

2 **ESHB 1589** - S COMM AMD (S3032.2)
3 By Committee on Health & Long-Term Care

4 ADOPTED AS AMENDED 4/14/95

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 43.70 RCW
8 to read as follows:

9 QUALITY ASSURANCE--INTERAGENCY COOPERATION--ELIMINATION AND
10 COORDINATION OF DUPLICATE STATE PROGRAMS. No later than July 1, 1995,
11 the department of health together with the health care authority, the
12 department of social and health services, the office of the insurance
13 commissioner, and the department of labor and industries shall form an
14 interagency group for coordination and consultation on quality
15 assurance activities. By December 31, 1996, the group shall review all
16 state agency programs governing health service quality assurance and
17 shall recommend to the legislature, the consolidation, coordination, or
18 elimination of rules and programs that would be made unnecessary
19 pursuant to the development of a uniform quality assurance and
20 improvement program.

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

23 No public or private health care payer subject to the jurisdiction
24 of the state of Washington shall propose, issue, sign, or renew a
25 provider agreement or enrollee service agreement that contains a clause
26 whose effect, in any way, is to disclaim liability for the care
27 delivered or not delivered to an enrollee because of a decision of the
28 payer as to whether the care was a covered service, medically
29 necessary, economically provided, medically appropriate, or similar
30 consideration. Similarly, no clause shall attempt to shift liability
31 for harm caused by such payer decision as to whether care should be
32 delivered, as opposed to paid for, is between the provider and patient
33 alone as if the fact of whether or not care is paid for played little
34 or no role in a patient's decision to obtain care. Nothing in this
35 section shall be inferred to result in liability to anyone for the

1 payer's payment decisions that are consistent with the language of the
2 applicable service agreement or consistent with the cost-effective
3 delivery of health care. The intent of this section is only to prevent
4 payers from shifting their liability for payment decisions to either
5 providers, or enrollees, or both.

6 NEW SECTION. **Sec. 3.** MANAGED COMPETITION--FINDINGS AND INTENT.

7 (1) The legislature recognizes that competition among health care
8 providers, facilities, payers, and purchasers will yield the best
9 allocation of health care resources, the lowest prices for health care,
10 and the highest quality of health care when there exists a large number
11 of buyers and sellers, easily comparable health care plans and
12 services, minimal barriers to entry and exit into the health care
13 market, and adequate information for buyers and sellers to base
14 purchasing and production decisions. However, the legislature finds
15 that purchasers of health care services and health care coverage do not
16 have adequate information upon which to base purchasing decisions; that
17 health care facilities and providers of health care services face legal
18 and market disincentives to develop economies of scale or to provide
19 the most cost-efficient and efficacious service; that health carriers
20 face market disincentives in providing health care coverage to those
21 Washington residents with the most need for health care coverage; and
22 that potential competitors in the provision of health care coverage
23 bear unequal burdens in entering the market for health care coverage.

24 (2) The legislature therefore intends to exempt from state anti-
25 trust laws, and to provide immunity from federal anti-trust laws
26 through the state action doctrine for activities approved under this
27 chapter that might otherwise be constrained by such laws and intends to
28 displace competition in the health care market: To contain the
29 aggregate cost of health care services; to promote the development of
30 comprehensive, integrated, and cost-effective health care delivery
31 systems through cooperative activities among health care providers and
32 facilities; to promote comparability of health care coverage; to
33 improve the cost-effectiveness in providing health care coverage
34 relative to health promotion, disease prevention, and the amelioration
35 or cure of illness; to assure universal access to a publicly
36 determined, standard package of health care benefits; and to create
37 reasonable equity in the distribution of funds, treatment, and medical
38 risk among purchasers of health care coverage, payers of health care

1 services, providers of health care services, health care facilities,
2 and Washington residents. To these ends, any lawful action taken
3 pursuant to chapter 492, Laws of 1993, by any person or entity created
4 or regulated by chapter 492, Laws of 1993, are declared to be taken
5 pursuant to state statute and in furtherance of the public purposes of
6 the state of Washington.

