
SUBSTITUTE SENATE BILL 5716

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Keiser, Kastama, Franklin and Kline; by request of Insurance Commissioner)

READ FIRST TIME 02/27/07.

1 AN ACT Relating to retainer health care practices; amending RCW
2 48.44.010; and adding a new chapter to Title 48 RCW.

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

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

6 For the purposes of this chapter:

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

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

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

1 any health care services. "Health care service contractor" does not
2 include retainer health care practices as defined in section 2 of this
3 act.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 NEW SECTION. **Sec. 2.** The definitions in this section apply
16 throughout this chapter unless the context clearly requires otherwise.

17 (1) "Retainer health care practice" and "retainer practice" mean a
18 provider, group, or entity that meets the following criteria in (a) and
19 (b) of this subsection:

20 (a)(i) A health care provider who furnishes only primary care
21 services through a retainer agreement; or

22 (ii) An entity that sponsors, employs, or is otherwise affiliated
23 with a group of health care providers who furnish only primary care
24 services through a retainer agreement, which entity is wholly owned by
25 the group of health care providers or is a nonprofit corporation exempt
26 from taxation under section 501(c)(3) of the internal revenue code.
27 Such entity is not prohibited from sponsoring, employing, or being
28 otherwise affiliated with other types of health care providers not
29 engaged in a retainer health care practice; and

30 (b) Enters into retainer agreements with retainer subscribers or
31 the parents or legal guardians of retainer subscribers.

32 (2) "Retainer subscriber" means a person who is covered by a
33 retainer agreement and is entitled to receive primary care services
34 under the retainer agreement from the retainer practice.

35 (3) "Retainer fee" means a fee charged by a retainer health care
36 practice as consideration for being available to provide and providing

1 primary care services as specified in the retainer agreement. The
2 retainer fee must represent the total amount due for all health care
3 services specified in the retainer agreement.

4 (4) "Retainer agreement" means a written agreement entered into
5 between a retainer health care practice and an individual retainer
6 subscriber whereby the retainer practice charges a retainer fee as
7 consideration for being available to provide and providing primary care
8 services to the individual retainer subscriber during a specified
9 service period. A retainer agreement must (a) describe the primary
10 care services the retainer practice will provide, and (b) be terminable
11 at will upon written notice by the retainer subscriber. A retainer
12 agreement may not be sold to a group and may not be entered with a
13 group of subscribers. It must be an agreement between a retainer
14 health care practice and an individual subscriber.

15 (5) "Health care provider" or "provider" means a person regulated
16 under chapters 18.57, 18.57A, 18.71, and 18.71A RCW and RCW 18.79.050
17 to practice health or health-related services or otherwise practicing
18 health care services in this state consistent with state law.

19 (6) "Health carrier" or "carrier" has the same meaning as in RCW
20 48.43.005.

21 (7) "Primary care" means routine health care services, including
22 screening, assessment, diagnosis, and treatment for the purpose of
23 promotion of health and detection of disease or injury.

24 (8) "Network" means the group of participating providers and
25 facilities providing health care services to a particular health
26 carrier.

27 NEW SECTION. **Sec. 3.** (1) Except as provided in subsection (2) of
28 this section, a retainer health care practice may not accept periodic
29 payment for health care services to retainer subscribers.

30 (2) A retainer practice may charge a retainer fee as consideration
31 for being available to provide and providing primary care services to
32 a retainer subscriber during a specified service period if the retainer
33 health care practice deposits the fee in one or more identifiable trust
34 accounts and distributes the fee to the retainer practice at the end of
35 the specified service period.

36 (3) The instrument creating the trust and governing the trust
37 account must provide that:

1 (a) All retainer fees are held in trust for and remain the property
2 of the retainer subscriber until the end of the service period for
3 which they are charged, at which time they become the property of the
4 retainer health care practice.

5 (b) All unearned retainer fees will immediately be returned to the
6 retainer subscriber, upon the occurrence of any event that prevents the
7 provision of the health care services as contemplated by the retainer
8 agreement.

9 (4) A retainer practice must:

10 (a) Promptly notify a retainer subscriber of the receipt of his or
11 her retainer fee;

12 (b) Render appropriate accounts to retainer subscribers regarding
13 the funds; and

14 (c) Promptly refund to the retainer subscriber all unearned
15 retainer fees upon the occurrence of any event that prevents the
16 provision of the health care services as contemplated by the retainer
17 agreement.

