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SENATE BILL 5111

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State of Washington

57th Legislature

2001 Regular Session

By Senators Thibaudeau, Winsley and Costa

Read first time 01/11/2001. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to the protection of charitable trusts that are  
2 health care service contractors and health maintenance organizations;  
3 amending RCW 48.43.005; and adding new sections to chapter 48.43 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.43 RCW  
6 to read as follows:

7 The legislature recognizes the state's interest in protecting  
8 charitable trusts. Charitable trusts are distinct from private trusts.  
9 Charitable trusts primarily benefit the general public or a segment of  
10 the public, rather than specific persons. The promotion of health is  
11 a commonly recognized charitable purpose. Certain health care service  
12 contractors and health maintenance organizations have established  
13 charitable trusts using state nonprofit incorporation statutes. Market  
14 pressures have forced nonprofit health care service contractors and  
15 health maintenance organizations to consider various corporate  
16 structures, including for profit structures, that would permit issuance  
17 of stock to shareholders. Reconfiguring corporate structure from  
18 nonprofit to for profit compromises the value of the charitable trust

1 because the for profit structure introduces a fiduciary duty to  
2 shareholders, which can conflict with the original charitable purpose.

3 The attorney general represents the public interest in securing  
4 enforcement of charitable trusts. However, statutory provisions are  
5 needed to clarify the role of the attorney general and provide  
6 regulatory authority to the insurance commissioner to assure  
7 preservation of the fair market value of the charitable trust when the  
8 corporate structure is altered.

9 **Sec. 2.** RCW 48.43.005 and 2000 c 79 s 18 are each amended to read  
10 as follows:

11 Unless otherwise specifically provided, the definitions in this  
12 section apply throughout this chapter.

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

17 (2) "Basic health plan" means the plan described under chapter  
18 70.47 RCW, as revised from time to time.

19 (3) "Basic health plan services" means that schedule of covered  
20 health services, including the description of how those benefits are to  
21 be administered, that are required to be delivered to an enrollee under  
22 the basic health plan, as revised from time to time.

23 (4) "Catastrophic health plan" means:

24 (a) In the case of a contract, agreement, or policy covering a  
25 single enrollee, a health benefit plan requiring a calendar year  
26 deductible of, at a minimum, one thousand five hundred dollars and an  
27 annual out-of-pocket expense required to be paid under the plan (other  
28 than for premiums) for covered benefits of at least three thousand  
29 dollars; and

30 (b) In the case of a contract, agreement, or policy covering more  
31 than one enrollee, a health benefit plan requiring a calendar year  
32 deductible of, at a minimum, three thousand dollars and an annual out-  
33 of-pocket expense required to be paid under the plan (other than for  
34 premiums) for covered benefits of at least five thousand five hundred  
35 dollars; or

36 (c) Any health benefit plan that provides benefits for hospital  
37 inpatient and outpatient services, professional and prescription drugs  
38 provided in conjunction with such hospital inpatient and outpatient

1 services, and excludes or substantially limits outpatient physician  
2 services and those services usually provided in an office setting.

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) "Charitable trust" means a nonprofit health care entity that  
10 has dedicated all or any portion of its assets to benefit the general  
11 public or a segment of the public. Such dedication may be evidenced by  
12 its articles of incorporation, bylaws, other organic documents,  
13 business transactions, or any other means sufficient to establish a  
14 charitable trust at common law. A nonprofit health care entity  
15 operating at any time as a 501(c)(3) organization for federal tax  
16 purposes, or a 501(c)(4) organization for federal tax purposes is a  
17 charitable trust. A nonprofit health care entity that is a public  
18 benefit corporation under chapter 24.03 RCW is a charitable trust. A  
19 nonprofit health care entity does not have to meet the filing and other  
20 requirements of chapter 11.110 RCW in order to be considered a  
21 charitable trust for this act.

22 (7) "Charitable trust assets" means a charitable trust that is less  
23 than the entire health care service contractor's or health maintenance  
24 organization's business.

25 (8) "Concurrent review" means utilization review conducted during  
26 a patient's hospital stay or course of treatment.

27 ~~((+7))~~ (9) "Conversion transaction" means the transfer of control  
28 or governance of a charitable trust or material charitable trust  
29 assets.

30 (10) "Covered person" or "enrollee" means a person covered by a  
31 health plan including an enrollee, subscriber, policyholder,  
32 beneficiary of a group plan, or individual covered by any other health  
33 plan.

34 ~~((+8))~~ (11) "Dependent" means, at a minimum, the enrollee's legal  
35 spouse and unmarried dependent children who qualify for coverage under  
36 the enrollee's health benefit plan.