7 (3) The legislature does not intend and unless explicitly permitted
8 in accordance with section 4 of this act or under rules adopted
9 pursuant to chapter 492, Laws of 1993, does not authorize any person or
10 entity to engage in activities or to conspire to engage in activities
11 that would constitute per se violations of state and federal anti-trust
12 laws including but not limited to conspiracies or agreements:

13 (a) Among competing health care providers not to grant discounts,
14 not to provide services, or to fix the price of their services;

15 (b) Among health carriers as to the price or level of reimbursement
16 for health care services;

17 (c) Among health carriers to boycott a group or class of health
18 care service providers;

19 (d) Among purchasers of health plans to boycott a particular
20 carrier or class of carriers;

21 (e) Among health carriers to divide the market for health care
22 coverage; or

23 (f) Among health carriers and purchasers to attract or discourage
24 enrollment of any Washington resident or groups of residents in a
25 health carrier based upon the perceived or actual risk of loss in
26 including such resident or group of residents in a health carrier or
27 subscriber purchasing group.

28 NEW SECTION. Sec. 4. MANAGED COMPETITION--COMPETITIVE OVERSIGHT--
29 ATTORNEY GENERAL DUTIES--ANTI-TRUST IMMUNITY. (1) A health carrier,
30 health care facility, health care provider, or other person involved in
31 the development, delivery, or marketing of health care or health plans
32 may request, in writing, that the insurance commissioner obtain an
33 informal opinion from the attorney general as to whether particular
34 conduct is lawful under federal and state anti-trust and similar
35 statutes. Trade secret or proprietary information contained in a
36 request for informal opinion shall be identified as such and shall not
37 be disclosed other than to an authorized employee of the insurance
38 commissioner or attorney general without the consent of the party

1 making the request, except that information in summary or aggregate
2 form and market share data may be contained in the informal opinion
3 issued by the attorney general. The attorney general shall issue such
4 opinion within thirty days of receipt of a written request for an
5 opinion or within thirty days of receipt of any additional information
6 requested by the attorney general necessary for rendering an opinion
7 unless extended by the attorney general for good cause shown. If the
8 attorney general concludes that such conduct is not lawful, the person
9 or organization making the request may petition the commissioner for
10 review and approval of such conduct in accordance with subsection (3)
11 of this section.

12 (2) After obtaining the written opinion of the attorney general and
13 subject to the approval of the attorney general, the insurance
14 commissioner:

15 (a) May authorize conduct by a health carrier, health care
16 facility, health care provider, or any other person that could tend to
17 lessen competition in the relevant market upon a strong showing that
18 the conduct is likely to achieve the policy goals of health care reform
19 and a more competitive alternative is impractical;

20 (b) Shall adopt rules governing conduct among providers, health
21 care facilities, and health carriers including rules governing provider
22 and facility contracts with health carriers, rules governing the use of
23 "most favored nation" clauses and exclusive dealing clauses in such
24 contracts, and rules providing that health carriers offering managed
25 care health plans in rural areas contract with a sufficient number and
26 type of health care providers and facilities to ensure consumer access
27 to local health care services;

28 (c) Shall adopt rules permitting health care providers within the
29 service area of a plan to collectively negotiate the terms and
30 conditions of contracts with the carrier including the ability of
31 providers to meet and communicate for the purposes of these
32 negotiations; and

33 (d) Shall adopt rules governing cooperative activities among health
34 care facilities and providers.

35 (3) A health carrier, health care facility, health care provider,
36 or any other person involved in the development, delivery, and
37 marketing of health services or health plans may file a written
38 petition with the insurance commissioner requesting approval of conduct
39 that could tend to lessen competition in the relevant market. Such

1 petition shall be filed in a form and manner prescribed by rule of the
2 insurance commissioner. Trade secret or proprietary information
3 contained in a written petition shall be identified as such and shall
4 not be disclosed other than to an authorized employee of the
5 commissioner or the attorney general without the consent of the party
6 filing the written petition, except that information in summary or
7 aggregate form and market share data may be contained in the written
8 decision issued by the commissioner.

