

2SHB 2551 - S COMM AMD

By Committee on Ways & Means

ADOPTED AS AMENDED 03/02/2010

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply  
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Association" means the Washington vaccine association.

6 (2) "Covered lives" means all persons under the age of nineteen in  
7 Washington state who are:

8 (a) Covered under an individual or group health benefit plan issued  
9 or delivered in Washington state or an individual or group health  
10 benefit plan that otherwise provides benefits to Washington residents;  
11 or

12 (b) Enrolled in a group health benefit plan administered by a  
13 third-party administrator. Persons under the age of nineteen for whom  
14 federal funding is used to purchase vaccines or who are enrolled in  
15 state purchased health care programs covering low-income children  
16 including, but not limited to, apple health for kids under RCW  
17 74.09.470 and the basic health plan under chapter 70.47 RCW are not  
18 considered "covered lives" under this chapter.

19 (3) "Estimated vaccine cost" means the estimated cost to the state  
20 over the course of a state fiscal year for the purchase and  
21 distribution of vaccines purchased at the federal discount rate by the  
22 department of health.

23 (4) "Health benefit plan" has the same meaning as defined in RCW  
24 48.43.005 and also includes health benefit plans administered by a  
25 third-party administrator.

26 (5) "Health carrier" has the same meaning as defined in RCW  
27 48.43.005.

28 (6) "Secretary" means the secretary of the department of health.

29 (7) "State supplied vaccine" means vaccine purchased by the state

1 department of health for covered lives for whom the state is purchasing  
2 vaccine using state funds raised via assessments on health carriers and  
3 third-party administrators as provided in this chapter.

4 (8) "Third-party administrator" means any person or entity who, on  
5 behalf of a health insurer or health care purchaser, receives or  
6 collects charges, contributions, or premiums for, or adjusts or settles  
7 claims on or for, residents of Washington state or Washington health  
8 care providers and facilities.

9 (9) "Total nonfederal program cost" means the estimated vaccine  
10 cost less the amount of federal revenue available to the state for the  
11 purchase and distribution of vaccines.

12 (10) "Vaccine" means a preparation of killed or attenuated living  
13 microorganisms, or fraction thereof, that upon administration  
14 stimulates immunity that protects against disease and is approved by  
15 the federal food and drug administration as safe and effective and  
16 recommended by the advisory committee on immunization practices of the  
17 centers for disease control and prevention for administration to  
18 children under the age of nineteen years.

19 NEW SECTION. **Sec. 2.** There is created a nonprofit corporation to  
20 be known as the Washington vaccine association. The association is  
21 formed for the purpose of collecting and remitting adequate funds from  
22 health carriers and third-party administrators for the cost of vaccines  
23 provided to certain children in Washington state.

24 NEW SECTION. **Sec. 3.** (1) The association is comprised of all  
25 health carriers issuing or renewing health benefit plans in Washington  
26 state and all third-party administrators conducting business on behalf  
27 of residents of Washington state or Washington health care providers  
28 and facilities. Third-party administrators are subject to registration  
29 under section 9 of this act.

30 (2) The association is a nonprofit corporation under chapter 24.03  
31 RCW and has the powers granted under that chapter.

32 (3) The board of directors includes the following voting members:

33 (a) Four members, selected from health carriers or third-party  
34 administrators, excluding health maintenance organizations, that have  
35 the most fully insured and self-funded covered lives in Washington  
36 state. The count of total covered lives includes enrollment in all

1 companies included in their holding company system. Each health  
2 carrier or third-party administrator is entitled to no more than a  
3 single position on the board to represent all entities under common  
4 ownership or control.

5 (b) One member selected from the health maintenance organization  
6 having the most fully insured and self-insured covered lives in  
7 Washington state. The count of total lives includes enrollment in all  
8 companies included in its holding company system. Each health  
9 maintenance organization is entitled to no more than a single position  
10 on the board to represent all entities under common ownership or  
11 control.

12 (c) One member, representing health carriers not otherwise  
13 represented on the board under (a) or (b) of this subsection, who is  
14 elected from among the health carrier members not designated under (a)  
15 or (b) of this subsection.

16 (d) One member, representing Taft Hartley plans, appointed by the  
17 secretary from a list of nominees submitted by the Northwest  
18 administrators association.

