
HOUSE BILL 2326

State of Washington

64th Legislature

2016 Regular Session

By Representatives Moeller and Appleton

Prefiled 12/30/15. Read first time 01/11/16. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to streamlining the independent review
2 organization process by transferring regulatory authority over
3 independent review organizations from the department of health to the
4 insurance commissioner and requiring independent review organizations
5 to report decisions and associated information directly to the
6 insurance commissioner; amending RCW 43.70.235, 41.05.017, and
7 70.47.130; adding a new section to chapter 48.43 RCW; creating a new
8 section; and recodifying RCW 43.70.235.

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

10 **Sec. 1.** RCW 43.70.235 and 2012 c 211 s 14 are each amended to
11 read as follows:

12 (1) No later than January 1, 2017, the ((department)) insurance
13 commissioner shall adopt rules providing a procedure and criteria for
14 certifying one or more organizations to perform independent review of
15 health care disputes described in RCW 48.43.535.

16 (2) The rules must require that the organization ensure:

17 (a) The confidentiality of medical records transmitted to an
18 independent review organization for use in independent reviews;

19 (b) That each health care provider, physician, or contract
20 specialist making review determinations for an independent review
21 organization is qualified. Physicians, other health care providers,

1 and, if applicable, contract specialists must be appropriately
2 licensed, certified, or registered as required in Washington state or
3 in at least one state with standards substantially comparable to
4 Washington state. Reviewers may be drawn from nationally recognized
5 centers of excellence, academic institutions, and recognized leading
6 practice sites. Expert medical reviewers should have substantial,
7 recent clinical experience dealing with the same or similar health
8 conditions. The organization must have demonstrated expertise and a
9 history of reviewing health care in terms of medical necessity,
10 appropriateness, and the application of other health plan coverage
11 provisions;

12 (c) That any physician, health care provider, or contract
13 specialist making a review determination in a specific review is free
14 of any actual or potential conflict of interest or bias. Neither the
15 expert reviewer, nor the independent review organization, nor any
16 officer, director, or management employee of the independent review
17 organization may have any material professional, familial, or
18 financial affiliation with any of the following: The health carrier;
19 professional associations of carriers and providers; the provider;
20 the provider's medical or practice group; the health facility at
21 which the service would be provided; the developer or manufacturer of
22 a drug or device under review; or the enrollee;

23 (d) The fairness of the procedures used by the independent review
24 organization in making the determinations;

25 (e) That each independent review organization make its
26 determination:

27 (i) Not later than the earlier of:

28 (A) The fifteenth day after the date the independent review
29 organization receives the information necessary to make the
30 determination; or

31 (B) The twentieth day after the date the independent review
32 organization receives the request that the determination be made. In
33 exceptional circumstances, when the independent review organization
34 has not obtained information necessary to make a determination, a
35 determination may be made by the twenty-fifth day after the date the
36 organization received the request for the determination; and

37 (ii) In requests for expedited review under RCW 48.43.535(7)(a),
38 as expeditiously as possible but within not more than seventy-two
39 hours after the date the independent review organization receives the
40 request for expedited review;

1 (f) That timely notice is provided to enrollees of the results of
2 the independent review, including the clinical basis for the
3 determination;

4 (g) That the independent review organization has a quality
5 assurance mechanism in place that ensures the timeliness and quality
6 of review and communication of determinations to enrollees and
7 carriers, and the qualifications, impartiality, and freedom from
8 conflict of interest of the organization, its staff, and expert
9 reviewers; and

10 (h) That the independent review organization meets any other
11 reasonable requirements of the ((department)) insurance commissioner
12 directly related to the functions the organization is to perform
13 under this section and RCW 48.43.535, and related to assessing fees
14 to carriers in a manner consistent with the maximum fee schedule
15 developed under this section.

16 (3) To be certified as an independent review organization under
17 this chapter, an organization must submit to the ((department))
18 insurance commissioner an application in the form required by the
19 ((department)) insurance commissioner. The application must include:

20 (a) For an applicant that is publicly held, the name of each
21 stockholder or owner of more than five percent of any stock or
22 options;

23 (b) The name of any holder of bonds or notes of the applicant
24 that exceed one hundred thousand dollars;

25 (c) The name and type of business of each corporation or other
26 organization that the applicant controls or is affiliated with and
27 the nature and extent of the affiliation or control;

28 (d) The name and a biographical sketch of each director, officer,
29 and executive of the applicant and any entity listed under (c) of
30 this subsection and a description of any relationship the named
31 individual has with:

32 (i) A carrier;

33 (ii) A utilization review agent;

34 (iii) A nonprofit or for-profit health corporation;

35 (iv) A health care provider;

36 (v) A drug or device manufacturer; or

37 (vi) A group representing any of the entities described by (d)(i)
38 through (v) of this subsection;

39 (e) The percentage of the applicant's revenues that are
40 anticipated to be derived from reviews conducted under RCW 48.43.535;

1 (f) A description of the areas of expertise of the health care
2 professionals and contract specialists making review determinations
3 for the applicant; and

4 (g) The procedures to be used by the independent review
5 organization in making review determinations regarding reviews
6 conducted under RCW 48.43.535.

