State of Washington 63rd Legislature 2013 Regular Session

By Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Nelson, Mullet, Hobbs, Fain, and Keiser; by request of Insurance Commissioner)

READ FIRST TIME 02/15/13.

1 AN ACT Relating to insurance; amending RCW 48.02.060, 48.02.120, 48.15.050, 48.16.030, 48.20.435, 48.21.157, 48.43.700, 48.43.705, 48.46.040, 48.140.040, 48.140.050, 48.155.010, 48.175.005, and 48.175.020; and repealing RCW 48.140.070.

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

Sec. 1. RCW 48.02.060 and 2010 c 27 s 1 are each amended to read as follows:

(1) The commissioner has the authority expressly conferred upon him or her by or reasonably implied from the provisions of this code.

(2) The commissioner must execute his or her duties and must enforce the provisions of this code.

(3) The commissioner may:

(a) Make reasonable rules for effectuating any provision of this code, except those relating to his or her election, qualifications, or compensation. Rules are not effective prior to their being filed for public inspection in the commissioner's office.

(b) Conduct investigations to determine whether any person has violated any provision of this code.
(c) Conduct examinations, investigations, hearings, in addition to those specifically provided for, useful and proper for the efficient administration of any provision of this code.

(d) Authorize reimbursement of authorized volunteer projects, training, and travel as provided in RCW 43.03.050 and 43.03.060 and other reasonable expenses relating to volunteer recognition.

(4) When the governor proclaims a state of emergency under RCW 43.06.010(12), the commissioner may issue an order that addresses any or all of the following matters related to insurance policies issued in this state:

(a) Reporting requirements for claims;

(b) Grace periods for payment of insurance premiums and performance of other duties by insureds;

(c) Temporary postponement of cancellations and nonrenewals; and

(d) Medical coverage to ensure access to care.

(5) An order by the commissioner under subsection (4) of this section may remain effective for not more than sixty days unless the commissioner extends the termination date for the order for an additional period of not more than thirty days. The commissioner may extend the order if, in the commissioner's judgment, the circumstances warrant an extension. An order of the commissioner under subsection (4) of this section is not effective after the related state of emergency is terminated by proclamation of the governor under RCW 43.06.210. The order must specify, by line of insurance:

(a) The geographic areas in which the order applies, which must be within but may be less extensive than the geographic area specified in the governor's proclamation of a state of emergency and must be specific according to an appropriate means of delineation, such as the United States postal service zip codes or other appropriate means; and

(b) The date on which the order becomes effective and the date on which the order terminates.

(6) The commissioner may adopt rules that establish general criteria for orders issued under subsection (4) of this section and may adopt emergency rules applicable to a specific proclamation of a state of emergency by the governor.

(7) The rule-making authority set forth in subsection (6) of this section does not limit or affect the rule-making authority otherwise granted to the commissioner by law.
Sec. 2. RCW 48.02.120 and 2011 c 312 s 1 are each amended to read as follows:

(1) The commissioner shall preserve in permanent form records of his or her proceedings, hearings, investigations, and examinations, and shall file such records in his or her office.

(2) The records of the commissioner and insurance filings in his or her office shall be open to public inspection, except as otherwise provided by this code.

(3) Except as provided in subsection (4) of this section, actuarial formulas, statistics, and assumptions submitted in support of a rate or form filing by an insurer, health care service contractor, or health maintenance organization or submitted to the commissioner upon his or her request shall be withheld from public inspection in order to preserve trade secrets or prevent unfair competition.

(4) For individual and small group health benefit plan rate filings submitted on or after July 1, 2011, subsection (3) of this section applies only to the numeric values of each small group rating factor used by a health carrier as authorized by RCW 48.21.045(3)(a), 48.44.023(3)(a), and 48.46.066(3)(a). Subsection (3) of this section may continue to apply for a period of one year from the date a new individual or small group product filing is submitted or until the next rate filing for the product, whichever occurs earlier, if the commissioner determines that the proposed rate filing is for a new product that is distinct and unique from any of the carrier's currently or previously offered health benefit plans. Carriers must make a written request for a product classification as a new product under this subsection and must receive subsequent written approval by the commissioner for this subsection to apply.

