

SENATE BILL REPORT

E2SSB 5215

As Amended by House, April 11, 2013

Title: An act relating to health care professionals contracting with public and private payors.

Brief Description: Concerning health care professionals contracting with public and private payors.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Becker, Holmquist Newbry, Ericksen, Dammeier, Honeyford and Schlicher).

Brief History:

Committee Activity: Health Care: 1/31/13, 2/21/13 [DPS-WM].

Ways & Means: 2/28/13, 3/01/13 [DP2S, DNP, w/oRec].

Passed Senate: 3/12/13, 49-0.

Passed House: 4/11/13, 97-0.

SENATE COMMITTEE ON HEALTH CARE

Majority Report: That Substitute Senate Bill No. 5215 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Becker, Chair; Dammeier, Vice Chair; Keiser, Ranking Member; Bailey, Cleveland, Ericksen, Frockt, Parlette and Schlicher.

Staff: Mich'l Needham (786-7442)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5215 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Honeyford, Capital Budget Chair; Hargrove, Ranking Member; Bailey, Becker, Braun, Dammeier, Hatfield, Hewitt, Keiser, Padden, Parlette, Ranker, Rivers, Schoesler and Tom.

Minority Report: Do not pass.

Signed by Senators Nelson, Assistant Ranking Member; Murray.

Minority Report: That it be referred without recommendation.

Signed by Senators Conway and Kohl-Welles.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Michael Bezanson (786-7449)

Background: The contractual agreements between health care providers and insurance carriers or third-party payors are privately negotiated contractual agreements. The Office of the Insurance Commissioner (OIC) requires insurance carriers to report their master list of participating providers to review network adequacy, but OIC does not have regulatory authority over the terms of the agreement in other cases. Public programs contract with insurance carriers in some cases, and directly with providers with their own contract terms and reimbursement agreements. Providers are not required by law to sign contracts as participating providers with insurance carriers or public programs. Some contracts include provisions that require providers to accept changes and may require providers to contract with all products offered by the third-party payor.

Summary of Engrossed Second Substitute Bill: Third-party payors must provide 60 days' notice to health care providers of any material amendments to the health care provider's contract with the third-party payor. Any material amendments to the provider's contract only become effective if the provider attests in writing or electronic form the acceptance to the contract changes. Failure to accept the material amendment does not affect the terms of the provider's existing contract.

A material amendment is a contract between a payor and health care provider that would result in requiring a provider to participate in a health plan, product, or line of business with a lower fee schedule, in order to continue to participate in a plan, product, or line of business with a higher fee schedule. A material amendment does not include the following:

- a decrease in payment or compensation resulting solely from a change in a published fee schedule with the date of applicability clearly identified in the contract;
- a decrease in payment or compensation that was anticipated under the terms of the contract, if the amount and date of applicability of the decrease is clearly identified in the contract; or
- changes unrelated to compensation so long as reasonable notice of not less than 60 days is provided.

Payors must provide no less than 60 days' notice to providers of any proposed material amendments. Any material amendment must be clearly defined in the notice to the provider, and the notice must inform the providers that they may choose to reject the amendment through written or electronic means. Rejection of the amendment does not affect the terms of the existing contract.

A payor may not, without the express written agreement of the provider, require a provider to extend the payor's Medicaid rates, or some percentage above the payor's Medicaid rates, to a commercial plan or line of business offered by the payor that is not administered by a public purchaser. Commercial coverage offered through the Health Benefit Exchange may not be included in the definition of a public purchaser.

Licensed health professionals are not required to participate in any public or private third-party payor arrangement as a condition of licensure.

Health care providers include all health professionals regulated under Title 18, home health and hospice providers regulated under Chapter 70.126 RCW, and hospitals licensed under RCW 70.41. Payor or third-party payor means all licensed health insurance carriers or Medicaid-managed care plans.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee (Health Care): PRO: There is some fear in the provider community that they may be forced to contract with everyone which may threaten the viability of their practice. This bill sends a message that Washington is physician friendly. The influx of newly insured patients anticipated in 2014 with the exchange and Medicaid expansion raises concerns about how patients will access care. The newly emerging all-product clauses are problematic. We would like to have a level playing field to negotiate with carriers. This bill includes principles that are important to send a message of support for maintaining independent practices. The all-product clause has been used to expand provider contracts to cover other lines of business like property and casualty, so we would like to see opt-in contract language specific to each line of business.

CON: We do not use all-products clauses and have no plans to use one. We could support a bill that had language limited to a simple prohibition of all products clauses, if well defined. The other areas in the bill are far-reaching and would jeopardize the business and force us to renegotiate thousands of contracts for simple changes. The WAC requires carriers to provide 60 days' notice of any change in the policy, procedure, or reimbursement and providers have the opportunity to reject the contract changes at any time without forcing an affirmative attestation.

Persons Testifying (Health Care): PRO: Senator Becker, prime sponsor; Dr. Nick Rajacich, WA State Medical Assn.; Brad Tower, Optometric Physicians of WA; Mary Clogton, WA Academy of Family Physicians; Lori Grassi, WA State Chiropractic Assn.

CON: Len Sorrin, Premera Blue Cross; Chris Bandoli, Regence Blue Shield.

Staff Summary of Public Testimony as Heard in Committee (Ways & Means): PRO: This is an important bill. Virginia and Georgia have already implemented this and so should we. This tells physicians to come to Washington because it is a physician-friendly state.

Persons Testifying (Ways & Means): PRO: Katie Kolan, WA State Medical Assn.; Len Sorrin, Premera Blue Cross; Chris Bandoli, Regence Blue Shield.

House Amendment(s): Allows a payor administering a public plan to extend its Medicaid rates, or some percentage above its Medicaid rates, to its non-Medicaid product offerings only if the

contracting provider expressly agreed in writing to the extension, instead of prohibiting such extension unless the provider expressly agreed in writing. Clarifies that this restriction does not affect the payor's ability to use Medicaid rates, or some percentage above Medicaid rates, as a base when negotiating payment rates with a provider.