37 ~~((+9))~~ (12) "Eligible employee" means an employee who works on a  
38 full-time basis with a normal work week of thirty or more hours. The  
39 term includes a self-employed individual, including a sole proprietor,

1 a partner of a partnership, and may include an independent contractor,  
2 if the self-employed individual, sole proprietor, partner, or  
3 independent contractor is included as an employee under a health  
4 benefit plan of a small employer, but does not work less than thirty  
5 hours per week and derives at least seventy-five percent of his or her  
6 income from a trade or business through which he or she has attempted  
7 to earn taxable income and for which he or she has filed the  
8 appropriate internal revenue service form. Persons covered under a  
9 health benefit plan pursuant to the consolidated omnibus budget  
10 reconciliation act of 1986 shall not be considered eligible employees  
11 for purposes of minimum participation requirements of chapter 265, Laws  
12 of 1995.

13 ~~((10))~~ (13) "Emergency medical condition" means the emergent and  
14 acute onset of a symptom or symptoms, including severe pain, that would  
15 lead a prudent layperson acting reasonably to believe that a health  
16 condition exists that requires immediate medical attention, if failure  
17 to provide medical attention would result in serious impairment to  
18 bodily functions or serious dysfunction of a bodily organ or part, or  
19 would place the person's health in serious jeopardy.

20 ~~((11))~~ (14) "Emergency services" means otherwise covered health  
21 care services medically necessary to evaluate and treat an emergency  
22 medical condition, provided in a hospital emergency department.

23 ~~((12))~~ (15) "Enrollee point-of-service cost-sharing" means  
24 amounts paid to health carriers directly providing services, health  
25 care providers, or health care facilities by enrollees and may include  
26 copayments, coinsurance, or deductibles.

27 ~~((13))~~ (16) "Grievance" means a written complaint submitted by or  
28 on behalf of a covered person regarding: (a) Denial of payment for  
29 medical services or nonprovision of medical services included in the  
30 covered person's health benefit plan, or (b) service delivery issues  
31 other than denial of payment for medical services or nonprovision of  
32 medical services, including dissatisfaction with medical care, waiting  
33 time for medical services, provider or staff attitude or demeanor, or  
34 dissatisfaction with service provided by the health carrier.

35 ~~((14))~~ (17) "Health care facility" or "facility" means hospices  
36 licensed under chapter 70.127 RCW, hospitals licensed under chapter  
37 70.41 RCW, rural health care facilities as defined in RCW 70.175.020,  
38 psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes  
39 licensed under chapter 18.51 RCW, community mental health centers

1 licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment  
2 centers licensed under chapter 70.41 RCW, ambulatory diagnostic,  
3 treatment, or surgical facilities licensed under chapter 70.41 RCW,  
4 drug and alcohol treatment facilities licensed under chapter 70.96A  
5 RCW, and home health agencies licensed under chapter 70.127 RCW, and  
6 includes such facilities if owned and operated by a political  
7 subdivision or instrumentality of the state and such other facilities  
8 as required by federal law and implementing regulations.

9 ~~((15))~~ (18) "Health care provider" or "provider" means:

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

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

15 ~~((16))~~ (19) "Health care service" means that service offered or  
16 provided by health care facilities and health care providers relating  
17 to the prevention, cure, or treatment of illness, injury, or disease.

18 ~~((17))~~ (20) "Health carrier" or "carrier" means a disability  
19 insurer regulated under chapter 48.20 or 48.21 RCW, a health care  
20 service contractor as defined in RCW 48.44.010, or a health maintenance  
21 organization as defined in RCW 48.46.020.

22 ~~((18))~~ (21) "Health plan" or "health benefit plan" means any  
23 policy, contract, or agreement offered by a health carrier to provide,  
24 arrange, reimburse, or pay for health care services except the  
25 following:

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

27 (b) Medicare supplemental health insurance governed by chapter  
28 48.66 RCW;

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

31 (d) Disability income;

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

35 (f) Workers' compensation coverage;

36 (g) Accident only coverage;

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

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

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

2 (k) Plans deemed by the insurance commissioner to have a short-term  
3 limited purpose or duration, or to be a student-only plan that is  
4 guaranteed renewable while the covered person is enrolled as a regular  
5 full-time undergraduate or graduate student at an accredited higher  
6 education institution, after a written request for such classification  
7 by the carrier and subsequent written approval by the insurance  
8 commissioner.

9 ~~((19))~~ (22) "Material modification" means a change in the  
10 actuarial value of the health plan as modified of more than five  
11 percent but less than fifteen percent.

