Z-0404.2

SENATE BILL 5122

State of Washington 62nd Legislature 2011 Regular Session

By Senators Keiser and Kline; by request of Insurance Commissioner

Read first time 01/14/11. Referred to Committee on Health & Long-Term Care.

AN ACT Relating to health care insurance; amending RCW 48.20.435, 48.21.270, 48.43.093, 48.43.530, 48.43.535, 48.44.215, 48.44.380, 48.46.325, 48.46.460, 48.20.025, 48.44.017, and 48.46.062; reenacting and amending RCW 48.43.005; and providing an effective date.

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

Sec. 1. RCW 48.20.435 and 2007 c 259 s 19 are each amended to read as follows:

Any disability insurance contract that provides coverage for a subscriber's dependent must offer the option of covering any ((~~unmarried~~)) dependent under the age of ((~~twenty-five~~)) <u>twenty-six</u>.

Sec. 2. RCW 48.21.270 and 1984 c 190 s 4 are each amended to read as follows:

(1) An insurer shall not require proof of insurability as a condition for issuance of the conversion policy.

(2) A conversion policy may not contain an exclusion for preexisting conditions ((~~except~~)) <u>for any applicant who is under age nineteen. For policies issued to those age nineteen and older, an</u>

exclusion for a preexisting condition is permitted only to the extent that a waiting period for a preexisting condition has not been satisfied under the group policy.

(3) An insurer must offer at least three policy benefit plans that comply with the following:

(a) A major medical plan with a five thousand dollar deductible ((~~and a lifetime benefit maximum of two hundred fifty thousand dollars~~)) per person;

(b) A comprehensive medical plan with a five hundred dollar deductible ((~~and a lifetime benefit maximum of five hundred thousand dollars~~)) per person; and

(c) A basic medical plan with a one thousand dollar deductible ((~~and a lifetime maximum of seventy-five thousand dollars~~)) per person.

(4) The insurance commissioner may revise the ((~~deductibles and lifetime benefit~~)) deductible amounts in subsection (3) of this section from time to time to reflect changing health care costs.

(5) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion policies.

(6) The commissioner shall adopt rules to establish specific standards for conversion policy provisions. These rules may include but are not limited to:

(a) Terms of renewability;

(b) Nonduplication of coverage;

(c) Benefit limitations, exceptions, and reductions; and

(d) Definitions of terms.

Sec. 3. RCW 48.43.005 and 2010 c 292 s 1 are each reenacted and amended to read as follows:

Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Adverse benefit determination" means an adverse benefit determination as defined in 29 C.F.R. 2560.503-1 (2010), as well as any rescission of coverage, whether or not, in connection with the

rescission, there is an adverse effect on any particular benefit at that time.

(3) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

((~~(3)~~)) (4) "Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)(e).

((~~(4)~~)) (5) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

((~~(5)~~)) (6) "Catastrophic health plan" means:

(a) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand seven hundred fifty dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least three thousand five hundred dollars, both amounts to be adjusted annually by the insurance commissioner; and

(b) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, three thousand five hundred dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least six thousand dollars, both amounts to be adjusted annually by the insurance commissioner; or

(c) Any health benefit plan that provides benefits for hospital inpatient and outpatient services, professional and prescription drugs provided in conjunction with such hospital inpatient and outpatient services, and excludes or substantially limits outpatient physician services and those services usually provided in an office setting.

In July 2008, and in each July thereafter, the insurance commissioner shall adjust the minimum deductible and out-of-pocket expense required for a plan to qualify as a catastrophic plan to reflect the percentage change in the consumer price index for medical care for a preceding twelve months, as determined by the United States department of labor. The adjusted amount shall apply on the following January 1st.

(((6))) (7) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

(((7))) (8) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

(((8))) (9) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

(((9))) (10) "Dependent" means, at a minimum, the enrollee's legal spouse and unmarried dependent children who qualify for coverage under the enrollee's health benefit plan.

(((10))) (11) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(((11))) (12) "Emergency services" means ((otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department)) a medical screening examination, as required under section 1867 of the social security act (42 U.S.C. 1395dd), that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate that emergency medical condition, and further medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under section 1867 of the social security act (42 U.S.C. 1395dd) to stabilize the patient. Stabilize, with respect to an emergency medical condition, has the meaning given in section 1867(e)(3) of the social security act (42 U.S.C. 1395dd(e)(3)).

