

SB 6089 - S AMD 354

By Senators Becker, Hill

ADOPTED 4/3/2015

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

3 "Sec. 1. RCW 43.71.010 and 2013 2nd sp.s. c 6 s 1 are each
4 amended to read as follows:

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

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

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

17 (3) "Board" means the governing board established in RCW
18 43.71.020.

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

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

23 (6) "Self-sustaining" means capable of operating with revenue
24 attributable to the operations of the exchange. Self-sustaining
25 sources include, but are not limited to, federal grants, federal
26 premium tax subsidies and credits, charges to health carriers, and
27 premiums paid by enrollees(~~(, and premium taxes under RCW~~
28 ~~48.14.020(5)(b) and 48.14.020(2))~~)).

29 **Sec. 2.** RCW 43.71.030 and 2012 c 87 s 4 are each amended to read
30 as follows:

31 (1) The exchange may, consistent with the purposes of this
32 chapter: (a) Sue and be sued in its own name; (b) make and execute

1 agreements, contracts, and other instruments, with any public or
2 private person or entity; (c) employ, contract with, or engage
3 personnel; (d) pay administrative costs; (e) accept grants,
4 donations, loans of funds, and contributions in money, services,
5 materials or otherwise, from the United States or any of its
6 agencies, from the state of Washington and its agencies or from any
7 other source, and use or expend those moneys, services, materials, or
8 other contributions; and (f) (~~aggregate or delegate the aggregation~~
9 ~~of funds that comprise the premium for a health plan; and (g))
10 complete other duties necessary to begin open enrollment in qualified
11 health plans through the exchange beginning October 1, 2013.~~

12 (2) The board shall develop a methodology to ensure the exchange
13 is self-sustaining after December 31, 2014. The board shall seek
14 input from health carriers to develop funding mechanisms that fairly
15 and equitably apportion among carriers the reasonable administrative
16 costs and expenses incurred to implement the provisions of this
17 chapter. The board shall submit its recommendations to the
18 legislature by December 1, 2012. If the legislature does not enact
19 legislation during the 2013 regular session to modify or reject the
20 board's recommendations, the board may proceed with implementation of
21 the recommendations.

22 (3) The board shall establish policies that permit city and
23 county governments, Indian tribes, tribal organizations, urban Indian
24 organizations, private foundations, and other entities to pay
25 premiums on behalf of qualified individuals.

26 (4) The employees of the exchange may participate in the public
27 employees' retirement system under chapter 41.40 RCW and the public
28 employees' benefits board under chapter 41.05 RCW.

29 (5) Qualified employers may access coverage for their employees
30 through the exchange for small groups under section 1311 of P.L.
31 111-148 of 2010, as amended. The exchange shall enable any qualified
32 employer to specify a level of coverage so that any of its employees
33 may enroll in any qualified health plan offered through the small
34 group exchange at the specified level of coverage.

35 (6) The exchange shall report its activities and status to the
36 governor and the legislature as requested, and no less often than
37 annually.

38 (7) The exchange shall not aggregate or delegate the aggregation
39 of funds that comprise the premium for any enrollee for any plan
40 offering except as required by federal law.

1 **Sec. 3.** RCW 43.71.060 and 2013 2nd sp.s. c 6 s 2 are each
2 amended to read as follows:

3 (1) The health benefit exchange account is created in the state
4 treasury. Moneys in the account may be spent only after
5 appropriation. Expenditures from the account may only be used to fund
6 the operation of the exchange and identification, collection, and
7 distribution of premium taxes collected under RCW 48.14.0201(5)(b)
8 and 48.14.020(2) prior to January 1, 2016.

9 (2)(a) The following funds must be deposited in the account:

10 (~~(a)~~) (i) Premium taxes collected under RCW 48.14.0201(5)(b)
11 and 48.14.020(2) prior to January 1, 2016;

12 (~~(b)~~) (ii) Assessments authorized under RCW 43.71.080; (~~and~~
13 ~~(c)~~) (iii) Amounts transferred by the pool administrator as
14 specified in the state omnibus appropriations act or pursuant to RCW
15 48.41.090(~~(-)~~); and

16 (~~(3)~~) (iv) All receipts from federal grants (~~(received under~~
17 ~~the affordable care act may be deposited into the account)~~).

18 (b) Expenditures from the account may be used only for purposes
19 consistent with the grants.

20 (~~(4)~~) (3) During the 2013-2015 fiscal biennium, the legislature
21 may transfer from the health benefit exchange account to the state
22 general fund such amounts as reflect the excess fund balance of the
23 account.

