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ENGROSSED SUBSTITUTE HOUSE BILL 1947

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State of Washington

63rd Legislature

2013 Regular Session

By House Appropriations (originally sponsored by Representatives  
Cody, Hunter, Jinkins, and Harris)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to ensuring the ongoing sustainability and vitality  
2 of the Washington health benefit exchange by providing a financing  
3 mechanism sufficient to defray the exchange's operating expenses;  
4 amending RCW 43.71.010, 43.71.060, and 48.14.0201; adding a new section  
5 to chapter 43.71 RCW; adding a new section to chapter 43.135 RCW;  
6 adding a new section to chapter 82.04 RCW; creating a new section; and  
7 providing an expiration date.

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

9 **Sec. 1.** RCW 43.71.010 and 2012 c 87 s 2 are each amended to read  
10 as follows:

11 The definitions in this section apply throughout this chapter  
12 unless the context clearly requires otherwise. Terms and phrases used  
13 in this chapter that are not defined in this section must be defined as  
14 consistent with implementation of a state health benefit exchange  
15 pursuant to the affordable care act.

16 (1) "Affordable care act" means the federal patient protection and  
17 affordable care act, P.L. 111-148, as amended by the federal health  
18 care and education reconciliation act of 2010, P.L. 111-152, or federal  
19 regulations or guidance issued under the affordable care act.

1 (2) "Authority" means the Washington state health care authority,  
2 established under chapter 41.05 RCW.

3 (3) "Board" means the governing board established in RCW 43.71.020.

4 (4) "Commissioner" means the insurance commissioner, established in  
5 Title 48 RCW.

6 (5) "Exchange" means the Washington health benefit exchange  
7 established in RCW 43.71.020.

8 (6) "Self-sustaining" means capable of operating (~~without direct~~  
9 ~~state tax subsidy~~) with revenue attributable to the operations of the  
10 exchange. Self-sustaining sources include, but are not limited to,  
11 federal grants, federal premium tax subsidies and credits, charges to  
12 health carriers, (~~and~~) premiums paid by enrollees, and premium taxes  
13 under RCW 48.14.0201(5)(b).

14 **Sec. 2.** RCW 43.71.060 and 2012 c 87 s 5 are each amended to read  
15 as follows:

16 (~~(1)~~) The health benefit exchange account is created in the  
17 (~~eustody of the state treasurer~~) state treasury. Moneys in the  
18 account may be spent only after appropriation. Expenditures from the  
19 account may only be used to fund the operation of the exchange and  
20 identification, collection, and distribution of premium taxes collected  
21 under RCW 48.14.0201(5)(b). The following funds must be deposited in  
22 the account:

23 (1) All receipts from federal grants received under the affordable  
24 care act may be deposited into the account. Expenditures from the  
25 account may be used only for purposes consistent with the grants(~~-~~  
26 ~~Until March 15, 2012, only the administrator of the health care~~  
27 ~~authority, or his or her designee, may authorize expenditures from the~~  
28 ~~account. Beginning March 15, 2012, only the board of the Washington~~  
29 ~~health benefit exchange or designee may authorize expenditures from the~~  
30 ~~account. The account is subject to allotment procedures under chapter~~  
31 ~~43.88 RCW, but an appropriation is not required for expenditures.~~

32 (~~2) This section expires January 1, 2014~~);

33 (2) Premium taxes collected under RCW 48.14.0201(5)(b); and

34 (3) Assessments authorized under section 3 of this act.

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.71 RCW  
36 to read as follows:

1 (1) Beginning January 1, 2014, the exchange may require each  
2 carrier writing premiums for qualified health benefits plans or dental  
3 plans through the exchange to pay an assessment in an amount necessary  
4 to fund the operations of the exchange. Assessments of carriers may be  
5 made only if the amount of expected premium taxes, as provided under  
6 RCW 48.14.0201(5)(b), and other funds deposited in the health benefit  
7 exchange account in the current calendar year are insufficient to fund  
8 exchange operations in the following calendar year at the level  
9 appropriated by the legislature for that purpose in the omnibus  
10 appropriations act. If the exchange is charging an assessment, the  
11 exchange shall set forth the amount of the assessment per member per  
12 month on monthly billing statements.