(((12))) (13) "Employee" has the same meaning given to the term, as

of January 1, 2008, under section 3(6) of the federal employee retirement income security act of 1974.

((~~(13)~~)) (14) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

((~~(14)~~)) (15) "Final external review decision" means a determination by an independent review organization at the conclusion of an external review.

(16) "Final internal adverse benefit determination" means an adverse benefit determination that has been upheld by a plan or carrier at the completion of the internal appeals process, or an adverse benefit determination with respect to which the internal appeals process has been exhausted under the exhaustion rules described in RCW 48.43.530 and 48.43.535.

(17) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding: (a) Denial of payment for medical services or nonprovision of medical services included in the covered person's health benefit plan, or (b) service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

((~~(15)~~)) (18) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

((~~(16)~~)) (19) "Health care provider" or "provider" means:

1 (a) A person regulated under Title 18 or chapter 70.127 RCW, to
2 practice health or health-related services or otherwise practicing
3 health care services in this state consistent with state law; or
4 (b) An employee or agent of a person described in (a) of this
5 subsection, acting in the course and scope of his or her employment.
6 ((~~(17)~~)) (20) "Health care service" means that service offered or
7 provided by health care facilities and health care providers relating
8 to the prevention, cure, or treatment of illness, injury, or disease.
9 ((~~(18)~~)) (21) "Health carrier" or "carrier" means a disability
10 insurer regulated under chapter 48.20 or 48.21 RCW, a health care
11 service contractor as defined in RCW 48.44.010, or a health maintenance
12 organization as defined in RCW 48.46.020.
13 ((~~(19)~~)) (22) "Health plan" or "health benefit plan" means any
14 policy, contract, or agreement offered by a health carrier to provide,
15 arrange, reimburse, or pay for health care services except the
16 following:
17 (a) Long-term care insurance governed by chapter 48.84 or 48.83
18 RCW;
19 (b) Medicare supplemental health insurance governed by chapter
20 48.66 RCW;
21 (c) Coverage supplemental to the coverage provided under chapter
22 55, Title 10, United States Code;
23 (d) Limited health care services offered by limited health care
24 service contractors in accordance with RCW 48.44.035;
25 (e) Disability income;
26 (f) Coverage incidental to a property/casualty liability insurance
27 policy such as automobile personal injury protection coverage and
28 homeowner guest medical;
29 (g) Workers' compensation coverage;
30 (h) Accident only coverage;
31 (i) Specified disease or illness-triggered fixed payment insurance,
32 hospital confinement fixed payment insurance, or other fixed payment
33 insurance offered as an independent, noncoordinated benefit;
34 (j) Employer-sponsored self-funded health plans;
35 (k) Dental only and vision only coverage; and
36 (l) Plans deemed by the insurance commissioner to have a short-term
37 limited purpose or duration, or to be a student-only plan that is
38 guaranteed renewable while the covered person is enrolled as a regular

full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

((~~(20)~~)) (23) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

((~~(21)~~)) (24) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

((~~(22)~~)) (25) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

((~~(23)~~)) (26) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and entities affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

((~~(24)~~)) (27) "Small employer" or "small group" means any person, firm, corporation, partnership, association, political subdivision, sole proprietor, or self-employed individual that is actively engaged in business that employed an average of at least one but no more than fifty employees, during the previous calendar year and employed at least one employee on the first day of the plan year, is not formed primarily for purposes of buying health insurance, and in which a bona fide employer-employee relationship exists. In determining the number of employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary

following the date the small employer no longer meets the requirements of this definition. A self-employed individual or sole proprietor who is covered as a group of one must also: (a) Have been employed by the same small employer or small group for at least twelve months prior to application for small group coverage, and (b) verify that he or she derived at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year, except a self-employed individual or sole proprietor in an agricultural trade or business, must have derived at least fifty-one percent of his or her income from the trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, for the previous taxable year.

((~~(25)~~)) (28) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

((~~(26)~~)) (29) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs.

