
HOUSE BILL 1459

State of Washington

64th Legislature

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By Representatives Cody, Schmick, and Tharinger; by request of Department of Social and Health Services and Health Care Authority

Read first time 01/21/15. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to excluding the federal-state partnership for a
2 capitated financial alignment model for medicare-medicaid enrollees,
3 known as the healthpath Washington program, from calculation of the
4 premium tax, the Washington state health insurance pool assessment,
5 and the business and occupation tax; amending RCW 48.14.0201,
6 48.41.030, and 48.41.090; adding a new section to chapter 82.04 RCW;
7 creating new sections; and providing a contingent expiration date.

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

9 **Sec. 1.** RCW 48.14.0201 and 2013 2nd sp.s. c 6 s 5 are each
10 amended to read as follows:

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

15 (2) Each taxpayer must pay a tax on or before the first day of
16 March of each year to the state treasurer through the insurance
17 commissioner's office. The tax must be equal to the total amount of
18 all premiums and prepayments for health care services collected or
19 received by the taxpayer under RCW 48.14.090 during the preceding
20 calendar year multiplied by the rate of two percent. For tax
21 purposes, the reporting of premiums and prepayments must be on a

1 written basis or on a paid-for basis consistent with the basis
2 required by the annual statement.

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

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

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

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

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

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

24 (b) Beginning January 1, 2014, moneys collected from taxpayers
25 for premiums written on qualified health benefit plans and stand-
26 alone dental plans offered through the health benefit exchange under
27 chapter 43.71 RCW must be deposited in the health benefit exchange
28 account under RCW 43.71.060.

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

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

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

36 (i) The medical care services program as provided in RCW
37 74.09.035; (~~or~~)

38 (ii) The healthpath Washington managed care health care delivery
39 program administered by the health care authority and department of
40 social and health services under chapter 74.09 RCW, which provides

1 coordinated medicare and medicaid medical, behavioral health, and
2 long-term services and support for eligible enrollees; or

3 (iii) 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. 2.** RCW 48.41.030 and 2004 c 260 s 25 are each amended to
17 read as follows:

18 The definitions in this section apply throughout this chapter
19 unless the context clearly requires otherwise.

20 (1) "Accounting year" means a twelve-month period determined by
21 the board for purposes of recordkeeping and accounting. The first
22 accounting year may be more or less than twelve months and, from time
23 to time in subsequent years, the board may order an accounting year
24 of other than twelve months as may be required for orderly management
25 and accounting of the pool.

26 (2) "Administrator" means the entity chosen by the board to
27 administer the pool under RCW 48.41.080.

28 (3) "Board" means the board of directors of the pool.

29 (4) "Commissioner" means the insurance commissioner.

30 (5) "Covered person" means any individual resident of this state
31 who is eligible to receive benefits from any member, or other health
32 plan.

33 (6) "Health care facility" has the same meaning as in RCW
34 70.38.025.

35 (7) "Health care provider" means any physician, facility, or
36 health care professional, who is licensed in Washington state and
37 entitled to reimbursement for health care services.

38 (8) "Health care services" means services for the purpose of
39 preventing, alleviating, curing, or healing human illness or injury.

1 (9) "Health carrier" or "carrier" has the same meaning as in RCW
2 48.43.005.

3 (10) "Health coverage" means any group or individual disability
4 insurance policy, health care service contract, and health
5 maintenance agreement, except those contracts entered into for the
6 provision of health care services pursuant to Title XVIII of the
7 Social Security Act, 42 U.S.C. Sec. 1395 et seq. The term does not
8 include short-term care, long-term care, dental, vision, accident,
9 fixed indemnity, disability income contracts, limited benefit or
10 credit insurance, coverage issued as a supplement to liability
11 insurance, insurance arising out of the worker's compensation or
12 similar law, automobile medical payment insurance, or insurance under
13 which benefits are payable with or without regard to fault and which
14 is statutorily required to be contained in any liability insurance
15 policy or equivalent self-insurance.