19 (e) One member representing Washington state employers offering  
20 self-funded health coverage, appointed by the secretary from a list of  
21 nominees submitted by the Puget Sound health alliance.

22 (f) Two physician members appointed by the secretary, including at  
23 least one board certified pediatrician.

24 (g) The secretary, or a designee of the secretary with expertise in  
25 childhood immunization purchasing and distribution.

26 (4) The directors' terms and appointments must be specified in the  
27 plan of operation adopted by the association.

28 (5) The board of directors of the association shall:

29 (a) Prepare and adopt articles of association and bylaws;

30 (b) Prepare and adopt a plan of operation;

31 (c) Submit the plan of operation to the secretary for approval;

32 (d) Conduct all activities in accordance with the approved plan of  
33 operation;

34 (e) Enter into contracts as necessary or proper to collect and  
35 disburse the assessment;

36 (f) Enter into contracts as necessary or proper to administer the  
37 plan of operation;

1 (g) Sue or be sued, including taking any legal action necessary or  
2 proper for the recovery of any assessment for, on behalf of, or against  
3 members of the association or other participating person;

4 (h) Appoint, from among its directors, committees as necessary to  
5 provide technical assistance in the operation of the association,  
6 including the hiring of independent consultants as necessary;

7 (i) Obtain such liability and other insurance coverage for the  
8 benefit of the association, its directors, officers, employees, and  
9 agents as may in the judgment of the board of directors be helpful or  
10 necessary for the operation of the association;

11 (j) By May 1, 2010, establish the estimated amount of the  
12 assessment needed for the period of May 1, 2010, through December 31,  
13 2010, based upon the estimate provided to the association under section  
14 4(1) of this act; and notify, in writing, each health carrier and  
15 third-party administrator of the health carrier's or third-party  
16 administrator's total assessment for this period by May 15, 2010;

17 (k) On an annual basis, beginning no later than November 1, 2010,  
18 and by November 1st of each year thereafter, establish the estimated  
19 amount of the assessment;

20 (l) Notify, in writing, each health carrier and third-party  
21 administrator of the health carrier's or third-party administrator's  
22 estimated total assessment by November 15th of each year;

23 (m) Submit a periodic report to the secretary listing those health  
24 carriers or third-party administrators that failed to remit their  
25 assessments and audit health carrier and third-party administrator  
26 books and records for accuracy of assessment payment submission;

27 (n) Allow each health carrier or third-party administrator no more  
28 than ninety days after the notification required by (l) of this  
29 subsection to remit any amounts in arrears or submit a payment plan,  
30 subject to approval by the association and initial payment under an  
31 approved payment plan;

32 (o) Deposit annual assessments collected by the association, less  
33 the association's administrative costs, with the state treasurer to the  
34 credit of the universal vaccine purchase account established in RCW  
35 43.70.720;

36 (p) Borrow and repay such working capital, reserve, or other funds  
37 as, in the judgment of the board of directors, may be helpful or  
38 necessary for the operation of the association; and

1 (q) Perform any other functions as may be necessary or proper to  
2 carry out the plan of operation and to affect any or all of the  
3 purposes for which the association is organized.

4 (6) The secretary shall convene the initial meeting of the  
5 association board of directors.

6 NEW SECTION. **Sec. 4.** (1) The secretary shall estimate the total  
7 nonfederal program cost for the upcoming calendar year by October 1,  
8 2010, and October 1st of each year thereafter. Additionally, the  
9 secretary shall subtract any amounts needed to serve children enrolled  
10 in state purchased health care programs covering low-income children  
11 for whom federal vaccine funding is not available, and report the final  
12 amount to the association. In addition, the secretary shall perform  
13 such calculation for the period of May 1st through December 31st, 2010,  
14 as soon as feasible but in no event later than April 1, 2010. The  
15 estimates shall be timely communicated to the association.

16 (2) The board of directors of the association shall determine the  
17 method and timing of assessment collection in consultation with the  
18 department of health. The board shall use a formula designed by the  
19 board to ensure the total anticipated nonfederal program cost, minus  
20 costs for other children served through state-purchased health care  
21 programs covering low-income children, calculated under subsection (1)  
22 of this section, is collected and transmitted to the universal vaccine  
23 purchase account created in RCW 43.70.720 in order to ensure adequacy  
24 of state funds to order state-supplied vaccine from federal centers for  
25 disease control and prevention.