Sec. 4. RCW 48.43.093 and 1997 c 231 s 301 are each amended to read as follows:

(1) ((~~When conducting a review of the necessity and appropriateness of emergency services or making a benefit determination for emergency services:~~))

(a) A health carrier ((~~shall~~)) must cover emergency services necessary to screen and stabilize a covered person if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. In addition, a health carrier ((~~shall~~)) must not require prior authorization of such services provided prior to

the point of stabilization if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. ((~~With respect to care obtained from a nonparticipating hospital emergency department, a health carrier shall cover emergency services necessary to screen and stabilize a covered person if a prudent layperson would have reasonably believed that use of a participating hospital emergency department would result in a delay that would worsen the emergency, or if a provision of federal, state, or local law requires the use of a specific provider or facility. In addition, a health carrier shall not require prior authorization of such services provided prior to the point of stabilization if a prudent layperson acting reasonably would have believed that an emergency medical condition existed and that use of a participating hospital emergency department would result in a delay that would worsen the emergency.~~

~~(b) If an authorized representative of a health carrier authorizes coverage of emergency services, the health carrier shall not subsequently retract its authorization after the emergency services have been provided, or reduce payment for an item or service furnished in reliance on approval, unless the approval was based on a material misrepresentation about the covered person's health condition made by the provider of emergency services.~~))

(b) Emergency services must be provided without the need for any prior authorization determination, even if the emergency services are provided on an out-of-network basis.

(c) Coverage of emergency services ((~~may be subject to applicable copayments, coinsurance, and deductibles, and a health carrier may impose reasonable differential cost-sharing arrangements for emergency services rendered by nonparticipating providers, if such differential between cost-sharing amounts applied to emergency services rendered by participating provider versus nonparticipating provider does not exceed fifty dollars. Differential cost sharing for emergency services may not be applied when a covered person presents to a nonparticipating hospital emergency department rather than a participating hospital emergency department when the health carrier requires preauthorization for postevaluation or poststabilization emergency services if:~~

~~(i) Due to circumstances beyond the covered person's control, the covered person was unable to go to a participating hospital emergency~~

~~department in a timely fashion without serious impairment to the covered person's health; or~~

~~(ii) A prudent layperson possessing an average knowledge of health and medicine would have reasonably believed that he or she would be unable to go to a participating hospital emergency department in a timely fashion without serious impairment to the covered person's health.~~

~~(d) If a health carrier requires preauthorization for postevaluation or poststabilization services, the health carrier shall provide access to an authorized representative twenty-four hours a day, seven days a week, to facilitate review. In order for postevaluation or poststabilization services to be covered by the health carrier, the provider or facility must make a documented good faith effort to contact the covered person's health carrier within thirty minutes of stabilization, if the covered person needs to be stabilized. The health carrier's authorized representative is required to respond to a telephone request for preauthorization from a provider or facility within thirty minutes. Failure of the health carrier to respond within thirty minutes constitutes authorization for the provision of immediately required medically necessary postevaluation and poststabilization services, unless the health carrier documents that it made a good faith effort but was unable to reach the provider or facility within thirty minutes after receiving the request.~~

~~(e) A health carrier shall immediately arrange for an alternative plan of treatment for the covered person if a nonparticipating emergency provider and health plan cannot reach an agreement on which services are necessary beyond those immediately necessary to stabilize the covered person consistent with state and federal laws~~)) must be provided without regard to any other term or condition of the coverage other than:

(i) The exclusion or coordination of benefits;

(ii) An affiliation or waiting period permitted under part 7 of the federal employee retirement income security act, part A of Title XXVII of the public health service act, or chapter 100 of the internal revenue code; or

(iii) Applicable cost sharing.

(d) Any cost-sharing requirement expressed as a copayment amount or coinsurance rate imposed with respect to a participant or beneficiary

for out-of-network emergency services cannot exceed the cost-sharing requirement imposed with respect to a participant or beneficiary if the services were provided in-network.

(i) A participant or beneficiary may be required to pay, in addition to the in-network cost sharing, the excess of the amount the out-of-network provider charges over the amount the carrier negotiated to pay to its in-network provider for the emergency service provided, excluding any in-network copayment or coinsurance imposed with respect to the participant or beneficiary.

(ii)(A) If there is more than one amount negotiated with in-network providers for the emergency service, the amount described under this subsection (1)(d) is the median of these amounts, excluding any in-network copayment or coinsurance imposed with respect to the participant or beneficiary.

(B) In determining the median described in (d)(ii)(A) of this subsection, the amount negotiated with each in-network provider is treated as a separate amount, even if the same amount is paid to more than one provider.