16 (11) "Health plan" means any arrangement by which persons,
17 including dependents or spouses, covered or making application to be
18 covered under this pool, have access to hospital and medical benefits
19 or reimbursement including any group or individual disability
20 insurance policy; health care service contract; health maintenance
21 agreement; uninsured arrangements of group or group-type contracts
22 including employer self-insured, cost-plus, or other benefit
23 methodologies not involving insurance or not governed by Title 48
24 RCW; coverage under group-type contracts which are not available to
25 the general public and can be obtained only because of connection
26 with a particular organization or group; and coverage by medicare or
27 other governmental benefits. This term includes coverage through
28 "health coverage" as defined under this section, and specifically
29 excludes those types of programs excluded under the definition of
30 "health coverage" in subsection (10) of this section.

31 (12) "Medical assistance" means coverage under Title XIX of the
32 federal Social Security Act (42 U.S.C., Sec. 1396 et seq.) and
33 chapter 74.09 RCW.

34 (13) "Medicare" means coverage under Title XVIII of the Social
35 Security Act, (42 U.S.C. Sec. 1395 et seq., as amended).

36 (14) "Member" means any commercial insurer which provides
37 disability insurance or stop loss insurance, any health care service
38 contractor, any health maintenance organization licensed under Title
39 48 RCW, and any self-funded multiple employer welfare arrangement as
40 defined in RCW 48.125.010. "Member" also means the Washington state

1 health care authority as issuer of the state uniform medical plan.
2 "Member" shall also mean, as soon as authorized by federal law,
3 employers and other entities, including a self-funding entity and
4 employee welfare benefit plans that provide health plan benefits in
5 this state on or after May 18, 1987. "Member" does not include any
6 insurer, health care service contractor, or health maintenance
7 organization whose products are exclusively dental products or those
8 products excluded from the definition of "health coverage" set forth
9 in subsection (10) of this section.

10 (15) "Network provider" means a health care provider who has
11 contracted in writing with the pool administrator or a health carrier
12 contracting with the pool administrator to offer pool coverage to
13 accept payment from and to look solely to the pool or health carrier
14 according to the terms of the pool health plans.

15 (16) "Plan of operation" means the pool, including articles, by-
16 laws, and operating rules, adopted by the board pursuant to RCW
17 48.41.050.

18 (17) "Point of service plan" means a benefit plan offered by the
19 pool under which a covered person may elect to receive covered
20 services from network providers, or nonnetwork providers at a reduced
21 rate of benefits.

22 (18) "Pool" means the Washington state health insurance pool as
23 created in RCW 48.41.040.

24 (19) "Healthpath Washington" means a federal-state partnership
25 for a capitated financial alignment model for individuals enrolled in
26 both medicare and medicaid administered by the health care authority
27 and department of social and health services under chapter 74.09 RCW,
28 which provides coordinated medicare and medicaid medical, behavioral
29 health, and long-term services and support for eligible enrollees.

30 **Sec. 3.** RCW 48.41.090 and 2013 2nd sp.s. c 6 s 7 are each
31 amended to read as follows:

32 (1) Following the close of each accounting year, the pool
33 administrator shall determine the total net cost of pool operation
34 which shall include:

35 (a) Net premium (premiums less administrative expense
36 allowances), the pool expenses of administration, and incurred losses
37 for the year, taking into account investment income and other
38 appropriate gains and losses; and

1 (b) The amount of pool contributions specified in the state
2 omnibus appropriations act for deposit into the health benefit
3 exchange account under RCW 43.71.060, to assist with the transition
4 of enrollees from the pool into the health benefit exchange created
5 by chapter 43.71 RCW.

6 (2)(a) Each member's proportion of participation in the pool
7 shall be determined annually by the board based on annual statements
8 and other reports deemed necessary by the board and filed by the
9 member with the commissioner; and shall be determined by multiplying
10 the total cost of pool operation by a fraction. The numerator of the
11 fraction equals that member's total number of resident insured
12 persons, including spouse and dependents, covered under all health
13 plans in the state by that member during the preceding calendar year.
14 The denominator of the fraction equals the total number of resident
15 insured persons, including spouses and dependents, covered under all
16 health plans in the state by all pool members during the preceding
17 calendar year.

