

SHB 2404 - S COMM AMD

By Committee on Health & Long-Term Care

1       Strike everything after the enacting clause and insert the  
2 following:

3       "**Sec. 1.** RCW 48.44.010 and 1990 c 120 s 1 are each amended to read  
4 as follows:

5       For the purposes of this chapter:

6       (1) "Health care services" means and includes medical, surgical,  
7 dental, chiropractic, hospital, optometric, podiatric, pharmaceutical,  
8 ambulance, custodial, mental health, and other therapeutic services.

9       (2) "Provider" means any health professional, hospital, or other  
10 institution, organization, or person that furnishes health care  
11 services and is licensed to furnish such services.

12       (3) "Health care service contractor" means any corporation,  
13 cooperative group, or association, which is sponsored by or otherwise  
14 intimately connected with a provider or group of providers, who or  
15 which not otherwise being engaged in the insurance business, accepts  
16 prepayment for health care services from or for the benefit of persons  
17 or groups of persons as consideration for providing such persons with  
18 any health care services. "Health care service contractor" does not  
19 include retainer health care practices as defined in section 2 of this  
20 act.

21       (4) "Participating provider" means a provider, who or which has  
22 contracted in writing with a health care service contractor to accept  
23 payment from and to look solely to such contractor according to the  
24 terms of the subscriber contract for any health care services rendered  
25 to a person who has previously paid, or on whose behalf prepayment has  
26 been made, to such contractor for such services.

27       (5) "Enrolled participant" means a person or group of persons who  
28 have entered into a contractual arrangement or on whose behalf a  
29 contractual arrangement has been entered into with a health care  
30 service contractor to receive health care services.

- 1 (6) "Commissioner" means the insurance commissioner.
- 2 (7) "Uncovered expenditures" means the costs to the health care  
3 service contractor for health care services that are the obligation of  
4 the health care service contractor for which an enrolled participant  
5 would also be liable in the event of the health care service  
6 contractor's insolvency and for which no alternative arrangements have  
7 been made as provided herein. The term does not include expenditures  
8 for covered services when a provider has agreed not to bill the  
9 enrolled participant even though the provider is not paid by the health  
10 care service contractor, or for services that are guaranteed, insured  
11 or assumed by a person or organization other than the health care  
12 service contractor.
- 13 (8) "Copayment" means an amount specified in a group or individual  
14 contract which is an obligation of an enrolled participant for a  
15 specific service which is not fully prepaid.
- 16 (9) "Deductible" means the amount an enrolled participant is  
17 responsible to pay before the health care service contractor begins to  
18 pay the costs associated with treatment.
- 19 (10) "Group contract" means a contract for health care services  
20 which by its terms limits eligibility to members of a specific group.  
21 The group contract may include coverage for dependents.
- 22 (11) "Individual contract" means a contract for health care  
23 services issued to and covering an individual. An individual contract  
24 may include dependents.
- 25 (12) "Carrier" means a health maintenance organization, an insurer,  
26 a health care service contractor, or other entity responsible for the  
27 payment of benefits or provision of services under a group or  
28 individual contract.
- 29 (13) "Replacement coverage" means the benefits provided by a  
30 succeeding carrier.
- 31 (14) "Insolvent" or "insolvency" means that the organization has  
32 been declared insolvent and is placed under an order of liquidation by  
33 a court of competent jurisdiction.
- 34 (15) "Fully subordinated debt" means those debts that meet the  
35 requirements of RCW 48.44.037(3) and are recorded as equity.
- 36 (16) "Net worth" means the excess of total admitted assets as  
37 defined in RCW 48.12.010 over total liabilities but the liabilities  
38 shall not include fully subordinated debt.

1        NEW SECTION.    **Sec. 2.** The definitions in this section apply  
2 throughout this chapter unless the context clearly requires otherwise.

3        (1) "Retainer health care practice" and "retainer practice" mean a  
4 provider, group, or entity that meets the following criteria in (a) and  
5 (b) of this subsection:

6        (a)(i) A health care provider who furnishes only primary care  
7 services;

8        (ii) A group of not more than thirty health care providers who  
9 furnish only primary care services; or

10       (iii) An entity that sponsors, employs, or is otherwise affiliated  
11 with a group of not more than thirty health care providers who furnish  
12 only primary care services through a retainer agreement, which entity  
13 is wholly owned by the group of health care providers or is a nonprofit  
14 corporation exempt from taxation under section 501(c)(3) of the  
15 internal revenue code. Such entity is not prohibited from sponsoring,  
16 employing, or being otherwise affiliated with other types of health  
17 care providers not engaged in a retainer health care practice; and

18       (b) Enters into retainer agreements with retainer subscribers.

