

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1947

63rd Legislature
2013 2nd Special Session

Passed by the House June 28, 2013
Yeas 68 Nays 24

Speaker of the House of Representatives

Passed by the Senate June 28, 2013
Yeas 31 Nays 16

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1947** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1947

AS AMENDED BY THE SENATE

Passed Legislature - 2013 2nd Special Session

State of Washington 63rd Legislature 2013 2nd Special 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, 48.14.0201, 48.14.020, and
5 48.41.090; adding a new section to chapter 43.71 RCW; adding a new
6 section to chapter 43.135 RCW; adding a new section to chapter 82.04
7 RCW; creating a new section; and providing an expiration 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) and 48.14.020(2).

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 (~~custody~~
17 ~~of the state treasurer~~) state treasury. Moneys in the account may be
18 spent only after appropriation. Expenditures from the account may only
19 be used to fund the operation of the exchange and identification,
20 collection, and distribution of premium taxes collected under RCW
21 48.14.0201(5)(b) and 48.14.020(2).

22 (2) The following funds must be deposited in the account:

23 (a) Premium taxes collected under RCW 48.14.0201(5)(b) and
24 48.14.020(2);

25 (b) Assessments authorized under section 3 of this act; and

26 (c) Amounts transferred by the pool administrator as specified in
27 the state omnibus appropriations act pursuant to RCW 48.41.090.

28 (3) All receipts from federal grants received under the affordable
29 care act may be deposited into the account. Expenditures from the
30 account may be used only for purposes consistent with the grants(~~(-~~
31 ~~Until March 15, 2012, only the administrator of the health care~~
32 ~~authority, or his or her designee, may authorize expenditures from the~~
33 ~~account. Beginning March 15, 2012, only the board of the Washington~~
34 ~~health benefit exchange or designee may authorize expenditures from the~~
35 ~~account. The account is subject to allotment procedures under chapter~~
36 ~~43.88 RCW, but an appropriation is not required for expenditures.~~

37 ~~(2) This section expires January 1, 2014))~~.

1 (4) During the 2013-2015 fiscal biennium, the legislature may
2 transfer from the health benefit exchange account to the state general
3 fund such amounts as reflect the excess fund balance of the account.

4 NEW SECTION. Sec. 3. A new section is added to chapter 43.71 RCW
5 to read as follows:

6 (1)(a) Beginning January 1, 2015, the exchange may require each
7 issuer writing premiums for qualified health benefit plans or stand-
8 alone dental plans offered through the exchange to pay an assessment in
9 an amount necessary to fund the operations of the exchange, applicable
10 to operational costs incurred beginning January 1, 2015.

11 (b) The assessment is an exchange user fee as that term is used in
12 45 C.F.R. 156.80. Assessments of issuers may be made only if the
13 amount of expected premium taxes, as provided under RCW
14 48.14.0201(5)(b) and 48.14.020(2), and other funds deposited in the
15 health benefit exchange account in the current calendar year are
16 insufficient to fund exchange operations in the following calendar year
17 at the level authorized by the legislature for that purpose in the
18 omnibus appropriations act.

19 (c) If the exchange is charging an assessment, the exchange shall
20 display the amount of the assessment per member per month for
21 enrollees. A health benefit plan or stand-alone dental plan may
22 identify the amount of the assessment to enrollees, but must not bill
23 the enrollee for the amount of the assessment separately from the
24 premium.

25 (2) The board, in collaboration with the issuers, the health care
26 authority, and the commissioner, must establish a fair and transparent
27 process for calculating the assessment amount. The process must meet
28 the following requirements:

29 (a) The assessment only applies to issuers that offer coverage in
30 the exchange and only for those market segments offered and must be
31 based on the number of enrollees in qualified health plans and stand-
32 alone dental plans in the exchange for a calendar year;

33 (b) The assessment must be established on a flat dollar and cents
34 amount per member per month, and the assessment for dental plans must
35 be proportional to the premiums paid for stand-alone dental plans in
36 the exchange;

1 (c) Issuers must be notified of the assessment amount by the
2 exchange on a timely basis;

3 (d) An appropriate assessment reconciliation process must be
4 established by the exchange that is administratively efficient;

5 (e) Issuers must remit the assessment due to the exchange in
6 quarterly installments after receiving notification from the exchange
7 of the due dates of the quarterly installments;

8 (f) A procedure must be established to allow issuers subject to
9 assessments under this section to have grievances reviewed by an
10 impartial body and reported to the board; and

11 (g) A procedure for enforcement must be established if an issuer
12 fails to remit its assessment amount to the exchange within ten
13 business days of the quarterly installment due date.

