
HOUSE BILL 1528

State of Washington

59th Legislature

2005 Regular Session

By Representatives Kirby, Priest, Simpson, Newhouse, Cody, Serben and Schual-Berke

Read first time 01/27/2005. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to escrow accounts required of self-funded multiple
2 employer welfare arrangements; amending RCW 48.14.0201 and 48.41.060;
3 and declaring an emergency.

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

5 **Sec. 1.** RCW 48.14.0201 and 2004 c 260 s 24 are each amended to
6 read 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 shall 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 shall be equal to the total amount of
14 all premiums and prepayments for health care services received by the
15 taxpayer during the preceding calendar year multiplied by the rate of
16 two percent.

17 (3) Taxpayers shall prepay their tax obligations under this
18 section. The minimum amount of the prepayments shall be percentages of
19 the taxpayer's tax obligation for the preceding calendar year

1 recomputed using the rate in effect for the current year. For the
2 prepayment of taxes due during the first calendar year, the minimum
3 amount of the prepayments shall be percentages of the taxpayer's tax
4 obligation that would have been due had the tax been in effect during
5 the previous calendar year. The tax prepayments shall be paid to the
6 state treasurer through the commissioner's office by the due dates and
7 in the following amounts:

8 (a) On or before June 15, forty-five percent;

9 (b) On or before September 15, twenty-five percent;

10 (c) On or before December 15, twenty-five percent.

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

17 (5) Moneys collected under this section shall be deposited in the
18 general fund through March 31, 1996, and in the health services account
19 under RCW 43.72.900 after March 31, 1996.

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

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

25 (b) Amounts received by any health care service contractor, as
26 defined in RCW 48.44.010, as prepayments for health care services
27 included within the definition of practice of dentistry under RCW
28 18.32.020.

29 (c) Participant contributions to self-funded multiple employer
30 welfare arrangements that are not taxable in this state.

31 (7) Beginning January 1, 2000, the state does hereby preempt the
32 field of imposing excise or privilege taxes upon taxpayers and no
33 county, city, town, or other municipal subdivision shall have the right
34 to impose any such taxes upon such taxpayers. This subsection shall be
35 limited to premiums and payments for health benefit plans offered by
36 health care service contractors under chapter 48.44 RCW, health
37 maintenance organizations under chapter 48.46 RCW, and self-funded
38 multiple employer welfare arrangements as defined in RCW 48.125.010.

1 The preemption authorized by this subsection shall not impair the
2 ability of a county, city, town, or other municipal subdivision to
3 impose excise or privilege taxes upon the health care services directly
4 delivered by the employees of a health maintenance organization under
5 chapter 48.46 RCW.

6 (8) The taxes imposed by this section apply to a self-funded
7 multiple employer welfare arrangement only in the event that they are
8 not preempted by the employee retirement income security act of 1974,
9 as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the
10 commissioner shall initially request an advisory opinion from the
11 United States department of labor or obtain a declaratory ruling from
12 a federal court on the legality of imposing state premium taxes on
13 these arrangements. If there has not been a final determination by the
14 United States department of labor or a federal court that the taxes are
15 not preempted by federal law, the taxes provided for in this section
16 become effective on (~~March 1, 2005, or thirty days following the~~
17 ~~issuance of a certificate of authority, whichever is later~~) April 1,
18 2006. During the time period between (~~March 1, 2005, or thirty days~~
19 ~~following the issuance of a certificate of authority, whichever is~~
20 ~~later~~) April 1, 2006, and the final determination by the United States
21 department of labor or a federal court, any taxes shall be deposited in
22 an interest bearing escrow account maintained by the (~~{self-funded}~~)
23 self-funded multiple employer welfare 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 shall be
27 transferred to the state treasurer.

28 **Sec. 2.** RCW 48.41.060 and 2004 c 260 s 26 are each amended to read
29 as follows:

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

35 (a) Designate or establish the standard health questionnaire to be
36 used under RCW 48.41.100 and 48.43.018, including the form and content
37 of the standard health questionnaire and the method of its application.

