
SUBSTITUTE HOUSE BILL 1947

State of Washington

63rd Legislature

2013 Regular Session

By House Appropriations (originally sponsored by Representatives Cody, Hunter, Jinkins, and Harris)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to ensuring the ongoing sustainability and vitality
2 of the Washington health benefit exchange by providing a financing
3 mechanism sufficient to defray the exchange's operating expenses;
4 amending RCW 43.71.010, 43.71.060, and 48.14.0201; adding a new section
5 to chapter 43.71 RCW; adding a new section to chapter 43.135 RCW;
6 adding a new section to chapter 82.04 RCW; and providing an expiration
7 date.

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

9 **Sec. 1.** RCW 43.71.010 and 2012 c 87 s 2 are each amended to read
10 as follows:

11 The definitions in this section apply throughout this chapter
12 unless the context clearly requires otherwise. Terms and phrases used
13 in this chapter that are not defined in this section must be defined as
14 consistent with implementation of a state health benefit exchange
15 pursuant to the affordable care act.

16 (1) "Affordable care act" means the federal patient protection and
17 affordable care act, P.L. 111-148, as amended by the federal health
18 care and education reconciliation act of 2010, P.L. 111-152, or federal
19 regulations or guidance issued under the affordable care act.

1 (2) "Authority" means the Washington state health care authority,
2 established under chapter 41.05 RCW.

3 (3) "Board" means the governing board established in RCW 43.71.020.

4 (4) "Commissioner" means the insurance commissioner, established in
5 Title 48 RCW.

6 (5) "Exchange" means the Washington health benefit exchange
7 established in RCW 43.71.020.

8 (6) "Self-sustaining" means capable of operating (~~without direct~~
9 ~~state tax subsidy~~) with revenue attributable to the operations of the
10 exchange. Self-sustaining sources include, but are not limited to,
11 federal grants, federal premium tax subsidies and credits, charges to
12 health carriers, (~~and~~) premiums paid by enrollees, and premium taxes
13 under RCW 48.14.0201(5)(b).

14 **Sec. 2.** RCW 43.71.060 and 2012 c 87 s 5 are each amended to read
15 as follows:

16 (~~(1)~~) The health benefit exchange account is created in the
17 (~~eustody of the state treasurer~~) state treasury. Moneys in the
18 account may be spent only after appropriation. Expenditures from the
19 account may only be used to fund the operation of the exchange and
20 identification, collection, and distribution of premium taxes collected
21 under RCW 48.14.0201(5)(b). The following funds must be deposited in
22 the account:

23 (1) All receipts from federal grants received under the affordable
24 care act may be deposited into the account. Expenditures from the
25 account may be used only for purposes consistent with the grants (~~-~~
26 ~~Until March 15, 2012, only the administrator of the health care~~
27 ~~authority, or his or her designee, may authorize expenditures from the~~
28 ~~account. Beginning March 15, 2012, only the board of the Washington~~
29 ~~health benefit exchange or designee may authorize expenditures from the~~
30 ~~account. The account is subject to allotment procedures under chapter~~
31 ~~43.88 RCW, but an appropriation is not required for expenditures.~~

32 (~~2~~) ~~This section expires January 1, 2014~~);

33 (2) Premium taxes collected under RCW 48.14.0201(5)(b); and

34 (3) Assessments authorized under section 3 of this act.

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.71 RCW
36 to read as follows:

1 (1) Beginning January 1, 2014, the exchange may require each
2 carrier writing premiums for qualified health benefits plans or dental
3 plans through the exchange to pay an assessment in an amount necessary
4 to fund the operations of the exchange. Assessments of carriers may be
5 made only if the amount of expected premium taxes, as provided under
6 RCW 48.14.0201(5)(b), and other funds deposited in the health benefit
7 exchange account in the current calendar year are insufficient to fund
8 exchange operations in the following calendar year at the level
9 appropriated by the legislature for that purpose in the omnibus
10 appropriations act.

11 (2) The board shall determine the amount of the assessment by
12 multiplying, by a fraction, for each carrier offering health or dental
13 coverage in the exchange, the number of its covered lives in qualified
14 health plans and dental plans in the exchange. The numerator of the
15 fraction is an estimate of the shortfall in revenues in the health
16 benefit exchange account necessary to operate the exchange at the level
17 appropriated for that purpose by the legislature in the omnibus
18 appropriations act for the following calendar year. The denominator of
19 the fraction equals the total number of expected covered lives in the
20 exchange for the calendar year that the assessment will be collected
21 in.

22 (3) The exchange shall collect the assessments required under this
23 section from carriers in quarterly installments. The exchange shall
24 deposit proceeds from the assessments in the health benefit exchange
25 account under RCW 43.71.060.

26 (4) The board shall establish procedures allowing carriers subject
27 to assessments under this section to have grievances reviewed by an
28 impartial body and reported to the board.

29 (5) By July 1, 2016, the state auditor shall conduct a performance
30 review of the cost of exchange operations and shall make
31 recommendations to the board and the health care committees of the
32 legislature addressing improvements in cost performance and adoption of
33 best practices. The auditor shall further evaluate the potential cost
34 and customer service benefits through regionalization with other states
35 of some exchange operation functions or through a partnership with the
36 federal government. The cost of the state auditor review must be borne
37 by the exchange.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.135 RCW
2 to read as follows:

3 RCW 43.135.034(4) does not apply to the dedication of premium taxes
4 established under RCW 48.14.0201(5)(b).

5 **Sec. 5.** RCW 48.14.0201 and 2011 c 47 s 8 are each amended to read
6 as follows:

7 (1) As used in this section, "taxpayer" means a health maintenance
8 organization as defined in RCW 48.46.020, a health care service
9 contractor as defined in RCW 48.44.010, or a self-funded multiple
10 employer welfare arrangement as defined in RCW 48.125.010.

