H-2377.1

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**HOUSE BILL 2066**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Representatives Riccelli, Macri, Ramel, Simmons, Reed, Ormsby, Fosse, Lekanoff, and Doglio

AN ACT Relating to addressing affordability through health care provider contracting; and adding a new chapter to Title 19 RCW.

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

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) The health care system is a comprehensive and interconnected entity;

(b) Health care costs and spending continue to rise and significantly outgrow inflation and the United States gross domestic product per capita;

(c) According to the health care cost institute, from 2015 to 2019 the average health care spending per person reached $6,000, an increase of 21 percent. Health care prices accounted for nearly two-thirds of this increase in spending after adjusting for inflation;

(d) According to a Milbank memorial fund issue brief, mitigating the price impacts of health care provider consolidation, consolidation of health care providers into health systems with market power is a primary driver of high health care prices. Further, the issue brief explains, competition in the health care market exists in three areas: (i) Competition between health care providers for inclusion in health plan networks; (ii) competition between health carriers in health plan enrollment; and (iii) competition between health care providers for in-network patients;

(e) A 2020 report to congress on medicare payment policy from the medicare payment advisory commission found "the preponderance of evidence suggests that hospital consolidation leads to higher prices. These findings imply that hospitals seek higher prices from insurers and will get them when they have greater bargaining power." Further, the report noted that "a recent study found that hospital and insurer concentration both increase premiums in the affordable care act marketplace"; and

(f) According to the Washington state office of the insurance commissioner preliminary report of health care affordability, significant vertical and horizontal consolidation has already occurred in Washington state's health care system. The office of the insurance commissioner report found that of the 101 hospitals in Washington state, 40 are part of the five largest hospital systems and nearly 40 to 50 percent of active physicians in Washington state work at a hospital or clinic. The Washington state office of financial management found that the percentage of hospitals in a hospital system grew to nearly 50 percent in 2017 from 10 percent in 1989.

(2) Therefore, the legislature intends to prohibit the use of certain contractual provisions often used by providers, hospitals, health systems, and carriers with significant market power.

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

(1) "Affiliate" means a person who directly through one or more intermediaries controls, is controlled by, or is under common control with, another specified person.

(2) "All-or-nothing clause" means a provision of a provider contract that requires a health carrier to contract with multiple hospitals or affiliates of a hospital owned or controlled by the same single entity.

(3) "Antisteering clause" means a provision of a provider contract that restricts the ability of a health carrier to encourage an enrollee to obtain a health care service from a competitor of the hospital or an affiliate of the hospital, including offering incentives to encourage enrollees to utilize specific health care providers.

(4) "Antitiering clause" means a provision in a provider contract that requires a health carrier to place a hospital or any affiliate of the hospital in a tier or a tiered provider network reflecting the lowest or lower enrollee cost-sharing amounts.

(5) "Control" means the possession, directly, of the power to direct the management and policies of a person, whether through ownership of voting securities, membership rights, by contract, or otherwise.

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

(7) "Provider" means:

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

(b) A health care facility as defined in RCW 48.43.005;

(c) Intermediaries that have agreed in writing with a health carrier to provide access to providers who render covered services to enrollees of a health carrier; and

(d) Health care benefit managers as defined in RCW 48.200.020.

(8) "Provider contract" has the same meaning as in RCW 48.43.730.

(9) "Tiered provider network" means a network that identifies and groups providers and facilities into specific groups to which different provider reimbursement, enrollee cost sharing, or provider access requirements, or any combination thereof, apply as a means to manage cost, utilization, quality, or to otherwise incentivize enrollee or provider behavior.

NEW SECTION. **Sec.**  (1) A provider or health carrier may not directly or indirectly offer, solicit, request, or enter into a provider contract that includes an all-or-nothing clause, antisteering clause, or antitiering clause.

(2) Any provision in a provider contract that is an all-or-nothing clause, an antisteering clause, or an antitiering clause is void and unenforceable. The remaining provisions in the provider contract remain in effect and are enforceable.

(3) The attorney general may enforce this section under the consumer protection act, chapter 19.86 RCW. For actions brought by the attorney general to enforce this section, the legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW, and that a violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. **Sec.**  (1) For provider contracts, a provider and health carrier must engage in good faith negotiations when a provider contract is expiring or terminating due to a without cause notification as permitted by the provider contract, regardless of the initiating party, unless the parties agree not to negotiate a new provider contract and allow the existing provider contract to terminate. Providers are prohibited from making any public statement or releasing notices of any potential or planned terminations of agreements with health carriers to any patients or third party until 30 days prior to the termination effective date.

(2) The attorney general may enforce this section under the consumer protection act, chapter 19.86 RCW. For actions brought by the attorney general to enforce this section, the legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW, and that a violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. **Sec.**  Sections 1 through 4 of this act constitute a new chapter in Title 19 RCW.

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