18 NEW SECTION. **Sec. 4.** (1) Retainer health care practices may not:

19 (a) Enter into a participating provider contract as defined in RCW
20 48.44.010 or 48.46.020 with any carrier or with any carrier's
21 contractor or subcontractor to provide health care services through a
22 retainer agreement except as set forth in subsection (2) of this
23 section;

24 (b) Submit a claim for payment to any carrier or any carrier's
25 contractor or subcontractor for health care services provided to
26 retainer subscribers as covered by their agreement;

27 (c) With respect to services provided through a retainer agreement,
28 be identified by a carrier or any carrier's contractor or subcontractor
29 as a participant in the carrier's or any carrier's contractor or
30 subcontractor network;

31 (d) Pay for health care services covered by a retainer agreement
32 rendered to retainer practice subscribers by providers other than the
33 providers in the retainer practice or their employees, except as
34 described in subsection (2)(b) of this section; or

35 (e) Decline to accept new retainer patients solely because of the
36 patient's health status. This does not require a retainer health care
37 practice to accept new retainer patients, if the practice has reached

1 its maximum capacity, or if the patient's medical condition is such
2 that the provider is unable to provide the appropriate level and type
3 of health care services in the retainer practice. In addition, the
4 provider may decline any patient for whom the payment of the retainer
5 fee is paid indirectly or directly by a third party.

6 (2) Retainer health care practices and providers may:

7 (a) Enter into a participating provider contract as defined by RCW
8 48.44.010 and 48.46.020 for purposes other than payment of claims for
9 services provided to retainer subscribers through a retainer agreement
10 and such providers shall be subject to all other provisions of the
11 participating provider contract applicable to participating providers
12 including but not limited to the right to:

13 (i) Make referrals to other participating providers;

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

16 (iii) Prescribe prescription drugs; and

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

19 (b) Pay for charges associated with the provision of routine lab
20 and imaging services provided in connection with wellness physical
21 examinations. In aggregate such payments per year per retainer
22 subscriber are not to exceed fifteen percent of the total annual
23 retainer subscription fee charged that subscriber.

24 (c) Retainer practices may charge an additional fee to direct
25 patients for supplies, medications, and specific vaccines provided to
26 retainer subscribers that are specifically excluded under the retainer
27 agreement, provided the retainer provider notifies the retainer
28 subscriber of the additional charge, prior to their administration or
29 delivery.

30 NEW SECTION. **Sec. 5.** (1) The legislature intends by enacting this
31 chapter to create a safe harbor for compliance with the insurance code
32 for retainer practices as defined in section 2 of this act who comply
33 with this chapter, but does not intend by this act to affect the
34 legality of arrangements not covered by this chapter.

35 (2) A health care provider may not act as, or hold himself or
36 herself out to be, a retainer health care practice in this state, nor

1 may a retainer agreement be entered into with a retainer subscriber in
2 this state, unless the provider submits annually to the commissioner a
3 letter certifying compliance with this chapter.

4 NEW SECTION. **Sec. 6.** Every retainer health care practice must
5 maintain the following records for a period of five years, and upon
6 request must make the following records available to the commissioner
7 for review:

8 (1) Forms of contracts between the retainer practice and retainer
9 subscribers;

10 (2) Documents relating to the creation and maintenance of any
11 retainer fee trust accounts. However, any patient's personal
12 identifying information may be withheld, unless otherwise authorized by
13 the patient;

14 (3) All advertising relating to the retainer practice and its
15 services; and

16 (4) All records relating to retainer fees received by the retainer
17 health care practice. However, any patient's personal identifying
18 information may be withheld, unless otherwise authorized by the
19 patient.

20 NEW SECTION. **Sec. 7.** A person shall not knowingly make, publish,
21 or disseminate any false, deceptive, or misleading representation or
22 advertising in the conduct of the business of a retainer practice, or
23 relative to the business of a retainer practice.

24 NEW SECTION. **Sec. 8.** A person shall not knowingly make, issue, or
25 circulate, or cause to be made, issued, or circulated, a
26 misrepresentation of the terms of any retainer agreement, or the
27 benefits or advantages promised thereby, or use the name or title of
28 any retainer agreement misrepresenting the nature thereof.

29 NEW SECTION. **Sec. 9.** The commissioner shall adopt rules in
30 accordance with chapter 34.05 RCW establishing a standardized
31 disclosure form to be distributed to all retainer subscribers with
32 their enrollment forms. Such form will inform the subscriber patient
33 of their financial rights and responsibilities to the retainer practice
34 as provided for in this chapter, will encourage that the retainer

1 patient obtain and maintain insurance for services not provided by the
2 retainer practice, and that the provider will not bill a carrier for
3 services covered under the retainer agreement. Such a standardized
4 disclosure form shall be deemed sufficient disclosure of a retainer
5 practice's obligations under this chapter.

6 NEW SECTION. **Sec. 10.** If the commissioner has cause to believe
7 that any person has violated the provisions of this chapter, the
8 commissioner may issue and enforce a cease and desist order in
9 accordance with RCW 48.02.080.

10 NEW SECTION. **Sec. 11.** Sections 2 through 10 of this act
11 constitute a new chapter in Title 48 RCW.

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