

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5434

63rd Legislature
2013 Regular Session

Passed by the Senate April 19, 2013
YEAS 47 NAYS 0

President of the Senate

Passed by the House April 16, 2013
YEAS 96 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5434** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5434

AS AMENDED BY THE HOUSE

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By Senate Health Care (originally sponsored by Senators Becker, Dammeier, Keiser, Harper, and Conway)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to the filing and public disclosure of health care
2 provider compensation; amending RCW 48.44.070, 48.46.243, 48.46.030,
3 and 42.56.400; adding a new section to chapter 48.43 RCW; and providing
4 an expiration date.

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

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

8 (1) For the purposes of this section:

9 (a) "Carrier" means a:

10 (i) Health carrier as defined in RCW 48.43.005; and

11 (ii) Limited health care service contractor that offers limited
12 health care service as defined in RCW 48.44.035.

13 (b) "Provider" means:

14 (i) A health care provider as defined in RCW 48.43.005;

15 (ii) A participating provider as defined in RCW 48.44.010;

16 (iii) A health care facility, as defined in RCW 48.43.005; and

17 (iv) Intermediaries that have agreed in writing with a carrier to
18 provide access to providers under this subsection (1)(b) who render
19 covered services to enrollees of a carrier.

1 (c) "Provider compensation agreement" means any written agreement
2 that includes specific information about payment methodology, payment
3 rates, and other terms that determine the remuneration a carrier will
4 pay to a provider.

5 (d) "Provider contract" means a written contract between a carrier
6 and a provider for any health care services rendered to an enrollee.

7 (2) A carrier must file all provider contracts and provider
8 compensation agreements with the commissioner thirty calendar days
9 before use. When a carrier and provider negotiate a provider contract
10 or provider compensation agreement that deviates from a filed
11 agreement, the carrier must also file that specific contract or
12 agreement with the commissioner thirty calendar days before use.

13 (a) Any provider contract and related provider compensation
14 agreements not affirmatively disapproved by the commissioner are deemed
15 approved, except the commissioner may extend the approval date an
16 additional fifteen calendar days upon giving notice before the
17 expiration of the initial thirty-day period.

18 (b) Changes to previously filed and approved provider compensation
19 agreements modifying the compensation amount or related terms that help
20 determine the compensation amount must be filed and are deemed approved
21 upon filing if no other changes are made to the previously approved
22 provider contract or compensation agreement.

23 (3) The commissioner may not base a disapproval of a provider
24 compensation agreement on the amount of compensation or other financial
25 arrangements between the carrier and the provider, unless that
26 compensation amount causes the underlying health benefit plan to
27 otherwise be in violation of state or federal law. This subsection
28 does not grant the commissioner the authority to regulate provider
29 reimbursement amounts.

30 (4) The commissioner may withdraw approval of a provider contract
31 or provider compensation agreement at any time for cause.

32 (5) Provider compensation agreements are confidential and not
33 subject to public inspection under RCW 48.02.120(2), or public
34 disclosure under chapter 42.56 RCW, if filed in accordance with the
35 procedures for submitting confidential filings through the system for
36 electronic rate and form filings and the general filing instructions as
37 set forth by the commissioner. In the event the referenced filing
38 fails to comply with the filing instructions setting forth the process

1 to withhold the compensation agreement from public inspection, and the
2 carrier indicates that the compensation agreement is to be withheld
3 from public inspection, the commissioner shall reject the filing and
4 notify the carrier through the system for electronic rate and form
5 filings to amend its filing to comply with the confidentiality filing
6 instructions.

7 (6) In the event a provider contract or provider compensation
8 agreement is disapproved or withdrawn from use by the commissioner, the
9 carrier has the right to demand and receive a hearing under chapters
10 48.04 and 34.05 RCW.

11 (7) The commissioner may adopt rules to implement this section.