(5) Unless the commissioner has determined that a filing is for a new product pursuant to subsection (4) of this section, for all individual or small group health benefit rate filings submitted on or after July 1, 2011, the health carrier must submit part I rate increase summary and part II written explanation of the rate increase as set forth by the department of health and human services and as revised from time to time at the time of filing, and the commissioner must:

(a) Make each filing and the part I rate increase summary and part II written explanation of the rate increase available for public
inspection on the tenth calendar day after the commissioner determines
that the rate filing is complete and accepts the filing for review
through the electronic rate and form filing system; and
(b) Prepare a standardized rate summary form, to explain his or her
findings after the rate review process is completed. The
commissioner's summary form must be included as part of the rate filing
documentation and available to the public electronically.

Sec. 3. RCW 48.15.050 and 1947 c 79 s .15.05 are each amended to
read as follows:

Every insurance contract procured and delivered as a surplus line
coverage pursuant to this chapter (shall) must have stamped upon it
and be initialied by or bear the name of the surplus line broker who
procured it, the following:
"This contract is registered and delivered as a surplus line
coverage under the insurance code of the state of Washington, (enacted
in 1947) Title 48 RCW."

Sec. 4. RCW 48.16.030 and 1955 c 86 s 5 are each amended to read
as follows:

All such deposits shall consist of cash funds or public obligations
as specified in RCW (48.13.040) 48.13.061(2); except, that with
respect to deposits held on account of registered policies heretofore
issued, the commissioner may accept deposit of such other kinds of
securities as are expressly required to be deposited by the terms of
such policies.

Sec. 5. RCW 48.20.435 and 2012 c 211 s 15 are each amended to read
as follows:

(1) Each disability insurance contract that is (not
grandfathered) a nongrandfathered health benefit plan and that
provides coverage for a subscriber's child must offer the option of
covering any child under the age of twenty-six.

(2) Each grandfathered disability insurance contract that provides
coverage for a subscriber's child must offer the option of covering any
child under the age of twenty-six unless the child is eligible to
enroll in an eligible health plan sponsored by the child's employer or
the child's spouse's employer.
(3) As used in this section, "grandfathered" has the same meaning as "grandfathered health plan" in RCW 48.43.005.

Sec. 6. RCW 48.21.157 and 2011 c 314 s 17 are each amended to read as follows:

Any group disability insurance contract or blanket disability insurance contract that provides health benefit plan coverage for a participating member's dependent must offer each participating member the option of covering any dependent under the age of twenty-six.

Sec. 7. RCW 48.43.700 and 2012 c 87 s 6 are each amended to read as follows:

(1) For plan or policy years beginning January 1, 2014, a carrier ((must offer individual or small group health benefit plans that meet the definition of silver and gold level plans in section 1302 of P.L. 111-148 of 2010, as amended, in any market outside the exchange in which it offers a plan that meets the definition of bronze level in section 1302 of P.L. 111-148 of 2010, as amended.)

(2)) offering a health benefit plan that meets the definition of bronze level in section 1302 of P.L. 111-148 of 2010, as amended, in the individual market outside of the exchange must also offer plans that meet the definition of silver and gold level plans in section 1302 of P.L. 111-148 of 2010, as amended, in the individual market outside of the exchange.

(2) For plan or policy years beginning January 1, 2014, a carrier offering a health benefit plan that meets the definition of bronze level in section 1302 of P.L. 111-148 of 2010, as amended, in the small group market outside of the exchange must also offer plans that meet the definition of silver and gold level plans in section 1302 of P.L. 111-148 of 2010, as amended, in the small group market outside of the exchange.

(3) A health benefit plan meeting the definition of a catastrophic plan in RCW 48.43.005(8)(c)(i) may only be sold through the exchange.

