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**SUBSTITUTE SENATE BILL 5111**

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**State of Washington**

**56th Legislature**

**1999 Regular Session**

**By** Senate Committee on Health & Long-Term Care (originally sponsored by Senators Franklin, Winsley, Thibaudeau, Wojahn, McAuliffe, Fraser, Prentice, Rasmussen, Kline, Brown, Eide, Bauer, Costa, Jacobsen, Spanel, Goings, Loveland, Gardner, Fairley, B. Sheldon and Kohl-Welles)

Read first time 02/19/1999.

1       AN ACT Relating to health insurance discrimination on the basis of  
2 genetic information; reenacting and amending RCW 48.43.005; and adding  
3 a new section to chapter 48.43 RCW.

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

5       **Sec. 1.** RCW 48.43.005 and 1997 c 231 s 202 and 1997 c 55 s 1 are  
6 each reenacted and amended to read as follows:

7       Unless otherwise specifically provided, the definitions in this  
8 section apply throughout this chapter.

9       (1) "Adjusted community rate" means the rating method used to  
10 establish the premium for health plans adjusted to reflect actuarially  
11 demonstrated differences in utilization or cost attributable to  
12 geographic region, age, family size, and use of wellness activities.

13       (2) "Basic health plan" means the plan described under chapter  
14 70.47 RCW, as revised from time to time.

15       (3) "Basic health plan model plan" means a health plan as required  
16 in RCW 70.47.060(2)(d).

17       (4) "Basic health plan services" means that schedule of covered  
18 health services, including the description of how those benefits are to

1 be administered, that are required to be delivered to an enrollee under  
2 the basic health plan, as revised from time to time.

3 (5) "Certification" means a determination by a review organization  
4 that an admission, extension of stay, or other health care service or  
5 procedure has been reviewed and, based on the information provided,  
6 meets the clinical requirements for medical necessity, appropriateness,  
7 level of care, or effectiveness under the auspices of the applicable  
8 health benefit plan.

9 (6) "Concurrent review" means utilization review conducted during  
10 a patient's hospital stay or course of treatment.

11 (7) "Covered person" or "enrollee" means a person covered by a  
12 health plan including an enrollee, subscriber, policyholder,  
13 beneficiary of a group plan, or individual covered by any other health  
14 plan.

15 (8) "Dependent" means, at a minimum, the enrollee's legal spouse  
16 and unmarried dependent children who qualify for coverage under the  
17 enrollee's health benefit plan.

18 (9) "Eligible employee" means an employee who works on a full-time  
19 basis with a normal work week of thirty or more hours. The term  
20 includes a self-employed individual, including a sole proprietor, a  
21 partner of a partnership, and may include an independent contractor, if  
22 the self-employed individual, sole proprietor, partner, or independent  
23 contractor is included as an employee under a health benefit plan of a  
24 small employer, but does not work less than thirty hours per week and  
25 derives at least seventy-five percent of his or her income from a trade  
26 or business through which he or she has attempted to earn taxable  
27 income and for which he or she has filed the appropriate internal  
28 revenue service form. Persons covered under a health benefit plan  
29 pursuant to the consolidated omnibus budget reconciliation act of 1986  
30 shall not be considered eligible employees for purposes of minimum  
31 participation requirements of chapter 265, Laws of 1995.

32 (10) "Emergency medical condition" means the emergent and acute  
33 onset of a symptom or symptoms, including severe pain, that would lead  
34 a prudent layperson acting reasonably to believe that a health  
35 condition exists that requires immediate medical attention, if failure  
36 to provide medical attention would result in serious impairment to  
37 bodily functions or serious dysfunction of a bodily organ or part, or  
38 would place the person's health in serious jeopardy.

1 (11) "Emergency services" means otherwise covered health care  
2 services medically necessary to evaluate and treat an emergency medical  
3 condition, provided in a hospital emergency department.

4 (12) "Enrollee point-of-service cost-sharing" means amounts paid to  
5 health carriers directly providing services, health care providers, or  
6 health care facilities by enrollees and may include copayments,  
7 coinsurance, or deductibles.

8 (13) "Genetic information" means information about genes, gene  
9 products, or inherited characteristics.

10 (14) "Genetic services" means health services to obtain, assess,  
11 and interpret genetic information for diagnostic and therapeutic  
12 purposes and for genetic education and counseling.

