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ENGROSSED SENATE BILL 6089

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State of Washington

64th Legislature

2015 Regular Session

By Senator Hill

Read first time 03/31/15. Referred to Committee on Ways & Means.

1 AN ACT Relating to health benefit exchange sustainability;  
2 amending RCW 43.71.010, 43.71.030, 43.71.060, 43.71.080, 48.14.0201,  
3 48.14.020, and 48.41.090; adding a new section to chapter 43.71 RCW;  
4 and declaring an emergency.

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

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

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

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

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

20 (3) "Board" means the governing board established in RCW  
21 43.71.020.

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

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

5 (6) "Self-sustaining" means capable of operating with revenue  
6 attributable to the operations of the exchange. Self-sustaining  
7 sources include, but are not limited to, federal grants, federal  
8 premium tax subsidies and credits, charges to health carriers, and  
9 premiums paid by enrollees(~~(, and premium taxes under RCW~~  
10 ~~48.14.0201(5)(b) and 48.14.020(2))~~)).

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

13 (1) The exchange may, consistent with the purposes of this  
14 chapter: (a) Sue and be sued in its own name; (b) make and execute  
15 agreements, contracts, and other instruments, with any public or  
16 private person or entity; (c) employ, contract with, or engage  
17 personnel; (d) pay administrative costs; (e) accept grants,  
18 donations, loans of funds, and contributions in money, services,  
19 materials or otherwise, from the United States or any of its  
20 agencies, from the state of Washington and its agencies or from any  
21 other source, and use or expend those moneys, services, materials, or  
22 other contributions; and (f) (~~aggregate or delegate the aggregation~~  
23 ~~of funds that comprise the premium for a health plan; and (g))~~)  
24 complete other duties necessary to begin open enrollment in qualified  
25 health plans through the exchange beginning October 1, 2013.

26 (2) The board shall develop a methodology to ensure the exchange  
27 is self-sustaining after December 31, 2014. The board shall seek  
28 input from health carriers to develop funding mechanisms that fairly  
29 and equitably apportion among carriers the reasonable administrative  
30 costs and expenses incurred to implement the provisions of this  
31 chapter. The board shall submit its recommendations to the  
32 legislature by December 1, 2012. If the legislature does not enact  
33 legislation during the 2013 regular session to modify or reject the  
34 board's recommendations, the board may proceed with implementation of  
35 the recommendations.

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

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

4 (5) Qualified employers may access coverage for their employees  
5 through the exchange for small groups under section 1311 of P.L.  
6 111-148 of 2010, as amended. The exchange shall enable any qualified  
7 employer to specify a level of coverage so that any of its employees  
8 may enroll in any qualified health plan offered through the small  
9 group exchange at the specified level of coverage.

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

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

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

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

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

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

27 ~~((b))~~ (ii) Assessments authorized under RCW 43.71.080; ~~(and~~  
28 ~~(c))~~ (iii) Amounts transferred by the pool administrator as  
29 specified in the state omnibus appropriations act or pursuant to RCW  
30 48.41.090~~((-))~~; and

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

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

35 ~~((4))~~ (3) During the 2013-2015 fiscal biennium, the legislature  
36 may transfer from the health benefit exchange account to the state  
37 general fund such amounts as reflect the excess fund balance of the  
38 account.

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

3       (1)(a) Beginning January 1, 2015, the exchange may require each  
4 issuer writing premiums for qualified health benefit plans or stand-  
5 alone dental plans offered through the exchange to pay an assessment  
6 in an amount necessary to fund the operations of the exchange,  
7 applicable to operational costs incurred beginning January 1, 2015.  
8 For calendar year 2015 the assessment in effect on March 1, 2015, may  
9 not be increased to fund the operations of the exchange.

10       (b) The assessment is an exchange user fee as that term is used  
11 in 45 C.F.R. 156.80. (~~Assessments of issuers may be made only if the~~  
12 ~~amount of expected premium taxes, as provided under RCW~~  
13 ~~48.14.0201(5)(b) and 48.14.020(2), and other funds deposited in the~~  
14 ~~health benefit exchange account in the current calendar year are~~  
15 ~~insufficient to fund exchange operations in the following calendar~~  
16 ~~year at the level~~) Beginning in calendar year 2016 the assessment  
17 may not exceed three and one-half percent of plan premium and may not  
18 generate greater income than authorized by the legislature (~~for that~~  
19 ~~purpose~~) in the omnibus appropriations act.