((4)) (4) By December 1, 2016, the exchange board, in consultation with the commissioner, must complete a review of the impact of this section on the health and viability of the markets inside and outside the exchange and submit the recommendations to the legislature on whether to maintain the market rules or let them expire.
The commissioner shall evaluate plans offered at each actuarial value defined in section 1302 of P.L. 111-148 of 2010, as amended, and determine whether variation in prescription drug benefit cost-sharing, both inside and outside the exchange in both the individual and small group markets results in adverse selection. If so, the commissioner may adopt rules to assure substantial equivalence of prescription drug cost-sharing.

Sec. 8. RCW 48.43.705 and 2012 c 87 s 7 are each amended to read as follows:

All nongrandfathered individual and small group health plans, other than catastrophic health plans, offered outside of the exchange must conform with the actuarial value tiers specified in section 1302 of P.L. 111-148 of 2010, as amended, as bronze, silver, gold, or platinum.

Sec. 9. RCW 48.46.040 and 2012 c 211 s 24 are each amended to read as follows:

The commissioner shall issue a certificate of registration to the applicant within sixty days of such filing unless he or she notifies the applicant within such time that such application is not complete and the reasons therefor; or that he or she is not satisfied that:

(1) The basic organizational document of the applicant permits the applicant to conduct business as a health maintenance organization;

(2) The organization has demonstrated the intent and ability to assure that comprehensive health care services will be provided in a manner to assure both their availability and accessibility;

(3) The organization is financially responsible and may be reasonably expected to meet its obligations to its enrolled participants. In making this determination, the commissioner (shall) must consider among other relevant factors:

(a) Any agreements with an insurer, a medical or hospital service bureau, a government agency or any other organization paying or insuring payment for health care services;

(b) Any agreements with providers for the provision of health care services;

(c) Any arrangements for liability and malpractice insurance coverage; and
Adequate procedures to be implemented to meet the protection against insolvency requirements in RCW 48.46.245;

(4) The procedures for offering health care services and offering or terminating contracts with enrolled participants are reasonable and equitable in comparison with prevailing health insurance subscription practices and health maintenance organization enrollment procedures; and, that

(5) Procedures have been established to:

(a) Monitor the quality of care provided by such organization, including, as a minimum, procedures for internal peer review;

(b) Offer enrolled participants an opportunity to participate in matters of policy and operation in accordance with RCW 48.46.020(18) and 48.46.070.

No person to whom a certificate of registration has not been issued, except a health maintenance organization certified by the secretary of the department of health and human services, pursuant to Public Law 93-222 or its successor, must use the words "health maintenance organization" or the initials "HMO" in its name, contracts, or literature. Persons who are contracting with, operating in association with, recruiting enrolled participants for, or otherwise authorized by a health maintenance organization possessing a certificate of registration to act on its behalf may use the terms "health maintenance organization" or "HMO" for the limited purpose of denoting or explaining their relationship to such health maintenance organization.

The department of health, at the request of the insurance commissioner, must inspect and review the facilities of every applicant health maintenance organization to determine that such facilities are reasonably adequate to provide the health care services offered in their contracts. If the commissioner has information to indicate that such facilities fail to continue to be adequate to provide the health care services offered, the department of health, upon request of the insurance commissioner, must reinspect and review the facilities and report to the insurance commissioner as to their adequacy or inadequacy.

Sec. 10. RCW 48.140.040 and 2006 c 8 s 204 are each amended to read as follows:
The commissioner must prepare aggregate statistical summaries of closed claims based on data submitted under RCW 48.140.020.

1. At a minimum, the commissioner must summarize data by calendar year and calendar/incident year. The commissioner may also decide to display data in other ways if the commissioner:
   a. Protects information as required under RCW 48.140.060(2); and
   b. Exempts from disclosure data described in RCW 42.56.400(11).

2. The summaries must be available by April 30th of each year, unless the commissioner notifies legislative committees by March 15th that data are not available and informs the committees when the summaries will be completed.

