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**SUBSTITUTE SENATE BILL 5084**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** Senate Health Care (originally sponsored by Senators Becker, Frockt, Conway, Keiser, and Mullet; by request of Governor Inslee)

1 AN ACT Relating to modifying the all payer claims database to  
2 improve health care quality and cost transparency by changing  
3 provisions related to definitions regarding data, reporting and  
4 pricing of products, responsibilities of the office of financial  
5 management and the lead organization, submission to the database, and  
6 parameters for release of information; amending RCW 43.371.010,  
7 43.371.020, 43.371.030, 43.371.040, 43.371.050, 43.371.060, and  
8 43.371.070; and adding a new section to chapter 43.371 RCW.

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

10 **Sec. 1.** RCW 43.371.010 and 2014 c 223 s 8 are each amended to  
11 read as follows:

12 The definitions in this section apply throughout this chapter  
13 unless the context clearly requires otherwise.

14 (1) "Authority" means the health care authority.

15 (2) "Carrier" and "health carrier" have the same meaning as in  
16 RCW 48.43.005.

17 (3) "Claims data" means the data required by RCW 43.371.030 to be  
18 submitted to the database, including billed, allowed and paid  
19 amounts, and such additional information as defined by the director  
20 in rule. (~~("Claims data" includes: (a) Claims data related to health~~  
21 ~~care coverage and services funded, in whole or in part, in the~~

~~omnibus appropriations act, including coverage and services funded by appropriated and nonappropriated state and federal moneys, for medicaid programs and the public employees benefits board program; and (b) claims data voluntarily provided by other data suppliers, including carriers and self-funded employers.))~~

(4) "Database" means the statewide all-payer health care claims database established in RCW 43.371.020.

(5) "Director" means the director of financial management.

(6) "Lead organization" means the organization selected under RCW 43.371.020.

(7) "Office" means the office of financial management.

(8) "Data supplier" means: (a) A carrier, third-party administrator, or a public program identified in RCW 43.371.030 that provides claims data; and (b) a carrier or any other entity that provides claims data to the database at the request of an employer-sponsored self-funded health plan or Taft-Hartley trust health plan pursuant to RCW 43.371.030(1).

(9) "Direct patient identifier" means a data variable that identifies an individual or can readily be associated with the identity of an individual.

(10) "Indirect patient identifier" means a data variable that allows association of data with a specific patient, or which, by itself or in combination with other identifiers, identifies a small set of potential patients.

(11) "Proprietary financial information" means claims data or reports that disclose or would allow the determination of specific terms of contracts, discounts, or fixed reimbursement arrangements or other specific reimbursement arrangements between an individual health care facility or health care provider, as those terms are defined in RCW 48.43.005, and a specific payer, or internal fee schedule or other internal pricing mechanism of integrated delivery systems owned by a carrier.

**Sec. 2.** RCW 43.371.020 and 2014 c 223 s 10 are each amended to read as follows:

(1) The office shall establish a statewide all-payer health care claims database to support transparent public reporting of health care information. The database must improve transparency to: Assist patients, providers, and hospitals to make informed choices about care; enable providers, hospitals, and communities to improve by

1 benchmarking their performance against that of others by focusing on  
2 best practices; enable purchasers to identify value, build  
3 expectations into their purchasing strategy, and reward improvements  
4 over time; and promote competition based on quality and cost. The  
5 database must systematically collect all medical claims and pharmacy  
6 claims from private and public payers, with data from all settings of  
7 care that permit the systematic analysis of health care delivery.

8 (2) The office shall follow a competitive procurement process.  
9 All documents, including the procurement documents, the contract, and  
10 any amendments must be posted on the office's web site available to  
11 the legislature and the public. Following the completion of the  
12 legislative session, the director shall ((select—a)) utilize a  
13 competitive procurement process to select an organization for the  
14 initial contract term of the lead organization to coordinate and  
15 manage the database.

16 (a) Due to the complexities of the all payer claims database and  
17 the unique privacy, quality, and financial objectives, the request  
18 for proposals must include the following criteria to be applied in  
19 the scoring evaluation: (i) Extra points must be awarded to a lead  
20 organization that has experience in reviewing and setting up an all  
21 payer claims database in at least four states; and (ii) the  
22 successful organization must have experience in data collection and  
23 may earn extra points if it considers the role of a chief economist  
24 with responsibility for oversight, hiring, security, quality  
25 assurance, and analytical capabilities.

