

2SHB 1160 - H AMD 196

By Representative Cody

ADOPTED 02/26/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 48.43
4 RCW to read as follows:

5 (1) Beginning January 1, 2022, a contract between a hospital or
6 any affiliate of a hospital and a health carrier may not, directly or
7 indirectly, do any of the following:

8 (a) Set provider compensation agreements or other terms for
9 affiliates of the hospital that are out of the carrier's network;

10 (b) Require the health carrier to contract with multiple
11 hospitals owned or controlled by the same single entity. This
12 subsection (1)(b) does not prohibit a health carrier from voluntarily
13 agreeing to contract with other hospitals owned or controlled by the
14 same single entity. If a health carrier voluntarily agrees to
15 contract with other hospitals owned or controlled by the same single
16 entity under this subsection (1)(b), the health carrier must file an
17 attestation with the office of the insurance commissioner that
18 complies with the filing requirements of RCW 48.43.730;

19 (c) To the extent that a health plan varies enrollee cost-sharing
20 based upon placing participating providers into tiered provider
21 networks, require health carriers to place the hospital or any
22 affiliate in the tier reflecting the lowest or lower enrollee cost-
23 sharing amounts;

24 (d) Require the health carrier to keep the contract's payment
25 rates confidential from any existing or potential payor that is or
26 may become financially responsible for the payments. This subsection
27 (1)(d) does not prohibit a requirement that any communication of the
28 contract's payment rates to an existing or potential payor be subject
29 to a reasonable nondisclosure agreement.

30 (2) The attorney general may enforce this section under the
31 consumer protection act, chapter 19.86 RCW. For actions brought by
32 the attorney general to enforce this section, the legislature finds

1 that the practices covered by this section are matters vitally
2 affecting the public interest for the purpose of applying the
3 consumer protection act, chapter 19.86 RCW, and that a violation of
4 this section is not reasonable in relation to the development and
5 preservation of business and is an unfair or deceptive act in trade
6 or commerce and an unfair method of competition for the purpose of
7 applying the consumer protection act, chapter 19.86 RCW.

8 (3) This section does not prohibit a hospital certified as a
9 critical access hospital by the centers for medicare and medicaid
10 services or an independent hospital certified as a sole community
11 hospital by the centers for medicare and medicaid services from
12 negotiating payment rates and methodologies on behalf of an
13 individual health care practitioner or a medical group that the
14 hospital is affiliated with.

15 (4) This section does not apply to the extent that it impairs the
16 ability of a hospital, provider, or health carrier to participate in
17 a state-sponsored, federally funded program, or grant opportunity.

18 (5) For the purposes of this section:

19 (a) "Affiliate" means a person who directly or indirectly through
20 one or more intermediaries, controls or is controlled by, or is under
21 common control with, another specified person.

22 (b) "Control" means the possession, directly or indirectly, of
23 the power to direct or cause the direction of the management and
24 policies of a person, whether through ownership of voting securities,
25 membership rights, by contract, or otherwise.

26 (c) "Provider" means:

27 (i) A health care provider as defined in RCW 48.43.005;

28 (ii) A participating provider as defined in RCW 48.44.010;

29 (iii) A health care facility as defined in RCW 48.43.005; and

30 (iv) Intermediaries that have agreed in writing with a carrier to
31 provide access to providers as defined under this subsection (5)(c)
32 who render covered services to enrollees of a carrier.

33 (d) "Provider compensation agreement" means any written agreement
34 that includes specific information about payment methodology, payment
35 rates, and other terms that determine the remuneration a carrier will
36 pay to a provider.

37 (e) "Tiered provider network" means a network that identifies and
38 groups providers and facilities into specific groups to which
39 different provider reimbursement, enrollee cost sharing, or provider
40 access requirements, or any combination thereof, apply as a means to

1 manage cost, utilization, quality, or to otherwise incentivize
2 enrollee or provider behavior.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.43
4 RCW to read as follows:

5 (1) Beginning January 1, 2022, health provider contracts between
6 a health carrier and a provider, may not contain a provision that
7 prohibits the disclosure of health care service claims data to
8 employers providing the coverage. However, any disclosure of claims
9 data must comply with state and federal health privacy laws.

10 (2) The attorney general may enforce this section under the
11 consumer protection act, chapter 19.86 RCW. For actions brought by
12 the attorney general to enforce this section, the legislature finds
13 that the practices covered by this section are matters vitally
14 affecting the public interest for the purpose of applying the
15 consumer protection act, chapter 19.86 RCW, and that a violation of
16 this section is not reasonable in relation to the development and
17 preservation of business and is an unfair or deceptive act in trade
18 or commerce and an unfair method of competition for the purpose of
19 applying the consumer protection act, chapter 19.86 RCW.

20 (3) For the purposes of this section, "provider" means:

21 (a) A health care provider as defined in RCW 48.43.005;

22 (b) A participating provider as defined in RCW 48.44.010;

23 (c) A health care facility as defined in RCW 48.43.005; and

24 (d) Intermediaries that have agreed in writing with a carrier to
25 provide access to providers as defined under this subsection who
26 render covered services to enrollees of a carrier.

27 NEW SECTION. **Sec. 3.** The insurance commissioner may adopt rules
28 necessary to implement this act."

29 Correct the title.

EFFECT: (1) Clarifies that a contract between a hospital and a health carrier may not set provider compensation or other terms for affiliates of the hospital that are out of the carrier's network, rather than prohibiting a contract from setting provider compensation agreements or other terms for nonparticipating affiliate.

(2) Limits the provision that prohibits a contract between a hospital and a health carrier from requiring the health carrier to contract with a hospital's affiliates, so that prohibition only applies to requiring a health carrier to contract with multiple hospitals owned or controlled by the same single entity.

(3) Modifies the exemption for critical access hospitals, so that critical access hospitals may negotiate payment rates and methodologies on behalf of individual health care practitioners and a medical group, rather than providers (which is defined to include health care facilities) and medical groups, and adds independent sole community hospitals to the exemption.

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