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**SUBSTITUTE SENATE BILL 6397**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Frockt, Rolfes, and Keiser; by request of Health Care Authority)

READ FIRST TIME 02/06/20.

1 AN ACT Relating to nonparticipating providers; amending RCW  
2 74.09.522; and providing an expiration date.

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

4 **Sec. 1.** RCW 74.09.522 and 2019 c 325 s 4004 are each amended to  
5 read as follows:

6 (1) For the purposes of this section:

7 (a) "Managed health care system" means any health care  
8 organization, including health care providers, insurers, health care  
9 service contractors, health maintenance organizations, health  
10 insuring organizations, or any combination thereof, that provides  
11 directly or by contract health care services covered under this  
12 chapter or other applicable law and rendered by licensed providers,  
13 on a prepaid capitated basis and that meets the requirements of  
14 section 1903(m)(1)(A) of Title XIX of the federal social security act  
15 or federal demonstration waivers granted under section 1115(a) of  
16 Title XI of the federal social security act;

17 (b) "Nonparticipating provider" means a person, health care  
18 provider, practitioner, facility, or entity, acting within their  
19 scope of practice, that does not have a written contract to  
20 participate in a managed health care system's provider network, but  
21 provides health care services to enrollees of programs authorized

1 under this chapter or other applicable law whose health care services  
2 are provided by the managed health care system.

3 (2) The authority shall enter into agreements with managed health  
4 care systems to provide health care services to recipients of  
5 medicaid under the following conditions:

6 (a) Agreements shall be made for at least thirty thousand  
7 recipients statewide;

8 (b) Agreements in at least one county shall include enrollment of  
9 all recipients of programs as allowed for in the approved state plan  
10 amendment or federal waiver for Washington state's medicaid program;

11 (c) To the extent that this provision is consistent with section  
12 1903(m) of Title XIX of the federal social security act or federal  
13 demonstration waivers granted under section 1115(a) of Title XI of  
14 the federal social security act, recipients shall have a choice of  
15 systems in which to enroll and shall have the right to terminate  
16 their enrollment in a system: PROVIDED, That the authority may limit  
17 recipient termination of enrollment without cause to the first month  
18 of a period of enrollment, which period shall not exceed twelve  
19 months: AND PROVIDED FURTHER, That the authority shall not restrict a  
20 recipient's right to terminate enrollment in a system for good cause  
21 as established by the authority by rule;

22 (d) To the extent that this provision is consistent with section  
23 1903(m) of Title XIX of the federal social security act,  
24 participating managed health care systems shall not enroll a  
25 disproportionate number of medical assistance recipients within the  
26 total numbers of persons served by the managed health care systems,  
27 except as authorized by the authority under federal demonstration  
28 waivers granted under section 1115(a) of Title XI of the federal  
29 social security act;

30 (e)(i) In negotiating with managed health care systems the  
31 authority shall adopt a uniform procedure to enter into contractual  
32 arrangements, including:

33 (A) Standards regarding the quality of services to be provided;

34 (B) The financial integrity of the responding system;

35 (C) Provider reimbursement methods that incentivize chronic care  
36 management within health homes, including comprehensive medication  
37 management services for patients with multiple chronic conditions  
38 consistent with the findings and goals established in RCW 74.09.5223;

1 (D) Provider reimbursement methods that reward health homes that,  
2 by using chronic care management, reduce emergency department and  
3 inpatient use;

4 (E) Promoting provider participation in the program of training  
5 and technical assistance regarding care of people with chronic  
6 conditions described in RCW 43.70.533, including allocation of funds  
7 to support provider participation in the training, unless the managed  
8 care system is an integrated health delivery system that has programs  
9 in place for chronic care management;

10 (F) Provider reimbursement methods within the medical billing  
11 processes that incentivize pharmacists or other qualified providers  
12 licensed in Washington state to provide comprehensive medication  
13 management services consistent with the findings and goals  
14 established in RCW 74.09.5223;

15 (G) Evaluation and reporting on the impact of comprehensive  
16 medication management services on patient clinical outcomes and total  
17 health care costs, including reductions in emergency department  
18 utilization, hospitalization, and drug costs; and

19 (H) Established consistent processes to incentivize integration  
20 of behavioral health services in the primary care setting, promoting  
21 care that is integrated, collaborative, colocated, and preventive.

22 (ii) (A) Health home services contracted for under this subsection  
23 may be prioritized to enrollees with complex, high cost, or multiple  
24 chronic conditions.

25 (B) Contracts that include the items in (e) (i) (C) through (G) of  
26 this subsection must not exceed the rates that would be paid in the  
27 absence of these provisions;

28 (f) The authority shall seek waivers from federal requirements as  
29 necessary to implement this chapter;

30 (g) The authority shall, wherever possible, enter into prepaid  
31 capitation contracts that include inpatient care. However, if this is  
32 not possible or feasible, the authority may enter into prepaid  
33 capitation contracts that do not include inpatient care;

34 (h) The authority shall define those circumstances under which a  
35 managed health care system is responsible for out-of-plan services  
36 and assure that recipients shall not be charged for such services;

37 (i) Nothing in this section prevents the authority from entering  
38 into similar agreements for other groups of people eligible to  
39 receive services under this chapter; and

1 (j) The authority must consult with the federal center for  
2 medicare and medicaid innovation and seek funding opportunities to  
3 support health homes.