26 (b) The successful organization must demonstrate internal  
27 controls and affiliations with separate organizations as appropriate  
28 to ensure safe data collection, security of the data with state of  
29 the art encryption methods, actuarial support, and data review for  
30 accuracy and quality assurance.

31 (c) Data must be housed on secure servers that are not accessible  
32 through the internet, and access to the data must be strictly  
33 controlled and limited to staff with appropriate training, clearance,  
34 and background checks.

35 (d) The successful entity must endeavor to have the Washington  
36 all payer claims database certified as a qualified entity by the  
37 centers for medicare and medicaid services by December 31, 2016.

38 (3) The lead organization is responsible for internal governance,  
39 management, funding, and operations of the database. At the direction  
40 of the office, the lead organization shall:

- 1 (a) Collect claims data from data suppliers as provided in RCW  
2 43.371.030;
- 3 (b) Design data collection mechanisms with consideration for the  
4 time and cost (~~involved~~) incurred by data suppliers and others in  
5 submission, collection, and the benefits that measurement would  
6 achieve, with an eye toward ensuring the data submitted meets quality  
7 standards and is reviewed for quality assurance, and all patient-  
8 specific information is deidentified with an up-to-date industry  
9 standard encryption algorithm;
- 10 (c) Ensure protection of collected data and store and use any  
11 data with patient-specific or proprietary financial information in a  
12 manner that protects patient privacy and complies with this section;
- 13 (d) Consistent with the requirements of this chapter, make  
14 information from the database available as a resource for public and  
15 private entities, including carriers, employers, providers,  
16 hospitals, and purchasers of health care;
- 17 (e) Report performance on cost and quality pursuant to RCW  
18 43.371.060 using, but not limited to, the performance measures  
19 developed under RCW 41.05.690;
- 20 (f) Develop protocols and policies, including prerelease peer  
21 review by data suppliers, to ensure the quality of data releases and  
22 reports;
- 23 (g) Develop a plan for the financial sustainability of the  
24 database and charge fees (~~not to exceed five thousand dollars unless~~  
25 ~~otherwise negotiated~~) for reports and data files as needed to fund  
26 the database. Any fees must be approved by the office and (~~must~~)  
27 should be comparable, accounting for relevant differences across data  
28 (requesters and users) requests and uses, and should not be applied  
29 to providers or data suppliers other than the fees directly related  
30 to requested reports; and
- 31 (h) Convene advisory committees with the approval and  
32 participation of the office, including: (i) A committee on data  
33 policy development; and (ii) a committee to establish a data release  
34 process consistent with the requirements of this chapter and to  
35 provide advice regarding formal data release requests. The advisory  
36 committees must include in-state representation from key provider,  
37 hospital, (~~payer,~~) public health, health maintenance organization,  
38 large and small private purchasers, (~~and~~) consumer organizations,  
39 and the two largest carriers supplying claims data to the database.

1        ~~((3))~~ (4) The lead organization governance structure and  
2 advisory committees for this database must include representation of  
3 the third-party administrator of the uniform medical plan. A payer,  
4 health maintenance organization, or third-party administrator must be  
5 a data supplier to the all-payer health care claims database to be  
6 represented on the lead organization governance structure or advisory  
7 committees.

8        **Sec. 3.** RCW 43.371.030 and 2014 c 223 s 11 are each amended to  
9 read as follows:

10        (1) ~~((Data suppliers must))~~ The state medicaid program, public  
11 employees' benefits board programs, all health carriers operating in  
12 this state, all third-party administrators paying claims on behalf of  
13 health plans in this state, and the state labor and industries  
14 program must submit claims data to the database within the time  
15 frames established by the director in rule and in accordance with  
16 procedures established by the lead organization. The director may  
17 expand this requirement by rule to include any health plans or health  
18 benefit plans defined in RCW 48.43.005(26) (a) through (i) to  
19 accomplish the goals of this chapter set forth in RCW 43.371.020(1).  
20 Employer-sponsored self-funded health plans and Taft-Hartley trust  
21 health plans may voluntarily provide claims data to the database  
22 within the time frames and in accordance with procedures established  
23 by the lead organization.

24        (2) ~~((An entity that is not a data supplier but that chooses to~~  
25 ~~participate in the database shall require any third-party~~  
26 ~~administrator utilized by the entity's plan to release any claims~~  
27 ~~data related to persons receiving health coverage from the plan.))~~  
28 Any data supplier used by an entity that voluntarily participates in  
29 the database must provide claims data to the lead organization upon  
30 request of the entity.

