

**ESSB 6112 - H AMD 1175**

By Representative Cody

ADOPTED 03/09/2004

1 On page 4, line 1, after "establishes to the" strike "reasonable"

2 On page 4, after line 25, insert the following:

3 "(5) In this state, the arrangement provides or arranges benefits  
4 for health care services in compliance with RCW 48.43.500 through  
5 48.43.535, 48.43.545, and 48.43.550;"

6 Renumber the remaining subsections consecutively and correct  
7 internal references accordingly.

8 Beginning on page 16, line 35, after "these arrangements" strike  
9 all language through "authority." on page 17, line 3, and insert ". If  
10 there has not been a final determination by the United States  
11 department of labor or a federal court that the taxes are not preempted  
12 by federal law, the taxes provided for in this section become effective  
13 on March 1, 2005, or thirty days following the issuance of a  
14 certificate of authority, whichever is later. During the time period  
15 between March 1, 2005, or thirty days following the issuance of a  
16 certificate of authority, whichever is later, and the final  
17 determination by the United States department of labor or a federal  
18 court, any taxes shall be deposited in an interest bearing escrow  
19 account maintained by the multiple employer welfare arrangement. Upon  
20 a final 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 shall be  
23 transferred to the state treasurer."

24 On page 17, after line 3, insert the following:

25 "**Sec. 25.** RCW 48.41.030 and 2001 c 196 s 2 are each amended to  
26 read as follows:

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

3 (1) "Accounting year" means a twelve-month period determined by the  
4 board for purposes of record-keeping and accounting. The first  
5 accounting year may be more or less than twelve months and, from time  
6 to time in subsequent years, the board may order an accounting year of  
7 other than twelve months as may be required for orderly management and  
8 accounting of the pool.

9 (2) "Administrator" means the entity chosen by the board to  
10 administer the pool under RCW 48.41.080.

11 (3) "Board" means the board of directors of the pool.

12 (4) "Commissioner" means the insurance commissioner.

13 (5) "Covered person" means any individual resident of this state  
14 who is eligible to receive benefits from any member, or other health  
15 plan.

16 (6) "Health care facility" has the same meaning as in RCW  
17 70.38.025.

18 (7) "Health care provider" means any physician, facility, or health  
19 care professional, who is licensed in Washington state and entitled to  
20 reimbursement for health care services.

21 (8) "Health care services" means services for the purpose of  
22 preventing, alleviating, curing, or healing human illness or injury.

23 (9) "Health carrier" or "carrier" has the same meaning as in RCW  
24 48.43.005.

25 (10) "Health coverage" means any group or individual disability  
26 insurance policy, health care service contract, and health maintenance  
27 agreement, except those contracts entered into for the provision of  
28 health care services pursuant to Title XVIII of the Social Security  
29 Act, 42 U.S.C. Sec. 1395 et seq. The term does not include short-term  
30 care, long-term care, dental, vision, accident, fixed indemnity,  
31 disability income contracts, limited benefit or credit insurance,  
32 coverage issued as a supplement to liability insurance, insurance  
33 arising out of the worker's compensation or similar law, automobile  
34 medical payment insurance, or insurance under which benefits are  
35 payable with or without regard to fault and which is statutorily  
36 required to be contained in any liability insurance policy or  
37 equivalent self-insurance.

38 (11) "Health plan" means any arrangement by which persons,  
39 including dependents or spouses, covered or making application to be

1 covered under this pool, have access to hospital and medical benefits  
2 or reimbursement including any group or individual disability insurance  
3 policy; health care service contract; health maintenance agreement;  
4 uninsured arrangements of group or group-type contracts including  
5 employer self-insured, cost-plus, or other benefit methodologies not  
6 involving insurance or not governed by Title 48 RCW; coverage under  
7 group-type contracts which are not available to the general public and  
8 can be obtained only because of connection with a particular  
9 organization or group; and coverage by medicare or other governmental  
10 benefits. This term includes coverage through "health coverage" as  
11 defined under this section, and specifically excludes those types of  
12 programs excluded under the definition of "health coverage" in  
13 subsection (10) of this section.

