
HOUSE BILL 2526

State of Washington 58th Legislature 2004 Regular Session

By Representatives Schual-Berke, Benson, Simpson, G., McMorris,
Moeller, Priest and Chase

Read first time 01/15/2004. Referred to Committee on Financial
Institutions & Insurance.

1 AN ACT Relating to self-funded multiple employer welfare
2 arrangements; adding a new section to chapter 48.43 RCW; adding a new
3 section to chapter 48.31 RCW; adding a new section to chapter 48.99
4 RCW; adding a new chapter to Title 48 RCW; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** This chapter may be cited as the "self-
7 funded multiple employer welfare arrangement regulation act."

8 NEW SECTION. **Sec. 2.** The purposes of this chapter are to:

9 (1) Provide for the authorization and registration of self-funded
10 multiple employer welfare arrangements;

11 (2) Regulate self-funded multiple employer welfare arrangements in
12 order to ensure the financial integrity of the arrangements;

13 (3) Provide reporting requirements for self-funded multiple
14 employer welfare arrangements; and

15 (4) Provide for sanctions against self-funded multiple employer
16 welfare arrangements organized, operated, providing benefits, or
17 maintained in this state that do not comply with this chapter.

1 NEW SECTION. **Sec. 3.** The definitions in this section apply

2 throughout this chapter unless the context clearly requires otherwise.

3 (1)(a) "Bona fide association" means an association of employers
4 that has been in existence for a period of not less than five years
5 prior to sponsoring a self-funded multiple employer welfare
6 arrangement, during which time the association has engaged in
7 substantial activities relating to the common interests of member
8 employers, such as conducting employee training programs, rendering
9 safety and regulatory compliance services, conducting accident
10 investigations, monitoring and testing workplace environmental
11 conditions, conducting wage surveys, negotiating collective bargaining
12 agreements, developing employee handbooks, improving employee
13 relations, or engaging in lobbying activities, and that continues to
14 engage in substantial activities in addition to sponsoring an
15 arrangement.

16 (b) Notwithstanding (a) of this subsection, an association that was
17 formed and began sponsoring an arrangement prior to October 1, 2004, is
18 not subject to the requirement that the association be in existence for
19 five years prior to sponsoring an arrangement.

20 (2) "Employer" means any person, firm, corporation, partnership,
21 business trust, legal representative, or other business entity which
22 engages in any business, industry, profession, or activity in this
23 state and employs one or more other persons or who contracts with one
24 or more persons, the essence of which is the personal labor of that
25 person or persons.

26 (3) "Health care service" means that service offered or provided by
27 health care facilities and health care providers relating to the
28 prevention, cure, or treatment of illness, injury, or disease.

29 (4) "Incurred claims" means the value of all amounts paid or
30 payable under a multiple employer welfare arrangement determined by
31 contract to be a liability with an incurred claims date during the
32 valuation period. It includes all payments during the valuation period
33 plus a reasonable estimate of unpaid claims liabilities.

34 (5) "Multiple employer welfare arrangement" means a multiple
35 employer welfare arrangement as defined by 29 U.S.C. Sec. 1002, but
36 does not include an arrangement, plan, program, or interlocal agreement
37 of or between any political subdivisions of this state.

38 (6) "Qualified actuary" means an individual who:

1 (a) Is a member in good standing of the American academy of
2 actuaries; and

3 (b) Is qualified to sign statements of actuarial opinion for health
4 annual statements in accordance with the American academy of actuaries
5 qualification standards for actuaries signing the statements.

6 (7) "Self-funded multiple employer welfare arrangement" or
7 "arrangement" means a multiple employer welfare arrangement that does
8 not provide for payment of benefits under the arrangement solely
9 through a policy or policies of insurance issued by one or more
10 insurance companies licensed under this title.

11 (8) "Surplus" means the excess of the assets of a self-funded
12 multiple employer welfare arrangement over the liabilities of the
13 arrangement. The assets and liabilities should be determined in
14 accordance with the accounting practices and procedures manuals as
15 adopted by the national association of insurance commissioners, unless
16 otherwise provided by law.