20       (c) If the exchange is charging an assessment, the exchange shall  
21 display the amount of the assessment per member per month for  
22 enrollees. A health benefit plan or stand-alone dental plan may  
23 identify the amount of the assessment to enrollees, but must not bill  
24 the enrollee for the amount of the assessment separately from the  
25 premium.

26       (2) The board, in collaboration with the issuers, the health care  
27 authority, and the commissioner, must establish a fair and  
28 transparent process for calculating the assessment amount. The  
29 process must meet the following requirements:

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

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

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

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

3 (e) Issuers must remit the assessment due to the exchange in  
4 quarterly installments after receiving notification from the exchange  
5 of the due dates of the quarterly installments;

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

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

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

14 (4) The assessment described in this section shall be considered  
15 a special purpose obligation or assessment in connection with  
16 coverage described in this section for the purpose of funding the  
17 operations of the exchange, and may not be applied by issuers to vary  
18 premium rates at the plan level.

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

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

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

30 (8) By July 1, 2016, the state auditor shall conduct a  
31 performance review of the cost of exchange operations and shall make  
32 recommendations to the board and the health care committees of the  
33 legislature addressing improvements in cost performance and adoption  
34 of best practices. The auditor shall further evaluate the potential  
35 cost and customer service benefits through regionalization with other  
36 states of some exchange operation functions or through a partnership  
37 with the federal government. The cost of the state auditor review  
38 must be borne by the exchange.

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

3        As part of eligibility verification responsibilities, the  
4    exchange shall verify that a person seeking to enroll in a qualified  
5    health plan or qualified dental plan during a special enrollment  
6    period has experienced a qualifying event as established by the  
7    office of the insurance commissioner and shall require reasonable  
8    proof or documentation of the qualifying event.

9        **Sec. 6.**    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  
22    written basis or on a paid-for basis consistent with the basis  
23    required by the annual statement.

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

- 34        (a) On or before June 15, forty-five percent;
- 35        (b) On or before September 15, twenty-five percent;
- 36        (c) On or before December 15, twenty-five percent.

37        (4) For good cause demonstrated in writing, the commissioner may  
38    approve an amount smaller than the preceding calendar year's tax  
39    obligation as recomputed for calculating the health maintenance

1 organization's, health care service contractor's, self-funded  
2 multiple employer welfare arrangement's, or certified health plan's  
3 prepayment obligations for the current tax year.

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

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

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

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

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

18 (i) The medical care services program as provided in RCW  
19 74.09.035; or

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

22 (c) Amounts received by any health care service contractor as  
23 defined in chapter 48.44 RCW, or any health maintenance organization  
24 as defined in chapter 48.46 RCW, as prepayments for health care  
25 services included within the definition of practice of dentistry  
26 under RCW 18.32.020, except amounts received for pediatric oral  
27 services that qualify as coverage for the minimum essential coverage  
28 requirement under P.L. 111-148 (2010), as amended.

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

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

1 excise or privilege taxes upon the health care services directly  
2 delivered by the employees of a health maintenance organization under  
3 chapter 48.46 RCW.

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

14 (b) If there has not been a final determination of the legality  
15 of these taxes, then beginning on the earlier of (i) the date the  
16 fourth multiple employer welfare arrangement has been certified by  
17 the insurance commissioner, or (ii) April 1, 2006, the arrangement  
18 must deposit the taxes imposed by this section into an interest  
19 bearing escrow account maintained by the arrangement. Upon a final  
20 determination that the taxes are not preempted by the employee  
21 retirement income security act of 1974, as amended, 29 U.S.C. Sec.  
22 1001 et seq., all funds in the interest bearing escrow account must  
23 be transferred to the state treasurer.

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

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

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

35 (1) Subject to other provisions of this chapter, each authorized  
36 insurer except title insurers shall on or before the first day of  
37 March of each year pay to the state treasurer through the  
38 commissioner's office a tax on premiums. Except as provided in  
39 subsection (3) of this section, such tax shall be in the amount of



1 two percent of all premiums, excluding amounts returned to or the  
2 amount of reductions in premiums allowed to holders of industrial  
3 life policies for payment of premiums directly to an office of the  
4 insurer, collected or received by the insurer under RCW 48.14.090  
5 during the preceding calendar year other than ocean marine and  
6 foreign trade insurances, after deducting premiums paid to  
7 policyholders as returned premiums, upon risks or property resident,  
8 situated, or to be performed in this state. For tax purposes, the  
9 reporting of premiums shall be on a written basis or on a paid-for  
10 basis consistent with the basis required by the annual statement. For  
11 the purposes of this section the consideration received by an insurer  
12 for the granting of an annuity shall not be deemed to be a premium.

