

ESHB 1311 - S COMM AMD

By Committee on Health & Long-Term Care

ADOPTED AS AMENDED 04/06/2011

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

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that:

4 (a) Efforts are needed across the health care system to improve the
5 quality and cost-effectiveness of health care services provided in
6 Washington state and to improve care outcomes for patients.

7 (b) Some health care services currently provided in Washington
8 state present significant safety, efficacy, or cost-effectiveness
9 concerns. Substantial variation in practice patterns or high
10 utilization trends can be indicators of poor quality and potential
11 waste in the health care system, without producing better care outcomes
12 for patients.

13 (c) State purchased health care programs should partner with
14 private health carriers, third-party purchasers, and health care
15 providers in shared efforts to improve quality, health outcomes, and
16 cost-effectiveness of care.

17 (2) The legislature declares that collaboration among state
18 purchased health care programs, private health carriers, third-party
19 purchasers, and health care providers to identify appropriate
20 strategies that will increase the effectiveness of health care
21 delivered in Washington state is in the best interest of the public.
22 The legislature therefore intends to exempt from state antitrust laws,
23 and to provide immunity from federal antitrust laws through the state
24 action doctrine, for activities undertaken pursuant to efforts designed
25 and implemented under this act that might otherwise be constrained by
26 such laws. The legislature does not intend and does not authorize any
27 person or entity to engage in activities or to conspire to engage in
28 activities that would constitute per se violations of state and federal
29 antitrust laws including, but not limited to, agreements among

1 competing health care providers or health carriers as to the price or
2 specific level of reimbursement for health care services.

3 (3) The legislature intends that the Robert Bree collaborative
4 established in section 3 of this act provide a mechanism through which
5 public and private health care purchasers, health carriers, and
6 providers can work together to identify effective means to improve
7 quality health outcomes and cost-effectiveness of care. It is not the
8 intent of the legislature to mandate payment or coverage decisions by
9 private health care purchasers or carriers.

10 **Sec. 2.** RCW 70.250.010 and 2009 c 258 s 1 are each amended to read
11 as follows:

12 The definitions in this section apply throughout this chapter
13 unless the context clearly requires otherwise.

14 (1) "Advanced diagnostic imaging services" means magnetic resonance
15 imaging services, computed tomography services, positron emission
16 tomography services, cardiac nuclear medicine services, and similar new
17 imaging services.

18 (2) "Authority" means the Washington state health care authority.

19 (3) "Collaborative" means the Robert Bree collaborative established
20 in section 3 of this act.

21 (4) "Payor" means (~~public purchasers and~~) carriers licensed under
22 chapters 48.21, 48.41, 48.44, 48.46, and 48.62 RCW.

23 (~~(4) "Public purchaser" means the department of social and health~~
24 ~~services, the department of health, the department of labor and~~
25 ~~industries, the authority, and the Washington state health insurance~~
26 ~~pool))~~

27 (5) "Self-funded health plan" means an employer-sponsored health
28 plan or Taft-Hartley plan that is not provided through a fully insured
29 health carrier.

30 ((+5)) (6) "State purchased health care" has the same meaning as
in RCW 41.05.011.

31 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.250 RCW
32 to read as follows:

33 (1) Consistent with the authority granted in RCW 41.05.013, the
34 authority shall convene a collaborative, to be known as the Robert Bree
35 collaborative. The collaborative shall identify health care services
36 for which there are substantial variation in practice patterns or high

1 utilization trends in Washington state, without producing better care
2 outcomes for patients, that are indicators of poor quality and
3 potential waste in the health care system. On an annual basis, the
4 collaborative shall identify up to three health care services it will
5 address.

6 (2) For each health care service identified, the collaborative
7 shall:

8 (a) Analyze and identify evidence-based best practice approaches to
9 improve quality and reduce variation in use of the service, including
10 identification of guidelines or protocols applicable to the health care
11 service. In evaluating guidelines, the collaborative should identify
12 the highest quality guidelines based upon the most rigorous and
13 transparent methods for identification, rating, and translation of
14 evidence into practice recommendations.

15 (b) Identify data collection and reporting necessary to develop
16 baseline health service utilization rates and to measure the impact of
17 strategies adopted under this section. Methods for data collection and
18 reporting should strive to minimize cost and administrative effort
19 related to data collection and reporting wherever possible, including
20 the use of existing data resources and nonfee-based tools for
21 reporting.

