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HOUSE BILL 1698

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State of Washington

59th Legislature

2005 Regular Session

By Representatives Cody, Bailey, Hinkle and Moeller; by request of Department of Social and Health Services

Read first time 02/02/2005. Referred to Committee on Health Care.

1 AN ACT Relating to exempting recipients of medical assistance under  
2 Title 74 RCW from independent review determinations; and amending RCW  
3 48.43.535 and 48.43.545.

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

5 **Sec. 1.** RCW 48.43.535 and 2000 c 5 s 11 are each amended to read  
6 as follows:

7 (1) There is a need for a process for the fair consideration of  
8 disputes relating to decisions by carriers that offer a health plan to  
9 deny, modify, reduce, or terminate coverage of or payment for health  
10 care services for an enrollee.

11 (2) An enrollee may seek review by a certified independent review  
12 organization of a carrier's decision to deny, modify, reduce, or  
13 terminate coverage of or payment for a health care service, after  
14 exhausting the carrier's grievance process and receiving a decision  
15 that is unfavorable to the enrollee, or after the carrier has exceeded  
16 the timelines for grievances provided in RCW 48.43.530, without good  
17 cause and without reaching a decision.

18 (3) The commissioner must establish and use a rotational registry  
19 system for the assignment of a certified independent review

1 organization to each dispute. The system should be flexible enough to  
2 ensure that an independent review organization has the expertise  
3 necessary to review the particular medical condition or service at  
4 issue in the dispute.

5 (4) Carriers must provide to the appropriate certified independent  
6 review organization, not later than the third business day after the  
7 date the carrier receives a request for review, a copy of:

8 (a) Any medical records of the enrollee that are relevant to the  
9 review;

10 (b) Any documents used by the carrier in making the determination  
11 to be reviewed by the certified independent review organization;

12 (c) Any documentation and written information submitted to the  
13 carrier in support of the appeal; and

14 (d) A list of each physician or health care provider who has  
15 provided care to the enrollee and who may have medical records relevant  
16 to the appeal. Health information or other confidential or proprietary  
17 information in the custody of a carrier may be provided to an  
18 independent review organization, subject to rules adopted by the  
19 commissioner.

20 (5) The medical reviewers from a certified independent review  
21 organization will make determinations regarding the medical necessity  
22 or appropriateness of, and the application of health plan coverage  
23 provisions to, health care services for an enrollee. The medical  
24 reviewers' determinations must be based upon their expert medical  
25 judgment, after consideration of relevant medical, scientific, and  
26 cost-effectiveness evidence, and medical standards of practice in the  
27 state of Washington. Except as provided in this subsection, the  
28 certified independent review organization must ensure that  
29 determinations are consistent with the scope of covered benefits as  
30 outlined in the medical coverage agreement. Medical reviewers may  
31 override the health plan's medical necessity or appropriateness  
32 standards if the standards are determined upon review to be  
33 unreasonable or inconsistent with sound, evidence-based medical  
34 practice.

35 (6) Once a request for an independent review determination has been  
36 made, the independent review organization must proceed to a final  
37 determination, unless requested otherwise by both the carrier and the  
38 enrollee or the enrollee's representative.

1 (7) Carriers must timely implement the certified independent review  
2 organization's determination, and must pay the certified independent  
3 review organization's charges.

4 (8) When an enrollee requests independent review of a dispute under  
5 this section, and the dispute involves a carrier's decision to modify,  
6 reduce, or terminate an otherwise covered health service that an  
7 enrollee is receiving at the time the request for review is submitted  
8 and the carrier's decision is based upon a finding that the health  
9 service, or level of health service, is no longer medically necessary  
10 or appropriate, the carrier must continue to provide the health service  
11 if requested by the enrollee until a determination is made under this  
12 section. If the determination affirms the carrier's decision, the  
13 enrollee may be responsible for the cost of the continued health  
14 service.

15 (9) A certified independent review organization may notify the  
16 office of the insurance commissioner if, based upon its review of  
17 disputes under this section, it finds a pattern of substandard or  
18 egregious conduct by a carrier.

19 (10)(a) The commissioner shall adopt rules to implement this  
20 section after considering relevant standards adopted by national  
21 managed care accreditation organizations.