(iii) If there is no per-service amount negotiated with in-network providers such as under a capitation or other similar payment arrangement, either the amount for the emergency service is calculated using the same method the carrier generally uses to determine payments for out-of-network services, such as the usual, customary, and reasonable amount, excluding any in-network copayment or coinsurance imposed with respect to the participant or beneficiary. The amount in this subsection (1) is determined without reduction for out-of-network cost sharing that generally applies with respect to out-of-network services, or the amount for emergency service may be calculated using the amount that would be paid under medicare, part A or part B of Title XVIII of the social security act, 42 U.S.C. 1395 et seq., for the emergency service, excluding any in-network copayment or coinsurance imposed with respect to the participant or beneficiary.

(iv) Any cost-sharing requirement other than a copayment or coinsurance requirement, such as a deductible or out-of-pocket maximum, may be imposed with respect to emergency services provided out of network if the cost-sharing requirement generally applies to out-of-network benefits. A deductible may be imposed with respect to out-of-network emergency services only as part of a deductible that generally

applies to out-of-network benefits. If an out-of-pocket maximum generally applies to out-of-network benefits, that out-of-pocket maximum must apply to out-of-network emergency services.

(2) Nothing in this section is to be construed as prohibiting the health carrier from requiring notification within the time frame specified in the contract for inpatient admission or as soon thereafter as medically possible but no less than twenty-four hours. Nothing in this section is to be construed as preventing the health carrier from reserving the right to require transfer of a hospitalized covered person upon stabilization. Follow-up care that is a direct result of the emergency must be obtained in accordance with the health plan's usual terms and conditions of coverage. All other terms and conditions of coverage may be applied to emergency services.

Sec. 5. RCW 48.43.530 and 2000 c 5 s 10 are each amended to read as follows:

(1) Each carrier that offers a health plan must have a fully operational, comprehensive grievance process that complies with the requirements of this section and any rules adopted by the commissioner to implement this section. For the purposes of this section, the commissioner shall consider grievance process standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services, and as approved by the United States department of health and human services or the United States department of labor.

(2) Each carrier must process as a complaint an enrollee's expression of dissatisfaction about customer service or the quality or availability of a health service. Each carrier must implement procedures for registering and responding to oral and written complaints in a timely and thorough manner.

(3) Each carrier must provide written notice to an enrollee or the enrollee's designated representative, and the enrollee's provider, of its decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including the admission to or continued stay in a health care facility.

(4) Each carrier must process as an appeal an enrollee's written or oral request that the carrier reconsider: (a) Its resolution of a complaint made by an enrollee; or (b) its decision to deny, modify,

reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including the admission to, or continued stay in, a health care facility. A carrier must not require that an enrollee file a complaint prior to seeking appeal of a decision under (b) of this subsection.

(5) To process an appeal, each carrier must:

(a) Provide written notice to the enrollee when the appeal is received;

(b) Assist the enrollee with the appeal process;

(c) Make its decision regarding the appeal within thirty days of the date the appeal is received. An appeal must be expedited if the enrollee's provider or the carrier's medical director reasonably determines that following the appeal process response timelines could seriously jeopardize the enrollee's life, health, or ability to regain maximum function. The decision regarding an expedited appeal must be made within seventy-two hours of the date the appeal is received;

(d) Cooperate with a representative authorized in writing by the enrollee;

(e) Consider information submitted by the enrollee;

(f) Investigate and resolve the appeal; and

(g) Provide written notice of its resolution of the appeal to the enrollee and, with the permission of the enrollee, to the enrollee's providers. The written notice must explain the carrier's decision and the supporting coverage or clinical reasons and the enrollee's right to request independent review of the carrier's decision under RCW 48.43.535.

(6) Written notice required by subsection (3) of this section must explain in a culturally and linguistically appropriate manner that complies with the standards established by the United States department of health and human services or the United States department of labor:

(a) The carrier's decision and the supporting coverage or clinical reasons; ((~~and~~))

(b) The carrier's appeal process, including information, as appropriate, about how to exercise the enrollee's rights to obtain a second opinion, and how to continue receiving services as provided in this section;

(c) Sufficient information to identify the claim involved,

including the date of service, the health care provider, the claim amount, if applicable, the diagnosis code and its corresponding meaning, and the treatment code and its corresponding meaning; and

(d) The reason or reasons for the adverse benefit determination or final internal adverse benefit determination, including the denial code and its corresponding meaning, as well as the description of the plan's or carrier's standard that was used in denying the claim. When the decision is a final internal adverse benefit determination, the description must include a discussion of the decision.

