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SENATE BILL 6092

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State of Washington

55th Legislature

1997 Regular Session

By Senators West and Deccio

Read first time 03/31/97. Referred to Committee on Ways & Means.

1 AN ACT Relating to abolishing the state health care policy board;  
2 amending RCW 41.05.021, 43.70.054, 43.70.066, 43.70.068, and 43.72.310;  
3 repealing RCW 43.72.320, 43.73.010, 43.73.020, 43.73.030, and  
4 43.73.040; providing an effective date; and declaring an emergency.

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

6 **Sec. 1.** RCW 41.05.021 and 1995 1st sp.s. c 6 s 7 are each amended  
7 to read as follows:

8 (1) The Washington state health care authority is created within  
9 the executive branch. The authority shall have an administrator  
10 appointed by the governor, with the consent of the senate. The  
11 administrator shall serve at the pleasure of the governor. The  
12 administrator may employ up to seven staff members, who shall be exempt  
13 from chapter 41.06 RCW, and any additional staff members as are  
14 necessary to administer this chapter. The administrator may delegate  
15 any power or duty vested in him or her by this chapter, including  
16 authority to make final decisions and enter final orders in hearings  
17 conducted under chapter 34.05 RCW. The primary duties of the authority  
18 shall be to: Administer state employees' insurance benefits and  
19 retired or disabled school employees' insurance benefits; administer

1 the basic health plan pursuant to chapter 70.47 RCW; study state-  
2 purchased health care programs in order to maximize cost containment in  
3 these programs while ensuring access to quality health care; and  
4 implement state initiatives, joint purchasing strategies, and  
5 techniques for efficient administration that have potential application  
6 to all state-purchased health services. The authority's duties  
7 include, but are not limited to, the following:

8 (a) To administer health care benefit programs for employees and  
9 retired or disabled school employees as specifically authorized in RCW  
10 41.05.065 and in accordance with the methods described in RCW  
11 41.05.075, 41.05.140, and other provisions of this chapter;

12 (b) To analyze state-purchased health care programs and to explore  
13 options for cost containment and delivery alternatives for those  
14 programs that are consistent with the purposes of those programs,  
15 including, but not limited to:

16 (i) Creation of economic incentives for the persons for whom the  
17 state purchases health care to appropriately utilize and purchase  
18 health care services, including the development of flexible benefit  
19 plans to offset increases in individual financial responsibility;

20 (ii) Utilization of provider arrangements that encourage cost  
21 containment, including but not limited to prepaid delivery systems,  
22 utilization review, and prospective payment methods, and that ensure  
23 access to quality care, including assuring reasonable access to local  
24 providers, especially for employees residing in rural areas;

25 (iii) Coordination of state agency efforts to purchase drugs  
26 effectively as provided in RCW 70.14.050;

27 (iv) Development of recommendations and methods for purchasing  
28 medical equipment and supporting services on a volume discount basis;  
29 and

30 (v) Development of data systems to obtain utilization data from  
31 state-purchased health care programs in order to identify cost centers,  
32 utilization patterns, provider and hospital practice patterns, and  
33 procedure costs, utilizing the information obtained pursuant to RCW  
34 41.05.031;

35 (c) To analyze areas of public and private health care interaction;

36 (d) To provide information and technical and administrative  
37 assistance to the board;

38 (e) To review and approve or deny applications from counties,  
39 municipalities, and other political subdivisions of the state to

1 provide state-sponsored insurance or self-insurance programs to their  
2 employees in accordance with the provisions of RCW 41.04.205, setting  
3 the premium contribution for approved groups as outlined in RCW  
4 41.05.050;

5 (f) To appoint a health care policy technical advisory committee as  
6 required by RCW 41.05.150;

7 (g) To establish billing procedures and collect funds from school  
8 districts and educational service districts under RCW 28A.400.400 in a  
9 way that minimizes the administrative burden on districts; and

10 (h) To promulgate and adopt rules consistent with this chapter as  
11 described in RCW 41.05.160.

12 (2) On and after January 1, 1996, the public employees' benefits  
13 board may implement strategies to promote managed competition among  
14 employee health benefit plans. Strategies may include but are not  
15 limited to:

16 (a) Standardizing the benefit package;

17 (b) Soliciting competitive bids for the benefit package;

18 (c) Limiting the state's contribution to a percent of the lowest  
19 priced qualified plan within a geographical area;

20 (d) Monitoring the impact of the approach under this subsection  
21 with regards to: Efficiencies in health service delivery, cost shifts  
22 to subscribers, access to and choice of managed care plans state-wide,  
23 and quality of health services. The health care authority shall also  
24 advise on the value of administering a benchmark employer-managed plan  
25 to promote competition among managed care plans. The health care  
26 authority shall report its findings and recommendations to the  
27 legislature by January 1, 1997.

