
HOUSE BILL 1379

State of Washington

68th Legislature

2023 Regular Session

By Representatives Macri, Riccelli, Reed, Simmons, Doglio, Pollet, and Fosse

Read first time 01/17/23. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to addressing affordability through health care
2 provider contracting; reenacting and amending RCW 41.05.017; adding
3 new sections to chapter 48.43 RCW; creating new sections; and
4 providing an expiration date.

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

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

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

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

12 (c) According to the health care cost institute, from 2015 to
13 2019 the average health care spending per person reached \$6,000, an
14 increase of 21 percent. Health care prices accounted for nearly two-
15 thirds of this increase in spending after adjusting for inflation;

16 (d) According to a Milbank memorial fund issue brief, mitigating
17 the price impacts of health care provider consolidation,
18 consolidation of health care providers into health systems with
19 market power is a primary driver of high health care prices. Further,
20 the issue brief explains, competition in the health care market
21 exists in three areas: (i) Competition between health care providers

1 for inclusion in health plan networks; (ii) competition between
2 health carriers in health plan enrollment; and (iii) competition
3 between health care providers for in-network patients;

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

12 (f) Significant vertical and horizontal consolidation has already
13 occurred in the health care market. In 2010, the five largest
14 hospital systems in Washington state had 30 hospitals, which grew to
15 49 hospitals by 2021. According to a 2020 American medical
16 association survey, nearly 40 percent of patient care physicians were
17 employed directly by a hospital or a practice owned at least
18 partially by a hospital or health system, an increase from just 23.5
19 percent in 2012. According to a 2020 study published in health
20 affairs, 72 percent of hospitals were affiliated with a hospital
21 system in 2018.

22 (2) Therefore, the legislature intends to prohibit the use of
23 certain contractual provisions often used by providers, hospitals,
24 health systems, and carriers with significant market power and to
25 direct the insurance commissioner, in collaboration with the office
26 of the attorney general, to study other states' regulatory approaches
27 to address affordability of health plan rates with the goal of
28 increasing health care competition, lowering health care prices, and
29 increasing affordability for consumers.

30 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.43
31 RCW to read as follows:

32 (1) Except as provided in subsections (2), (3), and (4) of this
33 section, for health plans issued or renewed on or after January 1,
34 2024, a provider contract between a hospital or any affiliate of a
35 hospital and a health carrier may not directly or indirectly include
36 any of the following provisions:

- 37 (a) An all-or-nothing clause;
- 38 (b) An antisteering clause;
- 39 (c) An antitiering clause; or

1 (d) Any clause that sets provider compensation agreements or
2 other terms for affiliates of the hospital that will not be included
3 as participating providers in the agreement.

4 (2) Subsection (1)(a) of this section does not prohibit a health
5 carrier from voluntarily agreeing to contract with other hospitals
6 owned or controlled by the same single entity, including for a
7 comprehensive population-based payment agreement meeting the criteria
8 of category 4B or higher as set forth in the health care payment
9 learning and action network alternative payment model framework, as
10 it existed on January 1, 2023. If a health carrier voluntarily agrees
11 to contract with other hospitals owned or controlled by the same
12 single entity under subsection (1)(a) of this section, the health
13 carrier must file a declaration with the office of the insurance
14 commissioner that complies with the filing requirements of RCW
15 48.43.730.

16 (3) Subsection (1)(a) and (d) of this section do not apply to the
17 limited extent that it would prevent a hospital, provider, or health
18 carrier from participating in:

19 (a) A state-sponsored health care program, federally funded
20 health care program, or state or federal grant opportunity; or

21 (b) A value-based purchasing arrangement structured to reduce
22 unnecessary utilization, improve health outcomes, and contain health
23 care costs.

24 (4) This section does not prohibit a hospital certified as a
25 critical access hospital by the centers for medicare and medicaid
26 services or an independent hospital certified as a sole community
27 hospital by the centers for medicare and medicaid services from
28 negotiating payment rates and methodologies on behalf of an
29 individual health care practitioner or a medical group that the
30 hospital is affiliated with.

