
HOUSE BILL 1947

State of Washington 63rd Legislature 2013 Regular Session

By Representatives Cody, Hunter, Jinkins, and Harris

Read first time 02/20/13. Referred to Committee on Appropriations.

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; and adding a new section to chapter 43.135 RCW.

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

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

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

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

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

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

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

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

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

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

14 (~~(1)~~) The health benefit exchange account is created in the
15 (~~custody of the state treasurer~~) state treasury. Moneys in the
16 account may be spent only after appropriation. Expenditures from the
17 account may only be used to fund the operation of the exchange. The
18 following funds must be deposited in the account:

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

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

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

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

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

33 (1) Beginning January 1, 2014, and on a quarterly basis, the
34 exchange may require each carrier writing premiums for qualified health
35 benefits plans or dental plans through the exchange to pay an
36 assessment in an amount necessary to fund the operations of the

1 exchange in the following quarter. Assessments of carriers may be made
2 only if the amount of expected premium taxes, as provided under RCW
3 48.14.0201(5)(b), and other funds deposited in the health benefit
4 exchange account in the current quarter are insufficient to fund
5 exchange operations in the following quarter at the level appropriated
6 by the legislature for that purpose in the omnibus appropriations act.

7 (2) On a quarterly basis, the board shall determine the amount of
8 the assessment by multiplying, by a fraction, for each carrier offering
9 health or dental coverage in the exchange, the number of its covered
10 lives in qualified health plans and dental plans in the exchange. The
11 numerator of the fraction is an estimate of the shortfall in revenues
12 in the health benefit exchange account necessary to operate the
13 exchange at the level appropriated for that purpose by the legislature
14 in the omnibus appropriations act for the following quarter. The
15 denominator of the fraction equals the total number of expected covered
16 lives in the exchange for the fiscal year that the assessment will be
17 collected in.

18 (3) The exchange shall deposit proceeds from the assessments in the
19 health benefit exchange account under RCW 43.71.060.

20 (4) The board shall establish procedures allowing carriers subject
21 to assessments under this section to have grievances reviewed by an
22 impartial body and reported to the board.

23 (5) By July 1, 2016, the state auditor shall conduct a performance
24 review of the cost of exchange operations and shall make
25 recommendations to the board and the health care committees of the
26 legislature addressing improvements in cost performance and adoption of
27 best practices. The auditor shall further evaluate the potential cost
28 and customer service benefits through regionalization with other states
29 of some exchange operation functions or through a partnership with the
30 federal government. The cost of the state auditor review must be borne
31 by the exchange.

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

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

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

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

7 (2) Each taxpayer must pay a tax on or before the first day of
8 March of each year to the state treasurer through the insurance
9 commissioner's office. The tax must be equal to the total amount of
10 all premiums and prepayments for health care services collected or
11 received by the taxpayer under RCW 48.14.090 during the preceding
12 calendar year multiplied by the rate of two percent. For tax purposes,
13 the reporting of premiums and prepayments must be on a written basis or
14 on a paid-for basis consistent with the basis required by the annual
15 statement.

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

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

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

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

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

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

37 (b) Beginning January 1, 2014, moneys collected from taxpayers for
38 premiums written on qualified health benefit plans offered through the

1 health benefit exchange under chapter 43.71 RCW and on premiums written
2 on medicaid plans provided to newly eligible clients enrolling in the
3 medicaid expansion under the federal patient protection and affordable
4 care act of 2010 (42 U.S.C. 1396a(a)(10)(A)(i)(VIII)) must be deposited
5 in the health benefit exchange account under RCW 43.71.060.

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

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

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

13 (i) The medical care services program as provided in RCW 74.09.035;
14 or

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

17 (c) Amounts received by any health care service contractor, as
18 defined in RCW 48.44.010, as prepayments for health care services
19 included within the definition of practice of dentistry under RCW
20 18.32.020.

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

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

35 (8)(a) The taxes imposed by this section apply to a self-funded
36 multiple employer welfare arrangement only in the event that they are
37 not preempted by the employee retirement income security act of 1974,
38 as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the

1 commissioner must initially request an advisory opinion from the United
2 States department of labor or obtain a declaratory ruling from a
3 federal court on the legality of imposing state premium taxes on these
4 arrangements. Once the legality of the taxes has been determined, the
5 multiple employer welfare arrangement certified by the insurance
6 commissioner must begin payment of these taxes.

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

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

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

26 NEW SECTION. **Sec. 6.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

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