31        (3) ~~((Each data supplier))~~ The lead organization shall submit an  
32 annual status report to the office regarding ~~((its))~~ compliance with  
33 this section. ~~((The report to the legislature required by section 2~~  
34 ~~of this act must include a summary of these status reports.))~~

35        **Sec. 4.** RCW 43.371.040 and 2014 c 223 s 12 are each amended to  
36 read as follows:

37        (1) The claims data provided to the database, the database  
38 itself, including the data compilation, and any raw data received

1 from the database are not public records and are exempt from public  
2 disclosure under chapter 42.56 RCW.

3 (2) Claims data obtained, distributed, or reported in the course  
4 of activities undertaken pursuant to or supported under this chapter  
5 are not subject to subpoena or similar compulsory process in any  
6 civil or criminal, judicial, or administrative proceeding, nor may  
7 any individual or organization with lawful access to data under this  
8 chapter be compelled to provide such information pursuant to subpoena  
9 or testify with regard to such data, except that data pertaining to a  
10 party in litigation may be subject to subpoena or similar compulsory  
11 process in an action brought by or on behalf of such individual to  
12 enforce any liability arising under this chapter.

13 **Sec. 5.** RCW 43.371.050 and 2014 c 223 s 13 are each amended to  
14 read as follows:

15 (1) Except as otherwise required by law, claims or other data  
16 from the database shall only be available for retrieval in original  
17 or processed form to public and private requesters pursuant to this  
18 section and shall be made available within a reasonable time after  
19 the request. Each request for claims data must include, at a minimum,  
20 the following information:

21 (a) The identity of any entities that will analyze the data in  
22 connection with the request;

23 (b) The stated purpose of the request and an explanation of how  
24 the request supports the goals of this chapter set forth in RCW  
25 43.371.020(1);

26 (c) A description of the proposed methodology;

27 (d) The specific variables requested and an explanation of how  
28 the data is necessary to achieve the stated purpose described  
29 pursuant to (b) of this subsection;

30 (e) How the requester will ensure all requested data is handled  
31 in accordance with the privacy and confidentiality protections  
32 required under this chapter and any other applicable law;

33 (f) The method by which the data will be stored, destroyed, or  
34 returned to the lead organization at the conclusion of the data use  
35 agreement; and

36 (g) The protections that will be utilized to keep the data from  
37 being used for any purposes not authorized by the requester's  
38 approved application.

1       (2) The lead organization may decline a request that does not  
2 include the information set forth in subsection (1) of this section,  
3 that does not meet the criteria established by the lead  
4 organization's data release advisory committee, or for reasons  
5 established by rule.

6       (3) Except as otherwise required by law, the office shall direct  
7 the lead organization to maintain the confidentiality of claims or  
8 other data it collects for the database that include ~~((direct and))~~  
9 proprietary financial information or indirect patient identifiers.  
10 Any ~~((agency, researcher, or other person))~~ entity that receives  
11 claims or other data ~~((under this section containing direct or~~  
12 ~~indirect patient identifiers))~~ must also maintain confidentiality and  
13 may ~~((not))~~ only release such claims ~~((or other data except as~~  
14 ~~consistent with this section. The office shall oversee the lead~~  
15 ~~organization's release of data as follows))~~ data or any part of the  
16 claims data if:

17       (a) The claims data does not contain proprietary financial  
18 information or indirect patient identifiers; and

19       (b) The release is described and approved as part of the request  
20 in subsection (1) of this section.

21       (4) The lead organization shall, in conjunction with the office,  
22 create and implement a process to govern levels of access to and use  
23 of data from the database consistent with the following:

24       (a) Claims or other data that include ~~((direct))~~ proprietary  
25 financial information or indirect patient identifiers, ((as  
26 specifically defined in rule,)) may be released only to the extent  
27 such information is necessary to achieve the goals of this chapter  
28 set forth in RCW 43.371.020(1) to:

29       (i) Federal, state, and local government agencies upon receipt of  
30 a signed data use and confidentiality agreement with ((the office  
31 and)) the lead organization. Federal, state, and local government  
32 agencies that obtain claims data pursuant to this subsection are  
33 prohibited from using such data in the purchase or procurement of  
34 health benefits for their employees; ((and))

35       (ii) Researchers with approval of an institutional review board  
36 upon receipt of a signed data use and confidentiality agreement with  
37 ((the office and)) the lead organization. A researcher or research  
38 organization that obtains claims data pursuant to this subsection  
39 must agree in writing not to disclose such data or parts of the data  
40 set to any other party, including affiliated entities; and

1 (iii) Any entity when functioning as the lead organization under  
2 the terms of this chapter.

