

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1846

63rd Legislature
2013 Regular Session

Passed by the House April 22, 2013
Yeas 95 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 15, 2013
Yeas 47 Nays 1

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1846** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1846

AS AMENDED BY THE SENATE

Passed Legislature - 2013 Regular Session

State of Washington **63rd Legislature** **2013 Regular Session**

By House Health Care & Wellness (originally sponsored by
Representatives Schmick, Cody, and Ryu)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to stand-alone dental coverage; and amending RCW
2 48.43.715, 48.46.243, 48.14.0201, and 48.14.020.

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

4 **Sec. 1.** RCW 48.43.715 and 2012 c 87 s 13 are each amended to read
5 as follows:

6 (1) Consistent with federal law, the commissioner, in consultation
7 with the board and the health care authority, shall, by rule, select
8 the largest small group plan in the state by enrollment as the
9 benchmark plan for the individual and small group market for purposes
10 of establishing the essential health benefits in Washington state under
11 P.L. 111-148 of 2010, as amended.

12 (2) If the essential health benefits benchmark plan for the
13 individual and small group market does not include all of the ten
14 benefit categories specified by section 1302 of P.L. 111-148, as
15 amended, the commissioner, in consultation with the board and the
16 health care authority, shall, by rule, supplement the benchmark plan
17 benefits as needed to meet the minimum requirements of section 1302.

18 (3) A health plan required to offer the essential health benefits,
19 other than a health plan offered through the federal basic health

1 program or medicaid, under P.L. 111-148 of 2010, as amended, may not be
2 offered in the state unless the commissioner finds that it is
3 substantially equal to the benchmark plan. When making this
4 determination, the commissioner (~~must~~):

5 (a) Must ensure that the plan covers the ten essential health
6 benefits categories specified in section 1302 of P.L. 111-148 of 2010,
7 as amended; (~~and~~)

8 (b) May consider whether the health plan has a benefit design that
9 would create a risk of biased selection based on health status and
10 whether the health plan contains meaningful scope and level of benefits
11 in each of the ten essential health benefit categories specified by
12 section 1302 of P.L. 111-148 of 2010, as amended;

13 (c) Notwithstanding the foregoing, for benefit years beginning
14 January 1, 2015, and only to the extent permitted by federal law and
15 guidance, must establish by rule the review and approval requirements
16 and procedures for pediatric oral services when offered in stand-alone
17 dental plans in the nongrandfathered individual and small group markets
18 outside of the exchange; and

19 (d) Unless prohibited by federal law and guidance, must allow
20 health carriers to also offer pediatric oral services within the health
21 benefit plan in the nongrandfathered individual and small group markets
22 outside of the exchange.

23 (4) Beginning December 15, 2012, and every year thereafter, the
24 commissioner shall submit to the legislature a list of state-mandated
25 health benefits, the enforcement of which will result in federally
26 imposed costs to the state related to the plans sold through the
27 exchange because the benefits are not included in the essential health
28 benefits designated under federal law. The list must include the
29 anticipated costs to the state of each state-mandated health benefit on
30 the list and any statutory changes needed if funds are not appropriated
31 to defray the state costs for the listed mandate. The commissioner may
32 enforce a mandate on the list for the entire market only if funds are
33 appropriated in an omnibus appropriations act specifically to pay the
34 state portion of the identified costs.

35 **Sec. 2.** RCW 48.46.243 and 2008 c 217 s 56 are each amended to read
36 as follows:

37 (1) Subject to subsection (2) of this section, every contract

1 between a health maintenance organization and its participating
2 providers of health care services shall be in writing and shall set
3 forth that in the event the health maintenance organization fails to
4 pay for health care services as set forth in the agreement, the
5 enrolled participant shall not be liable to the provider for any sums
6 owed by the health maintenance organization. Every such contract shall
7 provide that this requirement shall survive termination of the
8 contract.

9 (2) The provisions of subsection (1) of this section shall not
10 apply:

11 (a) To emergency care from a provider who is not a participating
12 provider((τ));

13 (b) To out-of-area services;

14 (c) To the delivery of covered pediatric oral services that are
15 substantially equal to the essential health benefits benchmark plan;
16 or((τ))

17 (d) In exceptional situations approved in advance by the
18 commissioner, if the health maintenance organization is unable to
19 negotiate reasonable and cost-effective participating provider
20 contracts.

21 (3)(a) Each participating provider contract form shall be filed
22 with the commissioner fifteen days before it is used.

23 (b) Any contract form not affirmatively disapproved within fifteen
24 days of filing shall be deemed approved, except that the commissioner
25 may extend the approval period an additional fifteen days upon giving
26 notice before the expiration of the initial fifteen-day period. The
27 commissioner may approve such a contract form for immediate use at any
28 time. Approval may be subsequently withdrawn for cause.

29 (c) Subject to the right of the health maintenance organization to
30 demand and receive a hearing under chapters 48.04 and 34.05 RCW, the
31 commissioner may disapprove such a contract form if it is in any
32 respect in violation of this chapter or if it fails to conform to
33 minimum provisions or standards required by the commissioner by rule
34 under chapter 34.05 RCW.