14 (3) The exchange shall deposit proceeds from the assessments in the
15 health benefit exchange account under RCW 43.71.060.

16 (4) The assessment described in this section shall be considered a
17 special purpose obligation or assessment in connection with coverage
18 described in this section for the purpose of funding the operations of
19 the exchange, and may not be applied by issuers to vary premium rates
20 at the plan level.

21 (5) The exchange shall monitor enrollment and provide periodic
22 reports which must be available on its web site.

23 (6) The board shall offer all qualified health plans through the
24 exchange, and the exchange shall not add criteria for certification of
25 qualified health plans beyond those set out in RCW 43.71.065 without
26 specific statutory direction. Nothing shall be construed to limit
27 duties, obligations, and authority otherwise legislatively delegated or
28 granted to the exchange.

29 (7) The exchange shall report to the joint select committee on
30 health care oversight on a quarterly basis with an update on budget
31 expenses and operations.

32 (8) By July 1, 2016, the state auditor shall conduct a performance
33 review of the cost of exchange operations and shall make
34 recommendations to the board and the health care committees of the
35 legislature addressing improvements in cost performance and adoption of
36 best practices. The auditor shall further evaluate the potential cost
37 and customer service benefits through regionalization with other states

1 of some exchange operation functions or through a partnership with the
2 federal government. The cost of the state auditor review must be borne
3 by the exchange.

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

6 RCW 43.135.034(4) does not apply to the dedication of premium taxes
7 established under RCW 48.14.0201(5)(b) or 48.14.020(2).

8 **Sec. 5.** RCW 48.14.0201 and 2013 c 325 s 3 are each amended to read
9 as follows:

10 (1) As used in this section, "taxpayer" means a health maintenance
11 organization as defined in RCW 48.46.020, a health care service
12 contractor as defined in chapter 48.44 RCW, or a self-funded multiple
13 employer welfare arrangement as defined in RCW 48.125.010.

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

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

- 33 (a) On or before June 15, forty-five percent;
34 (b) On or before September 15, twenty-five percent;
35 (c) On or before December 15, twenty-five percent.

1 (4) For good cause demonstrated in writing, the commissioner may
2 approve an amount smaller than the preceding calendar year's tax
3 obligation as recomputed for calculating the health maintenance
4 organization's, health care service contractor's, self-funded multiple
5 employer welfare arrangement's, or certified health plan's prepayment
6 obligations for the current tax year.

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

9 (b) Beginning January 1, 2014, moneys collected from taxpayers for
10 premiums written on qualified health benefit plans and stand-alone
11 dental plans offered through the health benefit exchange under chapter
12 43.71 RCW must be deposited in the health benefit exchange account
13 under RCW 43.71.060.

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

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

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

21 (i) The medical care services program as provided in RCW 74.09.035;
22 or

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

25 (c) Amounts received by any health care service contractor as
26 defined in chapter 48.44 RCW, or any health maintenance organization as
27 defined in chapter 48.46 RCW, as prepayments for health care services
28 included within the definition of practice of dentistry under RCW
29 18.32.020, except amounts received for pediatric oral services that
30 qualify as coverage for the minimum essential coverage requirement
31 under P.L. 111-148 (2010), as amended.