19       (2) "Retainer subscriber" means a person who is covered by a  
20 retainer agreement and is entitled to receive health care services from  
21 the retainer practice.

22       (3) "Retainer fee" means a fee charged by a retainer health care  
23 practice as consideration for being available to provide and providing  
24 primary care services to a retainer subscriber during a specified  
25 service period.

26       (4) "Retainer agreement" means an agreement entered into between a  
27 retainer health care practice and a retainer subscriber whereby the  
28 retainer practice charges a retainer fee as consideration for being  
29 available to provide and providing primary care services to the  
30 retainer subscriber during a specified service period.

31       (5) "Health care provider" or "provider" means a person regulated  
32 under Title 18 RCW or chapter 70.127 RCW to practice health or health-  
33 related services or otherwise practicing health care services in this  
34 state consistent with state law.

35       (6) "Health carrier" or "carrier" has the same meaning as in RCW  
36 48.43.005.

37       (7) "Primary care" means routine health care services, including

1 screening, assessment, diagnosis, and treatment for the purpose of  
2 promotion of health and detection of disease or injury.

3 (8) "Network" means the group of participating providers and  
4 facilities providing health care services to a particular health plan.

5 NEW SECTION. **Sec. 3.** (1) Except as provided in subsection (2) of  
6 this section, a retainer health care practice may not accept periodic  
7 payment for health care services to retainer subscribers.

8 (2) A retainer practice may charge a retainer fee as consideration  
9 for being available to provide and providing primary care services to  
10 a retainer subscriber during a specified service period if the retainer  
11 health care practice deposits the fee in one or more identifiable trust  
12 accounts and distributes the fee to the retainer practice at the end of  
13 the specified service period.

14 (3) The instrument creating the trust and governing the trust  
15 account must provide that:

16 (a) All retainer fees are held in trust for and remain the property  
17 of the retainer subscriber until the end of the service period for  
18 which they are charged, at which time they become the property of the  
19 retainer health care practice.

20 (b) All unearned retainer fees will immediately be returned to the  
21 retainer subscriber, upon the occurrence of any event that prevents the  
22 provision of the health care services as contemplated by the retainer  
23 agreement.

24 (4) A retainer practice must:

25 (a) Promptly notify a retainer subscriber of the receipt of his or  
26 her retainer fee;

27 (b) Render appropriate accounts to retainer subscribers regarding  
28 the funds; and

29 (c) Promptly refund to the retainer subscriber all unearned  
30 retainer fees upon the occurrence of any event that prevents the  
31 provision of the health care services as contemplated by the retainer  
32 agreement.

33 NEW SECTION. **Sec. 4.** (1) Retainer health care practices may not:

34 (a) Enter into a participating provider contract as defined in RCW  
35 48.44.010 or 48.46.020 with any carrier or with any carrier's

1 contractor or subcontractor to provide health care services through a  
2 retainer agreement except as set forth in subsection (2) of this  
3 section;

4 (b) Submit a claim for payment to any carrier or any carrier's  
5 contractor or subcontractor for health care services provided to  
6 retainer subscribers as covered by their agreement;

7 (c) With respect to services provided through a retainer agreement,  
8 be identified by a carrier or any carrier's contractor or subcontractor  
9 as a participant in the carrier's or any carrier's contractor or  
10 subcontractor network;

11 (d) Pay for health care services covered by a retainer agreement  
12 rendered to retainer practice subscribers by providers other than the  
13 providers in the retainer practice or their employees, except as  
14 described in subsection (2)(c) of this section; or

15 (e) Decline to accept new retainer patients solely because of the  
16 patient's health status. This does not require a retainer health care  
17 practice to accept new retainer patients, if the practice has reached  
18 its maximum capacity, or if the patient's medical condition is such  
19 that the provider is unable to provide the appropriate level and type  
20 of health care services in the retainer practice. In addition, the  
21 provider may decline any patient for whom the payment of the retainer  
22 fee is paid indirectly or directly by a third party.

