
SENATE BILL 5140

State of Washington

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By Senators Shin, Kastama, McAuliffe, Jacobsen, Pridemore, Keiser, Hatfield, Kohl-Welles, and Kline

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1 AN ACT Relating to language access services in health care;
2 amending RCW 70.47.060; adding new sections to chapter 48.44 RCW;
3 adding a new section to chapter 48.46 RCW; adding a new section to
4 chapter 48.20 RCW; adding a new section to chapter 41.05 RCW; adding a
5 new section to chapter 48.02 RCW; creating new sections; providing an
6 effective date; and providing a contingent effective date.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that:

9 (1) Hundreds of thousands of patients in Washington need
10 interpretation and translation services to understand medical
11 instructions and diagnoses and to communicate clearly with their health
12 care providers. For them, interpretation and translation are essential
13 to assuring that they receive the high quality health care called for
14 by the state's blue ribbon commission. The health care system in the
15 state is not currently meeting the needs of these patients, largely
16 because of unanswered questions about how to fund needed language
17 services. Studies document that limited English speakers are less
18 likely to have a regular primary care provider or receive preventative
19 care, and more likely to experience medical errors, all of which lead

1 to negative health outcomes and higher long-term costs to the health
2 care system. Furthermore, language barriers impede informed consent
3 for treatment and surgical procedures, leaving health care
4 organizations and providers vulnerable to potentially costly lawsuits.

5 (2) According to the 2005 American community survey, four hundred
6 fifty-four thousand Washington residents speak English less than very
7 well. Title VI of the civil rights act of 1964 and executive orders
8 issued by President Clinton and President Bush establish the
9 requirement that health care providers who serve patients in federally
10 funded programs must provide language access services to all patients
11 with limited English proficiency. Nevertheless, most health care
12 providers lack systems and financial resources to provide these
13 services. In a 2006 national survey of hospitals, forty-eight percent
14 cited cost and reimbursement concerns as a primary barrier to providing
15 language access services. In Washington state, medicaid and the state
16 children's health insurance program provide interpretation and
17 translation services. Many private insurers and the Washington basic
18 health plan do not. Quality language services lead to better health
19 outcomes and long-term cost savings to the health care system, and the
20 private and public sectors should share the responsibility of covering
21 the cost of these vital services.

22 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.44 RCW
23 to read as follows:

24 For the purposes of this act, the following definitions apply:

25 (1) "Dual-role interpreter" means a bilingual staff person who is
26 used to interpret but whose primary work is not interpreting.

27 (2) "Interpretation" is the process of, or activity involved in,
28 transferring a message orally from one language to another in real time
29 and in a culturally appropriate manner. For the purposes of this act,
30 interpretation includes the process of, or activity involved in,
31 transferring a message to and from the visually impaired or hearing
32 impaired.

33 (3) "Interpretation services" means the interpretation provided for
34 patients, enrollees, enrolled participants, insured individuals, and
35 their guardians or caregivers, with limited English proficiency, to
36 enable them to have accurate and adequate communications with clinical
37 health care providers and with contract representatives or

1 administrators responsible for billing and claims services.
2 Interpretation services must be provided by interpreters who are
3 certified or authorized in accordance with the standards established in
4 section 7 of this act. Certified or authorized interpreters may
5 include staff interpreters, contracted in-person interpreters,
6 contracted phone or video-conference interpreters, and dual-role
7 interpreters.

8 (4) "Limited English proficient" patients, enrollees, enrolled
9 participants, insured individuals, and their guardians or caregivers
10 are those who identify themselves, or who are identified by clinical
11 providers, contract representatives, or administrators, as having an
12 inability or a limited ability to speak, read, write, or understand the
13 English language at a level that permits them to interact effectively
14 with health care providers. For the purposes of this act, limited
15 English proficient includes the visually impaired and the hearing
16 impaired.

17 (5) "Translation" is the process of or activity involved in
18 transferring a written message from one language to another.

