the pharmacist or pharmacy due to alleged or actual criminal activity.

3 (18) Notwithstanding the applicable compliance date requirement in
4 subsection (1) of this section, a domestic nonprofit health plan shall
5 comply with this section within twelve months after the applicable
6 compliance date.

7 (19) A contract subject to this section may include an agreement
8 for binding arbitration.

9 (20)(a) With respect to the enforcement of this section, including
10 arbitration, there shall be available:

- 11 (i) Private rights of action at law and in equity;
- 12 (ii) Equitable relief, including injunctive relief;
- 13 (iii) Reasonable attorneys' fees when the health care provider is
14 the prevailing party in an action to enforce this section, except to
15 the extent that the violation of this section consisted of a mere
16 failure to make payment pursuant to a contract;
- 17 (iv) The option to introduce as persuasive authority prior
18 arbitration awards regarding a violation of this section.

19 (b) Arbitration awards related to the enforcement of this section
20 may be disclosed to those who have a bona fide interest in the
21 arbitration.

22 (21) No provision of this section shall be used to justify any act
23 or omission by a health care provider that is prohibited by any
24 applicable professional code of ethics or state or federal law
25 prohibiting discrimination against any person.

26 NEW SECTION. **Sec. 2.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

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