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**SENATE BILL 5948**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Senators Robinson and Dhingra

Prefiled 01/03/24.

1 AN ACT Relating to addressing affordability through health care  
2 provider contracting; and adding a new chapter to Title 19 RCW.

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

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

5 (a) The health care system is a comprehensive and interconnected  
6 entity;

7 (b) Health care costs and spending continue to rise and  
8 significantly outgrow inflation and the United States gross domestic  
9 product per capita;

10 (c) According to the health care cost institute, from 2015 to  
11 2019 the average health care spending per person reached \$6,000, an  
12 increase of 21 percent. Health care prices accounted for nearly two-  
13 thirds of this increase in spending after adjusting for inflation;

14 (d) According to a Milbank memorial fund issue brief, mitigating  
15 the price impacts of health care provider consolidation,  
16 consolidation of health care providers into health systems with  
17 market power is a primary driver of high health care prices. Further,  
18 the issue brief explains, competition in the health care market  
19 exists in three areas: (i) Competition between health care providers  
20 for inclusion in health plan networks; (ii) competition between

1 health carriers in health plan enrollment; and (iii) competition  
2 between health care providers for in-network patients;

3 (e) A 2020 report to congress on medicare payment policy from the  
4 medicare payment advisory commission found "the preponderance of  
5 evidence suggests that hospital consolidation leads to higher prices.  
6 These findings imply that hospitals seek higher prices from insurers  
7 and will get them when they have greater bargaining power." Further,  
8 the report noted that "a recent study found that hospital and insurer  
9 concentration both increase premiums in the affordable care act  
10 marketplace"; and

11 (f) According to the Washington state office of the insurance  
12 commissioner preliminary report of health care affordability,  
13 significant vertical and horizontal consolidation has already  
14 occurred in Washington state's health care system. The office of the  
15 insurance commissioner report found that of the 101 hospitals in  
16 Washington state, 40 are part of the five largest hospital systems  
17 and nearly 40 to 50 percent of active physicians in Washington state  
18 work at a hospital or clinic. The Washington state office of  
19 financial management found that the percentage of hospitals in a  
20 hospital system grew to nearly 50 percent in 2017 from 10 percent in  
21 1989.

22 (2) Therefore, the legislature intends to prohibit the use of  
23 certain contractual provisions often used by providers, hospitals,  
24 health systems, and carriers with significant market power.

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

28 (1) "Affiliate" means a person who directly through one or more  
29 intermediaries controls, is controlled by, or is under common control  
30 with, another specified person.

31 (2) "All-or-nothing clause" means a provision of a provider  
32 contract that requires a health carrier to contract with multiple  
33 hospitals or affiliates of a hospital owned or controlled by the same  
34 single entity.

35 (3) "Antisteering clause" means a provision of a provider  
36 contract that restricts the ability of a health carrier to encourage  
37 an enrollee to obtain a health care service from a competitor of the  
38 hospital or an affiliate of the hospital, including offering

1 incentives to encourage enrollees to utilize specific health care  
2 providers.

3 (4) "Antitiering clause" means a provision in a provider contract  
4 that requires a health carrier to place a hospital or any affiliate  
5 of the hospital in a tier or a tiered provider network reflecting the  
6 lowest or lower enrollee cost-sharing amounts.

7 (5) "Control" means the possession, directly, of the power to  
8 direct the management and policies of a person, whether through  
9 ownership of voting securities, membership rights, by contract, or  
10 otherwise.

11 (6) "Health carrier" has the same meaning as in RCW 48.43.005.

12 (7) "Provider" means:

13 (a) A health care provider as defined in RCW 48.43.005;

14 (b) A health care facility as defined in RCW 48.43.005;

15 (c) Intermediaries that have agreed in writing with a health  
16 carrier to provide access to providers who render covered services to  
17 enrollees of a health carrier; and

18 (d) Health care benefit managers as defined in RCW 48.200.020.

19 (8) "Provider contract" has the same meaning as in RCW 48.43.730.

20 (9) "Tiered provider network" means a network that identifies and  
21 groups providers and facilities into specific groups to which  
22 different provider reimbursement, enrollee cost sharing, or provider  
23 access requirements, or any combination thereof, apply as a means to  
24 manage cost, utilization, quality, or to otherwise incentivize  
25 enrollee or provider behavior.

26 NEW SECTION. **Sec. 3.** (1) A provider or health carrier may not  
27 directly or indirectly offer, solicit, request, or enter into a  
28 provider contract that includes an all-or-nothing clause,  
29 antisteering clause, or antitiering clause.

30 (2) Any provision in a provider contract that is an all-or-  
31 nothing clause, an antisteering clause, or an antitiering clause is  
32 void and unenforceable. The remaining provisions in the provider  
33 contract remain in effect and are enforceable.

34 (3) The attorney general may enforce this section under the  
35 consumer protection act, chapter 19.86 RCW. For actions brought by  
36 the attorney general to enforce this section, the legislature finds  
37 that the practices covered by this section are matters vitally  
38 affecting the public interest for the purpose of applying the  
39 consumer protection act, chapter 19.86 RCW, and that a violation of

1 this section is not reasonable in relation to the development and  
2 preservation of business and is an unfair or deceptive act in trade  
3 or commerce and an unfair method of competition for the purpose of  
4 applying the consumer protection act, chapter 19.86 RCW.

5 NEW SECTION. **Sec. 4.** (1) For provider contracts, a provider and  
6 health carrier must engage in good faith negotiations when a provider  
7 contract is expiring or terminating due to a without cause  
8 notification as permitted by the provider contract, regardless of the  
9 initiating party, unless the parties agree not to negotiate a new  
10 provider contract and allow the existing provider contract to  
11 terminate. Providers are prohibited from making any public statement  
12 or releasing notices of any potential or planned terminations of  
13 agreements with health carriers to any patients or third party until  
14 30 days prior to the termination effective date.

15 (2) The attorney general may enforce this section under the  
16 consumer protection act, chapter 19.86 RCW. For actions brought by  
17 the attorney general to enforce this section, the legislature finds  
18 that the practices covered by this section are matters vitally  
19 affecting the public interest for the purpose of applying the  
20 consumer protection act, chapter 19.86 RCW, and that a violation of  
21 this section is not reasonable in relation to the development and  
22 preservation of business and is an unfair or deceptive act in trade  
23 or commerce and an unfair method of competition for the purpose of  
24 applying the consumer protection act, chapter 19.86 RCW.

25 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act  
26 constitute a new chapter in Title 19 RCW.

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