

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5958

Chapter 267, Laws of 2007

60th Legislature
2007 Regular Session

PRIMARY HEALTH CARE

EFFECTIVE DATE: 07/22/07

Passed by the Senate April 17, 2007
YEAS 48 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 12, 2007
YEAS 90 NAYS 5

FRANK CHOPP

Speaker of the House of Representatives

Approved May 2, 2007, 10:53 a.m.

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 **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5958** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 3, 2007

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5958

AS AMENDED BY THE HOUSE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Ways & Means (originally sponsored by
Senators Keiser, Parlette, Marr and Kohl-Welles)

READ FIRST TIME 03/05/07.

1 AN ACT Relating to innovative primary health care delivery;
2 amending RCW 48.44.010; and adding a new chapter to Title 48 RCW.

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

4 NEW SECTION. **Sec. 1.** It is the public policy of Washington to
5 promote access to medical care for all citizens and to encourage
6 innovative arrangements between patients and providers that will help
7 provide all citizens with a medical home.

8 Washington needs a multipronged approach to provide adequate health
9 care to many citizens who lack adequate access to it. Direct patient-
10 provider practices, in which patients enter into a direct relationship
11 with medical practitioners and pay a fixed amount directly to the
12 health care provider for primary care services, represent an
13 innovative, affordable option which could improve access to medical
14 care, reduce the number of people who now lack such access, and cut
15 down on emergency room use for primary care purposes, thereby freeing
16 up emergency room facilities to treat true emergencies.

17 **Sec. 2.** RCW 48.44.010 and 1990 c 120 s 1 are each amended to read
18 as follows:

1 For the purposes of this chapter:

2 (1) "Health care services" means and includes medical, surgical,
3 dental, chiropractic, hospital, optometric, podiatric, pharmaceutical,
4 ambulance, custodial, mental health, and other therapeutic services.

5 (2) "Provider" means any health professional, hospital, or other
6 institution, organization, or person that furnishes health care
7 services and is licensed to furnish such services.

8 (3) "Health care service contractor" means any corporation,
9 cooperative group, or association, which is sponsored by or otherwise
10 intimately connected with a provider or group of providers, who or
11 which not otherwise being engaged in the insurance business, accepts
12 prepayment for health care services from or for the benefit of persons
13 or groups of persons as consideration for providing such persons with
14 any health care services. "Health care service contractor" does not
15 include direct patient-provider primary care practices as defined in
16 section 3 of this act.

17 (4) "Participating provider" means a provider, who or which has
18 contracted in writing with a health care service contractor to accept
19 payment from and to look solely to such contractor according to the
20 terms of the subscriber contract for any health care services rendered
21 to a person who has previously paid, or on whose behalf prepayment has
22 been made, to such contractor for such services.

23 (5) "Enrolled participant" means a person or group of persons who
24 have entered into a contractual arrangement or on whose behalf a
25 contractual arrangement has been entered into with a health care
26 service contractor to receive health care services.

27 (6) "Commissioner" means the insurance commissioner.

28 (7) "Uncovered expenditures" means the costs to the health care
29 service contractor for health care services that are the obligation of
30 the health care service contractor for which an enrolled participant
31 would also be liable in the event of the health care service
32 contractor's insolvency and for which no alternative arrangements have
33 been made as provided herein. The term does not include expenditures
34 for covered services when a provider has agreed not to bill the
35 enrolled participant even though the provider is not paid by the health
36 care service contractor, or for services that are guaranteed, insured
37 or assumed by a person or organization other than the health care
38 service contractor.

1 (8) "Copayment" means an amount specified in a group or individual
2 contract which is an obligation of an enrolled participant for a
3 specific service which is not fully prepaid.

4 (9) "Deductible" means the amount an enrolled participant is
5 responsible to pay before the health care service contractor begins to
6 pay the costs associated with treatment.

7 (10) "Group contract" means a contract for health care services
8 which by its terms limits eligibility to members of a specific group.
9 The group contract may include coverage for dependents.

10 (11) "Individual contract" means a contract for health care
11 services issued to and covering an individual. An individual contract
12 may include dependents.

13 (12) "Carrier" means a health maintenance organization, an insurer,
14 a health care service contractor, or other entity responsible for the
15 payment of benefits or provision of services under a group or
16 individual contract.

17 (13) "Replacement coverage" means the benefits provided by a
18 succeeding carrier.

19 (14) "Insolvent" or "insolvency" means that the organization has
20 been declared insolvent and is placed under an order of liquidation by
21 a court of competent jurisdiction.

22 (15) "Fully subordinated debt" means those debts that meet the
23 requirements of RCW 48.44.037(3) and are recorded as equity.

