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HOUSE BILL 2404

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State of Washington                      59th Legislature                      2006 Regular Session

By Representatives Cody and Morrell; by request of Insurance  
Commissioner

Prefiled 1/3/2006.      Read first time 01/09/2006.      Referred to  
Committee on Health Care.

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:

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

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

23 (iii) An entity that sponsors, employs, or is otherwise affiliated  
24 with a group of not more than twenty health care providers who furnish  
25 only primary care services and that is wholly owned by the group of  
26 health care providers; and

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

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

31 (3) "Retainer fee" means a fee charged by a retainer health care  
32 practice as consideration for being available to provide and providing  
33 primary care services to a retainer subscriber during a specified  
34 service period.

35 (4) "Retainer agreement" means an agreement entered into between a  
36 retainer health care practice and a retainer subscriber whereby the

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

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

8 (6) "Primary care" means basic health care services, including  
9 screening, assessment, diagnosis, and treatment for the purpose of  
10 promotion of health and detection of disease or injury.

11 (7) "Network" means the group of participating providers and  
12 facilities providing health care services to a particular health plan.

13 (8) "Participating provider" means a provider, who or which has  
14 contracted in writing with a health care service contractor to accept  
15 payment from and to look solely to that contractor according to the  
16 terms of the retainer subscriber contract for any health care services  
17 rendered to a person who has previously paid, or on whose behalf  
18 prepayment has been made, to that contractor for those services.

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

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

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

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

34 (b) All unearned retainer fees will immediately be returned to the  
35 retainer subscriber, upon the occurrence of any event that prevents the  
36 provision of the health care services as contemplated by the retainer  
37 agreement.

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

10 NEW SECTION. **Sec. 4.** (1) Retainer health care practices and  
11 providers sponsored by, employed by, or affiliated with retainer  
12 practices may not:

13 (a) Enter into participating provider contracts with any health  
14 plan or with any health plan's contractor or subcontractor to provide  
15 health care services to any retainer subscriber of the retainer  
16 practice in exchange for payment from the health plan or the health  
17 plan's contractor or subcontractor;

18 (b) Submit a claim for payment to any health plan or any health  
19 plan's contractor or subcontractor for health care services provided to  
20 retainer subscribers of the retainer practice; or

21 (c) Be identified as a network provider for health care services  
22 provided through the retainer practice.

23 (2) Retainer health care practices and providers sponsored by,  
24 employed by, or affiliated with retainer practices may:

25 (a) Be identified by health plans as retainer health care providers  
26 who are entitled to refer retainer subscribers to the health plan's  
27 network providers;

28 (b) Enter into contracts with health plans or with their  
29 contractors or subcontractors to provide referrals to health plan  
30 participating providers; and

31 (c) Enter into participating provider contracts with any health  
32 plan or with any health plan's contractor or subcontractor to provide  
33 other than primary care services to any retainer subscriber of the  
34 retainer practice in exchange for payment from the health plan or the  
35 health plan's contractor or subcontractor.

1        NEW SECTION.    **Sec. 5.** A health care provider may not act as, or  
2 hold himself or herself out to be, a retainer health care practice in  
3 this state, nor may a retainer agreement be entered into with a  
4 retainer subscriber in this state, unless the provider submits annually  
5 to the commissioner a letter certifying compliance with this chapter.

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

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

12        (2) Documents relating to the creation and maintenance of any  
13 retainer fee trust accounts;

14        (3) All advertising relating to the retainer practice and its  
15 services; and

16        (4) All records relating to retainer fees received by the retainer  
17 health care practice.

18        NEW SECTION.    **Sec. 7.** If the commissioner has cause to believe  
19 that any person has violated the provisions of this chapter, the  
20 commissioner may issue and enforce a cease and desist order in  
21 accordance with RCW 48.02.080.

22        NEW SECTION.    **Sec. 8.** Sections 2 through 7 of this act constitute  
23 a new chapter in Title 48 RCW.

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