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**SUBSTITUTE SENATE BILL 5436**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Health & Long-Term Care (originally sponsored by Senators Murray, Keiser, Pflug, Marr, Parlette, Kastama, and Roach)

READ FIRST TIME 02/13/09.

1           AN ACT Relating to payment arrangements involving direct practices;  
2 amending RCW 48.150.010, 48.150.040, and 48.150.050; and creating a new  
3 section.

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

5           **Sec. 1.** RCW 48.150.010 and 2007 c 267 s 3 are each amended to read  
6 as follows:

7           The definitions in this section apply throughout this chapter  
8 unless the context clearly requires otherwise.

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

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

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

16           (iii) An entity that sponsors, employs, or is otherwise affiliated  
17 with a group of health care providers who furnish only primary care  
18 services through a direct agreement, which entity is wholly owned by  
19 the group of health care providers or is a nonprofit corporation exempt

1 from taxation under section 501(c)(3) of the internal revenue code, and  
2 is not otherwise regulated as a health care service contractor, health  
3 maintenance organization, or disability insurer under Title 48 RCW.  
4 Such entity is not prohibited from sponsoring, employing, or being  
5 otherwise affiliated with other types of health care providers not  
6 engaged in a direct practice;

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

9 (c) Does not accept payment for health care services provided to  
10 direct patients from any entity subject to regulation under Title 48  
11 RCW((~~7~~)) or plans administered under chapter 41.05, 70.47, or 70.47A  
12 RCW((~~7~~, ~~or self-insured plans~~)); and

13 (d) Does not provide, in consideration for the direct fee,  
14 services, procedures, or supplies such as prescription drugs,  
15 hospitalization costs, major surgery, dialysis, high level radiology  
16 (CT, MRI, PET scans or invasive radiology), rehabilitation services,  
17 procedures requiring general anesthesia, or similar advanced  
18 procedures, services, or supplies.

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

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

25 (4) "Direct agreement" means a written agreement entered into  
26 between a direct practice and an individual direct patient, or the  
27 parent or legal guardian of the direct patient or a family of direct  
28 patients, whereby the direct practice charges a direct fee as  
29 consideration for being available to provide and providing primary care  
30 services to the individual direct patient. A direct agreement must (a)  
31 describe the specific health care services the direct practice will  
32 provide; and (b) be terminable at will upon written notice by the  
33 direct patient.

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

1 (6) "Health carrier" or "carrier" has the same meaning as in RCW  
2 48.43.005.

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

6 (8) "Network" means the group of participating providers and  
7 facilities providing health care services to a particular health  
8 carrier's health plan or to plans administered under chapter 41.05,  
9 70.47, or 70.47A RCW.

10 **Sec. 2.** RCW 48.150.040 and 2007 c 267 s 6 are each amended to read  
11 as follows:

12 (1) Direct practices may not:

13 (a) Enter into a participating provider contract as defined in RCW  
14 48.44.010 or 48.46.020 with any carrier or with any carrier's  
15 contractor or subcontractor, or plans administered under chapter 41.05,  
16 70.47, or 70.47A RCW, to provide health care services through a direct  
17 agreement except as set forth in subsection (2) of this section;

18 (b) Submit a claim for payment to any carrier or any carrier's  
19 contractor or subcontractor, or plans administered under chapter 41.05,  
20 70.47, or 70.47A RCW, for health care services provided to direct  
21 patients as covered by their agreement;

22 (c) With respect to services provided through a direct agreement,  
23 be identified by a carrier or any carrier's contractor or  
24 subcontractor, or plans administered under chapter 41.05, 70.47, or  
25 70.47A RCW, as a participant in the carrier's or any carrier's  
26 contractor or subcontractor network for purposes of determining network  
27 adequacy or being available for selection by an enrollee under a  
28 carrier's benefit plan; or

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

33 (2) Direct practices and providers may:

34 (a) Enter into a participating provider contract as defined by RCW  
35 48.44.010 and 48.46.020 or plans administered under chapter 41.05,  
36 70.47, or 70.47A RCW for purposes other than payment of claims for  
37 services provided to direct patients through a direct agreement. Such

1 providers shall be subject to all other provisions of the participating  
2 provider contract applicable to participating providers including but  
3 not limited to the right to:

4 (i) Make referrals to other participating providers;

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

7 (iii) Prescribe prescription drugs; and

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

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

17 (c) Charge an additional fee to direct patients for supplies,  
18 medications, and specific vaccines provided to direct patients that are  
19 specifically excluded under the agreement, provided the direct practice  
20 notifies the direct patient of the additional charge, prior to their  
21 administration or delivery.

22 **Sec. 3.** RCW 48.150.050 and 2007 c 267 s 7 are each amended to read  
23 as follows:

24 (1) Direct practices may not decline to accept new direct patients  
25 or discontinue care to existing patients solely because of the  
26 patient's health status. A direct practice may decline to accept a  
27 patient if the practice has reached its maximum capacity, or if the  
28 patient's medical condition is such that the provider is unable to  
29 provide the appropriate level and type of health care services in the  
30 direct practice. So long as the direct practice provides the patient  
31 notice and opportunity to obtain care from another physician, the  
32 direct practice may discontinue care for direct patients if: (a) The  
33 patient fails to pay the direct fee under the terms required by the  
34 direct agreement; (b) the patient has performed an act that constitutes  
35 fraud; (c) the patient repeatedly fails to comply with the recommended  
36 treatment plan; (d) the patient is abusive and presents an emotional or

1 physical danger to the staff or other patients of the direct practice;  
2 or (e) the direct practice discontinues operation as a direct practice.

3 (2) Subject to the restrictions established in this chapter, direct  
4 practices may accept payment of direct fees directly or indirectly from  
5 ((nonemployer)) third parties. A direct practice may accept a direct  
6 fee paid by an employer on behalf of an employee who is a direct  
7 patient. However, a direct practice shall not enter into a contract  
8 with an employer relating to direct practice agreements between the  
9 direct practice and employees of that employer, other than to establish  
10 the timing and method of the payment of the direct fee by the employer.

11 NEW SECTION. Sec. 4. The insurance commissioner shall work with  
12 health maintenance organizations under chapter 48.46 RCW to determine  
13 how they can operate as a direct practice as defined in RCW 48.150.010.  
14 Recommendations for any necessary statutory changes must be submitted  
15 to the legislature by December 1, 2009.

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