3 (b) Claims or other data that do not contain ~~((direct patient~~  
4 ~~identifiers but that may contain indirect patient identifiers))~~  
5 proprietary financial information may be released to agencies,  
6 researchers, and other ~~((persons))~~ entities as approved by the lead  
7 organization upon receipt of a signed data use agreement with the  
8 lead organization.

9 (c) Claims or other data that do not contain direct or indirect  
10 patient identifiers and proprietary financial information may be  
11 released upon request.

12 ~~((3))~~ (5) Reports utilizing data obtained under this section  
13 may not contain proprietary financial information, direct patient  
14 identifiers, or indirect patient identifiers.

15 (6) Reports issued by the lead organization at the request of  
16 providers, facilities, employers, health plans, and other entities as  
17 approved by the lead organization may utilize proprietary financial  
18 information to calculate aggregate cost data for display in such  
19 reports. The office will approve by rule a format for the calculation  
20 and display of aggregate cost data consistent with this act that will  
21 prevent the disclosure or determination of proprietary financial  
22 information. In developing the rule, the office shall solicit  
23 feedback from the stakeholders, including those listed in RCW  
24 43.371.020(2)(h), and must consider, at a minimum, data presented as  
25 proportions, ranges, averages, and medians, as well as the  
26 differences in types of data gathered and submitted by data  
27 suppliers.

28 (7) Recipients of claims or other data under subsection ~~((2)(a)~~  
29 ~~or (b))~~ (4) of this section must agree in a data use agreement or a  
30 confidentiality agreement to, at a minimum:

31 (a) Take steps to protect data containing direct and indirect  
32 patient ~~((identifying))~~ identifiers or proprietary financial  
33 information as described in the agreement; ~~((and))~~

34 (b) Not redisclose the claims data except ~~((as authorized in the~~  
35 ~~agreement consistent with the purpose of the agreement or as~~  
36 ~~otherwise required by law.~~

37 ~~(4) Recipients of the claims or other data under subsection~~  
38 ~~(2)(b) of this section must not attempt to determine the identity of~~  
39 ~~persons whose information is included in the data set or use the~~

1 ~~claims or other data in any manner that identifies the individuals or~~  
2 ~~their families.~~

3 ~~(5) For purposes of this section, the following definitions apply~~  
4 ~~unless the context clearly requires otherwise.~~

5 ~~(a) "Direct patient identifier" means information that identifies~~  
6 ~~a patient.~~

7 ~~(b) "Indirect patient identifier" means information that may~~  
8 ~~identify a patient when combined with other information)) pursuant to~~  
9 ~~subsection (3) of this section;~~

10 ~~(c) Not attempt to determine the identity of any person whose~~  
11 ~~information is included in the data set or use the claims or other~~  
12 ~~data in any manner that identifies any individual or their family or~~  
13 ~~attempt to locate information associated with a specific individual;~~  
14 ~~and~~

15 ~~(d) Store, destroy, or return claims data to the lead~~  
16 ~~organization at the conclusion of the data use agreement.~~

17 **Sec. 6.** RCW 43.371.060 and 2014 c 223 s 14 are each amended to  
18 read as follows:

19 (1)(a) Under the supervision of and through contract with the  
20 office, the lead organization shall prepare health care data reports  
21 using the database and the statewide health performance and quality  
22 measure set(~~, including only those measures that can be completed~~  
23 ~~with readily available claims data)). Prior to the lead organization~~  
24 releasing any health care data reports that use claims data, the lead  
25 organization must submit the reports to the office for review (~~and~~  
26 ~~approval~~)).

27 (b) By October 31st of each year, the lead organization shall  
28 submit to the director a list of reports it anticipates producing  
29 during the following calendar year. The director may establish a  
30 public comment period not to exceed thirty days, and shall submit the  
31 list and any comment to the appropriate committees of the legislature  
32 for review.

33 (2)(a) Health care data reports that use claims data prepared by  
34 the lead organization (~~that use claims data must assist~~) for the  
35 legislature and the public (~~with~~) should promote awareness and  
36 (~~promotion of~~) transparency in the health care market by reporting  
37 on:

38 (i) Whether providers and health systems deliver efficient, high  
39 quality care; and

1 (ii) Geographic and other variations in medical care and costs as  
2 demonstrated by data available to the lead organization.

3 (b) Measures in the health care data reports should be stratified  
4 by demography, income, language, health status, and geography when  
5 feasible with available data to identify disparities in care and  
6 successful efforts to reduce disparities.