13 (2) The board shall determine the amount of the assessment by  
14 multiplying, by a fraction, for each carrier offering health or dental  
15 coverage in the exchange, the number of its covered lives in qualified  
16 health plans and dental plans in the exchange. The numerator of the  
17 fraction is an estimate of the shortfall in revenues in the health  
18 benefit exchange account necessary to operate the exchange at the level  
19 appropriated for that purpose by the legislature in the omnibus  
20 appropriations act for the following calendar year. The denominator of  
21 the fraction equals the total number of expected covered lives in the  
22 exchange for the calendar year that the assessment will be collected  
23 in.

24 (3) The exchange shall collect the assessments required under this  
25 section from carriers in quarterly installments. Upon determination of  
26 the amount of the assessment, the exchange shall notify carriers of the  
27 due dates of the quarterly installments. The exchange shall deposit  
28 proceeds from the assessments in the health benefit exchange account  
29 under RCW 43.71.060.

30 (4) The exchange shall reconcile assessment payments based on  
31 actual covered lives at the end of the calendar year of the assessment.  
32 At the end of the calendar year, the exchange shall compare the amount  
33 of the assessment for each carrier calculated in subsection (2) of this  
34 section to the amount of the assessment that would have been collected  
35 from each carrier based on each carrier's actual covered lives in  
36 qualified health plans and dental plans in the exchange during that  
37 calendar year. If a carrier's share of the assessment would have been  
38 smaller if it were based on actual covered lives, the exchange shall

1 refund the carrier for the difference between the collected amount of  
2 the assessment and the amount of the assessment that would have been  
3 collected based on the carrier's actual covered lives. If the  
4 carrier's share of the assessment would have been larger if it were  
5 based on actual covered lives, the exchange shall collect from the  
6 carrier the difference between the collected amount of the assessment  
7 and the amount of the assessment that would have been collected based  
8 on the carrier's actual covered lives.

9 (5) The assessment described in this section shall be considered a  
10 special purpose obligation or assessment in connection with coverage  
11 described in this section for the purpose of funding the operations of  
12 the exchange.

13 (6) The board shall establish procedures allowing carriers subject  
14 to assessments under this section to have grievances reviewed by an  
15 impartial body and reported to the board.

16 (7) By July 1, 2016, the state auditor shall conduct a performance  
17 review of the cost of exchange operations and shall make  
18 recommendations to the board and the health care committees of the  
19 legislature addressing improvements in cost performance and adoption of  
20 best practices. The auditor shall further evaluate the potential cost  
21 and customer service benefits through regionalization with other states  
22 of some exchange operation functions or through a partnership with the  
23 federal government. The cost of the state auditor review must be borne  
24 by the exchange.

25 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.135 RCW  
26 to read as follows:

27 RCW 43.135.034(4) does not apply to the dedication of premium taxes  
28 established under RCW 48.14.0201(5)(b).

29 **Sec. 5.** RCW 48.14.0201 and 2011 c 47 s 8 are each amended to read  
30 as follows:

31 (1) As used in this section, "taxpayer" means a health maintenance  
32 organization as defined in RCW 48.46.020, a health care service  
33 contractor as defined in RCW 48.44.010, or a self-funded multiple  
34 employer welfare arrangement as defined in RCW 48.125.010.

35 (2) Each taxpayer must pay a tax on or before the first day of  
36 March of each year to the state treasurer through the insurance

1 commissioner's office. The tax must be equal to the total amount of  
2 all premiums and prepayments for health care services collected or  
3 received by the taxpayer under RCW 48.14.090 during the preceding  
4 calendar year multiplied by the rate of two percent. For tax purposes,  
5 the reporting of premiums and prepayments must be on a written basis or  
6 on a paid-for basis consistent with the basis required by the annual  
7 statement.

8 (3) Taxpayers must prepay their tax obligations under this section.  
9 The minimum amount of the prepayments is the percentages of the  
10 taxpayer's tax obligation for the preceding calendar year recomputed  
11 using the rate in effect for the current year. For the prepayment of  
12 taxes due during the first calendar year, the minimum amount of the  
13 prepayments is the percentages of the taxpayer's tax obligation that  
14 would have been due had the tax been in effect during the previous  
15 calendar year. The tax prepayments must be paid to the state treasurer  
16 through the commissioner's office by the due dates and in the following  
17 amounts:

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

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

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

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

27 (5)(a) Except as provided in (b) of this subsection, moneys  
28 collected under this section are deposited in the general fund.

