
SUBSTITUTE SENATE BILL 6193

State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senator Deccio)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to exempting medical assistance determinations from
2 independent review; amending RCW 48.43.545; amending 2000 c 5 s 19
3 (uncodified); and adding a new section to chapter 48.43 RCW.

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

5 **Sec. 1.** 2000 c 5 s 19 (uncodified) is amended to read as follows:
6 ((~~This act~~)) RCW 48.43.500 through 48.43.550 applies to: Health
7 plans as defined in RCW 48.43.005 offered, renewed, or issued by a
8 carrier; medical assistance provided under RCW 74.09.522, excluding
9 requirements set forth in RCW 48.43.535; the basic health plan offered
10 under chapter 70.47 RCW; and health benefits provided under chapter
11 41.05 RCW.

12 NEW SECTION. **Sec. 2.** (1) RCW 48.43.500 through 48.43.550
13 constitute a subchapter under the heading of "health care patient bill
14 of rights compliance."

15 (2) 2000 c 5 s 19 (uncodified) and section 1 of this act are added
16 to chapter 48.43 RCW under the subchapter heading "health care patient
17 bill of rights compliance."

1 **Sec. 3.** RCW 48.43.545 and 2000 c 5 s 17 are each amended to read
2 as follows:

3 (1)(a) A health carrier shall adhere to the accepted standard of
4 care for health care providers under chapter 7.70 RCW when arranging
5 for the provision of medically necessary health care services to its
6 enrollees. A health carrier shall be liable for any and all harm
7 proximately caused by its failure to follow that standard of care when
8 the failure resulted in the denial, delay, or modification of the
9 health care service recommended for, or furnished to, an enrollee.

10 (b) A health carrier is also liable for damages under (a) of this
11 subsection for harm to an enrollee proximately caused by health care
12 treatment decisions that result from a failure to follow the accepted
13 standard of care made by its:

14 (i) Employees;

15 (ii) Agents; or

16 (iii) Ostensible agents who are acting on its behalf and over whom
17 it has the right to exercise influence or control or has actually
18 exercised influence or control.

19 (2) The provisions of this section may not be waived, shifted, or
20 modified by contract or agreement and responsibility for the provisions
21 shall be a duty that cannot be delegated. Any effort to waive, modify,
22 delegate, or shift liability for a breach of the duty established by
23 this section, through a contract for indemnification or otherwise, is
24 invalid.

25 (3) This section does not create any new cause of action, or
26 eliminate any presently existing cause of action, with respect to
27 health care providers and health care facilities that are included in
28 and subject to the provisions of chapter 7.70 RCW.

29 (4) It is a defense to any action or liability asserted under this
30 section against a health carrier that:

31 (a) The health care service in question is not a benefit provided
32 under the plan or the service is subject to limitations under the plan
33 that have been exhausted;

34 (b) Neither the health carrier, nor any employee, agent, or
35 ostensible agent for whose conduct the health carrier is liable under
36 subsection (1)(b) of this section, controlled, influenced, or
37 participated in the health care decision; or

1 (c) The health carrier did not deny or unreasonably delay payment
2 for treatment prescribed or recommended by a participating health care
3 provider for the enrollee.

4 (5) This section does not create any liability on the part of an
5 employer, an employer group purchasing organization that purchases
6 coverage or assumes risk on behalf of its employers, or a governmental
7 agency that purchases coverage on behalf of individuals and families.
8 The governmental entity established to offer and provide health
9 insurance to public employees, public retirees, and their covered
10 dependents under RCW 41.05.140 is subject to liability under this
11 section.

12 (6) Nothing in any law of this state prohibiting a health carrier
13 from practicing medicine or being licensed to practice medicine may be
14 asserted as a defense by the health carrier in an action brought
15 against it under this section.

16 (7)(a) A person may not maintain a cause of action under this
17 section against a health carrier unless:

18 (i) The affected enrollee has suffered substantial harm. As used
19 in this subsection, "substantial harm" means loss of life, loss or
20 significant impairment of limb, bodily or cognitive function,
21 significant disfigurement, or severe or chronic physical pain; and

22 (ii) The affected enrollee or the enrollee's representative has
23 exercised the opportunity established in RCW 48.43.535 to seek
24 independent review of the health care treatment decision, or the
25 opportunity for an adjudicative proceeding if the enrollee is receiving
26 medical assistance under RCW 74.09.522.

27 (b) This subsection (7) does not prohibit an enrollee from pursuing
28 other appropriate remedies, including injunctive relief, a declaratory
29 judgment, or other relief available under law, if its requirements
30 place the enrollee's health in serious jeopardy.

31 (8) In an action against a health carrier, a finding that a health
32 care provider is an employee, agent, or ostensible agent of such a
33 health carrier shall not be based solely on proof that the person's
34 name appears in a listing of approved physicians or health care
35 providers made available to enrollees under a health plan.

36 (9) Any action under this section shall be commenced within three
37 years of the completion of the independent review process.

1 (10) This section does not apply to workers' compensation insurance
2 under Title 51 RCW.

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