14 (12) "Medical assistance" means coverage under Title XIX of the  
15 federal Social Security Act (42 U.S.C., Sec. 1396 et seq.) and chapter  
16 74.09 RCW.

17 (13) "Medicare" means coverage under Title XVIII of the Social  
18 Security Act, (42 U.S.C. Sec. 1395 et seq., as amended).

19 (14) "Member" means any commercial insurer which provides  
20 disability insurance or stop loss insurance, any health care service  
21 contractor, (~~and~~) any health maintenance organization licensed under  
22 Title 48 RCW, and any self-funded multiple employer welfare arrangement  
23 as defined in section 3 of this act. "Member" also means the  
24 Washington state health care authority as issuer of the state uniform  
25 medical plan. "Member" shall also mean, as soon as authorized by  
26 federal law, employers and other entities, including a self-funding  
27 entity and employee welfare benefit plans that provide health plan  
28 benefits in this state on or after May 18, 1987. "Member" does not  
29 include any insurer, health care service contractor, or health  
30 maintenance organization whose products are exclusively dental products  
31 or those products excluded from the definition of "health coverage" set  
32 forth in subsection (10) of this section.

33 (15) "Network provider" means a health care provider who has  
34 contracted in writing with the pool administrator or a health carrier  
35 contracting with the pool administrator to offer pool coverage to  
36 accept payment from and to look solely to the pool or health carrier  
37 according to the terms of the pool health plans.

38 (16) "Plan of operation" means the pool, including articles, by-

1 laws, and operating rules, adopted by the board pursuant to RCW  
2 48.41.050.

3 (17) "Point of service plan" means a benefit plan offered by the  
4 pool under which a covered person may elect to receive covered services  
5 from network providers, or nonnetwork providers at a reduced rate of  
6 benefits.

7 (18) "Pool" means the Washington state health insurance pool as  
8 created in RCW 48.41.040.

9 **Sec. 26.** RCW 48.41.060 and 2000 c 79 s 9 are each amended to read  
10 as follows:

11 (1) The board shall have the general powers and authority granted  
12 under the laws of this state to insurance companies, health care  
13 service contractors, and health maintenance organizations, licensed or  
14 registered to offer or provide the kinds of health coverage defined  
15 under this title. In addition thereto, the board shall:

16 (a) Designate or establish the standard health questionnaire to be  
17 used under RCW 48.41.100 and 48.43.018, including the form and content  
18 of the standard health questionnaire and the method of its application.  
19 The questionnaire must provide for an objective evaluation of an  
20 individual's health status by assigning a discreet measure, such as a  
21 system of point scoring to each individual. The questionnaire must not  
22 contain any questions related to pregnancy, and pregnancy shall not be  
23 a basis for coverage by the pool. The questionnaire shall be designed  
24 such that it is reasonably expected to identify the eight percent of  
25 persons who are the most costly to treat who are under individual  
26 coverage in health benefit plans, as defined in RCW 48.43.005, in  
27 Washington state or are covered by the pool, if applied to all such  
28 persons;

29 (b) Obtain from a member of the American academy of actuaries, who  
30 is independent of the board, a certification that the standard health  
31 questionnaire meets the requirements of (a) of this subsection;

32 (c) Approve the standard health questionnaire and any modifications  
33 needed to comply with this chapter. The standard health questionnaire  
34 shall be submitted to an actuary for certification, modified as  
35 necessary, and approved at least every eighteen months. The  
36 designation and approval of the standard health questionnaire by the  
37 board shall not be subject to review and approval by the commissioner.  
38 The standard health questionnaire or any modification thereto shall not

1 be used until ninety days after public notice of the approval of the  
2 questionnaire or any modification thereto, except that the initial  
3 standard health questionnaire approved for use by the board after March  
4 23, 2000, may be used immediately following public notice of such  
5 approval;