24 **Sec. 4.** RCW 43.71.080 and 2013 2nd sp.s. c 6 s 3 are each
25 amended to read as follows:

26 (1)(a) Beginning January 1, 2015, the exchange may require each
27 issuer writing premiums for qualified health benefit plans or stand-
28 alone dental plans offered through the exchange to pay an assessment
29 in an amount necessary to fund the operations of the exchange,
30 applicable to operational costs incurred beginning January 1, 2015.
31 For calendar year 2015 the assessment in effect on March 1, 2015, may
32 not be increased to fund the operations of the exchange.

33 (b) The assessment is an exchange user fee as that term is used
34 in 45 C.F.R. 156.80. (~~(Assessments of issuers may be made only if the~~
35 ~~amount of expected premium taxes, as provided under RCW~~
36 ~~48.14.0201(5)(b) and 48.14.020(2), and other funds deposited in the~~
37 ~~health benefit exchange account in the current calendar year are~~
38 ~~insufficient to fund exchange operations in the following calendar~~
39 ~~year at the level)) Beginning in calendar year 2016 the assessment~~

1 may not exceed three and one-half percent of plan premium and may not
2 generate greater income than authorized by the legislature (~~for that~~
3 ~~purpose~~) in the omnibus appropriations act.

4 (c) If the exchange is charging an assessment, the exchange shall
5 display the amount of the assessment per member per month for
6 enrollees. A health benefit plan or stand-alone dental plan may
7 identify the amount of the assessment to enrollees, but must not bill
8 the enrollee for the amount of the assessment separately from the
9 premium.

10 (2) The board, in collaboration with the issuers, the health care
11 authority, and the commissioner, must establish a fair and
12 transparent process for calculating the assessment amount. The
13 process must meet the following requirements:

14 (a) The assessment only applies to issuers that offer coverage in
15 the exchange and only for those market segments offered and must be
16 based on the number of enrollees in qualified health plans and stand-
17 alone dental plans in the exchange for a calendar year;

18 (b) The assessment must be established on a flat dollar and cents
19 amount per member per month, and the assessment for dental plans must
20 be proportional to the premiums paid for stand-alone dental plans in
21 the exchange;

22 (c) Issuers must be notified of the assessment amount by the
23 exchange on a timely basis;

24 (d) An appropriate assessment reconciliation process must be
25 established by the exchange that is administratively efficient;

26 (e) Issuers must remit the assessment due to the exchange in
27 quarterly installments after receiving notification from the exchange
28 of the due dates of the quarterly installments;

29 (f) A procedure must be established to allow issuers subject to
30 assessments under this section to have grievances reviewed by an
31 impartial body and reported to the board; and

32 (g) A procedure for enforcement must be established if an issuer
33 fails to remit its assessment amount to the exchange within ten
34 business days of the quarterly installment due date.

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

37 (4) The assessment described in this section shall be considered
38 a special purpose obligation or assessment in connection with
39 coverage described in this section for the purpose of funding the

1 operations of the exchange, and may not be applied by issuers to vary
2 premium rates at the plan level.

3 (5) The exchange shall monitor enrollment and provide periodic
4 reports which must be available on its web site.

5 (6) The board shall offer all qualified health plans through the
6 exchange, and the exchange shall not add criteria for certification
7 of qualified health plans beyond those set out in RCW 43.71.065
8 without specific statutory direction. Nothing shall be construed to
9 limit duties, obligations, and authority otherwise legislatively
10 delegated or granted to the exchange.

11 (7) The exchange shall report to the joint select committee on
12 health care oversight on a quarterly basis with an update on budget
13 expenses and operations.

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

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.71
24 RCW to read as follows:

25 As part of eligibility verification responsibilities, the
26 exchange shall verify that a person seeking to enroll in a qualified
27 health plan or qualified dental plan during a special enrollment
28 period has experienced a qualifying event as established by the
29 office of the insurance commissioner and shall require reasonable
30 proof or documentation of the qualifying event.

31 **Sec. 6.** RCW 48.14.0201 and 2013 2nd sp.s. c 6 s 5 are each
32 amended to read as follows:

33 (1) As used in this section, "taxpayer" means a health
34 maintenance organization as defined in RCW 48.46.020, a health care
35 service contractor as defined in chapter 48.44 RCW, or a self-funded
36 multiple employer welfare arrangement as defined in RCW 48.125.010.

37 (2) Each taxpayer must pay a tax on or before the first day of
38 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
5 purposes, the reporting of premiums and prepayments must be on a
6 written basis or on a paid-for basis consistent with the basis
7 required by the annual statement.