12 **Sec. 2.** RCW 48.44.070 and 1990 c 120 s 9 are each amended to read
13 as follows:

14 (1) Forms of contracts between health care service contractors and
15 participating providers shall be filed with the insurance commissioner
16 prior to use.

17 (2) Any contract form not affirmatively disapproved within fifteen
18 days of filing shall be deemed approved, except that the commissioner
19 may extend the approval period an additional fifteen days upon giving
20 notice before the expiration of the initial fifteen-day period. The
21 commissioner may approve such a contract form for immediate use at any
22 time. Approval may be subsequently withdrawn for cause.

23 (3) Subject to the right of the health care service contractor to
24 demand and receive a hearing under chapters 48.04 and 34.05 RCW, the
25 commissioner may disapprove such a contract form if it is in any
26 respect in violation of this chapter or if it fails to conform to
27 minimum provisions or standards required by the commissioner by rule
28 under chapter 34.05 RCW.

29 (4) This section is suspended, and shall have no effect, until July
30 1, 2017.

31 **Sec. 3.** RCW 48.46.243 and 2008 c 217 s 56 are each amended to read
32 as follows:

33 (1) Subject to subsection (2) of this section, every contract
34 between a health maintenance organization and its participating
35 providers of health care services shall be in writing and shall set
36 forth that in the event the health maintenance organization fails to

1 pay for health care services as set forth in the agreement, the
2 enrolled participant shall not be liable to the provider for any sums
3 owed by the health maintenance organization. Every such contract shall
4 provide that this requirement shall survive termination of the
5 contract.

6 (2) The provisions of subsection (1) of this section shall not
7 apply to emergency care from a provider who is not a participating
8 provider, to out-of-area services or, in exceptional situations
9 approved in advance by the commissioner, if the health maintenance
10 organization is unable to negotiate reasonable and cost-effective
11 participating provider contracts.

12 ~~(3)((a) Each participating provider contract form shall be filed
13 with the commissioner fifteen days before it is used.~~

14 ~~(b) Any contract form not affirmatively disapproved within fifteen
15 days of filing shall be deemed approved, except that the commissioner
16 may extend the approval period an additional fifteen days upon giving
17 notice before the expiration of the initial fifteen day period. The
18 commissioner may approve such a contract form for immediate use at any
19 time. Approval may be subsequently withdrawn for cause.~~

20 ~~(c) Subject to the right of the health maintenance organization to
21 demand and receive a hearing under chapters 48.04 and 34.05 RCW, the
22 commissioner may disapprove such a contract form if it is in any
23 respect in violation of this chapter or if it fails to conform to
24 minimum provisions or standards required by the commissioner by rule
25 under chapter 34.05 RCW.~~

26 ~~(4)) No participating provider, or insurance producer, trustee, or
27 assignee thereof, may maintain an action against an enrolled
28 participant to collect sums owed by the health maintenance
29 organization.~~

30 **Sec. 4.** RCW 48.46.030 and 2012 c 211 s 23 are each amended to read
31 as follows:

32 Any corporation, cooperative group, partnership, individual,
33 association, or groups of health professionals licensed by the state of
34 Washington, public hospital district, or public institutions of higher
35 education shall be entitled to a certificate of registration from the
36 insurance commissioner as a health maintenance organization if it:

1 (1) Provides comprehensive health care services to enrolled
2 participants on a group practice per capita prepayment basis or on a
3 prepaid individual practice plan and provides such health services
4 either directly or through arrangements with institutions, entities,
5 and persons which its enrolled population might reasonably require as
6 determined by the health maintenance organization in order to be
7 maintained in good health; and

8 (2) Is governed by a board elected by enrolled participants, or
9 otherwise provides its enrolled participants with a meaningful role in
10 policy making procedures of such organization, as defined in RCW
11 48.46.020(18)((7)) and 48.46.070; and

12 (3) Affords enrolled participants with a meaningful appeal
13 procedure aimed at settlement of disputes between such persons and such
14 health maintenance organization, as defined in RCW 48.46.020(17) and
15 48.46.100; and