3. Information included in an individual closed claim report submitted by an insuring entity, self-insurer, provider, or facility under this chapter is confidential and exempt from public disclosure, and the commissioner must not make these data available to the public.

**Sec. 11.** RCW 48.140.050 and 2006 c 8 s 205 are each amended to read as follows:

Beginning in 2010, the commissioner must prepare an annual report that summarizes and analyzes the medical malpractice closed claim (reports for medical malpractice) data filed under RCW 48.140.020 and 7.70.140 and the annual financial (reports) data filed by authorized insurers with the national association of insurance commissioners by insuring entities writing medical malpractice insurance in this state. The commissioner must complete the report by June 30th, unless the commissioner notifies legislative committees by June 1st that data are not available and informs the committees when the summaries will be completed) September 1st.

1. The report must include:
   a. An analysis of reported closed claims from prior years for which data are collected. The analysis must show:
      i. Trends in the frequency and severity of claim payments;
      ii. A comparison of economic and noneconomic damages;
      iii. A distribution of allocated loss adjustment expenses and other legal expenses;
      iv. The types of medical malpractice for which claims have been paid; and
(v) Any other information the commissioner finds relevant to trends in medical malpractice closed claims if the commissioner:
   (A) Protects information as required under RCW 48.140.060(2); and
   (B) Exempts from disclosure data described in RCW 42.56.400((11)) (10);
(b) An analysis of the medical malpractice insurance market in Washington state, including:
   (i) An analysis of the financial ((reports)) data of the authorized insurers with a combined market share of at least ninety percent of direct written medical malpractice premium in Washington state for the prior calendar year;
   (ii) A loss ratio analysis of medical malpractice insurance written in Washington state; and
   (iii) A profitability analysis of the authorized insurers with a combined market share of at least ninety percent of direct written medical malpractice premium in Washington state for the prior calendar year;
   (c) A comparison of loss ratios and the profitability of medical malpractice insurance in Washington state to other states based on financial ((reports)) data filed with the national association of insurance commissioners and any other source of information the commissioner deems relevant; and
   (d) A summary of the rate filings for medical malpractice that have been approved by the commissioner for the prior calendar year, including an analysis of the trend of direct incurred losses as compared to prior years.
(2) The commissioner must post reports required by this section on the internet no later than thirty days after they are due.
(3) The commissioner may adopt rules that require insuring entities and self-insurers required to report under RCW 48.140.020 and subsection (1)(a) of this section to report data related to:
   (a) The frequency and severity of closed claims for the reporting period; and
   (b) Any other closed claim information that helps the commissioner monitor losses and claim development patterns in the Washington state medical malpractice insurance market.
Sec. 12. RCW 48.155.010 and 2010 c 27 s 4 are each amended to read as follows:

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

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) "Commissioner" means the Washington state insurance commissioner.

(3)(a) "Control" or "controlled by" or "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(b) Control exists when any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. A presumption of control may be rebutted by a showing made in the manner provided by RCW 48.31B.005(2) and 48.31B.025(11) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(4)(a) "Discount plan" means a business arrangement or contract in which a person or organization, in exchange for fees, dues, charges, or other consideration, provides or purports to provide discounts to its members on charges by providers for health care services.

(b) "Discount plan" does not include:

(i) A plan that does not charge a membership or other fee to use the plan's discount card;

(ii) A patient access program as defined in this chapter;

(iii) A medicare prescription drug plan as defined in this chapter; or

(iv) A discount plan offered by a health carrier authorized under chapter 48.20, 48.21, 48.44, or 48.46 RCW.
(a) "Discount plan organization" means a person that, in exchange for fees, dues, charges, or other consideration, provides or purports to provide access to discounts to its members on charges by providers for health care services. "Discount plan organization" also means a person or organization that contracts with providers, provider networks, or other discount plan organizations to offer discounts on health care services to its members. This term also includes all persons that determine the charge to or other consideration paid by members.