6 (d) Establish appropriate rates, rate schedules, rate adjustments,  
7 expense allowances, claim reserve formulas and any other actuarial  
8 functions appropriate to the operation of the pool. Rates shall not be  
9 unreasonable in relation to the coverage provided, the risk experience,  
10 and expenses of providing the coverage. Rates and rate schedules may  
11 be adjusted for appropriate risk factors such as age and area variation  
12 in claim costs and shall take into consideration appropriate risk  
13 factors in accordance with established actuarial underwriting practices  
14 consistent with Washington state individual plan rating requirements  
15 under RCW 48.44.022 and 48.46.064;

16 (e) Assess members of the pool in accordance with the provisions of  
17 this chapter, and make advance interim assessments as may be reasonable  
18 and necessary for the organizational or interim operating expenses.  
19 Any interim assessments will be credited as offsets against any regular  
20 assessments due following the close of the year. Self-funded multiple  
21 employer welfare arrangements are subject to assessment under this  
22 subsection only in the event that assessments are not preempted by the  
23 employee retirement income security act of 1974, as amended, 29 U.S.C.  
24 Sec. 1001 et seq. The arrangements and the commissioner shall  
25 initially request an advisory opinion from the United States department  
26 of labor or obtain a declaratory ruling from a federal court on the  
27 legality of imposing assessments on these arrangements before imposing  
28 the assessment. If there has not been a final determination by the  
29 United States department of labor or a federal court that the  
30 assessments are not preempted by federal law, the assessments provided  
31 for in this subsection become effective on March 1, 2005, or thirty  
32 days following the issuance of a certificate of authority, whichever is  
33 later. During the time period between March 1, 2005, or thirty days  
34 following the issuance of a certificate of authority, whichever is  
35 later, and the final determination by the United States department of  
36 labor or a federal court, any assessments shall be deposited in an  
37 interest bearing escrow account maintained by the multiple employer  
38 welfare arrangement. Upon a final determination that the assessments

1 are not preempted by the employee retirement income security act of  
2 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the  
3 interest bearing escrow account shall be transferred to the board;

4 (f) Issue policies of health coverage in accordance with the  
5 requirements of this chapter;

6 (g) Establish procedures for the administration of the premium  
7 discount provided under RCW 48.41.200(3)(a)(iii);

8 (h) Contract with the Washington state health care authority for  
9 the administration of the premium discounts provided under RCW  
10 48.41.200(3)(a) (i) and (ii);

11 (i) Set a reasonable fee to be paid to an insurance agent licensed  
12 in Washington state for submitting an acceptable application for  
13 enrollment in the pool; and

14 (j) Provide certification to the commissioner when assessments will  
15 exceed the threshold level established in RCW 48.41.037.

16 (2) In addition thereto, the board may:

17 (a) Enter into contracts as are necessary or proper to carry out  
18 the provisions and purposes of this chapter including the authority,  
19 with the approval of the commissioner, to enter into contracts with  
20 similar pools of other states for the joint performance of common  
21 administrative functions, or with persons or other organizations for  
22 the performance of administrative functions;

23 (b) Sue or be sued, including taking any legal action as necessary  
24 to avoid the payment of improper claims against the pool or the  
25 coverage provided by or through the pool;

26 (c) Appoint appropriate legal, actuarial, and other committees as  
27 necessary to provide technical assistance in the operation of the pool,  
28 policy, and other contract design, and any other function within the  
29 authority of the pool; and

30 (d) Conduct periodic audits to assure the general accuracy of the  
31 financial data submitted to the pool, and the board shall cause the  
32 pool to have an annual audit of its operations by an independent  
33 certified public accountant.

34 (3) Nothing in this section shall be construed to require or  
35 authorize the adoption of rules under chapter 34.05 RCW."

36 Renumber remaining sections consecutively and correct the title.

EFFECT: Applies the provisions of the Patients Bill of Rights to

multiple employer welfare arrangements. Makes multiple employer welfare arrangements subject to assessments in the Washington State Health Insurance Pool if such assessments are not preempted by the Employee Retirement Income Security Act [ERISA]. Modifies the premium tax provision to have taxes paid into an escrow account pending a final determination on whether the taxes are preempted by ERISA.

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