13 (15) "Grievance" means a written complaint submitted by or on  
14 behalf of a covered person regarding: (a) Denial of payment for  
15 medical services or nonprovision of medical services included in the  
16 covered person's health benefit plan, or (b) service delivery issues  
17 other than denial of payment for medical services or nonprovision of  
18 medical services, including dissatisfaction with medical care, waiting  
19 time for medical services, provider or staff attitude or demeanor, or  
20 dissatisfaction with service provided by the health carrier.

21 (~~(14)~~) (16) "Health care facility" or "facility" means hospices  
22 licensed under chapter 70.127 RCW, hospitals licensed under chapter  
23 70.41 RCW, rural health care facilities as defined in RCW 70.175.020,  
24 psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes  
25 licensed under chapter 18.51 RCW, community mental health centers  
26 licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment  
27 centers licensed under chapter 70.41 RCW, ambulatory diagnostic,  
28 treatment, or surgical facilities licensed under chapter 70.41 RCW,  
29 drug and alcohol treatment facilities licensed under chapter 70.96A  
30 RCW, and home health agencies licensed under chapter 70.127 RCW, and  
31 includes such facilities if owned and operated by a political  
32 subdivision or instrumentality of the state and such other facilities  
33 as required by federal law and implementing regulations.

34 (~~(15)~~) (17) "Health care provider" or "provider" means:

35 (a) A person regulated under Title 18 or chapter 70.127 RCW, to  
36 practice health or health-related services or otherwise practicing  
37 health care services in this state consistent with state law; or

38 (b) An employee or agent of a person described in (a) of this  
39 subsection, acting in the course and scope of his or her employment.

1       (~~(16)~~) (18) "Health care service" means that service offered or  
2 provided by health care facilities and health care providers relating  
3 to the prevention, cure, or treatment of illness, injury, or disease.

4       (~~(17)~~) (19) "Health carrier" or "carrier" means a disability  
5 insurer regulated under chapter 48.20 or 48.21 RCW, a health care  
6 service contractor as defined in RCW 48.44.010, or a health maintenance  
7 organization as defined in RCW 48.46.020.

8       (~~(18)~~) (20) "Health plan" or "health benefit plan" means any  
9 policy, contract, or agreement offered by a health carrier to provide,  
10 arrange, reimburse, or pay for health care services except the  
11 following:

12       (a) Long-term care insurance governed by chapter 48.84 RCW;

13       (b) Medicare supplemental health insurance governed by chapter  
14 48.66 RCW;

15       (c) Limited health care services offered by limited health care  
16 service contractors in accordance with RCW 48.44.035;

17       (d) Disability income;

18       (e) Coverage incidental to a property/casualty liability insurance  
19 policy such as automobile personal injury protection coverage and  
20 homeowner guest medical;

21       (f) Workers' compensation coverage;

22       (g) Accident only coverage;

23       (h) Specified disease and hospital confinement indemnity when  
24 marketed solely as a supplement to a health plan;

25       (i) Employer-sponsored self-funded health plans;

26       (j) Dental only and vision only coverage; and

27       (k) Plans deemed by the insurance commissioner to have a short-term  
28 limited purpose or duration, or to be a student-only plan that is  
29 guaranteed renewable while the covered person is enrolled as a regular  
30 full-time undergraduate or graduate student at an accredited higher  
31 education institution, after a written request for such classification  
32 by the carrier and subsequent written approval by the insurance  
33 commissioner.

34       (~~(19)~~) (21) "Material modification" means a change in the  
35 actuarial value of the health plan as modified of more than five  
36 percent but less than fifteen percent.

37       (~~(20)~~) (22) "Open enrollment" means the annual sixty-two day  
38 period during the months of July and August during which every health  
39 carrier offering individual health plan coverage must accept onto

1 individual coverage any state resident within the carrier's service  
2 area regardless of health condition who submits an application in  
3 accordance with RCW 48.43.035(1).

4 ~~((+21))~~ (23) "Preexisting condition" means any medical condition,  
5 illness, or injury that existed any time prior to the effective date of  
6 coverage.

7 ~~((+22))~~ (24) "Premium" means all sums charged, received, or  
8 deposited by a health carrier as consideration for a health plan or the  
9 continuance of a health plan. Any assessment or any "membership,"  
10 "policy," "contract," "service," or similar fee or charge made by a  
11 health carrier in consideration for a health plan is deemed part of the  
12 premium. "Premium" shall not include amounts paid as enrollee point-  
13 of-service cost-sharing.