1 The questionnaire must provide for an objective evaluation of an
2 individual's health status by assigning a discreet measure, such as a
3 system of point scoring to each individual. The questionnaire must not
4 contain any questions related to pregnancy, and pregnancy shall not be
5 a basis for coverage by the pool. The questionnaire shall be designed
6 such that it is reasonably expected to identify the eight percent of
7 persons who are the most costly to treat who are under individual
8 coverage in health benefit plans, as defined in RCW 48.43.005, in
9 Washington state or are covered by the pool, if applied to all such
10 persons;

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

14 (c) Approve the standard health questionnaire and any modifications
15 needed to comply with this chapter. The standard health questionnaire
16 shall be submitted to an actuary for certification, modified as
17 necessary, and approved at least every eighteen months. The
18 designation and approval of the standard health questionnaire by the
19 board shall not be subject to review and approval by the commissioner.
20 The standard health questionnaire or any modification thereto shall not
21 be used until ninety days after public notice of the approval of the
22 questionnaire or any modification thereto, except that the initial
23 standard health questionnaire approved for use by the board after March
24 23, 2000, may be used immediately following public notice of such
25 approval;

26 (d) Establish appropriate rates, rate schedules, rate adjustments,
27 expense allowances, claim reserve formulas and any other actuarial
28 functions appropriate to the operation of the pool. Rates shall not be
29 unreasonable in relation to the coverage provided, the risk experience,
30 and expenses of providing the coverage. Rates and rate schedules may
31 be adjusted for appropriate risk factors such as age and area variation
32 in claim costs and shall take into consideration appropriate risk
33 factors in accordance with established actuarial underwriting practices
34 consistent with Washington state individual plan rating requirements
35 under RCW 48.44.022 and 48.46.064;

36 (e) Assess members of the pool in accordance with the provisions of
37 this chapter, and make advance interim assessments as may be reasonable
38 and necessary for the organizational or interim operating expenses.

1 Any interim assessments will be credited as offsets against any regular
2 assessments due following the close of the year. Self-funded multiple
3 employer welfare arrangements are subject to assessment under this
4 subsection only in the event that assessments are not preempted by the
5 employee retirement income security act of 1974, as amended, 29 U.S.C.
6 Sec. 1001 et seq. The arrangements and the commissioner shall
7 initially request an advisory opinion from the United States department
8 of labor or obtain a declaratory ruling from a federal court on the
9 legality of imposing assessments on these arrangements before imposing
10 the assessment. If there has not been a final determination by the
11 United States department of labor or a federal court that the
12 assessments are not preempted by federal law, the assessments provided
13 for in this subsection become effective on (~~March 1, 2005, or thirty~~
14 ~~days following the issuance of a certificate of authority, whichever is~~
15 ~~later~~) April 1, 2006. During the time period between (~~March 1, 2005,~~
16 ~~or thirty days following the issuance of a certificate of authority,~~
17 ~~whichever is later~~) April 1, 2006, and the final determination by the
18 United States department of labor or a federal court, any assessments
19 shall be deposited in an interest bearing escrow account maintained by
20 the (~~{self-funded}~~) self-funded multiple employer welfare
21 arrangement. Upon a final determination that the assessments are not
22 preempted by the employee retirement income security act of 1974, as
23 amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing
24 escrow account shall be transferred to the board;

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

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

29 (h) Contract with the Washington state health care authority for
30 the administration of the premium discounts provided under RCW
31 48.41.200(3)(a) (i) and (ii);

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

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

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

1 (a) Enter into contracts as are necessary or proper to carry out
2 the provisions and purposes of this chapter including the authority,
3 with the approval of the commissioner, to enter into contracts with
4 similar pools of other states for the joint performance of common
5 administrative functions, or with persons or other organizations for
6 the performance of administrative functions;

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

10 (c) Appoint appropriate legal, actuarial, and other committees as
11 necessary to provide technical assistance in the operation of the pool,
12 policy, and other contract design, and any other function within the
13 authority of the pool; and

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

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

20 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of the
22 state government and its existing public institutions, and takes effect
23 immediately.

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