

**Chapter 48.30A RCW
INSURANCE FRAUD**

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RCW 48.30A.005 Findings—Intent. The legislature finds that the business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. The payment of kickbacks, bribes, or rebates for referrals to service providers, as has been occurring with increasing regularity in this state, results in inflated or fraudulent insurance claims, results in greater insurance costs for all citizens, and is contrary to the public interest. In particular, the process whereby "cappers" buy and sell insurance claims without the controls of professional licensing and discipline creates a fertile ground for illegal activity and has, in this state, resulted in frauds committed against injured claimants, insurance companies, and the public. Operations that engage in this practice have some or all of the following characteristics: Cappers, acting under an agreement or understanding that they will receive a pecuniary benefit, refer claimants with real or imaginary claims, injuries, or property damage to service providers. This sets off a chain of events that corrupts both the provision of services and casualty or property insurance for all citizens. This chain of events includes false claims for services through the use of false estimates of repair; false prescriptions of care or rehabilitative therapy; services that either do not occur or are provided by persons unqualified to provide the services; submission of false claims; submission of and demands for fraudulent costs, lost wages, pain and suffering, and the like; and other devices meant to result in false claims under casualty or property insurance policies or contracts,

whether insured or self-insured, and either directly or through subrogation.

The legislature finds that combatting these practices requires laws carefully fashioned to identify practices that mimic customary business practices. The legislature does not intend this law to be used against medical and other business referral practices that are otherwise legal, customary, and unrelated to the furtherance of some or all of the corrupt practices identified in this chapter. [1995 c 285 s 1.]

RCW 48.30A.010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Casualty or property insurance" includes both the insurance under which a claim is filed and insurance that receives a claim through subrogation, and means insurance as defined in RCW 48.11.040 and 48.11.070 and includes self-insurance arrangements.

(2) "Claimant" means a person who has or is believed by an actor to have an insurance claim.

(3) "Group-buying arrangement" means an arrangement made by a membership organization having one hundred or more members in which the organization asks for or receives valuable consideration in exchange for referring its members to a service provider; the consideration asked for or received will be or is used to benefit the entire organization, not just one or more individuals in positions of power or influence in the organization; and reasonable efforts are made to disclose to affected members of the organization the nature of the referral relationship, including the nature, extent, amount, and use of the consideration.

(4) "Health care services" means a service provided to a claimant for treatment of physical or mental illness or injury arising in whole or substantial part from trauma.

(5) "Insurance claim" means a claim for payment, benefits, or damages under a contract, plan, or policy of casualty or property insurance.

(6) "Legal provider" means an active member in good standing of the Washington state bar association, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law.

(7) "Service provider" means a person who directly or indirectly provides, advertises, or otherwise claims to provide services.

(8) "Services" means health care services, motor vehicle body or other motor vehicle repair, and preparing, processing, presenting, or negotiating an insurance claim.

(9) "Trauma" means a physical injury or wound caused by external force or violence. [1995 c 285 s 2.]

RCW 48.30A.015 Unlawful acts—Penalties. (1) It is unlawful for a person:

(a) Knowing that the payment is for the referral of a claimant to a service provider, either to accept payment from a service provider or, being a service provider, to pay another; or

(b) To provide or claim or represent to have provided services to a claimant, knowing the claimant was referred in violation of (a) of this subsection.

(2) It is unlawful for a service provider to engage in a regular practice of waiving, rebating, giving, paying, or offering to waive, rebate, give, or pay all or any part of a claimant's casualty or property insurance deductible.

(3) A violation of this section constitutes trafficking in insurance claims.

(4) (a) Trafficking in insurance claims is a gross misdemeanor for a single violation.

(b) Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony. [2003 c 53 s 271; 1995 c 285 s 3.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

RCW 48.30A.020 Defenses to proceedings under this chapter. In a proceeding under this chapter, it is a defense if proven by the defendant by a preponderance of the evidence that, at the time of the offense:

(1) The conduct alleged was authorized by the rules of professional conduct or the admission to practice rules for lawyers as adopted by the state supreme court, Washington business and professions licensing statutes, or rules adopted by the secretary of health or the director of licensing;

(2) The payment was an incidental nonmonetary gift or gratuity, or was purely social in nature;

(3) The conduct alleged was an exercise of a group-buying arrangement;

(4) The conduct alleged was a legal provider paying a service provider's bills from the proceeds of an insurance claim that included the bills;

(5) The conduct alleged was a legal provider paying for services of an expert witness, including reports, consultation, and testimony; or

(6) The conduct alleged was a service provider's purchase of advertising from an unrelated business that provides referrals from advertising for groups of ten or more service providers that are not related to the advertising business and not related to each other. [1995 c 285 s 4.]

RCW 48.30A.030 Injunction available—Remedies—Costs—Attorneys' fees—Degree of proof—Time limit. Independent of authority granted to the attorney general, the prosecuting attorney may petition the superior court for an injunction against a person who has violated this chapter. Remedies in an injunctive action brought by a prosecuting attorney are limited to an order enjoining, restraining, or preventing the doing of any act or practice that constitutes a violation of this chapter and imposing a civil penalty of up to five thousand dollars for each violation. The prevailing party in the action may, in the discretion of the court, recover its reasonable investigative costs and the costs of the action including a reasonable

attorney's fee. The degree of proof required in an action brought under this section is a preponderance of the evidence. An action under this section must be brought within three years after the violation of this chapter occurred. [1995 c 285 s 6.]

