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SENATE BILL 5654

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State of Washington

65th Legislature

2017 Regular Session

By Senators Rivers and Keiser

1 AN ACT Relating to protecting consumers from charges for out-of-  
2 network health care services; amending RCW 48.43.093; adding a new  
3 section to chapter 48.43 RCW; and providing an effective date.

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

5 **Sec. 1.** RCW 48.43.093 and 1997 c 231 s 301 are each amended to  
6 read as follows:

7 (1) When conducting a review of the necessity and appropriateness  
8 of emergency services or making a benefit determination for emergency  
9 services:

10 (a) A health carrier shall cover emergency services necessary to  
11 screen and stabilize a covered person if a prudent layperson acting  
12 reasonably would have believed that an emergency medical condition  
13 existed. In addition, a health carrier shall not require prior  
14 authorization of such services provided prior to the point of  
15 stabilization if a prudent layperson acting reasonably would have  
16 believed that an emergency medical condition existed. With respect to  
17 care obtained from a nonparticipating hospital emergency department,  
18 a health carrier shall cover emergency services necessary to screen  
19 and stabilize a covered person (~~if a prudent layperson would have~~  
20 ~~reasonably believed that use of a participating hospital emergency~~  
21 ~~department would result in a delay that would worsen the emergency,~~

1 ~~or if a provision of federal, state, or local law requires the use of~~  
2 ~~a specific provider or facility)). Stabilization means both care~~  
3 ~~delivered in the emergency department and care immediately subsequent~~  
4 ~~to an emergency department visit for an emergency medical condition~~  
5 ~~prior to the point at which the patient's care may be transferred to~~  
6 ~~an in-network facility or provider.~~ In addition, a health carrier  
7 shall not require prior authorization of such services provided prior  
8 to the point of stabilization ((~~if a prudent layperson acting~~  
9 ~~reasonably would have believed that an emergency medical condition~~  
10 ~~existed and that use of a participating hospital emergency department~~  
11 ~~would result in a delay that would worsen the emergency)).~~

12 (b) If an authorized representative of a health carrier  
13 authorizes coverage of emergency services, the health carrier shall  
14 not subsequently retract its authorization after the emergency  
15 services have been provided, or reduce payment for an item or service  
16 furnished in reliance on approval, unless the approval was based on a  
17 material misrepresentation about the covered person's health  
18 condition made by the provider of emergency services.

19 (c) (~~Coverage of emergency services may be subject to applicable~~  
20 ~~copayments, coinsurance, and deductibles, and a health carrier may~~  
21 ~~impose reasonable differential cost sharing arrangements for~~  
22 ~~emergency services rendered by nonparticipating providers, if such~~  
23 ~~differential between cost sharing amounts applied to emergency~~  
24 ~~services rendered by participating provider versus nonparticipating~~  
25 ~~provider does not exceed fifty dollars. Differential cost sharing for~~  
26 ~~emergency services may not be applied when a covered person presents~~  
27 ~~to a nonparticipating hospital emergency department rather than a~~  
28 ~~participating hospital emergency department when the health carrier~~  
29 ~~requires preauthorization for postevaluation or poststabilization~~  
30 ~~emergency services if:~~

31 (i) ~~Due to circumstances beyond the covered person's control, the~~  
32 ~~covered person was unable to go to a participating hospital emergency~~  
33 ~~department in a timely fashion without serious impairment to the~~  
34 ~~covered person's health; or~~

35 (ii) ~~A prudent layperson possessing an average knowledge of~~  
36 ~~health and medicine would have reasonably believed that he or she~~  
37 ~~would be unable to go to a participating hospital emergency~~  
38 ~~department in a timely fashion without serious impairment to the~~  
39 ~~covered person's health.)) When a covered person utilizes a~~  
40 ~~participating health care facility for emergency services or~~

1 otherwise unscheduled services, and services are provided by a  
2 nonparticipating or out-of-network provider, the health carrier must  
3 ensure the covered person's cost-sharing in the form of copayments or  
4 coinsurance for out-of-network emergency services do not exceed the  
5 cost-sharing requirements imposed for in-network services.

6 (i) The health carrier must count the cost-sharing for an out-of-  
7 network provider at an in-network facility toward an in-network  
8 deductible and the in-network maximum out-of-pocket expenses allowed  
9 on the coverage.

10 (ii) The health carrier must pay the applicable charges for the  
11 out-of-network provider directly to the health care provider within  
12 thirty days for a clean claim, and may subsequently bill the covered  
13 person for the applicable in-network deductible and cost-sharing.