11 (2) Each taxpayer must pay a tax on or before the first day of
12 March of each year to the state treasurer through the insurance
13 commissioner's office. The tax must be equal to the total amount of
14 all premiums and prepayments for health care services collected or
15 received by the taxpayer under RCW 48.14.090 during the preceding
16 calendar year multiplied by the rate of two percent. For tax purposes,
17 the reporting of premiums and prepayments must be on a written basis or
18 on a paid-for basis consistent with the basis required by the annual
19 statement.

20 (3) Taxpayers must prepay their tax obligations under this section.
21 The minimum amount of the prepayments is the percentages of the
22 taxpayer's tax obligation for the preceding calendar year recomputed
23 using the rate in effect for the current year. For the prepayment of
24 taxes due during the first calendar year, the minimum amount of the
25 prepayments is the percentages of the taxpayer's tax obligation that
26 would have been due had the tax been in effect during the previous
27 calendar year. The tax prepayments must be paid to the state treasurer
28 through the commissioner's office by the due dates and in the following
29 amounts:

- 30 (a) On or before June 15, forty-five percent;
- 31 (b) On or before September 15, twenty-five percent;
- 32 (c) On or before December 15, twenty-five percent.

33 (4) For good cause demonstrated in writing, the commissioner may
34 approve an amount smaller than the preceding calendar year's tax
35 obligation as recomputed for calculating the health maintenance
36 organization's, health care service contractor's, self-funded multiple

1 employer welfare arrangement's, or certified health plan's prepayment
2 obligations for the current tax year.

3 (5)(a) Except as provided in (b) of this subsection, moneys
4 collected under this section are deposited in the general fund.

5 (b) Beginning January 1, 2014, moneys collected from taxpayers for
6 premiums written on qualified health benefit plans offered through the
7 health benefit exchange under chapter 43.71 RCW and on premiums written
8 on medicaid plans provided to newly eligible clients enrolling in the
9 medicaid expansion under the federal patient protection and affordable
10 care act of 2010 (42 U.S.C. 1396a(a)(10)(A)(i)(VIII)) must be deposited
11 in the health benefit exchange account under RCW 43.71.060.

12 (6) The taxes imposed in this section do not apply to:

13 (a) Amounts received by any taxpayer from the United States or any
14 instrumentality thereof as prepayments for health care services
15 provided under Title XVIII (medicare) of the federal social security
16 act.

17 (b) Amounts received by any taxpayer from the state of Washington
18 as prepayments for health care services provided under:

19 (i) The medical care services program as provided in RCW 74.09.035;
20 or

21 (ii) The Washington basic health plan on behalf of subsidized
22 enrollees as provided in chapter 70.47 RCW.

23 (c) Amounts received by any health care service contractor, as
24 defined in RCW 48.44.010, as prepayments for health care services
25 included within the definition of practice of dentistry under RCW
26 18.32.020.

27 (d) Participant contributions to self-funded multiple employer
28 welfare arrangements that are not taxable in this state.

29 (7) Beginning January 1, 2000, the state preempts the field of
30 imposing excise or privilege taxes upon taxpayers and no county, city,
31 town, or other municipal subdivision has the right to impose any such
32 taxes upon such taxpayers. This subsection is limited to premiums and
33 payments for health benefit plans offered by health care service
34 contractors under chapter 48.44 RCW, health maintenance organizations
35 under chapter 48.46 RCW, and self-funded multiple employer welfare
36 arrangements as defined in RCW 48.125.010. The preemption authorized
37 by this subsection must not impair the ability of a county, city, town,

1 or other municipal subdivision to impose excise or privilege taxes upon
2 the health care services directly delivered by the employees of a
3 health maintenance organization under chapter 48.46 RCW.

4 (8)(a) The taxes imposed by this section apply to a self-funded
5 multiple employer welfare arrangement only in the event that they are
6 not preempted by the employee retirement income security act of 1974,
7 as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the
8 commissioner must initially request an advisory opinion from the United
9 States department of labor or obtain a declaratory ruling from a
10 federal court on the legality of imposing state premium taxes on these
11 arrangements. Once the legality of the taxes has been determined, the
12 multiple employer welfare arrangement certified by the insurance
13 commissioner must begin payment of these taxes.

14 (b) If there has not been a final determination of the legality of
15 these taxes, then beginning on the earlier of (i) the date the fourth
16 multiple employer welfare arrangement has been certified by the
17 insurance commissioner, or (ii) April 1, 2006, the arrangement must
18 deposit the taxes imposed by this section into an interest bearing
19 escrow account maintained by the arrangement. Upon a final
20 determination that the taxes are not preempted by the employee
21 retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001
22 et seq., all funds in the interest bearing escrow account must be
23 transferred to the state treasurer.

24 (9) The effect of transferring contracts for health care services
25 from one taxpayer to another taxpayer is to transfer the tax prepayment
26 obligation with respect to the contracts.

27 (10) On or before June 1st of each year, the commissioner must
28 notify each taxpayer required to make prepayments in that year of the
29 amount of each prepayment and must provide remittance forms to be used
30 by the taxpayer. However, a taxpayer's responsibility to make
31 prepayments is not affected by failure of the commissioner to send, or
32 the taxpayer to receive, the notice or forms.

33 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.04 RCW
34 to read as follows:

35 (1) The taxes imposed by this chapter do not apply to amounts
36 received by the Washington health benefit exchange established under
37 chapter 43.71 RCW.

1 (2) This section expires on July 1, 2023.

2 NEW SECTION. **Sec. 7.** If any provision of this act or its
3 application to any person or circumstance is held invalid, the
4 remainder of the act or the application of the provision to other
5 persons or circumstances is not affected.

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