24 (16) "Net worth" means the excess of total admitted assets as
25 defined in RCW 48.12.010 over total liabilities but the liabilities
26 shall not include fully subordinated debt.

27 NEW SECTION. **Sec. 3.** The definitions in this section apply
28 throughout this chapter unless the context clearly requires otherwise.

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

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

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

36 (iii) An entity that sponsors, employs, or is otherwise affiliated
37 with a group of health care providers who furnish only primary care

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

9 (b) Enters into direct agreements with direct patients or parents
10 or legal guardians of direct patients;

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

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

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

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

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

36 (5) "Health care provider" or "provider" means a person regulated
37 under Title 18 RCW or chapter 70.127 RCW to practice health or health-

1 related services or otherwise practicing health care services in this
2 state consistent with state law.

3 (6) "Health carrier" or "carrier" has the same meaning as in RCW
4 48.43.005.

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

8 (8) "Network" means the group of participating providers and
9 facilities providing health care services to a particular health
10 carrier's health plan or to plans administered under chapter 41.05,
11 70.47, or 70.47A RCW.

12 NEW SECTION. **Sec. 4.** Except as provided in section 7 of this act,
13 no direct practice shall decline to accept any person solely on account
14 of race, religion, national origin, the presence of any sensory,
15 mental, or physical disability, education, economic status, or sexual
16 orientation.

17 NEW SECTION. **Sec. 5.** (1) A direct practice must charge a direct
18 fee on a monthly basis. The fee must represent the total amount due
19 for all primary care services specified in the direct agreement and may
20 be paid by the direct patient or on his or her behalf by others.

21 (2) A direct practice must:

22 (a) Maintain appropriate accounts and provide data regarding
23 payments made and services received to direct patients upon request;
24 and

25 (b) Either:

26 (i) Bill patients at the end of each monthly period; or

27 (ii) If the patient pays the monthly fee in advance, promptly
28 refund to the direct patient all unearned direct fees following receipt
29 of written notice of termination of the direct agreement from the
30 direct patient. The amount of the direct fee considered earned shall
31 be a proration of the monthly fee as of the date the notice of
32 termination is received.

33 (3) If the patient chooses to pay more than one monthly direct fee
34 in advance, the funds must be held in a trust account and paid to the
35 direct practice as earned at the end of each month. Any unearned
36 direct fees held in trust following receipt of termination of the

1 direct agreement shall be promptly refunded to the direct patient. The
2 amount of the direct fee earned shall be a proration of the monthly fee
3 for the then current month as of the date the notice of termination is
4 received.

5 (4) The direct fee schedule applying to an existing direct patient
6 may not be increased over the annual negotiated amount more frequently
7 than annually. A direct practice shall provide advance notice to
8 existing patients of any change within the fee schedule applying to
9 those existing direct patients. A direct practice shall provide at
10 least sixty days' advance notice of any change in the fee.

11 (5) A direct practice must designate a contact person to receive
12 and address any patient complaints.

13 (6) Direct fees for comparable services within a direct practice
14 shall not vary from patient to patient based on health status or sex.

15 NEW SECTION. **Sec. 6.** (1) Direct practices may not:

16 (a) Enter into a participating provider contract as defined in RCW
17 48.44.010 or 48.46.020 with any carrier or with any carrier's
18 contractor or subcontractor, or plans administered under chapter 41.05,
19 70.47, or 70.47A RCW, to provide health care services through a direct
20 agreement except as set forth in subsection (2) of this section;

21 (b) Submit a claim for payment to any carrier or any carrier's
22 contractor or subcontractor, or plans administered under chapter 41.05,
23 70.47, or 70.47A RCW, for health care services provided to direct
24 patients as covered by their agreement;

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

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

36 (2) Direct practices and providers may:

1 (a) Enter into a participating provider contract as defined by RCW
2 48.44.010 and 48.46.020 or plans administered under chapter 41.05,
3 70.47, or 70.47A RCW for purposes other than payment of claims for
4 services provided to direct patients through a direct agreement. Such
5 providers shall be subject to all other provisions of the participating
6 provider contract applicable to participating providers including but
7 not limited to the right to:

8 (i) Make referrals to other participating providers;

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

11 (iii) Prescribe prescription drugs; and

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

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

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

26 NEW SECTION. **Sec. 7.** (1) Direct practices may not decline to
27 accept new direct patients or discontinue care to existing patients
28 solely because of the patient's health status. A direct practice may
29 decline to accept a patient if the practice has reached its maximum
30 capacity, or if the patient's medical condition is such that the
31 provider is unable to provide the appropriate level and type of health
32 care services in the direct practice. So long as the direct practice
33 provides the patient notice and opportunity to obtain care from another
34 physician, the direct practice may discontinue care for direct patients
35 if: (a) The patient fails to pay the direct fee under the terms
36 required by the direct agreement; (b) the patient has performed an act
37 that constitutes fraud; (c) the patient repeatedly fails to comply with

1 the recommended treatment plan; (d) the patient is abusive and presents
2 an emotional or physical danger to the staff or other patients of the
3 direct practice; or (e) the direct practice discontinues operation as
4 a direct practice.