23 (2) Retainer health care practices and providers may:

24 (a) Enter into a participating provider contract as defined by RCW  
25 48.44.010 and 48.46.020 for purposes other than payment of claims for  
26 services provided to retainer subscribers through a retainer agreement  
27 and such providers shall be subject to all other provisions of the  
28 contract applicable to participating providers including but not  
29 limited to the right to:

- 30 (i) Make referrals to other participating providers;
- 31 (ii) Admit the carrier's members to participating hospitals and  
32 other health care facilities;
- 33 (iii) Prescribe prescription drugs; and
- 34 (iv) Implement other customary provisions of the contract not  
35 dealing with reimbursement of services;

36 (b) Enter into participating provider contracts with any carrier or  
37 with any carrier's contractor or subcontractor if the retainer

1 agreement conspicuously and plainly advises the retainer subscriber of  
2 the details of this feature of the arrangement; and

3 (c) Pay for charges associated with the provision of routine lab  
4 and imaging services provided in connection with wellness physical  
5 examinations. In aggregate such payments per year per retainer  
6 subscriber are not to exceed fifteen percent of the total annual  
7 retainer subscription fee charged that subscriber.

8 NEW SECTION. **Sec. 5.** (1) The legislature intends by enacting this  
9 chapter to create a safe harbor for compliance with the insurance code  
10 for retainer practices as defined in section 2 of this act who comply  
11 with this chapter, but does not intend by this act to affect the  
12 legality of arrangements not covered by this chapter.

13 (2) A health care provider may not act as, or hold himself or  
14 herself out to be, a retainer health care practice in this state, nor  
15 may a retainer agreement be entered into with a retainer subscriber in  
16 this state, unless the provider submits annually to the commissioner a  
17 letter certifying compliance with this chapter.

18 NEW SECTION. **Sec. 6.** Every retainer health care practice must  
19 maintain the following records for a period of five years, and upon  
20 request must make the following records available to the commissioner  
21 for review:

22 (1) Forms of contracts between the retainer practice and retainer  
23 subscribers;

24 (2) Documents relating to the creation and maintenance of any  
25 retainer fee trust accounts. However, any patient's personal  
26 identifying information may be withheld, unless otherwise authorized by  
27 the patient;

28 (3) All advertising relating to the retainer practice and its  
29 services; and

30 (4) All records relating to retainer fees received by the retainer  
31 health care practice. However, any patient's personal identifying  
32 information may be withheld, unless otherwise authorized by the  
33 patient.

34 NEW SECTION. **Sec. 7.** The commissioner shall adopt rules in  
35 accordance with chapter 34.05 RCW establishing a standardized

1 disclosure form to be distributed to all retainer subscribers with  
2 their enrollment forms. Such form will inform the subscriber patient  
3 of their financial rights and responsibilities to the retainer practice  
4 as provided for in this chapter, will encourage that the retainer  
5 patient obtain and maintain insurance for services not provided by the  
6 retainer practice, and that the provider will not bill a carrier for  
7 services covered under the retainer agreement. Such a standardized  
8 disclosure form shall be deemed sufficient disclosure of a retainer  
9 practice's obligations under this chapter.

10 NEW SECTION. **Sec. 8.** If the commissioner has cause to believe  
11 that any person has violated the provisions of this chapter, the  
12 commissioner may issue and enforce a cease and desist order in  
13 accordance with RCW 48.02.080.

14 NEW SECTION. **Sec. 9.** Sections 2 through 8 of this act constitute  
15 a new chapter in Title 48 RCW.

16 NEW SECTION. **Sec. 10.** A joint select legislative committee on  
17 retainer health care practices is established to include one member  
18 from each caucus of the legislature. The committee shall study and  
19 provide the opportunity for input from interested parties regarding the  
20 practice of retainer health care in Washington, its prevalence, its  
21 impact on patients and health care and insurance markets, and any  
22 reported or potential consumer protection issues. No later than  
23 December 1, 2006, the committee shall report its findings and  
24 recommendations regarding the appropriate scope and level of regulation  
25 of retainer health care practices in Washington.

26 NEW SECTION. **Sec. 11.** Sections 1 through 8 of this act take  
27 effect January 1, 2008."

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1        On page 1, line 1 of the title, after "practices;" strike the  
2 remainder of the title and insert "amending RCW 48.44.010; adding a new  
3 chapter to Title 48 RCW; creating a new section; and providing an  
4 effective date."

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