9 Subject to the approval of the attorney general, the insurance
10 commissioner shall issue a written decision approving or denying a
11 petition filed under this section within ninety days of receipt of a
12 properly completed written petition unless extended by the commissioner
13 for good cause shown. The decision shall set forth findings as to
14 benefits and disadvantages and conclusions as to whether the benefits
15 outweigh the disadvantages.

16 (4)(a) In authorizing conduct and adopting rules of conduct under
17 this section, the insurance commissioner with the advice of the
18 attorney general, shall consider the benefits of such conduct in
19 furthering the goals of health care reform including but not limited
20 to:

21 (i) Enhancement of the quality of health services to consumers;
22 (ii) Gains in cost-efficiency of health services;
23 (iii) Improvements in utilization of health services and equipment;
24 (iv) Avoidance of duplication of health services resources; or
25 (v) And as to (a) (ii) and (iii) of this subsection: (A)
26 Facilitates the exchange of information relating to performance
27 expectations; (B) simplifies the negotiation of delivery arrangements
28 and relationships; and (C) reduces the transactions costs on the part
29 of health carriers and providers in negotiating more cost-effective
30 delivery arrangements.

31 (b) These benefits must outweigh disadvantages including and not
32 limited to:

33 (i) Reduced competition among health carriers, health care
34 providers, or health care facilities;

35 (ii) Adverse impact on quality, availability, or price of health
36 care services to consumers; or

37 (iii) The availability of arrangements less restrictive to
38 competition that achieve the same benefits.

1 (5) Conduct authorized by the insurance commissioner shall be
2 deemed taken pursuant to state statute and in the furtherance of the
3 public purposes of the state of Washington.

4 (6) With the assistance of the attorney general's office, the
5 insurance commissioner shall actively supervise any conduct authorized
6 under this section to determine whether such conduct or rules
7 permitting certain conduct should be continued and whether a more
8 competitive alternative is practical. The commissioner shall
9 periodically review petitioned conduct through, at least, annual
10 progress reports from petitioners, annual or more frequent reviews by
11 the commissioner that evaluate whether the conduct is consistent with
12 the petition, and whether the benefits continue to outweigh any
13 disadvantages. Subject to the advice and approval of the attorney
14 general, the commissioner may determine that the likely benefits of any
15 conduct approved through rule, petition, or otherwise by the
16 commissioner no longer outweigh the disadvantages attributable to
17 potential reduction in competition and the commissioner shall order a
18 modification or discontinuance of such conduct. Conduct ordered
19 discontinued by the commissioner shall no longer be deemed to be taken
20 pursuant to state statute and in the furtherance of the public purposes
21 of the state of Washington.

22 (7) Nothing contained in this act is intended to in any way limit
23 the ability of rural hospital districts to enter into cooperative
24 agreements and contracts pursuant to RCW 70.44.450 and chapter 39.34
25 RCW.

26 NEW SECTION. **Sec. 5.** RCW 70.170.080 and 1993 sp.s. c 24 s 925,
27 1991 sp.s. c 13 s 71, & 1989 1st ex.s. c 9 s 508 are each repealed.

28 NEW SECTION. **Sec. 6.** If specific funding through the health
29 services account to continue the comprehensive hospital abstract
30 reporting system is not provided by June 30, 1995, in the omnibus
31 appropriations act, section 5 of this act is null and void.

32 NEW SECTION. **Sec. 7.** CAPTIONS. Captions as used in this act
33 constitute no part of the law.

34 NEW SECTION. **Sec. 8.** SEVERABILITY. If any provision of this act
35 or its application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 9.** EMERGENCY CLAUSE--EFFECTIVE DATE. This act
4 is necessary for the immediate preservation of the public peace,
5 health, or safety, or support of the state government and its existing
6 public institutions, and shall take effect July 1, 1995."

7 **ESHB 1589** - S COMM AMD (S3032.2)
8 By Committee on Health & Long-Term Care

9 ADOPTED 4/14/95

10 On page 1, line 1 of the title, after "assurance;" strike the
11 remainder of the title and insert "adding a new section to chapter
12 43.70 RCW; adding a new section to chapter 48.43 RCW; creating new
13 sections; repealing RCW 70.170.080; providing an effective date; and
14 declaring an emergency."

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