13 (2)(a) The taxes imposed in this section do not apply to amounts  
14 received by any life and disability insurer for health care services  
15 included within the definition of practice of dentistry under RCW  
16 18.32.020 except amounts received for pediatric oral services that  
17 qualify as coverage for the minimum essential coverage requirement  
18 under P.L. 111-148 (2010), as amended.

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

24 (3) In the case of insurers which require the payment by their  
25 policyholders at the inception of their policies of the entire  
26 premium thereon in the form of premiums or premium deposits which are  
27 the same in amount, based on the character of the risks, regardless  
28 of the length of term for which such policies are written, such tax  
29 shall be in the amount of two percent of the gross amount of such  
30 premiums and premium deposits upon policies on risks resident,  
31 located, or to be performed in this state, in force as of the thirty-  
32 first day of December next preceding, less the unused or unabsorbed  
33 portion of such premiums and premium deposits computed at the average  
34 rate thereof actually paid or credited to policyholders or applied in  
35 part payment of any renewal premiums or premium deposits on one-year  
36 policies expiring during such year.

37 (4) Each authorized insurer shall with respect to all ocean  
38 marine and foreign trade insurance contracts written within this  
39 state during the preceding calendar year, on or before the first day  
40 of March of each year pay to the state treasurer through the

1 commissioner's office a tax of ninety-five one-hundredths of one  
2 percent on its gross underwriting profit. Such gross underwriting  
3 profit shall be ascertained by deducting from the net premiums (i.e.,  
4 gross premiums less all return premiums and premiums for reinsurance)  
5 on such ocean marine and foreign trade insurance contracts the net  
6 losses paid (i.e., gross losses paid less salvage and recoveries on  
7 reinsurance ceded) during such calendar year under such contracts. In  
8 the case of insurers issuing participating contracts, such gross  
9 underwriting profit shall not include, for computation of the tax  
10 prescribed by this subsection, the amounts refunded, or paid as  
11 participation dividends, by such insurers to the holders of such  
12 contracts.

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

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

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

26 (1) Following the close of each accounting year, the pool  
27 administrator shall determine the total net cost of pool operation  
28 which shall include:

29 (a) Net premium (premiums less administrative expense  
30 allowances), the pool expenses of administration, and incurred losses  
31 for the year, taking into account investment income and other  
32 appropriate gains and losses; and

33 (b) The amount of pool contributions specified in the state  
34 omnibus appropriations act for deposit into the health benefit  
35 exchange account under RCW 43.71.060, to assist with the transition  
36 of enrollees from the pool into the health benefit exchange created  
37 by chapter 43.71 RCW. For the period from July 1, 2015, through  
38 December 31, 2015, the pool administrator shall deposit seven million

1 five hundred thousand dollars of pool contributions into the health  
2 benefit exchange account.

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

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

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

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

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

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

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

38 (3) The board may abate or defer, in whole or in part, the  
39 assessment of a member if, in the opinion of the board, payment of  
40 the assessment would endanger the ability of the member to fulfill

1 its contractual obligations. If an assessment against a member is  
2 abated or deferred in whole or in part, the amount by which such  
3 assessment is abated or deferred may be assessed against the other  
4 members in a manner consistent with the basis for assessments set  
5 forth in subsection (2) of this section. The member receiving such  
6 abatement or deferment shall remain liable to the pool for the  
7 deficiency.

8 (4) Subject to the limitation imposed in subsection (2)(c) of  
9 this section, the pool administrator shall transfer the assessments  
10 for pool contributions for the operation of the health benefit  
11 exchange to the treasurer for deposit into the health benefit  
12 exchange account with the quarterly assessments for ((2014)) 2015 and  
13 2016 as specified in this section or in the state omnibus  
14 appropriations act. If assessments exceed actual losses and  
15 administrative expenses of the pool and pool contributions for  
16 deposit into the health benefit exchange account, the excess shall be  
17 held at interest and used by the board to offset future losses or to  
18 reduce pool premiums. As used in this subsection, "future losses"  
19 includes reserves for incurred but not reported claims.

20 NEW SECTION. **Sec. 9.** This act is necessary for the immediate  
21 preservation of the public peace, health, or safety, or support of  
22 the state government and its existing public institutions, and takes  
23 effect immediately.

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