19 **Sec. 3.** RCW 70.47.060 and 2007 c 259 s 36 are each amended to read
20 as follows:

21 The administrator has the following powers and duties:

22 (1) To design and from time to time revise a schedule of covered
23 basic health care services, including physician services, inpatient and
24 outpatient hospital services, prescription drugs and medications, and
25 other services that may be necessary for basic health care. In
26 addition, the administrator may, to the extent that funds are
27 available, offer as basic health plan services chemical dependency
28 services, mental health services and organ transplant services;
29 however, no one service or any combination of these three services
30 shall increase the actuarial value of the basic health plan benefits by
31 more than five percent excluding inflation, as determined by the office
32 of financial management. All subsidized and nonsubsidized enrollees in
33 any participating managed health care system under the Washington basic
34 health plan shall be entitled to receive covered basic health care
35 services in return for premium payments to the plan. The schedule of
36 services shall emphasize proven preventive and primary health care and
37 shall include all services necessary for prenatal, postnatal, and well-

1 child care. However, with respect to coverage for subsidized enrollees
2 who are eligible to receive prenatal and postnatal services through the
3 medical assistance program under chapter 74.09 RCW, the administrator
4 shall not contract for such services except to the extent that such
5 services are necessary over not more than a one-month period in order
6 to maintain continuity of care after diagnosis of pregnancy by the
7 managed care provider. The schedule of services shall also include a
8 separate schedule of basic health care services for children, eighteen
9 years of age and younger, for those subsidized or nonsubsidized
10 enrollees who choose to secure basic coverage through the plan only for
11 their dependent children. In designing and revising the schedule of
12 services, the administrator shall consider the guidelines for assessing
13 health services under the mandated benefits act of 1984, RCW 48.47.030,
14 and such other factors as the administrator deems appropriate.

15 (2)(a) To design and implement a structure of periodic premiums due
16 the administrator from subsidized enrollees that is based upon gross
17 family income, giving appropriate consideration to family size and the
18 ages of all family members. The enrollment of children shall not
19 require the enrollment of their parent or parents who are eligible for
20 the plan. The structure of periodic premiums shall be applied to
21 subsidized enrollees entering the plan as individuals pursuant to
22 subsection (11) of this section and to the share of the cost of the
23 plan due from subsidized enrollees entering the plan as employees
24 pursuant to subsection (12) of this section.

25 (b) To determine the periodic premiums due the administrator from
26 subsidized enrollees under RCW 70.47.020(6)(b). Premiums due for
27 foster parents with gross family income up to two hundred percent of
28 the federal poverty level shall be set at the minimum premium amount
29 charged to enrollees with income below sixty-five percent of the
30 federal poverty level. Premiums due for foster parents with gross
31 family income between two hundred percent and three hundred percent of
32 the federal poverty level shall not exceed one hundred dollars per
33 month.

34 (c) To determine the periodic premiums due the administrator from
35 nonsubsidized enrollees. Premiums due from nonsubsidized enrollees
36 shall be in an amount equal to the cost charged by the managed health
37 care system provider to the state for the plan plus the administrative

1 cost of providing the plan to those enrollees and the premium tax under
2 RCW 48.14.0201.

3 (d) To determine the periodic premiums due the administrator from
4 health coverage tax credit eligible enrollees. Premiums due from
5 health coverage tax credit eligible enrollees must be in an amount
6 equal to the cost charged by the managed health care system provider to
7 the state for the plan, plus the administrative cost of providing the
8 plan to those enrollees and the premium tax under RCW 48.14.0201. The
9 administrator will consider the impact of eligibility determination by
10 the appropriate federal agency designated by the Trade Act of 2002
11 (P.L. 107-210) as well as the premium collection and remittance
12 activities by the United States internal revenue service when
13 determining the administrative cost charged for health coverage tax
14 credit eligible enrollees.

15 (e) An employer or other financial sponsor may, with the prior
16 approval of the administrator, pay the premium, rate, or any other
17 amount on behalf of a subsidized or nonsubsidized enrollee, by
18 arrangement with the enrollee and through a mechanism acceptable to the
19 administrator. The administrator shall establish a mechanism for
20 receiving premium payments from the United States internal revenue
21 service for health coverage tax credit eligible enrollees.

22 (f) To develop, as an offering by every health carrier providing
23 coverage identical to the basic health plan, as configured on January
24 1, 2001, a basic health plan model plan with uniformity in enrollee
25 cost-sharing requirements.