29 (b) Beginning January 1, 2014, moneys collected from taxpayers for  
30 premiums written on qualified health benefit plans and dental plans  
31 offered through the health benefit exchange under chapter 43.71 RCW and  
32 on premiums written on medicaid plans provided to newly eligible  
33 clients enrolling in the medicaid expansion under the federal patient  
34 protection and affordable care act of 2010 (42 U.S.C.  
35 1396a(a)(10)(A)(i)(VIII)) must be deposited in the health benefit  
36 exchange account under RCW 43.71.060.

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

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

5 (b) Amounts received by any taxpayer from the state of Washington  
6 as prepayments for health care services provided under:

7 (i) The medical care services program as provided in RCW 74.09.035;  
8 or

9 (ii) The Washington basic health plan on behalf of subsidized  
10 enrollees as provided in chapter 70.47 RCW.

11 (c) Amounts received from business conducted outside of the health  
12 benefit exchange under chapter 43.71 RCW by any health care service  
13 contractor, as defined in RCW 48.44.010, as prepayments for health care  
14 services included within the definition of practice of dentistry under  
15 RCW 18.32.020.

16 (d) Participant contributions to self-funded multiple employer  
17 welfare arrangements that are not taxable in this state.

18 (7) Beginning January 1, 2000, the state preempts the field of  
19 imposing excise or privilege taxes upon taxpayers and no county, city,  
20 town, or other municipal subdivision has the right to impose any such  
21 taxes upon such taxpayers. This subsection is limited to premiums and  
22 payments for health benefit plans offered by health care service  
23 contractors under chapter 48.44 RCW, health maintenance organizations  
24 under chapter 48.46 RCW, and self-funded multiple employer welfare  
25 arrangements as defined in RCW 48.125.010. The preemption authorized  
26 by this subsection must not impair the ability of a county, city, town,  
27 or other municipal subdivision to impose excise or privilege taxes upon  
28 the health care services directly delivered by the employees of a  
29 health maintenance organization under chapter 48.46 RCW.

30 (8)(a) The taxes imposed by this section apply to a self-funded  
31 multiple employer welfare arrangement only in the event that they are  
32 not preempted by the employee retirement income security act of 1974,  
33 as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the  
34 commissioner must initially request an advisory opinion from the United  
35 States department of labor or obtain a declaratory ruling from a  
36 federal court on the legality of imposing state premium taxes on these  
37 arrangements. Once the legality of the taxes has been determined, the

1 multiple employer welfare arrangement certified by the insurance  
2 commissioner must begin payment of these taxes.

3 (b) If there has not been a final determination of the legality of  
4 these taxes, then beginning on the earlier of (i) the date the fourth  
5 multiple employer welfare arrangement has been certified by the  
6 insurance commissioner, or (ii) April 1, 2006, the arrangement must  
7 deposit the taxes imposed by this section into an interest bearing  
8 escrow account maintained by the arrangement. Upon a final  
9 determination that the taxes are not preempted by the employee  
10 retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001  
11 et seq., all funds in the interest bearing escrow account must be  
12 transferred to the state treasurer.

13 (9) The effect of transferring contracts for health care services  
14 from one taxpayer to another taxpayer is to transfer the tax prepayment  
15 obligation with respect to the contracts.

16 (10) On or before June 1st of each year, the commissioner must  
17 notify each taxpayer required to make prepayments in that year of the  
18 amount of each prepayment and must provide remittance forms to be used  
19 by the taxpayer. However, a taxpayer's responsibility to make  
20 prepayments is not affected by failure of the commissioner to send, or  
21 the taxpayer to receive, the notice or forms.

22 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.04 RCW  
23 to read as follows:

24 (1) The taxes imposed by this chapter do not apply to amounts  
25 received by the Washington health benefit exchange established under  
26 chapter 43.71 RCW.

27 (2) This section expires on July 1, 2023.

28 NEW SECTION. **Sec. 7.** If any provision of this act or its  
29 application to any person or circumstance is held invalid, the  
30 remainder of the act or the application of the provision to other  
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 8.** Section 6 of this act applies both  
33 prospectively and retroactively.

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