4 (3) The authority shall ensure that publicly supported community  
5 health centers and providers in rural areas, who show serious intent  
6 and apparent capability to participate as managed health care systems  
7 are seriously considered as contractors. The authority shall  
8 coordinate its managed care activities with activities under chapter  
9 70.47 RCW.

10 (4) The authority shall work jointly with the state of Oregon and  
11 other states in this geographical region in order to develop  
12 recommendations to be presented to the appropriate federal agencies  
13 and the United States congress for improving health care of the poor,  
14 while controlling related costs.

15 (5) The legislature finds that competition in the managed health  
16 care marketplace is enhanced, in the long term, by the existence of a  
17 large number of managed health care system options for medicaid  
18 clients. In a managed care delivery system, whose goal is to focus on  
19 prevention, primary care, and improved enrollee health status,  
20 continuity in care relationships is of substantial importance, and  
21 disruption to clients and health care providers should be minimized.  
22 To help ensure these goals are met, the following principles shall  
23 guide the authority in its healthy options managed health care  
24 purchasing efforts:

25 (a) All managed health care systems should have an opportunity to  
26 contract with the authority to the extent that minimum contracting  
27 requirements defined by the authority are met, at payment rates that  
28 enable the authority to operate as far below appropriated spending  
29 levels as possible, consistent with the principles established in  
30 this section.

31 (b) Managed health care systems should compete for the award of  
32 contracts and assignment of medicaid beneficiaries who do not  
33 voluntarily select a contracting system, based upon:

34 (i) Demonstrated commitment to or experience in serving low-  
35 income populations;

36 (ii) Quality of services provided to enrollees;

37 (iii) Accessibility, including appropriate utilization, of  
38 services offered to enrollees;

39 (iv) Demonstrated capability to perform contracted services,  
40 including ability to supply an adequate provider network;

1 (v) Payment rates; and

2 (vi) The ability to meet other specifically defined contract  
3 requirements established by the authority, including consideration of  
4 past and current performance and participation in other state or  
5 federal health programs as a contractor.

6 (c) Consideration should be given to using multiple year  
7 contracting periods.

8 (d) Quality, accessibility, and demonstrated commitment to  
9 serving low-income populations shall be given significant weight in  
10 the contracting, evaluation, and assignment process.

11 (e) All contractors that are regulated health carriers must meet  
12 state minimum net worth requirements as defined in applicable state  
13 laws. The authority shall adopt rules establishing the minimum net  
14 worth requirements for contractors that are not regulated health  
15 carriers. This subsection does not limit the authority of the  
16 Washington state health care authority to take action under a  
17 contract upon finding that a contractor's financial status seriously  
18 jeopardizes the contractor's ability to meet its contract  
19 obligations.

20 (f) Procedures for resolution of disputes between the authority  
21 and contract bidders or the authority and contracting carriers  
22 related to the award of, or failure to award, a managed care contract  
23 must be clearly set out in the procurement document.

24 (6) The authority may apply the principles set forth in  
25 subsection (5) of this section to its managed health care purchasing  
26 efforts on behalf of clients receiving supplemental security income  
27 benefits to the extent appropriate.

28 (7) Any contract with a managed health care system to provide  
29 services to medical assistance enrollees shall require that managed  
30 health care systems offer contracts to mental health providers and  
31 substance use disorder treatment providers to provide access to  
32 primary care services integrated into behavioral health clinical  
33 settings, for individuals with behavioral health and medical  
34 comorbidities.

35 (8) Managed health care system contracts effective on or after  
36 April 1, 2016, shall serve geographic areas that correspond to the  
37 regional service areas established in RCW 74.09.870.

38 (9) A managed health care system shall pay a nonparticipating  
39 provider that provides a service covered under this chapter or other  
40 applicable law to the system's enrollee no more than the lowest

1 amount paid for that service under the managed health care system's  
2 contracts with similar providers in the state if the managed health  
3 care system has made good faith efforts to contract with the  
4 nonparticipating provider.

5 (10) For services covered under this chapter or other applicable  
6 law to medical assistance or medical care services enrollees,  
7 nonparticipating providers must accept as payment in full the amount  
8 paid by the managed health care system under subsection (9) of this  
9 section in addition to any deductible, coinsurance, or copayment that  
10 is due from the enrollee for the service provided. An enrollee is not  
11 liable to any nonparticipating provider for covered services, except  
12 for amounts due for any deductible, coinsurance, or copayment under  
13 the terms and conditions set forth in the managed health care system  
14 contract to provide services under this section.

15 (11) Pursuant to federal managed care access standards, 42 C.F.R.  
16 Sec. 438, managed health care systems must maintain a network of  
17 appropriate providers that is supported by written agreements  
18 sufficient to provide adequate access to all services covered under  
19 the contract with the authority, including hospital-based physician  
20 services. The authority will monitor and periodically report on the  
21 proportion of services provided by contracted providers and  
22 nonparticipating providers, by county, for each managed health care  
23 system to ensure that managed health care systems are meeting network  
24 adequacy requirements. No later than January 1st of each year, the  
25 authority will review and report its findings to the appropriate  
26 policy and fiscal committees of the legislature for the preceding  
27 state fiscal year.

28 (12) Payments under RCW 74.60.130 are exempt from this section.

29 (13) Subsections (9) through (11) of this section expire July 1,  
30 ((2021)) 2031.

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