(b) "Discount plan organization" does not mean:

(i) Pharmacy benefit managers;

(ii) Health care provider networks, when the network's only involvement in discount plans is contracting with the plan to provide discounts to the plan's members;

(iii) Marketers who market the discount plans of discount plan organizations which are licensed under this chapter as long as all written communications of the marketer in connection with a discount plan clearly identify the licensed discount plan organization as the responsible entity; or

(iv) Health carriers, if the discount on health care services is offered by a health carrier authorized under chapter 48.20, 48.21, 48.44, or 48.46 RCW.

(6) "Health care facility" or "facility" has the same meaning as in RCW 48.43.005((15)).

(7) "Health care provider" or "provider" has the same meaning as in RCW 48.43.005((16)).

(8) "Health care provider network," "provider network," or "network" means any network of health care providers, including any person or entity that negotiates directly or indirectly with a discount plan organization on behalf of more than one provider to provide health care services to members.

(9) "Health care services" has the same meaning as in RCW 48.43.005((17)).

(10) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005((18)).

(11) "Marketer" means a person or entity that markets, promotes, sells, or distributes a discount plan, including a contracted marketing
organization and a private label entity that places its name on and
markets or distributes a discount plan pursuant to a marketing
agreement with a discount plan organization.

(12) "Medicare prescription drug plan" means a plan that provides
a medicare part D prescription drug benefit in accordance with the
requirements of the federal medicare prescription drug improvement and

(13) "Member" means any individual who pays fees, dues, charges, or
other consideration for the right to receive the benefits of a discount
plan, but does not include any individual who enrolls in a patient
access program.

(14) "Patient access program" means a voluntary program sponsored
by a pharmaceutical manufacturer, or a consortium of pharmaceutical
manufacturers, that provides free or discounted health care products
for no additional consideration directly to low-income or uninsured
individuals either through a discount card or direct shipment.

(15) "Person" means an individual, a corporation, a governmental
entity, a partnership, an association, a joint venture, a joint stock
company, a trust, an unincorporated organization, any similar entity,
or any combination of the persons listed in this subsection.

(16)(a) "Pharmacy benefit manager" means a person that performs
pharmacy benefit management for a covered entity.

(b) For purposes of this subsection, a "covered entity" means an
insurer, a health care service contractor, a health maintenance
organization, or a multiple employer welfare arrangement licensed,
certified, or registered under the provisions of this title. "Covered
entity" also means a health program administered by the state as a
provider of health coverage, a single employer that provides health
coverage to its employees, or a labor union that provides health
coverage to its members as part of a collective bargaining agreement.

Sec. 13. RCW 48.175.005 and 2012 c 108 s 1 are each amended to
read as follows:

For the purposes of this chapter, unless the context otherwise
requires:

(1) "Owner's insurance policy" means an automobile liability
insurance policy, as defined in RCW 48.22.005, that includes:
(a) All coverage necessary to comply with the requirements of chapter 46.30 RCW; and

(b) Any optional coverage selected by the registered owner, including:

(i) Personal injury protection coverage as defined in RCW 48.22.005;

(ii) Underinsured coverage as defined in RCW 48.22.030;

(iii) Comprehensive property damage coverage for the vehicle; and

(iv) Collision property damage coverage for the vehicle.

(2) "Personal vehicle sharing" means the operation and use of a private passenger motor vehicle, by persons other than the vehicle's registered owner in connection with a personal vehicle sharing program.

(3) "Personal vehicle sharing program" or "program" means a legal entity qualified to do business in this state engaged in the business of facilitating the sharing of private passenger motor vehicles for noncommercial use by individuals within this state. For the purposes of this subsection, "noncommercial use" means use other than that for a "commercial vehicle" as defined in RCW 46.04.140.

(4) "Private passenger motor vehicle" means a four-wheel passenger motor vehicle insured under an automobile liability insurance policy covering a single individual or individuals residing in the same household as the named insured.