28 (3) The health care authority shall, no later than July 1, 1996,  
29 submit to the appropriate committees of the legislature, proposed  
30 methods whereby, through the use of a voucher-type process, state  
31 employees may enroll with any health carrier to receive employee  
32 benefits. Such methods shall include the employee option of  
33 participating in a health care savings account, as set forth in Title  
34 48 RCW.

35 (~~((4) The Washington health care policy board shall study the  
36 necessity and desirability of the health care authority continuing as  
37 a self-insuring entity and make recommendations to the appropriate  
38 committees of the legislature by December 1, 1996.))~~)

1       **Sec. 2.** RCW 43.70.054 and 1995 c 267 s 2 are each amended to read  
2 as follows:

3       (1) To promote the public interest consistent with chapter 267,  
4 Laws of 1995, the department of health, in cooperation with the  
5 (~~health care policy board and the~~) information services board  
6 established under RCW 43.105.032, shall develop health care data  
7 standards to be used by, and developed in collaboration with,  
8 consumers, purchasers, health carriers, providers, and state government  
9 as consistent with the intent of chapter 492, Laws of 1993 as amended  
10 by chapter 267, Laws of 1995, to promote the delivery of quality health  
11 services that improve health outcomes for state residents. The data  
12 standards shall include content, coding, confidentiality, and  
13 transmission standards for all health care data elements necessary to  
14 support the intent of this section, and to improve administrative  
15 efficiency and reduce cost. Purchasers, as allowed by federal law,  
16 health carriers, health facilities and providers as defined in chapter  
17 48.43 RCW, and state government shall utilize the data standards. The  
18 information and data elements shall be reported as the department of  
19 health directs by rule in accordance with data standards developed  
20 under this section.

21       (2) The health care data collected, maintained, and studied by the  
22 department under this section(~~(, the health care policy board,)~~) or any  
23 other entity: (a) Shall include a method of associating all  
24 information on health care costs and services with discrete cases; (b)  
25 shall not contain any means of determining the personal identity of any  
26 enrollee, provider, or facility; (c) shall only be available for  
27 retrieval in original or processed form to public and private  
28 requesters; (d) shall be available within a reasonable period of time  
29 after the date of request; and (e) shall give strong consideration to  
30 data standards that achieve national uniformity.

31       (3) The cost of retrieving data for state officials and agencies  
32 shall be funded through state general appropriation. The cost of  
33 retrieving data for individuals and organizations engaged in research  
34 or private use of data or studies shall be funded by a fee schedule  
35 developed by the department that reflects the direct cost of retrieving  
36 the data or study in the requested form.

37       (4) All persons subject to this section shall comply with  
38 departmental requirements established by rule in the acquisition of

1 data, however, the department shall adopt no rule or effect no policy  
2 implementing the provisions of this section without an act of law.

3 (5) The department shall submit developed health care data  
4 standards to the appropriate committees of the legislature by December  
5 31, 1995.

6 **Sec. 3.** RCW 43.70.066 and 1995 c 267 s 4 are each amended to read  
7 as follows:

8 (1) The department of health (~~in consultation with the health~~  
9 ~~policy board~~) shall study the feasibility of a uniform quality  
10 assurance and improvement program for use by all public and private  
11 health plans and health care providers and facilities. In this study,  
12 the department shall consult with:

- 13 (a) Public and private purchasers of health care services;
- 14 (b) Health carriers;
- 15 (c) Health care providers and facilities; and
- 16 (d) Consumers of health services.

17 (2) In conducting the study, the department shall propose standards  
18 that meet the needs of affected persons and organizations, whether  
19 public or private, without creation of differing levels of quality  
20 assurance. All consumers of health services should be afforded the  
21 same level of quality assurance.

22 (3) At a minimum, the study shall include but not be limited to the  
23 following program components and indicators appropriate for consumer  
24 disclosure:

- 25 (a) Health care provider training, credentialing, and licensure  
26 standards;
- 27 (b) Health care facility credentialing and recredentialing;
- 28 (c) Staff ratios in health care facilities;
- 29 (d) Annual mortality and morbidity rates of cases based on a  
30 defined set of procedures performed or diagnoses treated in health care  
31 facilities, adjusted to fairly consider variable factors such as  
32 patient demographics and case severity;
- 33 (e) The average total cost and average length of hospital stay for  
34 a defined set of procedures and diagnoses;
- 35 (f) The total number of the defined set of procedures, by  
36 specialty, performed by each physician at a health care facility within  
37 the previous twelve months;

1 (g) Utilization performance profiles by provider, both primary care  
2 and specialty care, that have been adjusted to fairly consider variable  
3 factors such as patient demographics and severity of case;

4 (h) Health plan fiscal performance standards;

5 (i) Health care provider and facility recordkeeping and reporting  
6 standards;

7 (j) Health care utilization management that monitors trends in  
8 health service underutilization, as well as overutilization of  
9 services;

10 (k) Health monitoring that is responsive to consumer, purchaser,  
11 and public health assessment needs; and

12 (l) Assessment of consumer satisfaction and disclosure of consumer  
13 survey results.

