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**SUBSTITUTE HOUSE BILL 2404**

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**State of Washington                      59th Legislature                      2006 Regular Session**

**By** House Committee on Health Care (originally sponsored by Representatives Cody and Morrell; by request of Insurance Commissioner)

READ FIRST TIME 01/31/2006.

1            AN ACT Relating to retainer health care practices; amending RCW  
2 48.44.010; and adding a new chapter to Title 48 RCW.

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

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

6            For the purposes of this chapter:

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

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

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

1 any health care services. "Health care service contractor" does not  
2 include retainer health care practices as defined in section 2 of this  
3 act.

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

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

14 (6) "Commissioner" means the insurance commissioner.

15 (7) "Uncovered expenditures" means the costs to the health care  
16 service contractor for health care services that are the obligation of  
17 the health care service contractor for which an enrolled participant  
18 would also be liable in the event of the health care service  
19 contractor's insolvency and for which no alternative arrangements have  
20 been made as provided herein. The term does not include expenditures  
21 for covered services when a provider has agreed not to bill the  
22 enrolled participant even though the provider is not paid by the health  
23 care service contractor, or for services that are guaranteed, insured  
24 or assumed by a person or organization other than the health care  
25 service contractor.

26 (8) "Copayment" means an amount specified in a group or individual  
27 contract which is an obligation of an enrolled participant for a  
28 specific service which is not fully prepaid.

29 (9) "Deductible" means the amount an enrolled participant is  
30 responsible to pay before the health care service contractor begins to  
31 pay the costs associated with treatment.

32 (10) "Group contract" means a contract for health care services  
33 which by its terms limits eligibility to members of a specific group.  
34 The group contract may include coverage for dependents.

35 (11) "Individual contract" means a contract for health care  
36 services issued to and covering an individual. An individual contract  
37 may include dependents.

1 (12) "Carrier" means a health maintenance organization, an insurer,  
2 a health care service contractor, or other entity responsible for the  
3 payment of benefits or provision of services under a group or  
4 individual contract.

5 (13) "Replacement coverage" means the benefits provided by a  
6 succeeding carrier.

7 (14) "Insolvent" or "insolvency" means that the organization has  
8 been declared insolvent and is placed under an order of liquidation by  
9 a court of competent jurisdiction.

10 (15) "Fully subordinated debt" means those debts that meet the  
11 requirements of RCW 48.44.037(3) and are recorded as equity.

12 (16) "Net worth" means the excess of total admitted assets as  
13 defined in RCW 48.12.010 over total liabilities but the liabilities  
14 shall not include fully subordinated debt.

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

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

20 (a)(i) A health care provider who furnishes only primary care  
21 services;

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

24 (iii) An entity that sponsors, employs, or is otherwise affiliated  
25 with a group of not more than thirty health care providers who furnish  
26 only primary care services through a retainer agreement, which entity  
27 is wholly owned by the group of health care providers or is a nonprofit  
28 corporation exempt from taxation under section 501(c)(3) of the  
29 internal revenue code. Such entity is not prohibited from sponsoring,  
30 employing, or being otherwise affiliated with other types of health  
31 care providers not engaged in a retainer health care practice; and

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

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

36 (3) "Retainer fee" means a fee charged by a retainer health care

1 practice as consideration for being available to provide and providing  
2 primary care services to a retainer subscriber during a specified  
3 service period.

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

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

13 (6) "Health carrier" or "carrier" has the same meaning as in RCW  
14 48.43.005.

15 (7) "Primary care" means routine health care services, including  
16 screening, assessment, diagnosis, and treatment for the purpose of  
17 promotion of health and detection of disease or injury.

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

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

23 (2) A retainer practice may charge a retainer fee as consideration  
24 for being available to provide and providing primary care services to  
25 a retainer subscriber during a specified service period if the retainer  
26 health care practice deposits the fee in one or more identifiable trust  
27 accounts and distributes the fee to the retainer practice at the end of  
28 the specified service period.

29 (3) The instrument creating the trust and governing the trust  
30 account must provide that:

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

35 (b) All unearned retainer fees will immediately be returned to the  
36 retainer subscriber, upon the occurrence of any event that prevents the

1 provision of the health care services as contemplated by the retainer  
2 agreement.

- 3 (4) A retainer practice must:
- 4 (a) Promptly notify a retainer subscriber of the receipt of his or  
5 her retainer fee;
  - 6 (b) Render appropriate accounts to retainer subscribers regarding  
7 the funds; and
  - 8 (c) Promptly refund to the retainer subscriber all unearned  
9 retainer fees upon the occurrence of any event that prevents the  
10 provision of the health care services as contemplated by the retainer  
11 agreement.

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

13 (a) Enter into a participating provider contract as defined in RCW  
14 48.44.010 or 48.46.020 with any carrier or with any carrier's  
15 contractor or subcontractor to provide health care services through a  
16 retainer agreement except as set forth in subsection (2) of this  
17 section;

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

21 (c) With respect to services provided through a retainer agreement,  
22 be identified by a carrier or any carrier's contractor or subcontractor  
23 as a participant in the carrier's or any carrier's contractor or  
24 subcontractor network;

25 (d) Pay for health care services covered by a retainer agreement  
26 rendered to retainer practice subscribers by providers other than the  
27 providers in the retainer practice or their employees, except as  
28 described in subsection (2)(d) of this section; or

29 (e) Decline to accept new retainer patients solely because of the  
30 patient's health status. This does not require a retainer health care  
31 practice to accept new retainer patients, if the practice has reached  
32 its maximum capacity, or if the patient's medical condition is such  
33 that the provider is unable to provide the appropriate level and type  
34 of health care services in the retainer practice. In addition, the  
35 provider may decline any patient for whom the payment of the retainer  
36 fee is paid indirectly or directly by a third party.

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

1 (a) Enter into a participating provider contract as defined by RCW  
2 48.44.010 and 48.46.020 for purposes other than payment of claims for  
3 services provided to retainer subscribers through a retainer agreement  
4 and such providers shall be subject to all other provisions of the  
5 contract applicable to participating providers including but not  
6 limited to the right to:

7 (i) Make referrals to other participating providers;

8 (ii) Admit the carrier's members to participating hospitals and  
9 other health care facilities;

10 (iii) Prescribe prescription drugs; and

11 (iv) Implement other customary provisions of the contract not  
12 dealing with reimbursement of services;

13 (b) Enter into participating provider contracts with any carrier or  
14 with any carrier's contractor or subcontractor if the retainer  
15 agreement conspicuously and plainly advises the retainer subscriber of  
16 the details of this feature of the arrangement; and

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

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

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

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

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

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

7 (3) All advertising relating to the retainer practice and its  
8 services; and

9 (4) All records relating to retainer fees received by the retainer  
10 health care practice. However, any patient's personal identifying  
11 information may be withheld, unless otherwise authorized by the  
12 patient.

13 NEW SECTION. **Sec. 7.** The commissioner shall adopt rules in  
14 accordance with chapter 34.05 RCW establishing a standardized  
15 disclosure form to be distributed to all retainer subscribers with  
16 their enrollment forms. Such form will inform the subscriber patient  
17 of their financial rights and responsibilities to the retainer practice  
18 as provided for in this chapter, will encourage that the retainer  
19 patient obtain and maintain insurance for services not provided by the  
20 retainer practice, and that the provider will not bill a carrier for  
21 services covered under the retainer agreement. Such a standardized  
22 disclosure form shall be deemed sufficient disclosure of a retainer  
23 practice's obligations under this chapter.

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

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

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