5 (2) Direct practices may accept payment of direct fees directly or
6 indirectly from nonemployer third parties.

7 NEW SECTION. **Sec. 8.** Direct practices, as defined in section 3 of
8 this act, who comply with this chapter are not insurers under RCW
9 48.01.050, health carriers under chapter 48.43 RCW, health care service
10 contractors under chapter 48.44 RCW, or health maintenance
11 organizations under chapter 48.46 RCW.

12 NEW SECTION. **Sec. 9.** A person shall not make, publish, or
13 disseminate any false, deceptive, or misleading representation or
14 advertising in the conduct of the business of a direct practice, or
15 relative to the business of a direct practice.

16 NEW SECTION. **Sec. 10.** A person shall not make, issue, or
17 circulate, or cause to be made, issued, or circulated, a
18 misrepresentation of the terms of any direct agreement, or the benefits
19 or advantages promised thereby, or use the name or title of any direct
20 agreement misrepresenting the nature thereof.

21 NEW SECTION. **Sec. 11.** Violations of this chapter constitute
22 unprofessional conduct enforceable under RCW 18.130.180.

23 NEW SECTION. **Sec. 12.** (1) Direct practices must submit annual
24 statements, beginning on October 1, 2007, to the office of insurance
25 commissioner specifying the number of providers in each practice, total
26 number of patients being served, the average direct fee being charged,
27 providers' names, and the business address for each direct practice.
28 The form and content for the annual statement must be developed in a
29 manner prescribed by the commissioner.

30 (2) A health care provider may not act as, or hold himself or
31 herself out to be, a direct practice in this state, nor may a direct
32 agreement be entered into with a direct patient in this state, unless

1 the provider submits the annual statement in subsection (1) of this
2 section to the commissioner.

3 (3) The commissioner shall report annually to the legislature on
4 direct practices including, but not limited to, participation trends,
5 complaints received, voluntary data reported by the direct practices,
6 and any necessary modifications to this chapter. The initial report
7 shall be due December 1, 2009.

8 NEW SECTION. **Sec. 13.** (1) A direct agreement must include the
9 following disclaimer: "This agreement does not provide comprehensive
10 health insurance coverage. It provides only the health care services
11 specifically described." The direct agreement may not be sold to a
12 group and may not be entered with a group of subscribers. It must be
13 an agreement between a direct practice and an individual direct
14 patient. Nothing prohibits the presentation of marketing materials to
15 groups of potential subscribers or their representatives.

16 (2) A comprehensive disclosure statement shall be distributed to
17 all direct patients with their participation forms. Such disclosure
18 must inform the direct patients of their financial rights and
19 responsibilities to the direct practice as provided for in this
20 chapter, encourage that direct patients obtain and maintain insurance
21 for services not provided by the direct practice, and state that the
22 direct practice will not bill a carrier for services covered under the
23 direct agreement. The disclosure statement shall include contact
24 information for the office of the insurance commissioner.

25 NEW SECTION. **Sec. 14.** By December 1, 2012, the commissioner shall
26 submit a study of direct care practices to the appropriate committees
27 of the senate and house of representatives. The study shall include an
28 analysis of the extent to which direct care practices:

29 (1) Improve or reduce access to primary health care services by
30 recipients of medicare and medicaid, individuals with private health
31 insurance, and the uninsured;

32 (2) Provide adequate protection for consumers from practice
33 bankruptcy, practice decisions to drop participants, or health
34 conditions not covered by direct care practices;

35 (3) Increase premium costs for individuals who have health coverage
36 through traditional health insurance;

1 (4) Have an impact on a health carrier's ability to meet network
2 adequacy standards set by the commissioner or state health purchasing
3 agencies; and

4 (5) Cover a population that is different from individuals covered
5 through traditional health insurance.

6 The study shall also examine the extent to which individuals and
7 families participating in a direct care practice maintain health
8 coverage for health conditions not covered by the direct care practice.
9 The commissioner shall recommend to the legislature whether the
10 statutory authority for direct care practices to operate should be
11 continued, modified, or repealed.

12 NEW SECTION. **Sec. 15.** Sections 1 and 3 through 14 of this act
13 constitute a new chapter in Title 48 RCW.

Passed by the Senate April 17, 2007.

Passed by the House April 12, 2007.

Approved by the Governor May 2, 2007.

Filed in Office of Secretary of State May 3, 2007.