7 (4) If at any time there is a material change in the information
8 included in the application under subsection (3) of this section, the
9 independent review organization shall submit updated information to
10 the ~~((department))~~ insurance commissioner.

11 (5) An independent review organization may not be a subsidiary
12 of, or in any way owned or controlled by, a carrier or a trade or
13 professional association of health care providers or carriers.

14 (6) An independent review organization, and individuals acting on
15 its behalf, are immune from suit in a civil action when performing
16 functions under chapter 5, Laws of 2000. However, this immunity does
17 not apply to an act or omission made in bad faith or that involves
18 gross negligence.

19 (7) Independent review organizations must be free from
20 interference by state government in its functioning except as
21 provided in subsection (8) of this section.

22 (8) The rules adopted under this section shall include provisions
23 for terminating the certification of an independent review
24 organization for failure to comply with the requirements for
25 certification. The ~~((department))~~ insurance commissioner may review
26 the operation and performance of an independent review organization
27 in response to complaints or other concerns about compliance. ~~((No
28 later than January 1, 2006, the department shall develop))~~ The rules
29 adopted under this section must include a reasonable maximum fee
30 schedule that independent review organizations shall use to assess
31 carriers for conducting reviews authorized under RCW 48.43.535.

32 (9) In adopting rules for this section, the ~~((department))~~
33 insurance commissioner shall take into consideration rules adopted by
34 the department of health that regulate independent review
35 organizations and standards for independent review organizations
36 adopted by national accreditation organizations. The ~~((department))~~
37 insurance commissioner may accept national accreditation or
38 certification by another state as evidence that an organization
39 satisfies some or all of the requirements for certification by the

1 ((department)) insurance commissioner as an independent review
2 organization.

3 (10) The rules adopted under this section must require
4 independent review organizations to report decisions and associated
5 information directly to the insurance commissioner.

6 NEW SECTION. Sec. 2. (1) Independent review organizations
7 remain subject to RCW 43.70.235 (as recodified by this act), as it
8 existed on January 1, 2016, and the rules adopted by the department
9 of health under that section through December 31, 2016. Beginning on
10 January 1, 2017, the insurance commissioner is the sole certifying
11 authority for independent review organizations under RCW 43.70.235
12 (as recodified by this act).

13 (2) On January 1, 2017, the insurance commissioner shall
14 automatically certify each independent review organization that was
15 certified in good standing by the department of health on December
16 31, 2016.

17 NEW SECTION. Sec. 3. RCW 43.70.235 is recodified as a section
18 in chapter 48.43 RCW.

19 **Sec. 4.** RCW 41.05.017 and 2008 c 304 s 2 are each amended to
20 read as follows:

21 Each health plan that provides medical insurance offered under
22 this chapter, including plans created by insuring entities, plans not
23 subject to the provisions of Title 48 RCW, and plans created under
24 RCW 41.05.140, are subject to the provisions of RCW 48.43.500,
25 70.02.045, 48.43.505 through 48.43.535, 43.70.235 (as recodified by
26 this act), 48.43.545, 48.43.550, 70.02.110, 70.02.900, 48.43.190, and
27 48.43.083.

28 **Sec. 5.** RCW 70.47.130 and 2009 c 298 s 4 are each amended to
29 read as follows:

30 (1) The activities and operations of the Washington basic health
31 plan under this chapter, including those of managed health care
32 systems to the extent of their participation in the plan, are exempt
33 from the provisions and requirements of Title 48 RCW except:

34 (a) Benefits as provided in RCW 70.47.070;

35 (b) Managed health care systems are subject to the provisions of
36 RCW 48.43.022, 48.43.500, 70.02.045, 48.43.505 through 48.43.535,

1 43.70.235 (as recodified by this act), 48.43.545, 48.43.550,
2 70.02.110, and 70.02.900;

3 (c) Persons appointed or authorized to solicit applications for
4 enrollment in the basic health plan, including employees of the
5 health care authority, must comply with chapter 48.17 RCW. For
6 purposes of this subsection (1)(c), "solicit" does not include
7 distributing information and applications for the basic health plan
8 and responding to questions;

9 (d) Amounts paid to a managed health care system by the basic
10 health plan for participating in the basic health plan and providing
11 health care services for nonsubsidized enrollees in the basic health
12 plan must comply with RCW 48.14.0201; and

13 (e) Administrative simplification requirements as provided in
14 chapter 298, Laws of 2009.

15 (2) The purpose of the 1994 amendatory language to this section
16 in chapter 309, Laws of 1994 is to clarify the intent of the
17 legislature that premiums paid on behalf of nonsubsidized enrollees
18 in the basic health plan are subject to the premium and prepayment
19 tax. The legislature does not consider this clarifying language to
20 either raise existing taxes nor to impose a tax that did not exist
21 previously.

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