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

34 (7) Beginning January 1, 2000, the state preempts the field of
35 imposing excise or privilege taxes upon taxpayers and no county, city,
36 town, or other municipal subdivision has the right to impose any such
37 taxes upon such taxpayers. This subsection is limited to premiums and
38 payments for health benefit plans offered by health care service

1 contractors under chapter 48.44 RCW, health maintenance organizations
2 under chapter 48.46 RCW, and self-funded multiple employer welfare
3 arrangements as defined in RCW 48.125.010. The preemption authorized
4 by this subsection must not impair the ability of a county, city, town,
5 or other municipal subdivision to impose excise or privilege taxes upon
6 the health care services directly delivered by the employees of a
7 health maintenance organization under chapter 48.46 RCW.

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

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

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

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

1 **Sec. 6.** RCW 48.14.020 and 2013 c 325 s 4 are each amended to read
2 as follows:

3 (1) Subject to other provisions of this chapter, each authorized
4 insurer except title insurers shall on or before the first day of March
5 of each year pay to the state treasurer through the commissioner's
6 office a tax on premiums. Except as provided in subsection (3) of this
7 section, such tax shall be in the amount of two percent of all
8 premiums, excluding amounts returned to or the amount of reductions in
9 premiums allowed to holders of industrial life policies for payment of
10 premiums directly to an office of the insurer, collected or received by
11 the insurer under RCW 48.14.090 during the preceding calendar year
12 other than ocean marine and foreign trade insurances, after deducting
13 premiums paid to policyholders as returned premiums, upon risks or
14 property resident, situated, or to be performed in this state. For tax
15 purposes, the reporting of premiums shall be on a written basis or on
16 a paid-for basis consistent with the basis required by the annual
17 statement. For the purposes of this section the consideration received
18 by an insurer for the granting of an annuity shall not be deemed to be
19 a premium.

20 (2)(a) The taxes imposed in this section do not apply to amounts
21 received by any life and disability insurer for health care services
22 included within the definition of practice of dentistry under RCW
23 18.32.020 except amounts received for pediatric oral services that
24 qualify as coverage for the minimum essential coverage requirement
25 under P.L. 111-148 (2010), as amended.

26 (b) Beginning January 1, 2014, moneys collected for premiums
27 written on qualified health benefit plans and stand-alone dental plans
28 offered through the health benefit exchange under chapter 43.71 RCW
29 must be deposited in the health benefit exchange account under RCW
30 43.71.060.

31 (3) In the case of insurers which require the payment by their
32 policyholders at the inception of their policies of the entire premium
33 thereon in the form of premiums or premium deposits which are the same
34 in amount, based on the character of the risks, regardless of the
35 length of term for which such policies are written, such tax shall be
36 in the amount of two percent of the gross amount of such premiums and
37 premium deposits upon policies on risks resident, located, or to be
38 performed in this state, in force as of the thirty-first day of

1 December next preceding, less the unused or unabsorbed portion of such
2 premiums and premium deposits computed at the average rate thereof
3 actually paid or credited to policyholders or applied in part payment
4 of any renewal premiums or premium deposits on one-year policies
5 expiring during such year.

6 (4) Each authorized insurer shall with respect to all ocean marine
7 and foreign trade insurance contracts written within this state during
8 the preceding calendar year, on or before the first day of March of
9 each year pay to the state treasurer through the commissioner's office
10 a tax of ninety-five one-hundredths of one percent on its gross
11 underwriting profit. Such gross underwriting profit shall be
12 ascertained by deducting from the net premiums (i.e., gross premiums
13 less all return premiums and premiums for reinsurance) on such ocean
14 marine and foreign trade insurance contracts the net losses paid (i.e.,
15 gross losses paid less salvage and recoveries on reinsurance ceded)
16 during such calendar year under such contracts. In the case of
17 insurers issuing participating contracts, such gross underwriting
18 profit shall not include, for computation of the tax prescribed by this
19 subsection, the amounts refunded, or paid as participation dividends,
20 by such insurers to the holders of such contracts.

21 (5) The state does hereby preempt the field of imposing excise or
22 privilege taxes upon insurers or their appointed insurance producers,
23 other than title insurers, and no county, city, town or other municipal
24 subdivision shall have the right to impose any such taxes upon such
25 insurers or these insurance producers.