14 ~~((+23))~~ (25) "Review organization" means a disability insurer  
15 regulated under chapter 48.20 or 48.21 RCW, health care service  
16 contractor as defined in RCW 48.44.010, or health maintenance  
17 organization as defined in RCW 48.46.020, and entities affiliated with,  
18 under contract with, or acting on behalf of a health carrier to perform  
19 a utilization review.

20 ~~((+24))~~ (26) "Small employer" means any person, firm, corporation,  
21 partnership, association, political subdivision except school  
22 districts, or self-employed individual that is actively engaged in  
23 business that, on at least fifty percent of its working days during the  
24 preceding calendar quarter, employed no more than fifty eligible  
25 employees, with a normal work week of thirty or more hours, the  
26 majority of whom were employed within this state, and is not formed  
27 primarily for purposes of buying health insurance and in which a bona  
28 fide employer-employee relationship exists. In determining the number  
29 of eligible employees, companies that are affiliated companies, or that  
30 are eligible to file a combined tax return for purposes of taxation by  
31 this state, shall be considered an employer. Subsequent to the  
32 issuance of a health plan to a small employer and for the purpose of  
33 determining eligibility, the size of a small employer shall be  
34 determined annually. Except as otherwise specifically provided, a  
35 small employer shall continue to be considered a small employer until  
36 the plan anniversary following the date the small employer no longer  
37 meets the requirements of this definition. The term "small employer"  
38 includes a self-employed individual or sole proprietor. The term  
39 "small employer" also includes a self-employed individual or sole

1 proprietor who derives at least seventy-five percent of his or her  
2 income from a trade or business through which the individual or sole  
3 proprietor has attempted to earn taxable income and for which he or she  
4 has filed the appropriate internal revenue service form 1040, schedule  
5 C or F, for the previous taxable year.

6 (~~(25)~~) (27) "Utilization review" means the prospective,  
7 concurrent, or retrospective assessment of the necessity and  
8 appropriateness of the allocation of health care resources and services  
9 of a provider or facility, given or proposed to be given to an enrollee  
10 or group of enrollees.

11 (~~(26)~~) (28) "Wellness activity" means an explicit program of an  
12 activity consistent with department of health guidelines, such as,  
13 smoking cessation, injury and accident prevention, reduction of alcohol  
14 misuse, appropriate weight reduction, exercise, automobile and  
15 motorcycle safety, blood cholesterol reduction, and nutrition education  
16 for the purpose of improving enrollee health status and reducing health  
17 service costs.

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

20 (1) A health carrier may not deny or cancel health plan coverage,  
21 or vary the premiums, terms, or conditions for health plan coverage,  
22 for an individual or a family member of an individual:

23 (a) On the basis of genetic information; or

24 (b) Because the individual or family member of an individual has  
25 requested or received genetic services.

26 (2)(a) A health carrier may not request or require an individual to  
27 whom the carrier provides health plan coverage, or an individual who  
28 desires the carrier to provide health plan coverage, to disclose to the  
29 carrier genetic information about the individual or family member of  
30 the individual.

31 (b) A health carrier may not disclose genetic information about an  
32 individual without the prior written authorization of the individual or  
33 legal representative of the individual. Authorization is required for  
34 each disclosure and must include an identification of the person to  
35 whom the disclosure is to be made.

36 (c) A health carrier may disclose genetic information about an  
37 individual for use in research projects that are approved by an  
38 institutional review board upon receipt of a written consent form.

1 (d) A health carrier may disclose information pertaining to the  
2 occurrence of a disease in an individual for use by the health carrier,  
3 within its organization, for the sole purpose of assembling a family  
4 history and alerting other family members of the prevalence of a  
5 hereditary disease. The family history information may be disclosed to  
6 another family member who is receiving disease prevention services.

7 (e) This section does not prohibit or otherwise limit newborn  
8 screening activities under chapter 70.83 RCW.

9 (3) The insurance commissioner shall enforce the requirements  
10 established under subsections (1) and (2) of this section.

11 (4) A person may bring a civil action:

12 (a) To enjoin any act or practice that violates subsection (1) or  
13 (2) of this section;

14 (b) To obtain other appropriate equitable relief: (i) To redress  
15 such violations; or (ii) to enforce subsection (1) or (2) of this  
16 section; or

17 (c) To obtain other legal relief, including monetary damages.

18 (5) The insurance commissioner may adopt rules necessary or  
19 appropriate to carry out this section.

20 (6) Nothing in this section requires a health plan to provide  
21 benefits to a particular participant or beneficiary.

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