(7) When an enrollee requests that the carrier reconsider its decision to modify, reduce, or terminate an otherwise covered health service that an enrollee is receiving through the health plan and the carrier's decision is based upon a finding that the health service, or level of health service, is no longer medically necessary or appropriate, the carrier must continue to provide that health service until the appeal is resolved. If the resolution of the appeal or any review sought by the enrollee under RCW 48.43.535 affirms the carrier's decision, the enrollee may be responsible for the cost of this continued health service.

(8) Each carrier must provide a clear explanation of the grievance process upon request, upon enrollment to new enrollees, and annually to enrollees and subcontractors. The information provided must include information for any applicable office of health insurance consumer assistance or ombudsman established under section 2793 of the public health service act to assist individuals with the internal claims and appeals and external review processes.

(9) Each carrier must ensure that the grievance process is accessible to enrollees who are limited English speakers, who have literacy problems, or who have physical or mental disabilities that impede their ability to file a grievance.

(10) Each carrier must: Track each appeal until final resolution; maintain, and make accessible to the commissioner for a period of three years, a log of all appeals; and identify and evaluate trends in appeals.

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

(1) There is a need for a process for the fair consideration of

disputes relating to decisions by carriers that offer a health plan to deny, modify, reduce, or terminate coverage of or payment for health care services for an enrollee.

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

(3) The commissioner must establish and use a rotational registry system for the assignment of a certified independent review organization to each dispute. The system should be flexible enough to ensure that an independent review organization has the expertise necessary to review the particular medical condition or service at issue in the dispute, and that any approved independent review organization does not have a conflict of interest that will influence its independence.

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

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

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

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

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

(5) Claimants must be provided with at least five business days to submit to the independent review organization in writing additional information that the independent review organization must consider when conducting the external review. The independent review organization

must forward any additional information submitted by a claimant to the plan or carrier within one business day of receipt by the independent review organization.

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

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

(((7))) (a) The independent review organization must provide written notice to the claimant and the plan or carrier of its decision to uphold or reverse the adverse benefit determination or internal adverse benefit determination within no more than forty-five days after its receipt of the request for external review.

(b) A claimant or carrier may request an expedited external review if the adverse benefit determination or internal adverse benefit determination concerns an admission, availability of care, continued stay, or health care service for which the claimant received emergency services but has not been discharged from a facility; or involves a medical condition for which the standard external review time frame of forty-five days would seriously jeopardize the life or health of the claimant or jeopardize the claimant's ability to regain maximum function. The independent review organization must make its decision to uphold or reverse the adverse benefit determination or final internal adverse benefit determination and notify the claimant and the

1 carrier or plan of the determination as expeditiously as possible but
2 within not more than seventy-two hours after the receipt of the request
3 for expedited external review. If the notice is not in writing, the
4 independent review organization must provide written confirmation of
5 the decision within forty-eight hours after the date of the notice of
6 the decision.

7 (c) For claims involving experimental or investigational
8 treatments, the internal review organization must ensure that adequate
9 clinical and scientific experience and protocols are taken into account
10 as part of the external review process.

11 (8) Carriers must timely implement the certified independent review
12 organization's determination, and must pay the certified independent
13 review organization's charges.

14 (((8))) (9) When an enrollee requests independent review of a
15 dispute under this section, and the dispute involves a carrier's
16 decision to modify, reduce, or terminate an otherwise covered health
17 service that an enrollee is receiving at the time the request for
18 review is submitted and the carrier's decision is based upon a finding
19 that the health service, or level of health service, is no longer
20 medically necessary or appropriate, the carrier must continue to
21 provide the health service if requested by the enrollee until a
22 determination is made under this section. If the determination affirms
23 the carrier's decision, the enrollee may be responsible for the cost of
24 the continued health service.

25 (((9))) (10) Each certified independent review organization must
26 maintain written records and make them available upon request to the
27 commissioner.

28 (11) A certified independent review organization may notify the
29 office of the insurance commissioner if, based upon its review of
30 disputes under this section, it finds a pattern of substandard or
31 egregious conduct by a carrier.

32 (((10))) (12)(a) The commissioner shall adopt rules to implement
33 this section after considering relevant standards adopted by national
34 managed care accreditation organizations and the national association
35 of insurance commissioners.