14 (4) In conducting the study, the department shall develop standards  
15 that permit each health care facility, provider group, or health  
16 carrier to assume responsibility for and determine the physical method  
17 of collection, storage, and assimilation of quality indicators for  
18 consumer disclosure. The study may define the forms, frequency, and  
19 posting requirements for disclosure of information.

20 In developing proposed standards under this subsection, the  
21 department shall identify options that would minimize provider burden  
22 and administrative cost resulting from duplicative private sector data  
23 submission requirements.

24 (5) The department shall submit a preliminary report to the  
25 legislature by December 31, 1995, including recommendations for initial  
26 legislation pursuant to subsection (6) of this section, and shall  
27 submit supplementary reports and recommendations as completed,  
28 consistent with appropriated funds and staffing.

29 (6) The department shall not adopt any rule implementing the  
30 uniform quality assurance program or consumer disclosure provisions  
31 unless expressly directed to do so by an act of law.

32 **Sec. 4.** RCW 43.70.068 and 1995 c 267 s 5 are each amended to read  
33 as follows:

34 (~~No later than July 1, 1995, the health care policy board together~~  
35 ~~with)) The department of health, the health care authority, the  
36 department of social and health services, the office of the insurance  
37 commissioner, and the department of labor and industries shall form an  
38 interagency group for coordination and consultation on quality~~

1 assurance activities and collaboration on final recommendations for the  
2 study required under RCW 43.70.066. (~~By December 31, 1996, the group~~  
3 ~~shall review all state agency programs governing health service quality~~  
4 ~~assurance, in light of legislative actions pursuant to RCW~~  
5 ~~43.70.066(6), and shall recommend to the legislature, the~~  
6 ~~consolidation, coordination, or elimination of rules and programs that~~  
7 ~~would be made unnecessary pursuant to the development of a uniform~~  
8 ~~quality assurance and improvement program.))~~

9       **Sec. 5.** RCW 43.72.310 and 1995 c 267 s 8 are each amended to read  
10 as follows:

11       (1) (~~Until May 8, 1995, and after June 30, 1996,~~) A certified  
12 health plan, health care facility, health care provider, or other  
13 person involved in the development, delivery, or marketing of health  
14 care or certified health plans may request, in writing, that the  
15 (~~commission~~) department of health obtain an informal opinion from the  
16 attorney general as to whether particular conduct is authorized by  
17 chapter 492, Laws of 1993. Trade secret or proprietary information  
18 contained in a request for informal opinion shall be identified as such  
19 and shall not be disclosed other than to an authorized employee of the  
20 (~~commission~~) department of health or attorney general without the  
21 consent of the party making the request, except that information in  
22 summary or aggregate form and market share data may be contained in the  
23 informal opinion issued by the attorney general. The attorney general  
24 shall issue such opinion within thirty days of receipt of a written  
25 request for an opinion or within thirty days of receipt of any  
26 additional information requested by the attorney general necessary for  
27 rendering an opinion unless extended by the attorney general for good  
28 cause shown. If the attorney general concludes that such conduct is  
29 not authorized by chapter 492, Laws of 1993, the person or organization  
30 making the request may petition the (~~commission~~) department of health  
31 for review and approval of such conduct in accordance with subsection  
32 (3) of this section.

33       (2) After obtaining the written opinion of the attorney general and  
34 consistent with such opinion, the (~~health services commission~~)  
35 department of health:

36       (a) May authorize conduct by a certified health plan, health care  
37 facility, health care provider, or any other person that could tend to  
38 lessen competition in the relevant market upon a strong showing that

1 the conduct is likely to achieve the policy goals of chapter 492, Laws  
2 of 1993 and a more competitive alternative is impractical;

3 (b) Shall adopt rules governing conduct among providers, health  
4 care facilities, and certified health plans including rules governing  
5 provider and facility contracts with certified health plans, rules  
6 governing the use of "most favored nation" clauses and exclusive  
7 dealing clauses in such contracts, and rules providing that certified  
8 health plans in rural areas contract with a sufficient number and type  
9 of health care providers and facilities to ensure consumer access to  
10 local health care services;

11 (c) Shall adopt rules permitting health care providers within the  
12 service area of a plan to collectively negotiate the terms and  
13 conditions of contracts with a certified health plan including the  
14 ability of providers to meet and communicate for the purposes of these  
15 negotiations; and

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

18 (3) (~~Until May 8, 1995, and after June 30, 1996,~~) A certified  
19 health plan, health care facility, health care provider, or any other  
20 person involved in the development, delivery, and marketing of health  
21 services or certified health plans may file a written petition with the  
22 (~~commission~~) department of health requesting approval of conduct that  
23 could tend to lessen competition in the relevant market. Such petition  
24 shall be filed in a form and manner prescribed by rule of the  
25 (~~commission~~) department of health.