(5) "Program insurance policy" means an automobile liability insurance policy that is obtained by the personal vehicle sharing program and that:

(a) Includes all coverage needed to comply with the requirements of chapter 46.30 RCW;

(b) Includes the following optional coverages:

(i) Comprehensive property damage coverage for the vehicle; and

(ii) Collision property damage coverage for the vehicle;

(c) Offers to the named insured on the program policy underinsured motorist coverage as defined in RCW 48.22.030;

(d) Offers to the named insured on the program policy personal injury protection coverage as defined in RCW 48.22.005; and

(e) Does not include any other optional coverage selected by the owner of the vehicle and included in the owner's insurance policy.
Sec. 14. RCW 48.175.020 and 2012 c 108 s 3 are each amended to read as follows:

(1) Notwithstanding any provision in the owner's insurance policy and notwithstanding chapter 46.29 RCW, in the event of any loss or injury that occurs at any time when the vehicle is under the operation or control of a person, other than the vehicle's registered owner, pursuant to a program, or is otherwise under the control of a program, the program shall assume all liability of the vehicle owner and shall be considered the vehicle owner for all purposes.

(2) Nothing in subsection (1) of this section:

(a) Limits the liability of a program for any acts or omissions by the program that result in injury to any persons as a result of the use or operation of the program; or

(b) Limits the ability of the program to, by contract, seek indemnification from the vehicle's registered owner for any claims paid by the program for any loss or injury resulting from fraud or material misrepresentation by the vehicle's registered owner, provided that the vehicle sharing program disclose in the contract that:

(i) The program is entitled to seek indemnification in these circumstances; and

(ii) The registered owner's insurance policy does not provide defense or indemnification for any loss or injury resulting from fraud or material intentional misrepresentation.

(3) A program continues to be liable under subsection (1) of this section until:

(a) The vehicle is returned to a location designated by the program, as set forth in the contract between the registered owner and the program; and

(b)(i) The expiration of the time period established for the vehicle occurs;

(ii) The intent to terminate the vehicle's personal vehicle sharing use is verifiably communicated to the program, as set forth in the contract between the registered owner and the program; or

(iii) The vehicle's registered owner takes possession and control of the vehicle.

(4)(a) A program shall assume liability, including the costs of
defense and indemnification, for a claim in which a dispute exists as to who was in control of a private passenger motor vehicle when the loss giving rise to the claim occurred.

(b) The insurer of the vehicle shall indemnify the program to the extent of the insurer's obligation under the owner's insurance policy, if it is determined that the vehicle's registered owner was in control of the vehicle at the time of the loss.

(5) If a private passenger motor vehicle's registered owner is named as a defendant in a civil action for any loss or injury that occurs at any time when the vehicle is under the operation or control of a person, other than the vehicle's registered owner, pursuant to a program, or is otherwise under the control of a program, the program shall have the duty to defend and indemnify the vehicle's registered owner.

(6)(a) Notwithstanding any provision in the owner's insurance policy, while the vehicle is under the operation or control of a person, other than the vehicle's registered owner, pursuant to a program, or is otherwise under the control of a program:

(i) The insurer providing coverage to the owner of a private passenger motor vehicle may exclude any and all coverage afforded under the owner's insurance policy; and

(ii) A primary or excess insurer of the vehicle owner may notify an insured that the insurer has no duty to defend or indemnify any person or organization for liability for any loss that occurs during use of the vehicle pursuant to a program;

(b) In order to exclude such coverage, the exclusion allowed in (a)(i) of this subsection and the notification required in (a)(ii) of this subsection are not required for a policy that otherwise does not provide such coverages.

(7) An owner's insurance policy for a private passenger motor vehicle may not be canceled, voided, terminated, rescinded, or nonrenewed solely on the basis that the vehicle has been made available for personal vehicle sharing pursuant to a program that is in compliance with the provisions of this chapter.

NEW SECTION. Sec. 15. RCW 48.140.070 (Model statistical reporting
standards--Report to legislature) and 2006 c 8 s 207 are each repealed.