

Striking Amendment to E2SSB 5958

By Representative Cody

Original bill: Creating innovative primary health care delivery.

Striking amendment compared to Senate passed bill:

- Prohibits direct practices from denying enrollment solely on the account of enumerated conditions.
 - Prohibits direct practices from increasing the direct fee schedule more frequently than annually. Sixty days notice must be provided for any change in the fee.
 - Prohibits direct practices from entering into a participating provider contract with self insured plans operated by the Health Care Authority.
 - Provides a Sunset termination and review of the bill beginning in 2013.
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Committee: House Health Care & Wellness Committee
Staff: David Knutson(786-7146), Office of Program Research
Draft: H-3115.4/07

E2SSB 5958 - H COMM AMD

By Committee on Health Care & Wellness

Strike everything after the enacting clause and insert the following:

NEW SECTION. **Sec. 1.** It is the public policy of Washington to promote access to medical care for all citizens and to encourage innovative arrangements between patients and providers that will help provide all citizens with a medical home.

Washington needs a multipronged approach to provide adequate health care to many citizens who lack adequate access to it. Direct patient-provider practices, in which patients enter into a direct relationship with medical practitioners and pay a fixed amount directly to the health care provider for primary care services, represent an innovative, affordable option which could improve access to medical care, reduce the number of people who now lack such access, and cut down on emergency room use for primary care purposes, thereby freeing up emergency room facilities to treat true emergencies.

Sec. 2. RCW 48.44.010 and 1990 c 120 s 1 are each amended to read as follows:

For the purposes of this chapter:

(1) "Health care services" means and includes medical, surgical, dental, chiropractic, hospital, optometric, podiatric, pharmaceutical, ambulance, custodial, mental health, and other therapeutic services.

(2) "Provider" means any health professional, hospital, or other institution, organization, or person that furnishes health care services and is licensed to furnish such services.

(3) "Health care service contractor" means any corporation, cooperative group, or association, which is sponsored by or otherwise intimately connected with a provider or group of providers, who or which not otherwise being engaged in the insurance business, accepts prepayment for health care services from or for the benefit of persons

1 or groups of persons as consideration for providing such persons with
2 any health care services. "Health care service contractor" does not
3 include direct patient-provider primary care practices as defined in
4 section 3 of this act.

5 (4) "Participating provider" means a provider, who or which has
6 contracted in writing with a health care service contractor to accept
7 payment from and to look solely to such contractor according to the
8 terms of the subscriber contract for any health care services rendered
9 to a person who has previously paid, or on whose behalf prepayment has
10 been made, to such contractor for such services.

11 (5) "Enrolled participant" means a person or group of persons who
12 have entered into a contractual arrangement or on whose behalf a
13 contractual arrangement has been entered into with a health care
14 service contractor to receive health care services.

15 (6) "Commissioner" means the insurance commissioner.

16 (7) "Uncovered expenditures" means the costs to the health care
17 service contractor for health care services that are the obligation of
18 the health care service contractor for which an enrolled participant
19 would also be liable in the event of the health care service
20 contractor's insolvency and for which no alternative arrangements have
21 been made as provided herein. The term does not include expenditures
22 for covered services when a provider has agreed not to bill the
23 enrolled participant even though the provider is not paid by the health
24 care service contractor, or for services that are guaranteed, insured
25 or assumed by a person or organization other than the health care
26 service contractor.

27 (8) "Copayment" means an amount specified in a group or individual
28 contract which is an obligation of an enrolled participant for a
29 specific service which is not fully prepaid.

30 (9) "Deductible" means the amount an enrolled participant is
31 responsible to pay before the health care service contractor begins to
32 pay the costs associated with treatment.

33 (10) "Group contract" means a contract for health care services
34 which by its terms limits eligibility to members of a specific group.
35 The group contract may include coverage for dependents.

36 (11) "Individual contract" means a contract for health care
37 services issued to and covering an individual. An individual contract
38 may include dependents.