16 (4) Provides enrolled participants, or makes available for
17 inspection at least annually, financial statements pertaining to health
18 maintenance agreements, disclosing income and expenses, assets and
19 liabilities, and the bases for proposed rate adjustments for health
20 maintenance agreements relating to its activity as a health maintenance
21 organization; and

22 (5) Demonstrates to the satisfaction of the commissioner that its
23 facilities and personnel are reasonably adequate to provide
24 comprehensive health care services to enrolled participants and that it
25 is financially capable of providing such members with, or has made
26 adequate contractual arrangements through insurance or otherwise to
27 provide such members with, such health services; and

28 (6) Substantially complies with administrative rules and
29 regulations of the commissioner for purposes of this chapter; and

30 (7) Submits an application for a certificate of registration which
31 shall be verified by an officer or authorized representative of the
32 applicant, being in form as the commissioner prescribes, and setting
33 forth:

34 (a) A copy of the basic organizational document, if any, of the
35 applicant, such as the articles of incorporation, articles of
36 association, partnership agreement, trust agreement, or other
37 applicable documents, and all amendments thereto;

1 (b) A copy of the bylaws, rules and regulations, or similar
2 documents, if any, which regulate the conduct of the internal affairs
3 of the applicant, and all amendments thereto;

4 (c) A list of the names, addresses, members of the board of
5 directors, board of trustees, executive committee, or other governing
6 board or committee and the principal officers, partners, or members;

7 (d) A full and complete disclosure of any financial interests held
8 by any officer, or director in any provider associated with the
9 applicant or any provider of the applicant;

10 (e) A description of the health maintenance organization, its
11 facilities and its personnel, and the applicant's most recent financial
12 statement showing such organization's assets, liabilities, income, and
13 other sources of financial support;

14 (f) A description of the geographic areas and the population groups
15 to be served and the size and composition of the anticipated enrollee
16 population;

17 (g) A copy of each type of health maintenance agreement to be
18 issued to enrolled participants;

19 (h) A schedule of all proposed rates of reimbursement to
20 contracting health care facilities or providers, if any, and a schedule
21 of the proposed charges for enrollee coverage for health care services,
22 accompanied by data relevant to the formulation of such schedules;

23 (i) A description of the proposed method and schedule for
24 soliciting enrollment in the applicant health maintenance organization
25 and the basis of compensation for such solicitation services;

26 (j) A copy of the solicitation document to be distributed to all
27 prospective enrolled participants in connection with any solicitation;

28 (k) A financial projection which sets forth the anticipated results
29 during the initial two years of operation of such organization,
30 accompanied by a summary of the assumptions and relevant data upon
31 which the projection is based. The projection should include the
32 projected expenses, enrollment trends, income, enrollee utilization
33 patterns, and sources of working capital;

34 (l) A detailed description of the procedures and programs to be
35 implemented to assure that the health care services delivered to
36 enrolled participants will be of professional quality;

37 (m) A detailed description of procedures to be implemented to meet
38 the requirements to protect against insolvency in RCW 48.46.245;

1 (n) Documentation that the health maintenance organization has an
2 initial net worth of one million dollars and shall thereafter maintain
3 the minimum net worth required under RCW 48.46.235; and

4 (o) Such other information as the commissioner shall require by
5 rule or regulation which is reasonably necessary to carry out the
6 provisions of this section.

7 A health maintenance organization shall, unless otherwise provided
8 for in this chapter, file a notice describing any modification of any
9 of the information required by subsection (7) of this section. Such
10 notice shall be filed with the commissioner. With respect to provider
11 compensation; however, such notice shall be filed in compliance with
12 the requirements regarding provider compensation filing in chapter
13 48.43 RCW.