RCW 48.30A.035 Detrimental judgment—Written notification to appropriate regulatory or disciplinary body or agency. Whenever a service provider or a person licensed by the state in a business or profession is convicted, enjoined, or found liable for damages or a civil penalty or other equitable relief under RCW 48.30A.030, the attorney general or the prosecuting attorney shall provide written notification of the judgment to the appropriate regulatory or disciplinary body or agency. [1995 c 285 s 7.]

RCW 48.30A.040 Violation—Cause for discipline—Unprofessional conduct—Regulatory penalty. A violation of this chapter is cause for discipline and constitutes unprofessional conduct that could result in any regulatory penalty provided by law, including refusal, revocation, or suspension of a business or professional license, or right or admission to practice. Conduct that constitutes a violation of this chapter is unprofessional conduct in violation of RCW 18.130.180. [1995 c 285 s 8.]

RCW 48.30A.045 Insurance antifraud plan—File plan and changes with commissioner—Exemptions. (1) Each insurer licensed to write direct insurance in this state, except those exempted in subsection (2) of this section, shall institute and maintain an insurance antifraud plan. An insurer licensed after July 1, 1995, shall file its antifraud plan within six months of licensure. An insurer shall file any change to the antifraud plan with the insurance commissioner within thirty days after the plan has been modified.

(2) This section does not apply to:

(a) Health carriers, as defined in RCW 48.43.005;

(b) Life insurers;

(c) Title insurers;

(d) Property or casualty insurers with annual gross written medical malpractice insurance premiums in this state that exceed fifty percent of their total annual gross written premiums in this state;

(e) Credit-related insurance written in connection with a credit transaction in which the creditor is named as a beneficiary or loss payee under the policy, except vendor single-interest or collateral protection coverage as defined in RCW 48.22.110(4); or

(f) Insurers with gross written premiums of less than one thousand dollars in Washington during the reporting year. [2005 c 223 s 20; 1997 c 92 s 1; 1995 c 285 s 9.]

RCW 48.30A.050 Insurance antifraud plan—Specific procedures.

An insurer's antifraud plan must establish specific procedures to:

(1) Prevent insurance fraud, including internal fraud involving employees or company representatives, fraud resulting from misrepresentation on applications for insurance coverage, and claims fraud;

(2) Review claims in order to detect evidence of possible insurance fraud and to investigate claims where fraud is suspected;

(3) Report fraud to appropriate law enforcement agencies and cooperate with those agencies in their prosecution of fraud cases;

(4) Undertake civil actions against persons who have engaged in fraudulent activities;

(5) Train company employees and agents in the detection and prevention of fraud. [1995 c 285 s 10.]

RCW 48.30A.055 Insurance antifraud plan—Review—Disapproval—Notice—Audit to ensure compliance. If after review of an insurer's antifraud plan, the commissioner finds that the plan does not comply with RCW 48.30A.050, the commissioner may disapprove the antifraud plan. Notice of disapproval must include a statement of the specific reasons for disapproval. The insurer shall refile a plan disapproved by the commissioner within sixty days of the date of the notice of disapproval. The commissioner may audit insurers to ensure compliance with antifraud plans. [1995 c 285 s 11.]

RCW 48.30A.060 Insurance antifraud plan—Actions taken by insurer—Report—Not public records. By March 31st of each year, each insurer shall provide to the insurance commissioner a summary report on actions taken under its antifraud plan to prevent and combat insurance fraud. The report must also include, but not be limited to, measures taken to protect and ensure the integrity of electronic data processing-generated data and manually compiled data, statistical data on the amount of resources committed to combatting fraud, and the amount of fraud identified and recovered during the reporting period. The antifraud plans and summary of the insurer's antifraud activities are not public records and are exempt from chapter 42.56 RCW, are proprietary, are not subject to public examination, and are not discoverable or admissible in civil litigation. [2005 c 274 s 312; 2005 c 223 s 21; 1995 c 285 s 12.]

Reviser's note: This section was amended by 2005 c 223 s 21 and by 2005 c 274 s 312, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

RCW 48.30A.065 Insurance antifraud plan or summary report—Failure to file or exercise good faith—Penalty—Failure to follow plan—Civil penalty. An insurer that fails to file a timely antifraud plan or summary report or that fails to make a good faith attempt to file an antifraud plan that complies with RCW 48.30A.050 or a summary report that complies with RCW 48.30A.060, is subject to the penalty provisions of RCW 48.01.080, but no penalty may be imposed for the first filing made by an insurer under this chapter. An insurer that fails to follow the antifraud plan is subject to a civil penalty not to exceed ten thousand dollars for each violation, at the discretion of the commissioner after consideration of all relevant factors, including the willfulness of the violation. [2005 c 223 s 22; 1995 c 285 s 13.]

RCW 48.30A.070 Duty to investigate, enforce, and prosecute violations. It is the duty of all peace officers, law enforcement officers, and law enforcement agencies within this state to investigate, enforce, and prosecute all violations of this chapter. [1995 c 285 s 14.]

RCW 48.30A.900 Effective date—1995 c 285. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995. [1995 c 285 s 39.]