17 NEW SECTION. **Sec. 4.** (1) Except as provided in subsection (3) of
18 this section, a person may not establish, operate, provide benefits, or
19 maintain a self-funded multiple employer welfare arrangement in this
20 state unless the arrangement first obtains a certificate of authority
21 from the commissioner.

22 (2) An arrangement is considered to be established, operated,
23 providing benefits, or maintained in this state if one or more of the
24 employer members participating in the arrangement is either domiciled
25 in or maintains its principal place of business in this state.

26 (3) An arrangement established, operated, providing benefits, or
27 maintained in this state prior to January 1, 2004, has until April 1,
28 2005, to file a substantially complete application for a certificate of
29 authority. An arrangement that files a substantially complete
30 application for a certificate of authority by that date is allowed to
31 continue to operate without a certificate of authority until the
32 commissioner approves or denies the arrangement's application for a
33 certificate of authority.

34 NEW SECTION. **Sec. 5.** The commissioner may not issue a certificate
35 of authority to a self-funded multiple employer welfare arrangement

1 unless the arrangement establishes to the reasonable satisfaction of
2 the commissioner that the following requirements have been satisfied by
3 the arrangement:

4 (1) The employers participating in the arrangement are either
5 engaged in the same trade, profession, or industry or the employers
6 participating in the arrangement are members of a bona fide
7 association;

8 (2) The employers participating in the arrangement exercise control
9 over the arrangement, as follows:

10 (a) Subject to (b) of this subsection, control exists if the board
11 of directors of the bona fide association or the employers
12 participating in the arrangement have the right to elect at least
13 seventy-five percent of the individuals designated in the arrangement's
14 organizational documents as having control over the operations of the
15 arrangement and the individuals designated in the arrangement's
16 organizational documents in fact exercise control over the operation of
17 the arrangement; and

18 (b) The use of a third-party administrator to process claims and to
19 assist in the administration of the arrangement is not evidence of the
20 lack of exercise of control over the operation of the arrangement;

21 (3) In this state, the arrangement provides only health care
22 services;

23 (4) The arrangement provides health care services to not less than
24 two employers and not less than seventy-five employees;

25 (5) The arrangement may not solicit participation in the
26 arrangement from the general public. However, the arrangement may
27 employ licensed insurance agents who receive a commission, unlicensed
28 individuals who do not receive a commission, and may contract with a
29 licensed insurance producer who may be paid a commission or other
30 remuneration, for the purpose of enrolling and renewing the enrollments
31 of employers in the arrangement;

32 (6) The arrangement has been in existence and operated actively for
33 a continuous period of not less than five years; and

34 (7) The arrangement is not organized or maintained solely as a
35 conduit for the collection of premiums and the forwarding of premiums
36 to an insurance company.

1 NEW SECTION. **Sec. 6.** (1) In addition to the requirements under
2 section 5 of this act, self-funded multiple employer welfare
3 arrangements formed after October 1, 2004, are subject to the following
4 requirements:

5 (a) Arrangements must maintain a calendar year for operations and
6 reporting purposes;

7 (b) Arrangements must satisfy one of the following requirements:

8 (i)(A) The arrangement must deposit two hundred thousand dollars
9 with the commissioner to be used for the payment of claims in the event
10 that the arrangement becomes insolvent; and

11 (B) The arrangement must submit to the commissioner a written plan
12 of operation that, in the reasonable discretion of the commissioner,
13 ensures the financial integrity of the arrangement; or

14 (ii) The arrangement demonstrates to the reasonable satisfaction of
15 the commissioner the ability of the arrangement to remain financially
16 solvent, for which purpose the commissioner may consider:

17 (A) The pro forma financial statements of the arrangement;

18 (B) The types and levels of excess of loss insurance coverage,
19 including the attachment points of the coverage and whether the points
20 are reflected as annual or monthly levels;

21 (C) Whether a deposit is required for each employee covered under
22 the arrangement equal to at least one month's cost of providing
23 benefits under the arrangement;

24 (D) The experience of the individuals who will be involved in the
25 management of the arrangement, including employees, independent
26 contractors, and consultants; and

27 (E) Other factors as reasonably determined by the commissioner to
28 be relevant to a determination of whether the arrangement is able to
29 operate in a financially solvent manner.