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

Sec. 7. RCW 48.44.215 and 2007 c 259 s 21 are each amended to read as follows:

(1) Any individual health care service plan contract that provides coverage for a subscriber's dependent must offer the option of covering any ((~~unmarried~~)) dependent under the age of ((~~twenty-five~~)) twenty-six.

(2) Any group health care service plan contract that provides coverage for a participating member's dependent must offer each participating member the option of covering any ((~~unmarried~~)) dependent under the age of ((~~twenty-five~~)) twenty-six.

Sec. 8. RCW 48.44.380 and 1984 c 190 s 7 are each amended to read as follows:

(1) A health care service contractor shall not require proof of insurability as a condition for issuance of the conversion contract.

(2) A conversion contract may not contain an exclusion for preexisting conditions ((~~except~~)) for any applicant who is under age nineteen. For policies issued to those age nineteen and older, an exclusion for a preexisting condition is permitted only to the extent that a waiting period for a preexisting condition has not been satisfied under the group contract.

(3) A health care service contractor must offer at least three contract benefit plans that comply with the following:

(a) A major medical plan with a five thousand dollar deductible ((~~and a lifetime benefit maximum of two hundred fifty thousand dollars~~)) per person;

(b) A comprehensive medical plan with a five hundred dollar deductible ((~~and a lifetime benefit maximum of five hundred thousand dollars~~)) per person; and

(c) A basic medical plan with a one thousand dollar deductible ((~~and a lifetime maximum of seventy-five thousand dollars~~)) per person.

(4) The insurance commissioner may revise the ((~~deductibles and lifetime benefit~~)) deductible amounts in subsection (3) of this section from time to time to reflect changing health care costs.

(5) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion contracts.

(6) The commissioner shall adopt rules to establish specific

standards for conversion contract provisions. These rules may include but are not limited to:

(a) Terms of renewability;

(b) Nonduplication of coverage;

(c) Benefit limitations, exceptions, and reductions; and

(d) Definitions of terms.

Sec. 9. RCW 48.46.325 and 2007 c 259 s 22 are each amended to read as follows:

(1) Any individual health maintenance agreement that provides coverage for a subscriber's dependent must offer the option of covering any ((~~unmarried~~)) dependent under the age of ((~~twenty-five~~)) twenty-six.

(2) Any group health maintenance agreement that provides coverage for a participating member's dependent must offer each participating member the option of covering any unmarried dependent under the age of ((~~twenty-five~~)) twenty-six.

Sec. 10. RCW 48.46.460 and 1984 c 190 s 10 are each amended to read as follows:

(1) A health maintenance organization must offer a conversion agreement for comprehensive health care services and shall not require proof of insurability as a condition for issuance of the conversion agreement.

(2) A conversion agreement may not contain an exclusion for preexisting conditions ((~~except~~)) for an applicant who is under age nineteen. For policies issued to those age nineteen and older, an exclusion for a preexisting condition is permitted only to the extent that a waiting period for a preexisting condition has not been satisfied under the group agreement.

(3) A conversion agreement need not provide benefits identical to those provided under the group agreement. The conversion agreement may contain provisions requiring the person covered by the conversion agreement to pay reasonable deductibles and copayments, except for preventive service benefits as defined in 45 C.F.R. 147.130 (2010), implementing sections 2701 through 2763, 2791, and 2792 of the public health service act (42 U.S.C. 300gg through 300gg-63, 300gg-91, and 300gg-92), as amended.

(4) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion agreements.

(5) The commissioner shall adopt rules to establish specific standards for conversion agreement provisions. These rules may include but are not limited to:

(a) Terms of renewability;

(b) Nonduplication of coverage;

(c) Benefit limitations, exceptions, and reductions; and

(d) Definitions of terms.

Sec. 11. RCW 48.20.025 and 2008 c 303 s 4 are each amended to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the insurer of health care services, as defined in RCW 48.43.005, provided to a policyholder or paid to or on behalf of the policyholder in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for a policyholder.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Declination rate" for an insurer means the percentage of the total number of applicants for individual health benefit plans received by that insurer in the aggregate in the applicable year which are not accepted for enrollment by that insurer based on the results of the standard health questionnaire administered pursuant to RCW 48.43.018(2)(a).