8 (3) Taxpayers must prepay their tax obligations under this
9 section. The minimum amount of the prepayments is the percentages of
10 the taxpayer's tax obligation for the preceding calendar year
11 recomputed using the rate in effect for the current year. For the
12 prepayment of taxes due during the first calendar year, the minimum
13 amount of the prepayments is the percentages of the taxpayer's tax
14 obligation that would have been due had the tax been in effect during
15 the previous calendar year. The tax prepayments must be paid to the
16 state treasurer through the commissioner's office by the due dates
17 and in the following 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
25 multiple employer welfare arrangement's, or certified health plan's
26 prepayment 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, and ending December 31, 2015,
30 moneys collected from taxpayers for premiums written on qualified
31 health benefit plans and stand-alone dental plans offered through the
32 health benefit exchange under chapter 43.71 RCW must be deposited in
33 the health benefit exchange account under RCW 43.71.060.

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

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

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

1 (i) The medical care services program as provided in RCW
2 74.09.035; or

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

5 (c) Amounts received by any health care service contractor as
6 defined in chapter 48.44 RCW, or any health maintenance organization
7 as defined in chapter 48.46 RCW, as prepayments for health care
8 services included within the definition of practice of dentistry
9 under RCW 18.32.020, except amounts received for pediatric oral
10 services that qualify as coverage for the minimum essential coverage
11 requirement under P.L. 111-148 (2010), as amended.

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

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

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

37 (b) If there has not been a final determination of the legality
38 of these taxes, then beginning on the earlier of (i) the date the
39 fourth multiple employer welfare arrangement has been certified by
40 the insurance commissioner, or (ii) April 1, 2006, the arrangement

1 must deposit the taxes imposed by this section into an interest
2 bearing escrow account maintained by the arrangement. Upon a final
3 determination that the taxes are not preempted by the employee
4 retirement income security act of 1974, as amended, 29 U.S.C. Sec.
5 1001 et seq., all funds in the interest bearing escrow account must
6 be transferred to the state treasurer.

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

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

16 **Sec. 7.** RCW 48.14.020 and 2013 2nd sp.s. c 6 s 6 are each
17 amended to read as follows:

18 (1) Subject to other provisions of this chapter, each authorized
19 insurer except title insurers shall on or before the first day of
20 March of each year pay to the state treasurer through the
21 commissioner's office a tax on premiums. Except as provided in
22 subsection (3) of this section, such tax shall be in the amount of
23 two percent of all premiums, excluding amounts returned to or the
24 amount of reductions in premiums allowed to holders of industrial
25 life policies for payment of premiums directly to an office of the
26 insurer, collected or received by the insurer under RCW 48.14.090
27 during the preceding calendar year other than ocean marine and
28 foreign trade insurances, after deducting premiums paid to
29 policyholders as returned premiums, upon risks or property resident,
30 situated, or to be performed in this state. For tax purposes, the
31 reporting of premiums shall be on a written basis or on a paid-for
32 basis consistent with the basis required by the annual statement. For
33 the purposes of this section the consideration received by an insurer
34 for the granting of an annuity shall not be deemed to be a premium.

35 (2)(a) The taxes imposed in this section do not apply to amounts
36 received by any life and disability insurer for health care services
37 included within the definition of practice of dentistry under RCW
38 18.32.020 except amounts received for pediatric oral services that

1 qualify as coverage for the minimum essential coverage requirement
2 under P.L. 111-148 (2010), as amended.

3 (b) Beginning January 1, 2014, and ending December 31, 2015,
4 moneys collected for premiums written on qualified health benefit
5 plans and stand-alone dental plans offered through the health benefit
6 exchange under chapter 43.71 RCW must be deposited in the health
7 benefit exchange account under RCW 43.71.060.

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

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

37 (5) The state does hereby preempt the field of imposing excise or
38 privilege taxes upon insurers or their appointed insurance producers,
39 other than title insurers, and no county, city, town or other

1 municipal subdivision shall have the right to impose any such taxes
2 upon such insurers or these insurance producers.

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

9 **Sec. 8.** RCW 48.41.090 and 2013 2nd sp.s. c 6 s 7 are each
10 amended to read as follows:

11 (1) Following the close of each accounting year, the pool
12 administrator shall determine the total net cost of pool operation
13 which shall include:

14 (a) Net premium (premiums less administrative expense
15 allowances), the pool expenses of administration, and incurred losses
16 for the year, taking into account investment income and other
17 appropriate gains and losses; and

18 (b) The amount of pool contributions specified in the state
19 omnibus appropriations act for deposit into the health benefit
20 exchange account under RCW 43.71.060, to assist with the transition
21 of enrollees from the pool into the health benefit exchange created
22 by chapter 43.71 RCW. For the period from July 1, 2015, through
23 December 31, 2015, the pool administrator shall deposit seven million
24 five hundred thousand dollars of pool contributions into the health
25 benefit exchange account.