26 (3) To evaluate, with the cooperation of participating managed
27 health care system providers, the impact on the basic health plan of
28 enrolling health coverage tax credit eligible enrollees. The
29 administrator shall issue to the appropriate committees of the
30 legislature preliminary evaluations on June 1, 2005, and January 1,
31 2006, and a final evaluation by June 1, 2006. The evaluation shall
32 address the number of persons enrolled, the duration of their
33 enrollment, their utilization of covered services relative to other
34 basic health plan enrollees, and the extent to which their enrollment
35 contributed to any change in the cost of the basic health plan.

36 (4) To end the participation of health coverage tax credit eligible
37 enrollees in the basic health plan if the federal government reduces or

1 terminates premium payments on their behalf through the United States
2 internal revenue service.

3 (5) To design and implement a structure of enrollee cost-sharing
4 due a managed health care system from subsidized, nonsubsidized, and
5 health coverage tax credit eligible enrollees. The structure shall
6 discourage inappropriate enrollee utilization of health care services,
7 and may utilize copayments, deductibles, and other cost-sharing
8 mechanisms, but shall not be so costly to enrollees as to constitute a
9 barrier to appropriate utilization of necessary health care services.

10 (6) To limit enrollment of persons who qualify for subsidies so as
11 to prevent an overexpenditure of appropriations for such purposes.
12 Whenever the administrator finds that there is danger of such an
13 overexpenditure, the administrator shall close enrollment until the
14 administrator finds the danger no longer exists. Such a closure does
15 not apply to health coverage tax credit eligible enrollees who receive
16 a premium subsidy from the United States internal revenue service as
17 long as the enrollees qualify for the health coverage tax credit
18 program.

19 (7) To limit the payment of subsidies to subsidized enrollees, as
20 defined in RCW 70.47.020. The level of subsidy provided to persons who
21 qualify may be based on the lowest cost plans, as defined by the
22 administrator.

23 (8) To adopt a schedule for the orderly development of the delivery
24 of services and availability of the plan to residents of the state,
25 subject to the limitations contained in RCW 70.47.080 or any act
26 appropriating funds for the plan.

27 (9) To solicit and accept applications from managed health care
28 systems, as defined in this chapter, for inclusion as eligible basic
29 health care providers under the plan for subsidized enrollees,
30 nonsubsidized enrollees, or health coverage tax credit eligible
31 enrollees. The administrator shall endeavor to assure that covered
32 basic health care services are available to any enrollee of the plan
33 from among a selection of two or more participating managed health care
34 systems. In adopting any rules or procedures applicable to managed
35 health care systems and in its dealings with such systems, the
36 administrator shall consider and make suitable allowance for the need
37 for health care services and the differences in local availability of
38 health care resources, along with other resources, within and among the

1 several areas of the state. Contracts with participating managed
2 health care systems shall ensure that basic health plan enrollees who
3 become eligible for medical assistance may, at their option, continue
4 to receive services from their existing providers within the managed
5 health care system if such providers have entered into provider
6 agreements with the department of social and health services.

7 (10) To receive periodic premiums from or on behalf of subsidized,
8 nonsubsidized, and health coverage tax credit eligible enrollees,
9 deposit them in the basic health plan operating account, keep records
10 of enrollee status, and authorize periodic payments to managed health
11 care systems on the basis of the number of enrollees participating in
12 the respective managed health care systems.

13 (11) To accept applications from individuals residing in areas
14 served by the plan, on behalf of themselves and their spouses and
15 dependent children, for enrollment in the Washington basic health plan
16 as subsidized, nonsubsidized, or health coverage tax credit eligible
17 enrollees, to give priority to members of the Washington national guard
18 and reserves who served in Operation Enduring Freedom, Operation Iraqi
19 Freedom, or Operation Noble Eagle, and their spouses and dependents,
20 for enrollment in the Washington basic health plan, to establish
21 appropriate minimum-enrollment periods for enrollees as may be
22 necessary, and to determine, upon application and on a reasonable
23 schedule defined by the authority, or at the request of any enrollee,
24 eligibility due to current gross family income for sliding scale
25 premiums. Funds received by a family as part of participation in the
26 adoption support program authorized under RCW 26.33.320 and 74.13.100
27 through 74.13.145 shall not be counted toward a family's current gross
28 family income for the purposes of this chapter. When an enrollee fails
29 to report income or income changes accurately, the administrator shall
30 have the authority either to bill the enrollee for the amounts overpaid
31 by the state or to impose civil penalties of up to two hundred percent
32 of the amount of subsidy overpaid due to the enrollee incorrectly
33 reporting income. The administrator shall adopt rules to define the
34 appropriate application of these sanctions and the processes to
35 implement the sanctions provided in this subsection, within available
36 resources. No subsidy may be paid with respect to any enrollee whose
37 current gross family income exceeds twice the federal poverty level or,
38 subject to RCW 70.47.110, who is a recipient of medical assistance or