35 (4) No participating provider, or insurance producer, trustee, or
36 assignee thereof, may maintain an action against an enrolled
37 participant to collect sums owed by the health maintenance
38 organization.

1 **Sec. 3.** 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~~) chapter 48.44 RCW, or a
6 self-funded multiple employer welfare arrangement as defined in RCW
7 48.125.010.

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

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

- 27 (a) On or before June 15, forty-five percent;
- 28 (b) On or before September 15, twenty-five percent;
- 29 (c) On or before December 15, twenty-five percent.

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

36 (5) Moneys collected under this section are deposited in the
37 general fund.

38 (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 by any health care service contractor((~~7~~)) as
12 defined in ((~~RCW 48.44.010~~)) chapter 48.44 RCW, or any health
13 maintenance organization as defined in chapter 48.46 RCW, as
14 prepayments for health care services included within the definition of
15 practice of dentistry under RCW 18.32.020, except amounts received for
16 pediatric oral services that qualify as coverage for the minimum
17 essential coverage requirement under P.L. 111-148 (2010), as amended.

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

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

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

1 arrangements. Once the legality of the taxes has been determined, the
2 multiple employer welfare arrangement certified by the insurance
3 commissioner must begin payment of these taxes.

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

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

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

23 **Sec. 4.** RCW 48.14.020 and 2009 c 161 s 3 are each amended to read
24 as follows:

25 (1) Subject to other provisions of this chapter, each authorized
26 insurer except title insurers shall on or before the first day of March
27 of each year pay to the state treasurer through the commissioner's
28 office a tax on premiums. Except as provided in subsection ~~((+2))~~ (3)
29 of this section, such tax shall be in the amount of two percent of all
30 premiums, excluding amounts returned to or the amount of reductions in
31 premiums allowed to holders of industrial life policies for payment of
32 premiums directly to an office of the insurer, collected or received by
33 the insurer under RCW 48.14.090 during the preceding calendar year
34 other than ocean marine and foreign trade insurances, after deducting
35 premiums paid to policyholders as returned premiums, upon risks or
36 property resident, situated, or to be performed in this state. For tax
37 purposes, the reporting of premiums shall be on a written basis or on

1 a paid-for basis consistent with the basis required by the annual
2 statement. For the purposes of this section the consideration received
3 by an insurer for the granting of an annuity shall not be deemed to be
4 a premium.

5 (2) The taxes imposed in this section do not apply to amounts
6 received by any life and disability insurer for health care services
7 included within the definition of practice of dentistry under RCW
8 18.32.020 except amounts received for pediatric oral services that
9 qualify as coverage for the minimum essential coverage requirement
10 under P.L. 111-148 (2010), as amended.

11 (3) In the case of insurers which require the payment by their
12 policyholders at the inception of their policies of the entire premium
13 thereon in the form of premiums or premium deposits which are the same
14 in amount, based on the character of the risks, regardless of the
15 length of term for which such policies are written, such tax shall be
16 in the amount of two percent of the gross amount of such premiums and
17 premium deposits upon policies on risks resident, located, or to be
18 performed in this state, in force as of the thirty-first day of
19 December next preceding, less the unused or unabsorbed portion of such
20 premiums and premium deposits computed at the average rate thereof
21 actually paid or credited to policyholders or applied in part payment
22 of any renewal premiums or premium deposits on one-year policies
23 expiring during such year.

24 ~~((+3))~~ (4) Each authorized insurer shall with respect to all ocean
25 marine and foreign trade insurance contracts written within this state
26 during the preceding calendar year, on or before the first day of March
27 of each year pay to the state treasurer through the commissioner's
28 office a tax of ninety-five one-hundredths of one percent on its gross
29 underwriting profit. Such gross underwriting profit shall be
30 ascertained by deducting from the net premiums (i.e., gross premiums
31 less all return premiums and premiums for reinsurance) on such ocean
32 marine and foreign trade insurance contracts the net losses paid (i.e.,
33 gross losses paid less salvage and recoveries on reinsurance ceded)
34 during such calendar year under such contracts. In the case of
35 insurers issuing participating contracts, such gross underwriting
36 profit shall not include, for computation of the tax prescribed by this
37 subsection, the amounts refunded, or paid as participation dividends,
38 by such insurers to the holders of such contracts.

1 (~~(4)~~) (5) The state does hereby preempt the field of imposing
2 excise or privilege taxes upon insurers or their appointed insurance
3 producers, other than title insurers, and no county, city, town or
4 other municipal subdivision shall have the right to impose any such
5 taxes upon such insurers or these insurance producers.

6 (~~(5)~~) (6) If an authorized insurer collects or receives any such
7 premiums on account of policies in force in this state which were
8 originally issued by another insurer and which other insurer is not
9 authorized to transact insurance in this state on its own account, such
10 collecting insurer shall be liable for and shall pay the tax on such
11 premiums.

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