26 The (~~commission~~) department of health shall issue a written  
27 decision approving or denying a petition filed under this section  
28 within ninety days of receipt of a properly completed written petition  
29 unless extended by the (~~commission~~) department of health for good  
30 cause shown. The decision shall set forth findings as to benefits and  
31 disadvantages and conclusions as to whether the benefits outweigh the  
32 disadvantages.

33 (4) In authorizing conduct and adopting rules of conduct under this  
34 section, the (~~commission~~) department of health with the advice of the  
35 attorney general, shall consider the benefits of such conduct in  
36 furthering the goals of health care reform including but not limited  
37 to:

38 (a) Enhancement of the quality of health services to consumers;

39 (b) Gains in cost efficiency of health services;

1 (c) Improvements in utilization of health services and equipment;  
2 (d) Avoidance of duplication of health services resources; or  
3 (e) And as to (b) and (c) of this subsection: (i) Facilitates the  
4 exchange of information relating to performance expectations; (ii)  
5 simplifies the negotiation of delivery arrangements and relationships;  
6 and (iii) reduces the transactions costs on the part of certified  
7 health plans and providers in negotiating more cost-effective delivery  
8 arrangements.

9 These benefits must outweigh disadvantages including and not  
10 limited to:

11 (i) Reduced competition among certified health plans, health care  
12 providers, or health care facilities;

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

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

17 (5) Conduct authorized by the (~~commission~~) department of health  
18 shall be deemed taken pursuant to state statute and in the furtherance  
19 of the public purposes of the state of Washington.

20 (6) With the assistance of the attorney general's office, the  
21 (~~commission~~) department of health shall actively supervise any  
22 conduct authorized under this section to determine whether such conduct  
23 or rules permitting certain conduct should be continued and whether a  
24 more competitive alternative is practical. The (~~commission~~)  
25 department of health shall periodically review petitioned conduct  
26 through, at least, annual progress reports from petitioners, annual or  
27 more frequent reviews by the (~~commission~~) department of health that  
28 evaluate whether the conduct is consistent with the petition, and  
29 whether the benefits continue to outweigh any disadvantages. If the  
30 (~~commission~~) department of health determines that the likely benefits  
31 of any conduct approved through rule, petition, or otherwise by the  
32 (~~commission~~) department of health no longer outweigh the  
33 disadvantages attributable to potential reduction in competition, the  
34 (~~commission~~) department of health shall order a modification or  
35 discontinuance of such conduct. Conduct ordered discontinued by the  
36 (~~commission~~) department of health shall no longer be deemed to be  
37 taken pursuant to state statute and in the furtherance of the public  
38 purposes of the state of Washington.

1 (7) Nothing contained in chapter 492, Laws of 1993 is intended to  
2 in any way limit the ability of rural hospital districts to enter into  
3 cooperative agreements and contracts pursuant to RCW 70.44.450 and  
4 chapter 39.34 RCW.

5 (8) (~~Only requests for informal opinions under subsection (1) of~~  
6 ~~this section and petitions under subsection (3) of this section that~~  
7 ~~were received prior to May 8, 1995, or after June 30, 1996, shall be~~  
8 ~~considered.~~) The cost of the department of health and attorney  
9 general activities required by this section shall be fully borne by the  
10 organizations or persons requesting or granted approval to engage in  
11 conduct that could tend to lessen competition. The secretary of health  
12 shall from time to time establish application and renewal fees at a  
13 level sufficient to defray the costs of administering the program. The  
14 fees shall be fixed by rule adopted in accordance with the provisions  
15 of the administrative procedure act, chapter 34.05 RCW, and shall be  
16 deposited in the health professions account established in accordance  
17 with RCW 43.70.320.

18 NEW SECTION. Sec. 6. The following acts or parts of acts are each  
19 repealed:

- 20 (1) RCW 43.72.320 and 1995 c 267 s 10;
- 21 (2) RCW 43.73.010 and 1995 c 265 s 9;
- 22 (3) RCW 43.73.020 and 1995 c 265 s 10;
- 23 (4) RCW 43.73.030 and 1995 c 265 s 11; and
- 24 (5) RCW 43.73.040 and 1995 c 265 s 12.

25 NEW SECTION. Sec. 7. This act is necessary for the immediate  
26 preservation of the public peace, health, or safety, or support of the  
27 state government and its existing public institutions, and takes effect  
28 July 1, 1997.

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