1 medical care services under chapter 74.09 RCW. If a number of
2 enrollees drop their enrollment for no apparent good cause, the
3 administrator may establish appropriate rules or requirements that are
4 applicable to such individuals before they will be allowed to reenroll
5 in the plan.

6 (12) To accept applications from business owners on behalf of
7 themselves and their employees, spouses, and dependent children, as
8 subsidized or nonsubsidized enrollees, who reside in an area served by
9 the plan. The administrator may require all or the substantial
10 majority of the eligible employees of such businesses to enroll in the
11 plan and establish those procedures necessary to facilitate the orderly
12 enrollment of groups in the plan and into a managed health care system.
13 The administrator may require that a business owner pay at least an
14 amount equal to what the employee pays after the state pays its portion
15 of the subsidized premium cost of the plan on behalf of each employee
16 enrolled in the plan. Enrollment is limited to those not eligible for
17 medicare who wish to enroll in the plan and choose to obtain the basic
18 health care coverage and services from a managed care system
19 participating in the plan. The administrator shall adjust the amount
20 determined to be due on behalf of or from all such enrollees whenever
21 the amount negotiated by the administrator with the participating
22 managed health care system or systems is modified or the administrative
23 cost of providing the plan to such enrollees changes.

24 (13) To determine the rate to be paid to each participating managed
25 health care system in return for the provision of covered basic health
26 care services to enrollees in the system. Although the schedule of
27 covered basic health care services will be the same or actuarially
28 equivalent for similar enrollees, the rates negotiated with
29 participating managed health care systems may vary among the systems.
30 In negotiating rates with participating systems, the administrator
31 shall consider the characteristics of the populations served by the
32 respective systems, economic circumstances of the local area, the need
33 to conserve the resources of the basic health plan trust account, and
34 other factors the administrator finds relevant.

35 (14) To monitor the provision of covered services to enrollees by
36 participating managed health care systems in order to assure enrollee
37 access to good quality basic health care, to require periodic data
38 reports concerning the utilization of health care services rendered to

1 enrollees in order to provide adequate information for evaluation, and
2 to inspect the books and records of participating managed health care
3 systems to assure compliance with the purposes of this chapter. In
4 requiring reports from participating managed health care systems,
5 including data on services rendered enrollees, the administrator shall
6 endeavor to minimize costs, both to the managed health care systems and
7 to the plan. The administrator shall coordinate any such reporting
8 requirements with other state agencies, such as the insurance
9 commissioner and the department of health, to minimize duplication of
10 effort.

11 (15) To evaluate the effects this chapter has on private employer-
12 based health care coverage and to take appropriate measures consistent
13 with state and federal statutes that will discourage the reduction of
14 such coverage in the state.

15 (16) To develop a program of proven preventive health measures and
16 to integrate it into the plan wherever possible and consistent with
17 this chapter.

18 (17) To provide, consistent with available funding, assistance for
19 rural residents, underserved populations, and persons of color.

20 (18) In consultation with appropriate state and local government
21 agencies, to establish criteria defining eligibility for persons
22 confined or residing in government-operated institutions.

23 (19) To administer the premium discounts provided under RCW
24 48.41.200(3)(a) (i) and (ii) pursuant to a contract with the Washington
25 state health insurance pool.

26 (20) To give priority in enrollment to persons who disenrolled from
27 the program in order to enroll in medicaid, and subsequently became
28 ineligible for medicaid coverage.

29 The Washington basic health plan shall provide interpretation
30 services, as defined in section 2 of this act, to limited English
31 proficient enrollees. Enrollees are not subject to additional premium
32 charges, copayments, deductibles, or other cost sharing associated with
33 the interpretation services.