12 ~~((20))~~ (23) "Nonprofit health care entity" means a nonprofit  
13 corporation formed under Title 24 RCW doing business as a health care  
14 service contractor as defined in RCW 48.44.010 or a health maintenance  
15 organization as defined in RCW 48.46.020.

16 (24) "Preexisting condition" means any medical condition, illness,  
17 or injury that existed any time prior to the effective date of  
18 coverage.

19 ~~((21))~~ (25) "Premium" means all sums charged, received, or  
20 deposited by a health carrier as consideration for a health plan or the  
21 continuance of a health plan. Any assessment or any "membership,"  
22 "policy," "contract," "service," or similar fee or charge made by a  
23 health carrier in consideration for a health plan is deemed part of the  
24 premium. "Premium" shall not include amounts paid as enrollee point-  
25 of-service cost-sharing.

26 ~~((22))~~ (26) "Review organization" means a disability insurer  
27 regulated under chapter 48.20 or 48.21 RCW, health care service  
28 contractor as defined in RCW 48.44.010, or health maintenance  
29 organization as defined in RCW 48.46.020, and entities affiliated with,  
30 under contract with, or acting on behalf of a health carrier to perform  
31 a utilization review.

32 ~~((23))~~ (27) "Small employer" or "small group" means any person,  
33 firm, corporation, partnership, association, political subdivision  
34 except school districts, or self-employed individual that is actively  
35 engaged in business that, on at least fifty percent of its working days  
36 during the preceding calendar quarter, employed no more than fifty  
37 eligible employees, with a normal work week of thirty or more hours,  
38 the majority of whom were employed within this state, and is not formed  
39 primarily for purposes of buying health insurance and in which a bona

1 fide employer-employee relationship exists. In determining the number  
2 of eligible employees, companies that are affiliated companies, or that  
3 are eligible to file a combined tax return for purposes of taxation by  
4 this state, shall be considered an employer. Subsequent to the  
5 issuance of a health plan to a small employer and for the purpose of  
6 determining eligibility, the size of a small employer shall be  
7 determined annually. Except as otherwise specifically provided, a  
8 small employer shall continue to be considered a small employer until  
9 the plan anniversary following the date the small employer no longer  
10 meets the requirements of this definition. The term "small employer"  
11 includes a self-employed individual or sole proprietor. The term  
12 "small employer" also includes a self-employed individual or sole  
13 proprietor who derives at least seventy-five percent of his or her  
14 income from a trade or business through which the individual or sole  
15 proprietor has attempted to earn taxable income and for which he or she  
16 has filed the appropriate internal revenue service form 1040, schedule  
17 C or F, for the previous taxable year.

18 ~~((+24))~~ (28) "Utilization review" means the prospective,  
19 concurrent, or retrospective assessment of the necessity and  
20 appropriateness of the allocation of health care resources and services  
21 of a provider or facility, given or proposed to be given to an enrollee  
22 or group of enrollees.

23 ~~((+25))~~ (29) "Wellness activity" means an explicit program of an  
24 activity consistent with department of health guidelines, such as,  
25 smoking cessation, injury and accident prevention, reduction of alcohol  
26 misuse, appropriate weight reduction, exercise, automobile and  
27 motorcycle safety, blood cholesterol reduction, and nutrition education  
28 for the purpose of improving enrollee health status and reducing health  
29 service costs.

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

32 (1) A nonprofit health care entity must not enter any conversion  
33 transaction without notifying in writing the attorney general prior to  
34 entering any conversion transaction and obtaining approval from the  
35 office of the insurance commissioner for any conversion transaction  
36 referred to the office of the insurance commissioner by the attorney  
37 general.

1 (a) Notice shall include the health care entity's articles of  
2 incorporation, including all historical versions, bylaws, and contracts  
3 governing the proposal necessary for the attorney general to make its  
4 determination. The health care entity has a duty to respond to  
5 attorney general requests for information.

6 (b) Notice is not effective until the attorney general acknowledges  
7 receipt of a complete notice in accordance with the rules adopted by  
8 the attorney general under section 6 of this act.

9 (c) The nonprofit health care entity shall provide the attorney  
10 general with written certification that a copy of sections 1 and 3  
11 through 9 of this act and RCW 48.43.005 have been given in their  
12 entirety to each member of the board of trustees of the nonprofit  
13 health care entity at the time the notice is submitted.

14 (2) The attorney general shall determine whether the proposed  
15 transaction is a conversion transaction that requires review by the  
16 office of the insurance commissioner.

