
SENATE BILL 5716

State of Washington

60th Legislature

2007 Regular Session

By Senators Keiser, Kastama, Franklin and Kline; by request of Insurance Commissioner

Read first time 01/29/2007. Referred to Committee on Health & Long-Term 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 in (a) and
19 (b) of this subsection:

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

22 (ii) A group of not more than thirty health care providers who
23 furnish only primary care services through a retainer agreement; 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 all primary care services
35 under the retainer agreement from the retainer practice.

36 (3) "Retainer fee" means a fee charged by a retainer health care
37 practice as consideration for being available to provide and providing

1 all primary care services that are within the scope of the provider's
2 license to a retainer subscriber during a specified service period.
3 The fee must represent the total amount due for all primary care
4 services rendered by the retainer practice provider.

5 (4) "Retainer agreement" means a written agreement entered into
6 between a retainer health care practice and an individual retainer
7 subscriber whereby the retainer practice charges a retainer fee as
8 consideration for being available to provide and providing all primary
9 care services that are within the scope of the provider's license to
10 the individual retainer subscriber during a specified service period.
11 A retainer agreement may not be sold to a group and may not be entered
12 with a group of subscribers. It must be an agreement between a
13 retainer health care practice and an individual subscriber. A retainer
14 practice provider may not provide care that is compensated outside the
15 scope of the retainer agreement to a patient with whom the provider has
16 a retainer agreement.

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

21 (6) "Health carrier" or "carrier" has the same meaning as in RCW
22 48.43.005.

23 (7) "Primary care" means routine health care services, including
24 screening, assessment, diagnosis, and treatment for the purpose of
25 promotion of health and detection of disease or injury. "Primary care"
26 is basic or general health care provided at the person's first contact
27 with the health care system. Usually this contact is for common
28 illnesses. The primary health care provider assumes ongoing
29 responsibility for health maintenance and therapy for illness,
30 including consultation with specialists. For purposes of this chapter,
31 "primary care" does not include postdiagnosis prenatal or maternity
32 care, or services rendered by a specialist as secondary or tertiary
33 care.

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

36 (9) "Secondary care" means health care beyond the primary care.
37 Included are more sophisticated diagnostic methods and techniques, and

1 laboratory facilities. This level of care is more nearly available in
2 medical care institutions including hospitals and large multispecialty
3 clinics.

4 (10) "Tertiary care" means an advanced and complex level of medical
5 care that would be available only in large medical care institutions.
6 Included would be techniques and methods of therapy and diagnosis
7 involving equipment and personnel that would not be feasible to have in
8 a smaller institution because of lack of utilization.

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

12 (2) A retainer practice may charge a retainer fee as consideration
13 for being available to provide and providing all primary care services
14 that are within the scope of the provider's license to a retainer
15 subscriber during a specified service period if the retainer health
16 care practice deposits the fee in one or more identifiable trust
17 accounts and distributes the fee to the retainer practice at the end of
18 the specified service period.

19 (3) The instrument creating the trust and governing the trust
20 account must provide that:

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

25 (b) All unearned retainer fees will immediately be returned to the
26 retainer subscriber, upon the occurrence of any event that prevents the
27 provision of the health care services as contemplated by the retainer
28 agreement.

29 (4) A retainer practice must:

30 (a) Promptly notify a retainer subscriber of the receipt of his or
31 her retainer fee;

32 (b) Render appropriate accounts to retainer subscribers regarding
33 the funds; and

34 (c) Promptly refund to the retainer subscriber all unearned
35 retainer fees upon the occurrence of any event that prevents the
36 provision of the health care services as contemplated by the retainer
37 agreement.

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

2 (a) Enter into a participating provider contract as defined in RCW
3 48.44.010 or 48.46.020 with any carrier or with any carrier's
4 contractor or subcontractor to provide health care services through a
5 retainer agreement except as set forth in subsection (2) of this
6 section;

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

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

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

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

26 (f) Charge additional fees beyond the retainer fee for the primary
27 care services provided to the retainer subscriber by the retainer
28 practice, regardless of the nature of the health care service.

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

30 (a) Enter into a participating provider contract as defined by RCW
31 48.44.010 and 48.46.020 for purposes other than payment of claims for
32 services provided to retainer subscribers through a retainer agreement
33 and such providers shall be subject to all other provisions of the
34 participating provider contract applicable to participating providers
35 including but not limited to the right to:

36 (i) Make referrals to other participating providers;

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

1 (iii) Prescribe prescription drugs; and
2 (iv) Implement other customary provisions of the contract not
3 dealing with reimbursement of services; and
4 (b) Pay for charges associated with the provision of routine lab
5 and imaging services provided in connection with wellness physical
6 examinations. In aggregate such payments per year per retainer
7 subscriber are not to exceed fifteen percent of the total annual
8 retainer subscription fee charged that subscriber.

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 7.** A person shall not knowingly make, publish,
2 or disseminate any false, deceptive, or misleading representation or
3 advertising in the conduct of the business of a retainer practice, or
4 relative to the business of a retainer practice.

5 NEW SECTION. **Sec. 8.** A person shall not knowingly make, issue, or
6 circulate, or cause to be made, issued, or circulated, a
7 misrepresentation of the terms of any retainer agreement, or the
8 benefits or advantages promised thereby, or use the name or title of
9 any retainer agreement misrepresenting the nature thereof.

10 NEW SECTION. **Sec. 9.** The commissioner shall adopt rules in
11 accordance with chapter 34.05 RCW establishing a standardized
12 disclosure form to be distributed to all retainer subscribers with
13 their enrollment forms. Such form will inform the subscriber patient
14 of their financial rights and responsibilities to the retainer practice
15 as provided for in this chapter, will encourage that the retainer
16 patient obtain and maintain insurance for services not provided by the
17 retainer practice, and that the provider will not bill a carrier for
18 services covered under the retainer agreement. Such a standardized
19 disclosure form shall be deemed sufficient disclosure of a retainer
20 practice's obligations under this chapter.

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

25 NEW SECTION. **Sec. 11.** Sections 2 through 10 of this act
26 constitute a new chapter in Title 48 RCW.

--- END ---