(d) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(e) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(f) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(g) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) An insurer must file supporting documentation of its method of determining the rates charged for its individual health benefit plans. At a minimum, the insurer must provide the following supporting documentation:

(a) A description of the insurer's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the insurer's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard of seventy-four percent, minus the premium tax rate applicable to the insurer's individual health benefit plans under RCW 48.14.020.

((~~(3) By the last day of May each year any insurer issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio and its actual declination rate for its individual health benefit plans offered or renewed in the state in aggregate for the preceding calendar year. The filing shall include aggregate earned premiums, aggregate incurred claims, and a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.~~

~~(a) At the expiration of a thirty-day period beginning with the date the filing is received by the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.~~

~~(b) If the commissioner contests the calculation of the actual loss~~

~~ratio, the commissioner shall state in writing the grounds for contesting the calculation to the insurer.~~

~~(c) Any dispute regarding the calculation of the actual loss ratio shall, upon written demand of either the commissioner or the insurer, be submitted to hearing under chapters 48.04 and 34.05 RCW.~~

~~(4) If the actual loss ratio for the preceding calendar year is less than the loss ratio established in subsection (5) of this section, a remittance is due and the following shall apply:~~

~~(a) The insurer shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (5) of this section.~~

~~(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.~~

~~(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.~~

~~(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (3)(a) of this section or the determination by an administrative law judge under subsection (3)(c) of this section.~~

~~(5) The loss ratio applicable to this section shall be the percentage set forth in the following schedule that correlates to the insurer's actual declination rate in the preceding year, minus the premium tax rate applicable to the insurer's individual health benefit plans under RCW 48.14.020.~~

~~Actual Declination Rate~~	~~Loss Ratio~~
~~Under Six Percent (6%)~~	~~Seventy-Four Percent (74%)~~
~~Six Percent (6%) or more (but less than Seven Percent)~~	~~Seventy-Five Percent (75%)~~
~~Seven Percent (7%) or more (but less than Eight Percent)~~	~~Seventy-Six Percent (76%)~~
~~Eight Percent (8%) or more~~	~~Seventy-Seven Percent (77%)~~))

1 **Sec. 12.** RCW 48.44.017 and 2008 c 303 s 5 are each amended to read
2 as follows:
3 (1) The definitions in this subsection apply throughout this
4 section unless the context clearly requires otherwise.
5 (a) "Claims" means the cost to the health care service contractor
6 of health care services, as defined in RCW 48.43.005, provided to a
7 contract holder or paid to or on behalf of a contract holder in
8 accordance with the terms of a health benefit plan, as defined in RCW
9 48.43.005. This includes capitation payments or other similar payments
10 made to providers for the purpose of paying for health care services
11 for an enrollee.
12 (b) "Claims reserves" means: (i) The liability for claims which
13 have been reported but not paid; (ii) the liability for claims which
14 have not been reported but which may reasonably be expected; (iii)
15 active life reserves; and (iv) additional claims reserves whether for
16 a specific liability purpose or not.
17 (c) "Declination rate" for a health care service contractor means
18 the percentage of the total number of applicants for individual health
19 benefit plans received by that health care service contractor in the
20 aggregate in the applicable year which are not accepted for enrollment
21 by that health care service contractor based on the results of the
22 standard health questionnaire administered pursuant to RCW
23 48.43.018(2)(a).
24 (d) "Earned premiums" means premiums, as defined in RCW 48.43.005,
25 plus any rate credits or recoupments less any refunds, for the
26 applicable period, whether received before, during, or after the
27 applicable period.
28 (e) "Incurred claims expense" means claims paid during the
29 applicable period plus any increase, or less any decrease, in the
30 claims reserves.
31 (f) "Loss ratio" means incurred claims expense as a percentage of
32 earned premiums.
33 (g) "Reserves" means: (i) Active life reserves; and (ii)
34 additional reserves whether for a specific liability purpose or not.
35 (2) A health care service contractor must file supporting
36 documentation of its method of determining the rates charged for its
37 individual contracts. At a minimum, the health care service contractor
38 must provide the following supporting documentation:

(a) A description of the health care service contractor's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the health care service contractor's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard of seventy-four percent, minus the premium tax rate applicable to the carrier's individual health benefit plans under RCW 48.14.0201.