30 (2) The commissioner may require that the articles, bylaws,
31 agreements, trusts, or other documents or instruments describing the
32 rights and obligations of the employers, employees, and beneficiaries
33 of the arrangement provide that employers participating in the
34 arrangement are subject to pro rata assessment for all liabilities of
35 the arrangement.

36 (3) Self-funded multiple employer welfare arrangements with fewer
37 than one thousand covered persons or arrangements in their first year
38 of operation are required to have aggregate stop loss coverage, with an

1 attachment point of one hundred twenty-five percent of expected claims.
2 If the arrangement is allowed to assess the participating employers to
3 cover actual or projected claims in excess of plan assets, then the
4 attachment point shall be increased by the amount of the allowable
5 assessments. If the required attachment point exceeds one hundred
6 seventy-five percent of expected claims, aggregate stop loss coverage
7 shall be waived, unless the arrangement is in its first year of
8 operation. If the arrangement is in its first year of operation,
9 aggregate stop loss coverage shall not be waived. Arrangements with
10 one thousand covered persons or more, except arrangements in their
11 first year, are not required to have aggregate stop loss coverage.

12 (4) An arrangement must submit its base contribution rates for
13 participation under the arrangement for its initial year of operations
14 for review and approval by the commissioner.

15 (5) The arrangement must demonstrate continued compliance with
16 respect to the conditions set forth in this section as a condition of
17 receiving and maintaining a certificate of authority. The commissioner
18 may waive continued compliance with respect to the conditions in this
19 section at any time after the commissioner has granted a certificate of
20 authority to an arrangement.

21 NEW SECTION. **Sec. 7.** A self-funded multiple employer welfare
22 arrangement must apply for a certificate of authority on a form
23 prescribed by the commissioner and must submit the application,
24 together with the following documents, to the commissioner:

25 (1) A copy of all articles, bylaws, agreements, trusts, or other
26 documents or instruments describing the rights and obligations of the
27 employers, employees, and beneficiaries of the arrangement;

28 (2) A copy of the summary plan description or summary plan
29 descriptions of the arrangement, including those filed or required to
30 be filed with the United States department of labor, together with any
31 amendments to the description;

32 (3) Evidence of coverage of or letters of intent to participate
33 executed by at least two employers providing allowable benefits to at
34 least seventy-five employees;

35 (4) A copy of the arrangement's most recent year's financial
36 statements or, if the arrangement has been in existence for less than
37 one year, pro forma financial statements that must include, at a

1 minimum, a balance sheet, an income statement, a statement of changes
2 in financial position, and an actuarial opinion signed by a qualified
3 actuary stating that the unpaid claim liability of the arrangement
4 satisfies the standards under this title;

5 (5) Proof that the arrangement maintains or will maintain fidelity
6 bonds required by the United States department of labor under the
7 employee retirement income security act of 1974, 29 U.S.C. Sec. 1001,
8 et seq.;

9 (6) A copy of any excess of loss insurance coverage policies
10 maintained or proposed to be maintained by the arrangement;

11 (7) Biographical reports on forms prescribed by the national
12 association of insurance commissioners evidencing the general
13 trustworthiness and competence of each individual who is serving or who
14 will serve as an officer, director, trustee, employee, or fiduciary of
15 the arrangement;

16 (8) Fingerprint cards and current fees payable to the Washington
17 state patrol to check the criminal history of any person who exercises
18 control over the financial dealings and operations of the self-funded
19 multiple employer welfare arrangement, including collection of employer
20 contributions, investment of assets, payment of claims, rate setting,
21 and claims adjudication; and

22 (9) A statement executed by a representative of the arrangement
23 certifying, to the best knowledge and belief of the representative,
24 that:

25 (a) The arrangement is in compliance with section 5 of this act;

26 (b) The arrangement is in compliance with the requirements of the
27 employee retirement income security act of 1974, 29 U.S.C. Sec. 1001,
28 et seq., or a statement of any requirements with which the arrangement
29 is not in compliance and a statement of proposed corrective actions;
30 and

31 (c) The arrangement is in compliance with sections 8 and 9 of this
32 act.