22 (c) Identify strategies to increase use of the evidence-based best
23 practice approaches identified under (a) of this subsection in both
24 state purchased and privately purchased health care plans. Strategies
25 considered should include, but are not limited to: Identifying goals
26 for appropriate utilization rates and reduction in practice variation
27 among providers; peer-to-peer consultation or second opinions; provider
28 feedback reports; use of patient decision aids; incentives for
29 appropriate use of health care services; centers of excellence or other
30 provider qualification standards; quality improvement systems; and
31 service utilization and outcomes reporting, including public reporting.
32 In developing strategies, the collaborative should strongly consider
33 related efforts of organizations such as the Puget Sound health
34 alliance, the Washington state hospital association, the national
35 quality forum, the joint commission on accreditation of health care
36 organizations, the national committee for quality assurance, the
37 foundation for health care quality, and, where appropriate, more
38 focused quality improvement efforts, such as the Washington state

1 perinatal advisory committee and the Washington state surgical care and
2 outcomes assessment program. The collaborative shall provide an
3 opportunity for public comment on the strategies chosen before
4 finalizing their recommendations.

5 (3) If the collaborative chooses a health care service for which
6 there is substantial variation in practice patterns or a high or low
7 utilization trend in Washington state, and a lack of evidence-based
8 best practice approaches, it should consider strategies that will
9 promote improved care outcomes, such as patient decision aids, provider
10 feedback reports, centers of excellence or other provider qualification
11 standards, and research to improve care quality and outcomes.

12 (4) The governor shall appoint twenty members of the collaborative,
13 who must include:

14 (a) Two members, selected from health carriers or third-party
15 administrators that have the most fully insured and self-funded covered
16 lives in Washington state. The count of total covered lives includes
17 enrollment in all companies included in their holding company system.
18 Each health carrier or third-party administrator is entitled to no more
19 than a single position on the collaborative to represent all entities
20 under common ownership or control;

21 (b) One member, selected from the health maintenance organization
22 having the most fully insured and self-insured covered lives in
23 Washington state. The count of total lives includes enrollment in all
24 companies included in its holding company system. Each health
25 maintenance organization is entitled to no more than a single position
26 on the collaborative to represent all entities under common ownership
27 or control;

28 (c) One member, chosen from among three nominees submitted by the
29 association of Washington health plans, representing national health
30 carriers that operate in multiple states outside of the Pacific
31 Northwest;

32 (d) Four physicians, selected from lists of nominees submitted by
33 the Washington state medical association, as follows:

34 (i) Two physicians, one of whom must be a practicing primary care
35 physician, representing large multispecialty clinics with fifty or more
36 physicians, selected from a list of five nominees. The primary care
37 physician must be either a family physician, an internal medicine
38 physician, or a general pediatrician; and

1 (ii) Two physicians, one of whom must be a practicing primary care
2 physician, representing clinics with less than fifty physicians,
3 selected from a list of five nominees. The primary care physician must
4 be either a family physician, an internal medicine physician, or a
5 general pediatrician;

6 (e) One osteopathic physician, selected from a list of five
7 nominees submitted by the Washington state osteopathic medical
8 association;

9 (f) Two physicians representing the largest hospital-based
10 physician systems in the state, selected from a list of five nominees
11 submitted jointly by the Washington state medical association and the
12 Washington state hospital association;

13 (g) Three members representing hospital systems, at least one of
14 whom is responsible for quality, submitted from a list of six nominees
15 from the Washington state hospital association;

16 (h) Three members, representing self-funded purchasers of health
17 care services for employees;

18 (i) Two members, representing state purchased health care programs;
19 and

20 (j) One member, representing the Puget Sound health alliance.

21 (5) The governor shall appoint the chair of the collaborative.

22 (6) The collaborative shall add members to its membership or
23 establish clinical committees for each therapy under review by the
24 collaborative for the purpose of acquiring clinical expertise needed to
25 accomplish its responsibilities under this section and RCW 70.250.010
26 and 70.250.030. Membership of clinical committees should reflect
27 clinical expertise in the area of health care services being addressed
28 by the collaborative, including clinicians involved in related quality
29 improvement or comparative effectiveness efforts, as well as
30 nonphysician practitioners.