22 (b) This section is not intended to supplant any existing authority  
23 of the office of the insurance commissioner under this title to oversee  
24 and enforce carrier compliance with applicable statutes and rules.

25 (11) This section does not apply to enrollees who are receiving  
26 medical assistance from the department of social and health services  
27 under Title 74 RCW.

28 **Sec. 2.** RCW 48.43.545 and 2000 c 5 s 17 are each amended to read  
29 as follows:

30 (1)(a) A health carrier shall adhere to the accepted standard of  
31 care for health care providers under chapter 7.70 RCW when arranging  
32 for the provision of medically necessary health care services to its  
33 enrollees. A health carrier shall be liable for any and all harm  
34 proximately caused by its failure to follow that standard of care when  
35 the failure resulted in the denial, delay, or modification of the  
36 health care service recommended for, or furnished to, an enrollee.

1 (b) A health carrier is also liable for damages under (a) of this  
2 subsection for harm to an enrollee proximately caused by health care  
3 treatment decisions that result from a failure to follow the accepted  
4 standard of care made by its:

5 (i) Employees;

6 (ii) Agents; or

7 (iii) Ostensible agents who are acting on its behalf and over whom  
8 it has the right to exercise influence or control or has actually  
9 exercised influence or control.

10 (2) The provisions of this section may not be waived, shifted, or  
11 modified by contract or agreement and responsibility for the provisions  
12 shall be a duty that cannot be delegated. Any effort to waive, modify,  
13 delegate, or shift liability for a breach of the duty established by  
14 this section, through a contract for indemnification or otherwise, is  
15 invalid.

16 (3) This section does not create any new cause of action, or  
17 eliminate any presently existing cause of action, with respect to  
18 health care providers and health care facilities that are included in  
19 and subject to the provisions of chapter 7.70 RCW.

20 (4) It is a defense to any action or liability asserted under this  
21 section against a health carrier that:

22 (a) The health care service in question is not a benefit provided  
23 under the plan or the service is subject to limitations under the plan  
24 that have been exhausted;

25 (b) Neither the health carrier, nor any employee, agent, or  
26 ostensible agent for whose conduct the health carrier is liable under  
27 subsection (1)(b) of this section, controlled, influenced, or  
28 participated in the health care decision; or

29 (c) The health carrier did not deny or unreasonably delay payment  
30 for treatment prescribed or recommended by a participating health care  
31 provider for the enrollee.

32 (5) This section does not create any liability on the part of an  
33 employer, an employer group purchasing organization that purchases  
34 coverage or assumes risk on behalf of its employers, or a governmental  
35 agency that purchases coverage on behalf of individuals and families.  
36 The governmental entity established to offer and provide health  
37 insurance to public employees, public retirees, and their covered

1 dependents under RCW 41.05.140 is subject to liability under this  
2 section.

3 (6) Nothing in any law of this state prohibiting a health carrier  
4 from practicing medicine or being licensed to practice medicine may be  
5 asserted as a defense by the health carrier in an action brought  
6 against it under this section.

7 (7)(a) A person may not maintain a cause of action under this  
8 section against a health carrier unless:

9 (i) The affected enrollee has suffered substantial harm. As used  
10 in this subsection, "substantial harm" means loss of life, loss or  
11 significant impairment of limb, bodily or cognitive function,  
12 significant disfigurement, or severe or chronic physical pain; and

13 (ii) The affected enrollee or the enrollee's representative has  
14 exercised the opportunity established in RCW 48.43.535 to seek  
15 independent review of the health care treatment decision or the  
16 opportunity for an adjudicative proceeding if the enrollee is receiving  
17 medical assistance under RCW 74.09.522.

18 (b) This subsection (7) does not prohibit an enrollee from pursuing  
19 other appropriate remedies, including injunctive relief, a declaratory  
20 judgment, or other relief available under law, if its requirements  
21 place the enrollee's health in serious jeopardy.

22 (8) In an action against a health carrier, a finding that a health  
23 care provider is an employee, agent, or ostensible agent of such a  
24 health carrier shall not be based solely on proof that the person's  
25 name appears in a listing of approved physicians or health care  
26 providers made available to enrollees under a health plan.

27 (9) Any action under this section shall be commenced within three  
28 years of the completion of the independent review process.

29 (10) This section does not apply to workers' compensation insurance  
30 under Title 51 RCW.

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