26 (6) If an authorized insurer collects or receives any such premiums
27 on account of policies in force in this state which were originally
28 issued by another insurer and which other insurer is not authorized to
29 transact insurance in this state on its own account, such collecting
30 insurer shall be liable for and shall pay the tax on such premiums.

31 **Sec. 7.** RCW 48.41.090 and 2005 c 405 s 2 are each amended to read
32 as follows:

33 (1) Following the close of each accounting year, the pool
34 administrator shall determine the total net cost of pool operation
35 which shall include:

36 (a) Net premium (premiums less administrative expense allowances),

1 the pool expenses of administration, and incurred losses for the year,
2 taking into account investment income and other appropriate gains and
3 losses; and

4 (b) The amount of pool contributions specified in the state omnibus
5 appropriations act for deposit into the health benefit exchange account
6 under RCW 43.71.060, to assist with the transition of enrollees from
7 the pool into the health benefit exchange created by chapter 43.71 RCW.

8 (2)(a) Each member's proportion of participation in the pool shall
9 be determined annually by the board based on annual statements and
10 other reports deemed necessary by the board and filed by the member
11 with the commissioner; and shall be determined by multiplying the total
12 cost of pool operation by a fraction. The numerator of the fraction
13 equals that member's total number of resident insured persons,
14 including spouse and dependents, covered under all health plans in the
15 state by that member during the preceding calendar year. The
16 denominator of the fraction equals the total number of resident insured
17 persons, including spouses and dependents, covered under all health
18 plans in the state by all pool members during the preceding calendar
19 year.

20 (b) For purposes of calculating the numerator and the denominator
21 under (a) of this subsection:

22 (i) All health plans in the state by the state health care
23 authority include only the uniform medical plan;

24 (ii) Each ten resident insured persons, including spouse and
25 dependents, under a stop loss plan or the uniform medical plan shall
26 count as one resident insured person;

27 (iii) Health plans serving medical care services program clients
28 under RCW 74.09.035 are exempted from the calculation; and

29 (iv) Health plans established to serve elderly clients or
30 ~~((disabled))~~ medicaid clients with disabilities under chapter 74.09 RCW
31 when the plan has been implemented on a demonstration or pilot project
32 basis are exempted from the calculation until July 1, 2009.

33 (c) Except as provided in RCW 48.41.037, any deficit incurred by
34 the pool, including pool contributions for deposit into the health
35 benefit exchange account, shall be recouped by assessments among
36 members apportioned under this subsection pursuant to the formula set
37 forth by the board among members. The monthly per member assessment
38 may not exceed the 2013 assessment level. If the maximum assessment is

1 insufficient to cover a pool deficit the assessment shall be used first
2 to pay all incurred losses and pool administrative expenses, with the
3 remainder being available for deposit in the health benefit exchange
4 account.

5 (3) The board may abate or defer, in whole or in part, the
6 assessment of a member if, in the opinion of the board, payment of the
7 assessment would endanger the ability of the member to fulfill its
8 contractual obligations. If an assessment against a member is abated
9 or deferred in whole or in part, the amount by which such assessment is
10 abated or deferred may be assessed against the other members in a
11 manner consistent with the basis for assessments set forth in
12 subsection (2) of this section. The member receiving such abatement or
13 deferment shall remain liable to the pool for the deficiency.

14 (4) Subject to the limitation imposed in subsection (2)(c) of this
15 section, the pool administrator shall transfer the assessments for pool
16 contributions for the operation of the health benefit exchange to the
17 treasurer for deposit into the health benefit exchange account with the
18 quarterly assessments for 2014 as specified in the state omnibus
19 appropriations act. If assessments exceed actual losses and
20 administrative expenses of the pool and pool contributions for deposit
21 into the health benefit exchange account, the excess shall be held at
22 interest and used by the board to offset future losses or to reduce
23 pool premiums. As used in this subsection, "future losses" includes
24 reserves for incurred but not reported claims.

25 NEW SECTION. Sec. 8. A new section is added to chapter 82.04 RCW
26 to read as follows:

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

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

31 NEW SECTION. Sec. 9. If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 10.** Section 8 of this act applies both
2 prospectively and retroactively.

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