17 (3) If the nonprofit health care entity is a charitable trust and  
18 the proposed transaction is a conversion transaction, the attorney  
19 general must require administrative regulation of the conversion  
20 transaction by the office of the insurance commissioner. If the  
21 nonprofit health care entity is not a charitable trust in its entirety,  
22 but has material charitable assets that are included within the  
23 conversion transaction, the attorney general must require  
24 administrative regulation of the conversion transaction by the office  
25 of the insurance commissioner.

26 (4) A decision by the attorney general for administrative  
27 regulation of the conversion transaction by the office of the insurance  
28 commissioner is not subject to the review provisions under chapter  
29 34.05 RCW until the office of the insurance commissioner has taken  
30 final action.

31 (5) Nonprofit health care entities shall disclose all documents to  
32 the attorney general that are relevant to determine whether the  
33 nonprofit health care entity is a charitable trust or has charitable  
34 trust assets and that are relevant to determine whether the proposal is  
35 a conversion transaction. Trade secrets or other commercially  
36 competitive information disclosed to the attorney general to determine  
37 the extent to which the nonprofit health care entity is a charitable  
38 trust, has charitable trust assets, or the proposal is a conversion  
39 transaction are confidential and are not subject to public disclosure.

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

3        (1) In making a decision whether to approve or disapprove a  
4 proposed nonprofit health care entity conversion transaction the office  
5 of the insurance commissioner shall consider:

6        (a) Whether the nonprofit health care entity will receive full and  
7 fair market value for its charitable trust assets;

8        (b) Whether the fair market value of the nonprofit health care  
9 entity's charitable trust assets to be transferred has been manipulated  
10 by the actions of the parties in a manner that causes the fair market  
11 value of the charitable trust to decrease;

12        (c) Whether the proceeds of the proposed nonprofit health care  
13 conversion transaction will be used consistent with the trust under  
14 which the assets are held by the nonprofit health care entity and  
15 whether the proceeds will be controlled as funds independently of the  
16 acquiring or related entities;

17        (d) Whether the proposed nonprofit health care conversion  
18 transaction will result in a breach of fiduciary duty, as determined by  
19 the office of the insurance commissioner, including conflicts of  
20 interest related to payments or benefits to officers, directors, board  
21 members, executives, and experts employed or retained by the parties;

22        (e) Whether the governing body of the nonprofit health care entity  
23 exercised due diligence in deciding to dispose of the nonprofit health  
24 care entity's charitable trust assets, selecting the acquiring entity,  
25 and negotiating the terms and conditions of the disposition;

26        (f) Whether the nonprofit health care conversion transaction will  
27 result in private inurement to any person;

28        (g) Whether health care providers will be offered the opportunity  
29 to invest or own an interest in the acquiring entity or a related  
30 party, and whether procedures or safeguards are in place to avoid  
31 conflict of interest in patient referrals;

32        (h) Whether the terms of any management or services contract  
33 negotiated in conjunction with the proposed nonprofit health care  
34 conversion transaction are reasonable;

35        (i) Whether the office of the insurance commissioner has been  
36 provided with sufficient information and data by the nonprofit health  
37 care entity to evaluate adequately the proposed nonprofit health care  
38 conversion transaction or the effects thereof on the public, provided  
39 the office of the insurance commissioner has notified the nonprofit

1 health care entity or the acquiring entity of any inadequacy of the  
2 information or data and has provided a reasonable opportunity to remedy  
3 such inadequacy; and

4 (j) Any other criteria the office of the insurance commissioner  
5 considers necessary to determine whether the nonprofit health care  
6 entity will receive full and fair market value for its charitable trust  
7 assets to be transferred as required in rules adopted by the office of  
8 the insurance commissioner under section 6 of this act.

9 (2) The office of the insurance commissioner has ninety days to  
10 approve or disapprove, in writing, the proposed nonprofit health care  
11 conversion transaction. The time may be extended for an additional  
12 sixty-day period, if the extension is necessary to obtain information  
13 requested under this act.

14 (3) All documents submitted to the office of the insurance  
15 commissioner under this section and sections 3 and 8 of this act are  
16 subject to chapter 42.17 RCW.

17 NEW SECTION. **Sec. 5.** A new section is added to chapter 48.43 RCW  
18 to read as follows:

19 Any proceeds from regulation of conversion transactions shall be  
20 deposited into the health services account.

21 NEW SECTION. **Sec. 6.** A new section is added to chapter 48.43 RCW  
22 to read as follows:

23 The insurance commissioner and the attorney general are each  
24 authorized to establish rules to implement this act.