14 **Sec. 5.** RCW 42.56.400 and 2012 2nd sp.s. c 3 s 8 are each amended
15 to read as follows:

16 The following information relating to insurance and financial
17 institutions is exempt from disclosure under this chapter:

18 (1) Records maintained by the board of industrial insurance appeals
19 that are related to appeals of crime victims' compensation claims filed
20 with the board under RCW 7.68.110;

21 (2) Information obtained and exempted or withheld from public
22 inspection by the health care authority under RCW 41.05.026, whether
23 retained by the authority, transferred to another state purchased
24 health care program by the authority, or transferred by the authority
25 to a technical review committee created to facilitate the development,
26 acquisition, or implementation of state purchased health care under
27 chapter 41.05 RCW;

28 (3) The names and individual identification data of either all
29 owners or all insureds, or both, received by the insurance commissioner
30 under chapter 48.102 RCW;

31 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

32 (5) Information provided under RCW 48.05.510 through 48.05.535,
33 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
34 through 48.46.625;

35 (6) Examination reports and information obtained by the department
36 of financial institutions from banks under RCW 30.04.075, from savings
37 banks under RCW 32.04.220, from savings and loan associations under RCW

1 33.04.110, from credit unions under RCW 31.12.565, from check cashers
2 and sellers under RCW 31.45.030(3), and from securities brokers and
3 investment advisers under RCW 21.20.100, all of which is confidential
4 and privileged information;

5 (7) Information provided to the insurance commissioner under RCW
6 48.110.040(3);

7 (8) Documents, materials, or information obtained by the insurance
8 commissioner under RCW 48.02.065, all of which are confidential and
9 privileged;

10 (9) Confidential proprietary and trade secret information provided
11 to the commissioner under RCW 48.31C.020 through 48.31C.050 and
12 48.31C.070;

13 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and
14 7.70.140 that, alone or in combination with any other data, may reveal
15 the identity of a claimant, health care provider, health care facility,
16 insuring entity, or self-insurer involved in a particular claim or a
17 collection of claims. For the purposes of this subsection:

18 (a) "Claimant" has the same meaning as in RCW 48.140.010(2).

19 (b) "Health care facility" has the same meaning as in RCW
20 48.140.010(6).

21 (c) "Health care provider" has the same meaning as in RCW
22 48.140.010(7).

23 (d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

24 (e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

25 (11) Documents, materials, or information obtained by the insurance
26 commissioner under RCW 48.135.060;

27 (12) Documents, materials, or information obtained by the insurance
28 commissioner under RCW 48.37.060;

29 (13) Confidential and privileged documents obtained or produced by
30 the insurance commissioner and identified in RCW 48.37.080;

31 (14) Documents, materials, or information obtained by the insurance
32 commissioner under RCW 48.37.140;

33 (15) Documents, materials, or information obtained by the insurance
34 commissioner under RCW 48.17.595;

35 (16) Documents, materials, or information obtained by the insurance
36 commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);

37 (17) Documents, materials, or information obtained by the insurance
38 commissioner in the commissioner's capacity as receiver under RCW

1 48.31.025 and 48.99.017, which are records under the jurisdiction and
2 control of the receivership court. The commissioner is not required to
3 search for, log, produce, or otherwise comply with the public records
4 act for any records that the commissioner obtains under chapters 48.31
5 and 48.99 RCW in the commissioner's capacity as a receiver, except as
6 directed by the receivership court;

7 (18) Documents, materials, or information obtained by the insurance
8 commissioner under RCW 48.13.151;

9 (19) Data, information, and documents provided by a carrier
10 pursuant to section 1, chapter 172, Laws of 2010;

11 (20) Information in a filing of usage-based insurance about the
12 usage-based component of the rate pursuant to RCW 48.19.040(5)(b);
13 ((and))

14 (21) Data, information, and documents, other than those described
15 in RCW 48.02.210(2), that are submitted to the office of the insurance
16 commissioner by an entity providing health care coverage pursuant to
17 RCW 28A.400.275 and 48.02.210; and

18 (22) Information not subject to public inspection or public
19 disclosure under section 1(5) of this act.

20 NEW SECTION. Sec. 6. This act expires July 1, 2017.

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