26 (2)(a) Each member's proportion of participation in the pool
27 shall be determined annually by the board based on annual statements
28 and other reports deemed necessary by the board and filed by the
29 member with the commissioner; and shall be determined by multiplying
30 the total cost of pool operation by a fraction. The numerator of the
31 fraction equals that member's total number of resident insured
32 persons, including spouse and dependents, covered under all health
33 plans in the state by that member during the preceding calendar year.
34 The denominator of the fraction equals the total number of resident
35 insured persons, including spouses and dependents, covered under all
36 health plans in the state by all pool members during the preceding
37 calendar year.

38 (b) For purposes of calculating the numerator and the denominator
39 under (a) of this subsection:

1 (i) All health plans in the state by the state health care
2 authority include only the uniform medical plan;

3 (ii) Each ten resident insured persons, including spouse and
4 dependents, under a stop loss plan or the uniform medical plan shall
5 count as one resident insured person;

6 (iii) Health plans serving medical care services program clients
7 under RCW 74.09.035 are exempted from the calculation; and

8 (iv) Health plans established to serve elderly clients or
9 medicaid clients with disabilities under chapter 74.09 RCW when the
10 plan has been implemented on a demonstration or pilot project basis
11 are exempted from the calculation until July 1, 2009.

12 (c) Except as provided in RCW 48.41.037, any deficit incurred by
13 the pool, including pool contributions for deposit into the health
14 benefit exchange account, shall be recouped by assessments among
15 members apportioned under this subsection pursuant to the formula set
16 forth by the board among members. The monthly per member assessment
17 may not exceed the 2013 assessment level. If the maximum assessment
18 is insufficient to cover a pool deficit the assessment shall be used
19 first to pay all incurred losses and pool administrative expenses,
20 with the remainder being available for deposit in the health benefit
21 exchange account.

22 (3) The board may abate or defer, in whole or in part, the
23 assessment of a member if, in the opinion of the board, payment of
24 the assessment would endanger the ability of the member to fulfill
25 its contractual obligations. If an assessment against a member is
26 abated or deferred in whole or in part, the amount by which such
27 assessment is abated or deferred may be assessed against the other
28 members in a manner consistent with the basis for assessments set
29 forth in subsection (2) of this section. The member receiving such
30 abatement or deferment shall remain liable to the pool for the
31 deficiency.

32 (4) Subject to the limitation imposed in subsection (2)(c) of
33 this section, the pool administrator shall transfer the assessments
34 for pool contributions for the operation of the health benefit
35 exchange to the treasurer for deposit into the health benefit
36 exchange account with the quarterly assessments for ~~((2014))~~ 2015 and
37 2016 as specified in this section or in the state omnibus
38 appropriations act. If assessments exceed actual losses and
39 administrative expenses of the pool and pool contributions for
40 deposit into the health benefit exchange account, the excess shall be

1 held at interest and used by the board to offset future losses or to
2 reduce pool premiums. As used in this subsection, "future losses"
3 includes reserves for incurred but not reported claims.

4 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of
6 the state government and its existing public institutions, and takes
7 effect immediately."

SB 6089 - S AMD 354

By Senators Becker, Hill

ADOPTED 4/3/2015

8 On page 1, line 1 of the title, after "sustainability;" strike
9 the remainder of the title and insert "amending RCW 43.71.010,
10 43.71.030, 43.71.060, 43.71.080, 48.14.0201, 48.14.020, and
11 48.41.090; adding a new section to chapter 43.71 RCW; and declaring
12 an emergency."

EFFECT: Prohibits the Exchange from aggregating premiums or
delegating this function unless required by federal law to do so.

Allows the Exchange to use premium taxes generated from qualified
health plans through December 31, 2015. Delays the Exchange from
increasing assessments on carriers until January 1, 2016, and
establishes limits on the amount of assessment income that may be
collected.

Requires persons seeking enrollment in qualified health plans or
qualified dental plans during special open enrollment periods to
submit proof of the qualifying event.

Requires WSHIP to transfer \$7,500,000 to the Health Benefit
Exchange Account in 2015, and in 2016 as specified in the budget.

--- END ---