31 (5) A health plan contract between a health carrier and a
32 hospital, physician or physician group, or ancillary provider may not
33 include a clause requiring the health carrier to reimburse a
34 hospital, physician or physician group, or ancillary provider at the
35 acquiror's contract rate when acquired, directly or indirectly, by an
36 acquiror or when the hospital, physician or physician group, or
37 ancillary provider enters into a management, comanagement,
38 professional services, leasing, joint venture, or similar agreement
39 or arrangement with an acquiror. In the event such an event occurs,
40 the acquiror shall notify the health carrier 90 days in advance, or

1 as soon as reasonably possible of any such acquisition or
2 arrangement.

3 (6) For health plans issued or renewed on or after January 1,
4 2024, a contract between a health carrier and a hospital or any
5 affiliate of a hospital shall include an attestation signed by the
6 carrier and the hospital or any affiliate of the hospital, attesting
7 that the contract negotiations did not include discussion of or
8 agreement to any of the contract provisions prohibited under this
9 section.

10 (7) For the purposes of this section:

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

14 (b) An "all-or-nothing clause" means a provision of a provider
15 contract that requires a health carrier to contract with multiple
16 hospitals or affiliates of a hospital owned or controlled by the same
17 single entity.

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

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

28 (e) "Control" means the possession, directly or indirectly, of
29 the power to direct or cause the direction of the management and
30 policies of a person, whether through ownership of voting securities,
31 membership rights, by contract, or otherwise.

32 (f) "Provider" has the same meaning as in RCW 48.43.730.

33 (g) "Provider compensation agreement" has the same meaning as in
34 RCW 48.43.730.

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

36 (i) "Tiered provider network" means a network that identifies and
37 groups providers and facilities into specific groups to which
38 different provider reimbursement, enrollee cost sharing, or provider
39 access requirements, or any combination thereof, apply as a means to

1 manage cost, utilization, quality, or to otherwise incentivize
2 enrollee or provider behavior.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.43
4 RCW to read as follows:

5 The provisions of section 2 of this act apply to a self-funded
6 group health plan governed by the provisions of the federal employee
7 retirement income security act of 1974 (29 U.S.C. Sec. 1001 et seq.)
8 only if the self-funded group health plan elects to participate in
9 the provisions of section 2 of this act through actions including,
10 but not limited to, direction to any entity administering their group
11 health plan. To elect to participate in these provisions, the self-
12 funded group health plan may provide notice to the commissioner in a
13 manner prescribed by the commissioner, attesting to the plan's
14 participation in section 2 of this act.

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

17 (1) The insurance commissioner, in collaboration with the office
18 of the attorney general, shall study regulatory approaches used by
19 other states to address affordability of health plan rates and the
20 impact of anticompetitive behaviors on health care affordability. The
21 study should focus on approaches outside of the traditional health
22 plan rate review such as that required by the affordable care act,
23 and shall include, for each state reported on:

24 (a) The statutory and regulatory authority for the state's
25 affordability activities;

26 (b) A description of the activities and processes developed by
27 the state; and

28 (c) Any available research or other findings related to the
29 impact or outcomes of the state's affordability activities.

30 (2) The insurance commissioner may contract with a third party to
31 conduct all or any portion of the study.

32 (3) The insurance commissioner and the office of the attorney
33 general shall submit a report and any recommendations to the relevant
34 policy and fiscal committees of the legislature by December 1, 2023.

35 (4) This section expires July 1, 2024.

36 **Sec. 5.** RCW 41.05.017 and 2022 c 236 s 3, 2022 c 228 s 2, and
37 2022 c 10 s 2 are each reenacted and amended to read as follows:

1 Each health plan that provides medical insurance offered under
2 this chapter, including plans created by insuring entities, plans not
3 subject to the provisions of Title 48 RCW, and plans created under
4 RCW 41.05.140, are subject to the provisions of RCW 48.43.500,
5 70.02.045, 48.43.505 through 48.43.535, 48.43.537, 48.43.545,
6 48.43.550, 70.02.110, 70.02.900, 48.43.190, 48.43.083, 48.43.0128,
7 48.43.780, 48.43.435, 48.43.815, section 2 of this act, and chapter
8 48.49 RCW.

9 NEW SECTION. **Sec. 6.** The insurance commissioner may adopt rules
10 necessary to implement this act.

--- END ---