

SB 6263 - S AMD 50

By Senators Keiser, Franklin, Pflug

ADOPTED AS AMENDED 02/10/2010

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.

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

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

28 (7) "State supplied vaccine" means vaccine purchased by the state
29 department of health for covered lives for whom the state is purchasing

1 vaccine using state funds raised via assessments on health carriers and
2 third-party administrators as provided in this chapter.

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

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

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

18 NEW SECTION. **Sec. 2.** There is created a nonprofit corporation to
19 be known as the Washington vaccine association. The association is
20 formed for the primary purpose of collecting and remitting adequate
21 funds from health carriers and third-party administrators for the cost
22 of vaccines provided to certain children in Washington state. The
23 association may also undertake other activities in support of a broader
24 private/public initiative to protect Washington's children from the
25 effects of preventable infectious diseases through increasing
26 immunization rates.

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

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

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

1 (a) Four members, selected from health carriers or third-party
2 administrators, excluding health maintenance organizations, that have
3 the most fully insured and self-funded covered lives in Washington
4 state. The count of total covered lives includes enrollment in all
5 companies included in their holding company system. Each health
6 carrier or third-party administrator is entitled to no more than a
7 single position on the board to represent all entities under common
8 ownership or control.

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

16 (c) One member, representing health carriers not otherwise
17 represented on the board under (a) or (b) of this subsection, who is
18 elected from among the health carrier members not designated under (a)
19 or (b) of this subsection.

20 (d) One member, representing Taft Hartley plans, and one member
21 representing Washington state employers offering self-funded health
22 coverage, appointed by the secretary from a list of nominees submitted
23 by the Puget Sound health alliance.

24 (e) Two physician members appointed by the secretary, including at
25 least one board certified pediatrician.

26 (f) The secretary, or a designee of the secretary with expertise in
27 childhood immunization purchasing and distribution.

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

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

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

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

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

34 (d) Conduct all activities in accordance with the approved plan of
35 operation;

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

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

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

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

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

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

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

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

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

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

34 (o) Deposit annual assessments collected by the association, less
35 the association's administrative costs, with the state treasurer to the
36 credit of the universal vaccine purchase account established in RCW
37 43.70.720;

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

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

7 (6) The secretary shall convene the initial meeting of the
8 association board of directors.

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

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

29 (3) Each licensed health carrier and third-party administrator must
30 be assessed and is required to timely remit payment for its share of
31 the total amount needed to fund nonfederal program costs calculated by
32 the department of health. Such an assessment includes additional funds
33 as determined necessary by the board to cover the reasonable costs for
34 the association's administration. The board shall determine the
35 assessment methodology, with the intent of ensuring that the nonfederal
36 costs are based on actual usage of vaccine for a health carrier or
37 third-party administrator's covered lives. The board may in addition

1 provide financial or other incentives for achievement of higher
2 vaccination rates. State and local governments and school districts
3 must pay their portion of vaccine expense for covered lives under this
4 chapter.

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

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

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

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

35 NEW SECTION. **Sec. 5.** (1) The board of the association shall
36 establish a committee for the purposes of developing recommendations to
37 the board regarding selection of vaccines to be purchased in each

1 upcoming year by the department. The committee must be composed of at
2 least five voting board members, including at least three health
3 carrier or third-party administrator members, one physician, and the
4 secretary or the secretary's designee. The committee must also include
5 a representative of vaccine manufacturers, who is a nonvoting member of
6 the committee. The representative of vaccine manufacturers must be
7 chosen by the secretary from a list of three nominees submitted
8 collectively by vaccine manufacturers on an annual basis.

9 (2) In selecting vaccines to purchase, the following factors should
10 be strongly considered by the committee: Patient safety and clinical
11 efficacy, public health and purchaser value, patient and provider
12 choice, and stability of vaccine supply.

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

15 (1) The association may, pursuant to either vote of its board of
16 directors or request of the secretary, audit compliance by any health
17 carrier or third-party administrator of any reporting obligations
18 established under the association's plan of operation. Upon failure of
19 any health carrier or third-party administrator to reimburse the costs
20 of such audit as certified by vote of the association's board of
21 directors within forty-five days of notice of such vote, the secretary
22 shall assess a civil penalty of one hundred fifty percent of the amount
23 of such costs.

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

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

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

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

5 NEW SECTION. **Sec. 8.** No liability on the part of, and no cause of
6 action of any nature, shall arise against any member of the board of
7 the association, against an employee or agent of the association, or
8 against any health care provider for any lawful action taken by them in
9 the performance of their duties or required activities under this
10 chapter.

11 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.24 RCW
12 to read as follows:

13 (1)(a) Beginning September 1, 2010, a third-party administrator
14 must register with the department of licensing and renew its
15 registration on an annual basis thereafter prior to December 31st of
16 each year, or within ten days after the registrant changes its name,
17 business name, business address, or business telephone number,
18 whichever occurs sooner.

19 (b) The registrant shall pay the registration or renewal fee
20 established by the department of licensing as provided in RCW
21 43.24.086.

22 (c) Any person or entity that is acting as or holding itself out to
23 be a third-party administrator while failing to have registered under
24 this section is subject to a civil penalty of not less than one
25 thousand dollars nor more than ten thousand dollars for each violation.
26 The civil penalty is in addition to any other penalties that may be
27 imposed for violations of other laws of this state.

28 (2) For the purposes of this section, "third-party administrator"
29 has the same meaning as defined in section 1 of this act.

30 (3) The department of licensing may adopt rules under chapter 34.05
31 RCW as necessary to implement this section.

32 **Sec. 10.** RCW 43.70.720 and 2009 c 564 s 934 are each amended to
33 read as follows:

34 The universal vaccine purchase account is created in the custody of
35 the state treasurer. Receipts from public and private sources for the

1 purpose of increasing access to vaccines for children may be deposited
2 into the account. Expenditures from the account must be used
3 exclusively for the purchase of vaccines, at no cost to health care
4 providers in Washington, to administer to children under nineteen years
5 old who are not eligible to receive vaccines at no cost through federal
6 programs. Only the secretary or the secretary's designee may authorize
7 expenditures from the account. The account is subject to allotment
8 procedures under chapter 43.88 RCW, but an appropriation is not
9 required for expenditures.

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

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

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

31 NEW SECTION. **Sec. 13.** Physicians and clinics ordering state
32 supplied vaccine must ensure they have billing mechanisms and practices
33 in place that enable the association to accurately track vaccine
34 delivered to association members' covered lives and must submit
35 documentation in such a form as may be prescribed by the board in

1 consultation with state physician organizations. Physicians and other
2 persons providing childhood immunization are strongly encouraged to use
3 state supplied vaccine whenever possible. Nothing in this chapter
4 prohibits health carriers and third-party administrators from denying
5 claims for vaccine serum costs when the serum or serums providing
6 similar protection are provided or available via state supplied
7 vaccine.

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

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

16 Assessments paid by carriers under section 4 of this act may be
17 considered medical expenses for purposes of rate setting and regulatory
18 filings.

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

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

24 NEW SECTION. **Sec. 17.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 immediately."

ADOPTED AS AMENDED 02/10/2010

1 On page 1, line 2 of the title, after "association;" strike the
2 remainder of the title and insert "amending RCW 43.70.720; adding a new
3 section to chapter 43.24 RCW; adding a new section to chapter 48.43
4 RCW; adding a new section to chapter 82.04 RCW; adding a new chapter to
5 Title 70 RCW; prescribing penalties; and declaring an emergency."

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