(12) "Carrier" means a health maintenance organization, an insurer, a health care service contractor, or other entity responsible for the payment of benefits or provision of services under a group or individual contract.

(13) "Replacement coverage" means the benefits provided by a succeeding carrier.

(14) "Insolvent" or "insolvency" means that the organization has been declared insolvent and is placed under an order of liquidation by a court of competent jurisdiction.

(15) "Fully subordinated debt" means those debts that meet the requirements of RCW 48.44.037(3) and are recorded as equity.

(16) "Net worth" means the excess of total admitted assets as defined in RCW 48.12.010 over total liabilities but the liabilities shall not include fully subordinated debt.

NEW SECTION. **Sec. 3.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Direct patient-provider primary care practice" and "direct practice" means a provider, group, or entity that meets the following criteria in (a), (b), (c), and (d) of this subsection:

(a)(i) A health care provider who furnishes primary care services through a direct agreement;

(ii) A group of health care providers who furnish primary care services through a direct agreement; or

(iii) An entity that sponsors, employs, or is otherwise affiliated with a group of health care providers who furnish only primary care services through a direct agreement, which entity is wholly owned by the group of health care providers or is a nonprofit corporation exempt from taxation under section 501(c)(3) of the internal revenue code, and is not otherwise regulated as a health care service contractor, health maintenance organization, or disability insurer under Title 48 RCW. Such entity is not prohibited from sponsoring, employing, or being otherwise affiliated with other types of health care providers not engaged in a direct practice;

(b) Enters into direct agreements with direct patients or parents or legal guardians of direct patients;

(c) Does not accept payment for health care services provided to

1 direct patients from any entity subject to regulation under Title 48
2 RCW or self-insured plans; and

3 (d) Does not provide, in consideration for the direct fee,
4 services, procedures, or supplies such as prescription drugs,
5 hospitalization costs, major surgery, dialysis, high level radiology
6 (CT, MRI, PET scans or invasive radiology), rehabilitation services,
7 procedures requiring general anesthesia, or similar advanced
8 procedures, services, or supplies.

9 (2) "Direct patient" means a person who is party to a direct
10 agreement and is entitled to receive primary care services under the
11 direct agreement from the direct practice.

12 (3) "Direct fee" means a fee charged by a direct practice as
13 consideration for being available to provide and providing primary care
14 services as specified in a direct agreement.

15 (4) "Direct agreement" means a written agreement entered into
16 between a direct practice and an individual direct patient, or the
17 parent or legal guardian of the direct patient or a family of direct
18 patients, whereby the direct practice charges a direct fee as
19 consideration for being available to provide and providing primary care
20 services to the individual direct patient. A direct agreement must (a)
21 describe the specific health care services the direct practice will
22 provide; and (b) be terminable at will upon written notice by the
23 direct patient.

24 (5) "Health care provider" or "provider" means a person regulated
25 under Title 18 RCW or chapter 70.127 RCW to practice health or health-
26 related services or otherwise practicing health care services in this
27 state consistent with state law.

28 (6) "Health carrier" or "carrier" has the same meaning as in RCW
29 48.43.005.

30 (7) "Primary care" means routine health care services, including
31 screening, assessment, diagnosis, and treatment for the purpose of
32 promotion of health, and detection and management of disease or injury.

33 (8) "Network" means the group of participating providers and
34 facilities providing health care services to a particular health
35 carrier's health plan or to plans administered under chapter 41.05 RCW
36 or 70.47 RCW.

1 NEW SECTION. **Sec. 4.** Except as provided in section 7 of this act,
2 no direct practice shall deny enrollment to any person solely on
3 account of race, religion, national origin, the presence of any
4 sensory, mental, or physical disability, education, economic status, or
5 sexual orientation.

6 NEW SECTION. **Sec. 5.** (1) A direct practice must charge a direct
7 fee on a monthly basis. The fee must represent the total amount due
8 for all primary care services specified in the direct agreement and may
9 be paid by the direct patient or on his or her behalf by others.