14 (iii) The health carrier must pay the out-of-network provider a  
15 reasonable rate to be referenced to as a minimum benefit standard set  
16 at the eightieth percentile of the geographically comparable charges,  
17 as reported by a Washington state public entity that establishes or  
18 sponsors a health care claims database or by a commercially available  
19 usual, customary, and reasonable fee schedule database provider. Such  
20 a database provider may not have an ownership or controlling interest  
21 in, or be an affiliate of, any entity with a pecuniary interest in  
22 the application of the database, including an insurer, health care  
23 provider, or trade association in the field of insurance, health  
24 benefits, or provider of health care. The charges must be benchmarked  
25 to 2016 rates and updated on an annual basis with the relevant health  
26 care consumer price index adjustor calculated by the bureau of labor  
27 statistics.

28 (d) If a health carrier requires preauthorization for  
29 postevaluation or poststabilization services, the health carrier  
30 shall provide access to an authorized representative twenty-four  
31 hours a day, seven days a week, to facilitate review. In order for  
32 postevaluation or poststabilization services to be covered by the  
33 health carrier, the provider or facility must make a documented good  
34 faith effort to contact the covered person's health carrier within  
35 thirty minutes of stabilization, if the covered person needs to be  
36 stabilized. The health carrier's authorized representative is  
37 required to respond to a telephone request for preauthorization from  
38 a provider or facility within thirty minutes. Failure of the health  
39 carrier to respond within thirty minutes constitutes authorization  
40 for the provision of immediately required medically necessary

1 postevaluation and poststabilization services, unless the health  
2 carrier documents that it made a good faith effort but was unable to  
3 reach the provider or facility within thirty minutes after receiving  
4 the request.

5 (e) A health carrier shall immediately arrange for an alternative  
6 plan of treatment for the covered person if a nonparticipating  
7 emergency provider and health plan cannot reach an agreement on which  
8 services are necessary beyond those immediately necessary to  
9 stabilize the covered person consistent with state and federal laws.

10 (2) Nothing in this section is to be construed as prohibiting the  
11 health carrier from requiring notification within the time frame  
12 specified in the contract for inpatient admission or as soon  
13 thereafter as medically possible but no less than twenty-four hours.  
14 Nothing in this section is to be construed as preventing the health  
15 carrier from reserving the right to require transfer of a  
16 hospitalized covered person upon stabilization. Follow-up care that  
17 is a direct result of the emergency must be obtained in accordance  
18 with the health plan's usual terms and conditions of coverage. All  
19 other terms and conditions of coverage may be applied to emergency  
20 services.

21 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.43  
22 RCW to read as follows:

23 (1) A carrier must maintain each provider network of in-network  
24 providers and facilities for each health plan in a manner that is  
25 sufficient in numbers and types of providers and facilities to assure  
26 that, to the extent feasible based on the number and type of  
27 providers and facilities in the service area, enrollees may access  
28 in-network options for all health plan services in a timely manner  
29 appropriate for the enrollee's condition and the place of service.

30 (2) A carrier must demonstrate that for each health plan's  
31 defined service area, it has established a network of participating  
32 providers and facilities to provide a comprehensive range of primary,  
33 specialty, institutional, and ancillary services, as well as  
34 emergency services that are accessible twenty-four hours per day,  
35 seven days per week without unreasonable delay.

36 (3) If a carrier has an insufficient number or type of in-network  
37 participating providers or facilities to provide a particular covered  
38 health care service, the carrier must ensure that the enrollee  
39 obtains the covered service from a nonnetwork provider or facility

1 within reasonable proximity and a timely manner, consistent with the  
2 generally accepted standards of care, to the enrollee at no greater  
3 cost to the enrollee than if the service were obtained from in-  
4 network providers and facilities.

5 (4) In assessing a carrier's provider network under this section  
6 and rules adopted by the commissioner, the commissioner shall  
7 consider the relative availability of providers and facilities and  
8 the willingness of providers and facilities in a service area to  
9 contract with the carrier under reasonable terms and conditions,  
10 including the provider reimbursement amount. The reimbursement amount  
11 set forth in RCW 48.43.093 does not in and of itself constitute a  
12 reasonable compensation amount for the purposes of establishing  
13 network adequacy.

14 (5) A carrier may not state or imply in communications with or  
15 directed toward enrollees or potential enrollees that a hospital  
16 licensed under chapter 70.41 RCW is an in-network health care  
17 facility if the health care providers who provide the following  
18 specialty services to the hospital do not also participate in the  
19 carrier's network: Anesthesiology; emergency medicine; radiology; and  
20 pathology.

21 NEW SECTION. **Sec. 3.** This act takes effect January 1, 2018.

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