((~~(3) By the last day of May each year any health care service contractor issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio and its actual declination rate for its individual health benefit plans offered or renewed in this state in aggregate for the preceding calendar year. The filing shall include aggregate earned premiums, aggregate incurred claims, and a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.~~

~~(a) At the expiration of a thirty-day period beginning with the date the filing is received by the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.~~

~~(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the health care service contractor.~~

~~(c) Any dispute regarding the calculation of the actual loss ratio shall upon written demand of either the commissioner or the health care service contractor be submitted to hearing under chapters 48.04 and 34.05 RCW.~~

~~(4) If the actual loss ratio for the preceding calendar year is~~

~~less than the loss ratio standard established in subsection (5) of this section, a remittance is due and the following shall apply:~~

~~(a) The health care service contractor shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (5) of this section.~~

~~(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.~~

~~(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.~~

~~(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (3)(a) of this section or the determination by an administrative law judge under subsection (3)(c) of this section.~~

~~(5) The loss ratio applicable to this section shall be the percentage set forth in the following schedule that correlates to the health care service contractor's actual declination rate in the preceding year, minus the premium tax rate applicable to the health care service contractor's individual health benefit plans under RCW 48.14.0201.~~

~~Actual Declination Rate~~	~~Loss Ratio~~
~~Under Six Percent (6%)~~	~~Seventy-Four Percent (74%)~~
~~Six Percent (6%) or more (but less than Seven Percent)~~	~~Seventy-Five Percent (75%)~~
~~Seven Percent (7%) or more (but less than Eight Percent)~~	~~Seventy-Six Percent (76%)~~
~~Eight Percent (8%) or more~~	~~Seventy-Seven Percent (77%)~~))

Sec. 13. RCW 48.46.062 and 2008 c 303 s 6 are each amended to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the health maintenance organization of health care services, as defined in RCW 48.43.005, provided to an

enrollee or paid to or on behalf of the enrollee in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for an enrollee.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Declination rate" for a health maintenance organization means the percentage of the total number of applicants for individual health benefit plans received by that health maintenance organization in the aggregate in the applicable year which are not accepted for enrollment by that health maintenance organization based on the results of the standard health questionnaire administered pursuant to RCW 48.43.018(2)(a).

(d) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(e) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(f) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(g) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) A health maintenance organization must file supporting documentation of its method of determining the rates charged for its individual agreements. At a minimum, the health maintenance organization must provide the following supporting documentation:

(a) A description of the health maintenance organization's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the health maintenance organization's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard of seventy-four percent, minus the premium tax rate applicable to the carrier's individual health benefit plans under RCW 48.14.0201.

((~~(3) By the last day of May each year any health maintenance organization issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio and its actual declination rate for its individual health benefit plans offered or renewed in the state in aggregate for the preceding calendar year. The filing shall include aggregate earned premiums, aggregate incurred claims, and a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.~~

~~(a) At the expiration of a thirty-day period beginning with the date the filing is received by the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.~~

~~(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the health maintenance organization.~~

~~(c) Any dispute regarding the calculation of the actual loss ratio shall, upon written demand of either the commissioner or the health maintenance organization, be submitted to hearing under chapters 48.04 and 34.05 RCW.~~

~~(4) If the actual loss ratio for the preceding calendar year is less than the loss ratio standard established in subsection (5) of this section, a remittance is due and the following shall apply:~~

~~(a) The health maintenance organization shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (5) of this section.~~

~~(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.~~

~~(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.~~

~~(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (3)(a) of this section or the determination by an administrative law judge under subsection (3)(c) of this section.~~

~~(5) The loss ratio applicable to this section shall be the percentage set forth in the following schedule that correlates to the health maintenance organization's actual declination rate in the preceding year, minus the premium tax rate applicable to the health maintenance organization's individual health benefit plans under RCW 48.14.0201.~~

~~Actual Declination Rate~~	~~Loss Ratio~~
~~Under Six Percent (6%)~~	~~Seventy-Four Percent (74%)~~
~~Six Percent (6%) or more (but less than Seven Percent)~~	~~Seventy-Five Percent (75%)~~
~~Seven Percent (7%) or more (but less than Eight Percent)~~	~~Seventy-Six Percent (76%)~~
~~Eight Percent (8%) or more~~	~~Seventy-Seven Percent (77%)~~))

NEW SECTION. **Sec. 14.** Sections 11 through 13 of this act take effect January 1, 2012.

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