25 NEW SECTION. **Sec. 7.** A new section is added to chapter 48.43 RCW  
26 to read as follows:

27 Before issuing any written decision under section 4 of this act,  
28 the office of the insurance commissioner shall conduct one or more  
29 public meetings hearing public testimony regarding the proposed  
30 nonprofit health care conversion transaction. Notice shall be provided  
31 in a manner reasonably calculated to notify interested persons. The  
32 meeting shall be held in a location accessible to persons interested in  
33 participating.

34 NEW SECTION. **Sec. 8.** A new section is added to chapter 48.43 RCW  
35 to read as follows:

1 The attorney general and the office of the insurance commissioner  
2 may demand that the nonprofit health care entity provide such  
3 information as the attorney general or the office of the insurance  
4 commissioner deems necessary to complete its review of any proposed  
5 nonprofit health care conversion transaction. A failure to provide  
6 timely information as required shall be sufficient ground for the  
7 attorney general or the office of the insurance commissioner to  
8 disapprove the proposed conversion transaction.

9 NEW SECTION. **Sec. 9.** A new section is added to chapter 48.43 RCW  
10 to read as follows:

11 Nothing in sections 3 through 8 of this act shall be construed to  
12 limit the authority of the attorney general under the common law or  
13 other statutory authority to protect charitable interests in this  
14 state. These penalties and remedies are in addition to, and not a  
15 replacement for, any other civil or criminal actions that the attorney  
16 general may take under either the common law or statutory law.

17 NEW SECTION. **Sec. 10.** A new section is added to chapter 48.43 RCW  
18 to read as follows:

19 (1) The attorney general may commence an action against a nonprofit  
20 health care entity that enters into a conversion transaction without  
21 notice to the attorney general or approval by the insurance  
22 commissioner pursuant to this chapter, and any other party to the  
23 conversion transaction, to recover all charitable trust assets or to  
24 void the transaction and return the parties to the situation existing  
25 before the conversion transaction, or, if the conversion transaction  
26 has not yet occurred, to enjoin such conversion transaction from  
27 occurring. Such action may be brought in the superior court for the  
28 county where the nonprofit health care entity has its principal place  
29 of business or in Thurston county.

30 (2) Upon request by the attorney general, any nonprofit health care  
31 entity that has entered into, or is proposing to enter into, a  
32 transaction without making a filing with the attorney general pursuant  
33 to section 3 of this act shall provide to the attorney general all  
34 documents relevant to determine whether such transaction is or was a  
35 conversion transaction and whether the nonprofit health care entity is  
36 or was a charitable trust or has or had charitable trust assets.

1        NEW SECTION.    **Sec. 11.**    A new section is added to chapter 48.43 RCW  
2 to read as follows:

3        (1) The office of the insurance commissioner may:

4        (a) Contract with, consult, and receive advice from any agency of  
5 the state or the United States on such terms and conditions the office  
6 of the insurance commissioner deems appropriate; or

7        (b) In the office of the insurance commissioner's sole discretion,  
8 contract with such experts or consultants the insurance commissioner  
9 deems appropriate to assist the insurance commissioner in reviewing the  
10 proposed nonprofit health care conversion transaction.

11       (2) Any contract costs incurred by the insurance commissioner under  
12 this section shall not exceed an amount that is reasonable and  
13 necessary to conduct the review of the proposed nonprofit health care  
14 conversion transaction. The insurance commissioner shall be exempt  
15 from chapter 43.19 RCW for the purposes of entering into contracts  
16 under this section. The nonprofit health care entity giving notice  
17 under section 3 of this act, upon request, shall pay the office of the  
18 insurance commissioner promptly for all costs of contracts entered into  
19 by the office of the insurance commissioner under this section.

20       (3) The office of the insurance commissioner shall be entitled to  
21 reimbursement from the nonprofit health care entity giving notice under  
22 section 3 of this act for all reasonable and actual costs incurred by  
23 the office of the insurance commissioner in reviewing any proposed  
24 nonprofit health care conversion transaction under this act, including  
25 attorneys' fees at the billing rate used by the office of the insurance  
26 commissioner to bill state agencies for legal services. The nonprofit  
27 health care entity giving notice under section 3 of this act, upon  
28 request, shall pay the office of the insurance commissioner promptly  
29 for all such costs.

30       (4) The failure by the nonprofit health care entity giving notice  
31 under section 3 of this act to promptly reimburse the office of the  
32 insurance commissioner for all costs under subsection (2) or (3) of  
33 this section is sufficient ground for the office of the insurance  
34 commissioner to disapprove the proposed nonprofit health care  
35 conversion transaction.

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