31 (7) Permanent and ad hoc members of the collaborative or any of its
32 committees may not have personal financial conflicts of interest that
33 could substantially influence or bias their participation. If a
34 collaborative or committee member has a personal financial conflict of
35 interest with respect to a particular health care service being
36 addressed by the collaborative, he or she shall disclose such an
37 interest. The collaborative must determine whether the member should
38 be recused from any deliberations or decisions related to that service.

1 (8) A person serving on the collaborative or any of its clinical
2 committees shall be immune from civil liability, whether direct or
3 derivative, for any decisions made in good faith while pursuing
4 activities associated with the work of collaborative or any of its
5 clinical committees.

6 (9) The guidelines or protocols identified under this section shall
7 not be construed to establish the standard of care or duty of care owed
8 by health care providers in any cause of action occurring as a result
9 of health care.

10 (10) The collaborative shall actively solicit federal or private
11 funds and in-kind contributions necessary to complete its work in a
12 timely fashion. The collaborative shall not accept private funds if
13 receipt of such funding could present a potential conflict of interest
14 or bias in the collaborative's deliberations. Available state funds
15 may be used to support the work of the collaborative when the
16 collaborative has selected a health care service that is a high
17 utilization or high-cost service in state purchased health care
18 programs or the health care service is undergoing evaluation in one or
19 more state purchased health care programs and coordination will reduce
20 duplication of efforts. The collaborative shall not begin the work
21 described in this section unless sufficient funds are received from
22 private or federal resources, or available state funds.

23 (11) No member of the collaborative or its committees may be
24 compensated for his or her service.

25 (12) The proceedings of the collaborative shall be open to the
26 public and notice of meetings shall be provided at least twenty days
27 prior to a meeting.

28 (13) The collaborative shall report to the administrator of the
29 authority regarding the health services areas it has chosen and
30 strategies proposed. The administrator shall review the strategies
31 recommended in the report, giving strong consideration to the direction
32 provided in section 1 of this act and this section. The
33 administrator's review shall describe the outcomes of the review and
34 any decisions related to adoption of the recommended strategies by
35 state purchased health care programs. Following the administrator's
36 review, the collaborative shall report to the legislature and the
37 governor regarding chosen health services, proposed strategies, the
38 results of the administrator's review, and available information

1 related to the impact of strategies adopted in the previous three years
2 on the cost and quality of care provided in Washington state. The
3 initial report must be submitted by November 15, 2011, with annual
4 reports thereafter.

5 **Sec. 4.** RCW 70.250.030 and 2009 c 258 s 3 are each amended to read
6 as follows:

7 (1) No later than September 1, 2009, all state purchased health
8 care programs shall, except for state purchased health care services
9 that are purchased from or through health carriers as defined in RCW
10 48.43.005, implement evidence-based best practice guidelines or
11 protocols applicable to advanced diagnostic imaging services, and the
12 decision support tools to implement the guidelines or protocols,
13 identified under ((RCW 70.250.020)) section 3 of this act.

14 (2) By January 1, 2012, and every January 1st thereafter, all state
15 purchased health care programs must implement the evidence-based best
16 practice guidelines or protocols and strategies identified under
17 section 3 of this act, after the administrator, in consultation with
18 participating agencies, has affirmatively reviewed and endorsed the
19 recommendations. This requirement applies to health carriers, as
20 defined in RCW 48.43.005 and to entities acting as third-party
21 administrators that contract with state purchased health care programs
22 to provide or administer health benefits for enrollees of those
23 programs. If the collaborative fails to reach consensus within the
24 time frames identified in this section and section 3 of this act, state
25 purchased health care programs may pursue implementation of evidence-
26 based strategies on their own initiative.

27 NEW SECTION. **Sec. 5.** RCW 70.250.020 (Work group--Members--
28 Duties--Report--Expiration of work group) and 2009 c 258 s 2 are each
29 repealed."

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1 On page 1, line 3 of the title, after "state;" strike the remainder
2 of the title and insert "amending RCW 70.250.010 and 70.250.030; adding
3 a new section to chapter 70.250 RCW; creating a new section; and
4 repealing RCW 70.250.020."

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