26 (3) Each licensed health carrier and each third-party administrator  
27 on behalf of its clients' health benefit plans must be assessed and is  
28 required to timely remit payment for its share of the total amount  
29 needed to fund nonfederal program costs calculated by the department of  
30 health. Such an assessment includes additional funds as determined  
31 necessary by the board to cover the reasonable costs for the  
32 association's administration. The board shall determine the assessment  
33 methodology, with the intent of ensuring that the nonfederal costs are  
34 based on actual usage of vaccine for a health carrier or third-party  
35 administrator's covered lives. State and local governments and school  
36 districts must pay their portion of vaccine expense for covered lives  
37 under this chapter.

1 (4) The board of the association shall develop a mechanism through  
2 which the number and cost of doses of vaccine purchased under this  
3 chapter that have been administered to children covered by each health  
4 carrier, and each third-party administrator's clients health benefit  
5 plans, are attributed to each such health carrier and third-party  
6 administrator. Except as otherwise permitted by the board, this  
7 mechanism must include at least the following: Date of service;  
8 patient name; vaccine received; and health benefit plan eligibility.  
9 The data must be collected and maintained in a manner consistent with  
10 applicable state and federal health information privacy laws.  
11 Beginning November 1, 2011, and each November 1st thereafter, the board  
12 shall factor the results of this mechanism for the previous year into  
13 the determination of the appropriate assessment amount for each health  
14 carrier and third-party administrator for the upcoming year.

15 (5) For any year in which the total calculated cost to be received  
16 from association members through assessments is less than the total  
17 nonfederal program cost, the association must pay the difference to the  
18 state for deposit into the universal vaccine purchase account  
19 established in RCW 43.70.720. The board may assess, and the health  
20 carrier and third-party administrators are obligated to pay, their  
21 proportionate share of such costs and appropriate reserves as  
22 determined by the board.

23 (6) The aggregate amount to be raised by the association in any  
24 year may be reduced by any surpluses remaining from prior years.

25 (7) In order to generate sufficient start-up funding, the  
26 association may accept prepayment from member health carriers and  
27 third-party administrators, subject to offset of future amounts  
28 otherwise owing or other repayment method as determined by the board.  
29 The initial deposit of start-up funding must be deposited into the  
30 universal vaccine purchase account on or before April 30, 2010.

31 NEW SECTION. **Sec. 5.** (1) The board of the association shall  
32 establish a committee for the purposes of developing recommendations to  
33 the board regarding selection of vaccines to be purchased in each  
34 upcoming year by the department. The committee must be composed of at  
35 least five voting board members, including at least three health  
36 carrier or third-party administrator members, one physician, and the  
37 secretary or the secretary's designee. The committee must also include

1 a representative of vaccine manufacturers, who is a nonvoting member of  
2 the committee. The representative of vaccine manufacturers must be  
3 chosen by the secretary from a list of three nominees submitted  
4 collectively by vaccine manufacturers on an annual basis.

5 (2) In selecting vaccines to purchase, the following factors should  
6 be strongly considered by the committee: Patient safety and clinical  
7 efficacy, public health and purchaser value, compliance with RCW  
8 70.95M.115, patient and provider choice, and stability of vaccine  
9 supply.

10 NEW SECTION. **Sec. 6.** In addition to the duties and powers  
11 enumerated elsewhere in this chapter:

12 (1) The association may, pursuant to either vote of its board of  
13 directors or request of the secretary, audit compliance with reporting  
14 obligations established under the association's plan of operation.  
15 Upon failure of any entity that has been audited to reimburse the costs  
16 of such audit as certified by vote of the association's board of  
17 directors within forty-five days of notice of such vote, the secretary  
18 shall assess a civil penalty of one hundred fifty percent of the amount  
19 of such costs.

20 (2) The association may establish an interest charge for late  
21 payment of any assessment under this chapter. The secretary shall  
22 assess a civil penalty against any health carrier or third-party  
23 administrator that fails to pay an assessment within three months of  
24 notification under section 3 of this act. The civil penalty under this  
25 subsection is one hundred fifty percent of such assessment.