7 (c) Comparisons of costs among providers and health care systems  
8 must account for differences in ~~((acuity))~~ the case mix and severity  
9 of illness of patients and populations, as appropriate and feasible,  
10 and must take into consideration the cost impact of subsidization for  
11 uninsured and ~~((governmental))~~ government-sponsored patients, as well  
12 as teaching expenses, when feasible with available data.

13 (3) The lead organization may not publish any data or health care  
14 data reports that:

15 (a) Directly or indirectly ~~((identify))~~ identifies individual  
16 patients;

17 (b) ~~((Disclose specific terms of contracts, discounts, or fixed~~  
18 ~~reimbursement arrangements or other specific reimbursement~~  
19 ~~arrangements between an individual provider and a specific payer))~~  
20 Discloses a carrier's proprietary financial information; or

21 (c) Compares performance in a report generated for the general  
22 public that includes any provider in a practice with fewer than  
23 ~~((five))~~ four providers.

24 (4) The lead organization may not release a report that compares  
25 and identifies providers, hospitals, or data suppliers unless ~~((it))~~:

26 (a) It allows the data supplier, the hospital, or the provider to  
27 verify the accuracy of the information submitted to the lead  
28 organization, comment on the reasonableness of conclusions reached,  
29 and submit to the lead organization any corrections of errors with  
30 supporting evidence and comments within ~~((forty-five))~~ thirty days of  
31 receipt of the report; ~~((and))~~

32 (b) It corrects data found to be in error within a reasonable  
33 amount of time; and

34 (c) The report otherwise complies with this chapter.

35 (5) The office and the lead organization may use claims data to  
36 identify and make available information on payers, providers, and  
37 facilities, but may not use claims data to recommend or incentivize  
38 direct contracting between providers and employers.

39 (6) The lead organization shall ~~((ensure that no individual data~~  
40 ~~supplier comprises more than twenty five percent of the claims data~~

1 ~~used in any report or other analysis generated from the database. For~~  
2 ~~purposes of this subsection, a "data supplier" means a carrier and~~  
3 ~~any self-insured employer that uses the carrier's provider~~  
4 ~~contracts)) distinguish in advance to the office when it is operating~~  
5 ~~in its capacity as the lead organization and when it is operating in~~  
6 ~~its capacity as a private entity. Where the lead organization acts in~~  
7 ~~its capacity as a private entity, it may only access data pursuant to~~  
8 ~~RCW 43.371.050(4) (b) or (c).~~

9 **Sec. 7.** RCW 43.371.070 and 2014 c 223 s 15 are each amended to  
10 read as follows:

11 (1) The director shall adopt any rules necessary to implement  
12 this chapter, including:

13 (a) Definitions of claim and data files that data suppliers must  
14 submit to the database, including: Files for covered medical  
15 services, pharmacy claims, and dental claims; member eligibility and  
16 enrollment data; and provider data with necessary identifiers;

17 (b) Deadlines for submission of claim files;

18 (c) Penalties for failure to submit claim files as required;

19 (d) Procedures for ensuring that all data received from data  
20 suppliers are securely collected and stored in compliance with state  
21 and federal law; ~~((and))~~

22 (e) Procedures for ensuring compliance with state and federal  
23 privacy laws;

24 (f) Procedures for establishing appropriate fees; and

25 (g) Procedures for data release.

26 (2) The director may not adopt rules, policies, or procedures  
27 beyond the authority granted in this chapter.

28 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.371  
29 RCW to read as follows:

30 (1) By December 1st of 2016 and 2017, the office shall report to  
31 the appropriate committees of the legislature regarding the  
32 development and implementation of the database, including but not  
33 limited to budget and cost detail, technical progress, and work plan  
34 metrics.

35 (2) Every two years commencing two years following the year in  
36 which the first report is issued or the first release of data is  
37 provided from the database, the office shall report to the  
38 appropriate committees of the legislature regarding the cost,

1 performance, and effectiveness of the database and the performance of  
2 the lead organization under its contract with the office. Using  
3 independent economic expertise, subject to appropriation, the report  
4 must evaluate whether the database has advanced the goals set forth  
5 in RCW 43.371.020(1), as well as the performance of the lead  
6 organization. The report must also make recommendations regarding but  
7 not limited to how the database can be improved, whether the contract  
8 for the lead organization should be modified, renewed, or terminated,  
9 and the impact the database has had on competition between and among  
10 providers, purchasers, and payers.

11 (3) Beginning July 1, 2015, and every six months thereafter, the  
12 office shall report to the appropriate committees of the legislature  
13 regarding any additional grants received or extended.

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

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