10 (2) A direct practice must:

11 (a) Maintain appropriate accounts and provide data regarding
12 payments made and services received to direct patients upon request;
13 and

14 (b) Either:

15 (i) Bill patients at the end of each monthly period; or

16 (ii) If the patient pays the monthly fee in advance, promptly
17 refund to the direct patient all unearned direct fees following receipt
18 of written notice of termination of the direct agreement from the
19 direct patient. The amount of the direct fee considered earned shall
20 be a proration of the monthly fee as of the date the notice of
21 termination is received.

22 (3) If the patient chooses to pay more than one monthly direct fee
23 in advance, the funds must be held in a trust account and paid to the
24 direct practice as earned at the end of each month. Any unearned
25 direct fees held in trust following receipt of termination of the
26 direct agreement shall be promptly refunded to the direct patient. The
27 amount of the direct fee earned shall be a proration of the monthly fee
28 for the then current month as of the date the notice of termination is
29 received.

30 (4) The direct fee schedule applying to an existing direct patient
31 may not be increased more frequently than annually. A direct practice
32 shall provide advance notice to existing patients of any change within
33 the fee schedule applying to those existing direct patients. A direct
34 practice shall provide at least sixty days' advance notice of any
35 change in the fee.

36 (5) A direct practice must designate a contact person to receive
37 and address any patient complaints.

(6) Direct fees for comparable services within a direct practice shall not vary from patient to patient based on health status or sex.

NEW SECTION. **Sec. 6.** (1) Direct practices may not:

(a) Enter into a participating provider contract as defined in RCW 48.44.010 or 48.46.020 with any carrier or with any carrier's contractor or subcontractor, or plans administered under chapter 41.05 or 70.47 RCW, to provide health care services through a direct agreement except as set forth in subsection (2) of this section;

(b) Submit a claim for payment to any carrier or any carrier's contractor or subcontractor, or plans administered under chapter 41.05 or 70.47 RCW, for health care services provided to direct patients as covered by their agreement;

(c) With respect to services provided through a direct agreement, be identified by a carrier or any carrier's contractor or subcontractor, or plans administered under chapter 41.05 or 70.47 RCW, as a participant in the carrier's or any carrier's contractor or subcontractor network for purposes of determining network adequacy or being available for selection by an enrollee under a carrier's benefit plan; or

(d) Pay for health care services covered by a direct agreement rendered to direct patients by providers other than the providers in the direct practice or their employees, except as described in subsection (2)(b) of this section.

(2) Direct practices and providers may:

(a) Enter into a participating provider contract as defined by RCW 48.44.010 and 48.46.020 or plans administered under chapter 41.05 or 70.47 RCW for purposes other than payment of claims for services provided to direct patients through a direct agreement. Such providers shall be subject to all other provisions of the participating provider contract applicable to participating providers including but not limited to the right to:

(i) Make referrals to other participating providers;

(ii) Admit the carrier's members to participating hospitals and other health care facilities;

(iii) Prescribe prescription drugs; and

(iv) Implement other customary provisions of the contract not dealing with reimbursement of services;

1 (b) Pay for charges associated with the provision of routine lab
2 and imaging services provided in connection with wellness physical
3 examinations. In aggregate such payments per year per direct patient
4 are not to exceed fifteen percent of the total annual direct fee
5 charged that direct patient. Exceptions to this limitation may occur
6 in the event of short-term equipment failure if such failure prevents
7 the provision of care that should not be delayed; and

8 (c) Charge an additional fee to direct patients for supplies,
9 medications, and specific vaccines provided to direct patients that are
10 specifically excluded under the agreement, provided the direct practice
11 notifies the direct patient of the additional charge, prior to their
12 administration or delivery.

13 NEW SECTION. **Sec. 7.** (1) Direct practices may not decline to
14 accept new direct patients or discontinue care to existing patients
15 solely because of the patient's health status. A direct practice may
16 decline to accept a patient if the practice has reached its maximum
17 capacity, or if the patient's medical condition is such that the
18 provider is unable to provide the appropriate level and type of health
19 care services in the direct practice.