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

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

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

25 (iii) Health plans serving medical care services program clients
26 under RCW 74.09.035 and healthpath Washington enrollees are exempted
27 from the calculation and from participation in the pool((; and

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

32 (c) Except as provided in RCW 48.41.037, any deficit incurred by
33 the pool, including pool contributions for deposit into the health
34 benefit exchange account, shall be recouped by assessments among
35 members apportioned under this subsection pursuant to the formula set
36 forth by the board among members. The monthly per member assessment
37 may not exceed the 2013 assessment level. If the maximum assessment
38 is insufficient to cover a pool deficit the assessment shall be used
39 first to pay all incurred losses and pool administrative expenses,

1 with the remainder being available for deposit in the health benefit
2 exchange account.

3 (3) The board may abate or defer, in whole or in part, the
4 assessment of a member if, in the opinion of the board, payment of
5 the assessment would endanger the ability of the member to fulfill
6 its contractual obligations. If an assessment against a member is
7 abated or deferred in whole or in part, the amount by which such
8 assessment is abated or deferred may be assessed against the other
9 members in a manner consistent with the basis for assessments set
10 forth in subsection (2) of this section. The member receiving such
11 abatement or deferment shall remain liable to the pool for the
12 deficiency.

13 (4) Subject to the limitation imposed in subsection (2)(c) of
14 this section, the pool administrator shall transfer the assessments
15 for pool contributions for the operation of the health benefit
16 exchange to the treasurer for deposit into the health benefit
17 exchange account with the quarterly assessments for 2014 as specified
18 in the state omnibus appropriations act. If assessments exceed actual
19 losses and administrative expenses of the pool and pool contributions
20 for deposit into the health benefit exchange account, the excess
21 shall be held at interest and used by the board to offset future
22 losses or to reduce pool premiums. As used in this subsection,
23 "future losses" includes reserves for incurred but not reported
24 claims.

25 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.04
26 RCW to read as follows:

27 The taxes imposed by this chapter do not apply to amounts
28 received under the healthpath Washington program that are exempt
29 under RCW 48.14.0201(6)(b)(ii).

30 NEW SECTION. **Sec. 5.** This section is the tax preference
31 performance statement for the tax preference contained in section 4
32 of this act. This performance statement is only intended to be used
33 for subsequent evaluation of the tax preference. It is not intended
34 to create a private right of action by any party or be used to
35 determine eligibility for preferential tax treatment.

36 (1) The legislature categorizes this tax preference as one
37 intended to induce certain designated behavior by taxpayers under RCW
38 82.32.808(2)(a).

1 (2) It is the legislature's specific public policy objective to
2 lower costs for providing medical, behavioral health and long-term
3 services and support to high-risk populations and to improve health
4 outcomes, coordination of care, and experience of care. Under chapter
5 43.136 RCW, the joint legislative audit and review committee must
6 review the business and occupation tax exemption established under
7 section 4 of this act by December 1, 2019.

8 (3) If a review finds the healthpath Washington program has been
9 successful in improving access to care and achieving savings to the
10 state and federal governments, then the legislative auditor should
11 recommend extension of the expiration date of the tax preference.

12 (4) In order to obtain the data necessary to perform the review
13 under subsections (2) and (3) of this section, the joint legislative
14 audit and review committee must determine whether the healthpath
15 Washington project is: (a) Improving the quality of care without
16 increasing spending; (b) reducing spending without reducing the
17 quality of care; or (c) improving the quality of care and reducing
18 spending.

19 NEW SECTION. **Sec. 6.** The tax exemption in section 4 of this act
20 expires upon termination of the healthpath Washington managed care
21 program. The department of social and health services must notify the
22 department of revenue within thirty days of termination of the
23 program.

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