CERTIFICATION OF ENROLLMENT

HOUSE BILL 2326

64th Legislature
2016 Regular Session

Passed by the House February 11, 2016
Yeas 77 Nays 20

Speaker of the House of Representatives

Passed by the Senate March 4, 2016
Yeas 40 Nays 8

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2326** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington

HOUSE BILL 2326

Passed Legislature - 2016 Regular Session

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.

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

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

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

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

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

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

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

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

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

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

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

(i) Not later than the earlier of:

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

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

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

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

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

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

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

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

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

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

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

(i) A carrier;

(ii) A utilization review agent;

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

(iv) A health care provider;

(v) A drug or device manufacturer; or

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

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

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

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

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

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

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

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

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

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

((~~department~~)) insurance commissioner as an independent review organization.

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

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

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

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

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

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

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

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

(a) Benefits as provided in RCW 70.47.070;

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

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

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

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

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

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

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