20 (2) Direct practices may accept payment of direct fees directly or
21 indirectly from nonemployer third parties.

22 NEW SECTION. **Sec. 8.** Direct practices, as defined in section 3 of
23 this act, who comply with this chapter are not insurers under RCW
24 48.01.050, health carriers under chapter 48.43 RCW, health care service
25 contractors under chapter 48.44 RCW, or health maintenance
26 organizations under chapter 48.46 RCW.

27 NEW SECTION. **Sec. 9.** A person shall not make, publish, or
28 disseminate any false, deceptive, or misleading representation or
29 advertising in the conduct of the business of a direct practice, or
30 relative to the business of a direct practice.

31 NEW SECTION. **Sec. 10.** A person shall not make, issue, or
32 circulate, or cause to be made, issued, or circulated, a
33 misrepresentation of the terms of any direct agreement, or the benefits

or advantages promised thereby, or use the name or title of any direct agreement misrepresenting the nature thereof.

NEW SECTION. **Sec. 11.** Violations of this chapter constitute unprofessional conduct enforceable under RCW 18.130.180.

NEW SECTION. **Sec. 12.** (1) Direct practices must submit annual statements, beginning on October 1, 2007, to the office of insurance commissioner specifying the number of providers in each practice, total number of patients being served, the average direct fee being charged, providers' names, and the business address for each direct practice. The form and content for the annual statement must be developed in a manner prescribed by the commissioner.

(2) A health care provider may not act as, or hold himself or herself out to be, a direct practice in this state, nor may a direct agreement be entered into with a direct patient in this state, unless the provider submits the annual statement in subsection (1) of this section to the commissioner.

(3) The commissioner shall report annually to the legislature on direct practices including, but not limited to, enrollment trends, complaints received, and any suggested modifications to this chapter. The initial report shall be due December 1, 2009.

NEW SECTION. **Sec. 13.** (1) A direct agreement must include the following disclaimer: "This agreement does not provide comprehensive health insurance coverage. It provides only the health care services specifically described." The direct agreement may not be sold to a group and may not be entered with a group of subscribers. It must be an agreement between a direct practice and an individual direct patient. Nothing prohibits the presentation of marketing materials to groups of potential subscribers or their representatives.

(2) A comprehensive disclosure statement shall be distributed to all direct patients with their enrollment forms. Such disclosure must inform the direct patients of their financial rights and responsibilities to the direct practice as provided for in this chapter, encourage that direct patients obtain and maintain insurance for services not provided by the direct practice, and state that the

1 direct practice will not bill a carrier for services covered under the
2 direct agreement. The disclosure statement shall include contact
3 information for the office of the insurance commissioner.

4 NEW SECTION. **Sec. 14.** Sections 1 and 3 through 13 of this act
5 constitute a new chapter in Title 48 RCW.

6 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.131
7 RCW to read as follows:

8 The authorization for direct patient-provider primary care
9 practices under this act shall be terminated on June 30, 2012.

10 NEW SECTION. **Sec. 16.** A new section is added to chapter 43.131
11 RCW to read as follows:

12 The following acts or parts of acts, as now existing or hereafter
13 amended, are each repealed, effective June 30, 2013:

- 14 (1) RCW 48.. . . . and section 1 of this act;
- 15 (2) Section 2 of this act;
- 16 (3) RCW 48.. . . . and section 3 of this act;
- 17 (4) RCW 48.. . . . and section 4 of this act;
- 18 (5) RCW 48.. . . . and section 5 of this act;
- 19 (6) RCW 48.. . . . and section 6 of this act;
- 20 (7) RCW 48.. . . . and section 7 of this act;
- 21 (8) RCW 48.. . . . and section 8 of this act;
- 22 (9) RCW 48.. . . . and section 9 of this act;
- 23 (10) RCW 48.. . . . and section 10 of this act;
- 24 (11) RCW 48.. . . . and section 11 of this act;
- 25 (12) RCW 48.. . . . and section 12 of this act; and
- 26 (13) RCW 48.. . . . and section 13 of this act."

27 Correct the title.

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