34 NEW SECTION. Sec. 4. A new section is added to chapter 48.44 RCW
35 to read as follows:

36 All health care service contractors that provide coverage for
37 health care services shall provide interpretation services or shall

1 reimburse clinical health care providers, contract representatives, or
2 administrators that are responsible for billing and claims services for
3 providing interpretation services, as defined in section 2 of this act,
4 to limited English proficient enrolled participants. Enrolled
5 participants are not subject to additional premium charges, copayments,
6 deductibles, or other cost sharing associated with the interpretation
7 services.

8 NEW SECTION. **Sec. 5.** A new section is added to chapter 48.46 RCW
9 to read as follows:

10 All health maintenance organizations that provide coverage for
11 health care services shall provide interpretation services or shall
12 reimburse clinical health care providers, contract representatives, or
13 administrators that are responsible for billing and claims services for
14 providing interpretation services, as defined in section 2 of this act,
15 to limited English proficient enrolled participants. Enrolled
16 participants are not subject to additional premium charges, copayments,
17 deductibles, or other cost sharing associated with the interpretation
18 services.

19 NEW SECTION. **Sec. 6.** A new section is added to chapter 48.20 RCW
20 to read as follows:

21 For all disability insurance contracts that provide hospital and
22 medical expenses and health care services, insurers shall provide
23 interpretation services or shall reimburse clinical health care
24 providers, contract representatives, or administrators that are
25 responsible for billing and claims services for providing
26 interpretation services, as defined in section 2 of this act, to
27 limited English proficient insured individuals. Insured individuals
28 are not subject to additional premiums, copayments, deductibles, or
29 other cost sharing associated with the interpretation services.

30 NEW SECTION. **Sec. 7.** A working group on language access in health
31 care is hereby established in the department of health with the
32 following members: A representative of the department of social and
33 health services, a representative of the office of the insurance
34 commissioner, a representative of the health care authority, and a
35 representative of the department of labor and industries. In addition,

1 the governor shall appoint two health care interpreters, a hospital
2 representative, a representative of community clinics, a representative
3 of community health centers, a physician, a pharmacist, two consumers
4 of interpretation services, and two consumer advocates to serve in the
5 working group. The secretary of the department of health, or the
6 secretary's designee, shall chair the working group. The working group
7 shall review and make recommendations regarding standards for
8 interpreter certification and authorization to be used in this act.
9 The working group must include in its analysis the potential impact of
10 new standards on ensuring an adequate supply of interpreters,
11 particularly in rural areas of the state. The working group must also
12 devise a plan for increasing the number of interpreters who meet the
13 new standards, and make a recommendation as to whether the state should
14 provide or subsidize training for interpreters to help them meet the
15 new standards. The working group report shall be issued no later than
16 January 1, 2010.

17 NEW SECTION. **Sec. 8.** A new section is added to chapter 41.05 RCW
18 to read as follows:

19 Based on the recommendations of the working group established in
20 section 7 of this act, on or before July 31, 2010, the health care
21 authority must adopt rules governing the certification and
22 authorization of health care interpreters to be used in this act.

23 NEW SECTION. **Sec. 9.** The insurance commissioner shall conduct a
24 study of language issues that affect consumers who purchase health
25 insurance contracts in the state of Washington. Such study shall
26 include an analysis and recommendations regarding:

27 (1) Barriers that language access problems pose for understanding
28 insurance contracts and costs, and resolving disputes between consumers
29 and health insurers;

30 (2) Whether insurers are in compliance with RCW 48.43.510 and
31 whether more detailed requirements should be added to the
32 administrative rules to assure such compliance; and

33 (3) The necessity for, and feasibility of, the office of the
34 insurance commissioner providing interpretation and translation
35 services regarding health insurance, consumer advice, and dispute
36 resolution assistance in languages that they speak and understand. The

1 results of this analysis and associated recommendations shall be
2 reported to the governor and the legislature no later than January 1,
3 2010.

4 NEW SECTION. **Sec. 10.** A new section is added to chapter 48.02 RCW
5 to read as follows:

6 The insurance commissioner shall adopt rules for the implementation
7 of sections 4, 5, and 6 of this act and rules governing the
8 authorization of health care interpreters.

9 NEW SECTION. **Sec. 11.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 12.** (1) Sections 4 through 6 of this act take
14 effect January 1, 2011.

15 (2) Section 3 of this act takes effect when funds are appropriated
16 for its implementation.

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