26 (3) The secretary and the association are authorized to file liens  
27 and seek judgment to recover amounts in arrears and civil penalties,  
28 and recover reasonable collection costs, including reasonable  
29 attorneys' fees and costs. Civil penalties so levied must be deposited  
30 in the universal vaccine purchase account created in RCW 43.70.720.

31 (4) The secretary may adopt rules under chapter 34.05 RCW as  
32 necessary to carry out the purposes of this section.

33 NEW SECTION. **Sec. 7.** The board of directors of the association  
34 shall submit to the secretary, no later than one hundred twenty days  
35 after the close of the association's fiscal year, a financial report in  
36 a form approved by the secretary.





1 programs. Only the secretary or the secretary's designee may authorize  
2 expenditures from the account. The account is subject to allotment  
3 procedures under chapter 43.88 RCW, but an appropriation is not  
4 required for expenditures.

5 NEW SECTION. Sec. 11. Sections 1 through 8 and 12 through 14 of  
6 this act constitute a new chapter in Title 70 RCW.

7 NEW SECTION. Sec. 12. (1) The association board may, on or after  
8 June 30, 2015, vote to recommend termination of the association if it  
9 finds that the original intent of its formation and operation, which is  
10 to ensure more cost-effective purchase and distribution of vaccine than  
11 if provided through uncoordinated purchase by health care providers,  
12 has not been achieved. The association board shall provide notice of  
13 the recommendation to the relevant policy and fiscal committees of the  
14 legislature within thirty days of the vote being taken by the  
15 association board. If the legislature has not acted by the last day of  
16 the next regular legislative session to reject the board's  
17 recommendation, the board may vote to permanently dissolve the  
18 association.

19 (2) In the event of a voluntary or involuntary dissolution of the  
20 association, funds remaining in the universal purchase vaccine account  
21 created in RCW 43.70.720 that were collected under this chapter must be  
22 returned to the member health carrier and third-party administrators in  
23 proportion to their previous year's contribution, from any balance  
24 remaining following the repayment of any prepayments for start-up  
25 funding not previously recouped by such member.

26 NEW SECTION. Sec. 13. Physicians and clinics ordering state  
27 supplied vaccine must ensure they have billing mechanisms and practices  
28 in place that enable the association to accurately track vaccine  
29 delivered to association members' covered lives and must submit  
30 documentation in such a form as may be prescribed by the board in  
31 consultation with state physician organizations. Physicians and other  
32 persons providing childhood immunization are strongly encouraged to use  
33 state supplied vaccine whenever possible. Nothing in this chapter  
34 prohibits health carriers and third-party administrators from denying

1 claims for vaccine serum costs when the serum or serums providing  
2 similar protection are provided or available via state supplied  
3 vaccine.

4 NEW SECTION. **Sec. 14.** If the requirement that any segment of  
5 health carriers, third-party administrators, or state or local  
6 governmental entities provide funding for the program established in  
7 this chapter is invalidated by a court of competent jurisdiction, the  
8 board of the association may terminate the program one hundred twenty  
9 days following a final judicial determination on the matter.

10 NEW SECTION. **Sec. 15.** A new section is added to chapter 48.43 RCW  
11 to read as follows:

12 Assessments paid by carriers under section 4 of this act may be  
13 considered medical expenses for purposes of rate setting and regulatory  
14 filings.

15 NEW SECTION. **Sec. 16.** A new section is added to chapter 82.04 RCW  
16 to read as follows:

17 This chapter does not apply to assessments described in sections 3  
18 and 4 of this act received by a nonprofit corporation established under  
19 section 2 of this act.

20 NEW SECTION. **Sec. 17.** 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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By Committee on Health & Long-Term Care

**ADOPTED AS AMENDED 03/02/2010**

24 On page 1, line 2 of the title, after "association;" strike the  
25 remainder of the title and insert "amending RCW 43.70.720; adding a new  
26 section to chapter 43.24 RCW; adding a new section to chapter 48.43

1 RCW; adding a new section to chapter 82.04 RCW; adding a new chapter to  
2 Title 70 RCW; prescribing penalties; and declaring an emergency."

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