33 NEW SECTION. **Sec. 8.** Self-funded multiple employer welfare
34 arrangements must establish upon inception and must maintain
35 continuously a surplus equal to at least ten percent of the next twelve
36 months projected incurred claims or two million dollars, whichever is
37 greater. The commissioner may proceed against self-funded multiple

1 employer welfare arrangements that fail to maintain the level of
2 surplus required by this section in any manner that the commissioner is
3 authorized to proceed against a health care service contractor that
4 failed to maintain minimum net worth.

5 NEW SECTION. **Sec. 9.** A self-funded multiple employer welfare
6 arrangement must establish and maintain contribution rates for
7 participation under the arrangement that satisfy either of the
8 following requirements:

9 (1) Contribution rates must equal or exceed the sum of projected
10 incurred claims for the year, plus all projected costs of operation of
11 the arrangement for the year, plus an amount equal to any deficiency in
12 the surplus of the arrangement for the prior year, minus an amount
13 equal to the surplus of the arrangement in excess of the minimum
14 required level of surplus; or

15 (2) Contribution rates must equal or exceed a funding level
16 established by a report prepared by a qualified actuary.

17 NEW SECTION. **Sec. 10.** (1) The commissioner shall grant or deny an
18 application for a certificate of authority within one hundred eighty
19 days of the date that a completed application, together with the items
20 designated in section 7 of this act, is submitted to the commissioner.

21 (2) The commissioner shall grant the application of an arrangement
22 that satisfies the applicable requirements of sections 5 through 9 of
23 this act.

24 (3) The commissioner shall deny the application of an arrangement
25 that does not satisfy the applicable requirements of sections 5 through
26 9 of this act. Denial of an application for a certificate of authority
27 is subject to appeal under chapter 34.05 RCW.

28 (4) A certificate of authority granted to an arrangement is
29 effective unless revoked by the commissioner under section 12 of this
30 act.

31 NEW SECTION. **Sec. 11.** (1) A self-funded multiple employer welfare
32 arrangement must comply with the reporting requirements of this
33 section.

34 (2) Every arrangement holding a certificate of authority from the
35 commissioner must file its financial statements as required by this

1 title and by the commissioner in accordance with the accounting
2 practices and procedures manuals as adopted by the national association
3 of insurance commissioners, unless otherwise provided by law.

4 (3) Every arrangement must comply with the provisions of chapters
5 48.12 and 48.13 RCW.

6 (4) Every arrangement holding a certificate of authority shall,
7 annually, before the first day of March, file with the commissioner a
8 true statement of its financial condition, transactions, and affairs as
9 of the thirty-first day of December of the preceding year. The
10 statement forms must be those forms approved by the national
11 association of insurance commissioners for health insurance. The
12 statement must be verified by the oaths of at least two officers of the
13 arrangement. Additional information may be required by this title or
14 by the request of the commissioner.

15 (5) Every arrangement must report their annual and other statements
16 in the same manner required of other insurers by rule of the
17 commissioner.

18 (6) The arrangement must file with the commissioner a copy of the
19 arrangement's internal revenue service form 5500 together with all
20 attachments to the form, at the time required for filing the form.

21 NEW SECTION. **Sec. 12.** (1) The commissioner may impose sanctions
22 against a self-funded multiple employer welfare arrangement that fails
23 to comply with this chapter. The maximum fine may not exceed ten
24 thousand dollars for each violation.

25 (2) The commissioner may issue a notice of intent to revoke the
26 certificate of authority of a self-funded multiple employer welfare
27 arrangement that fails to comply with section 8, 9, or 11 of this act.
28 If, within sixty days of receiving notice under this subsection, the
29 arrangement fails to file with the commissioner a plan to bring the
30 arrangement into compliance with section 8, 9, or 11 of this act, the
31 commissioner may revoke the arrangement's certificate of authority. A
32 revocation of a certificate of authority is subject to appeal under
33 chapter 34.05 RCW.

34 (3) An arrangement that fails to maintain the level of surplus
35 required by section 8 of this act is subject to the sanctions
36 authorized in RCW 48.44.160 through 48.44.166.

1 NEW SECTION. **Sec. 19.** Sections 1 through 15 of this act
2 constitute a new chapter in Title 48 RCW.

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