
SENATE BILL 5581

State of Washington

65th Legislature

2017 Regular Session

By Senators Angel and Mullet

Read first time 01/30/17. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to authorizing public hospital districts to
2 participate in self-insurance risk pools with nonprofit hospitals;
3 adding a new chapter to Title 48 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** This chapter is intended to provide
6 authority for two or more public benefit hospital entities to
7 participate in a joint self-insurance program covering property or
8 liability risks. This chapter provides public benefit hospital
9 entities with the exclusive source of authority to jointly self-
10 insure property and liability risks, jointly purchase insurance or
11 reinsurance, and to contract for risk management, claims, and
12 administrative services with other public benefit hospital entities.
13 This chapter must be liberally construed to grant public benefit
14 hospital entities maximum flexibility in jointly self-insuring to the
15 extent the self-insurance programs are operated in a safe and sound
16 manner. This chapter is intended to require prior approval for the
17 establishment of every joint self-insurance program. In addition,
18 this chapter is intended to require every joint self-insurance
19 program for public benefit hospital entities established under this
20 chapter to notify the state of the existence of the program and to
21 comply with the regulatory and statutory standards governing the

1 management and operation of the programs as provided in this chapter.
2 This chapter is not intended to authorize or regulate self-insurance
3 of unemployment compensation under chapter 50.44 RCW or industrial
4 insurance under chapter 51.14 RCW.

5 NEW SECTION. **Sec. 2.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Hospital services" means clinically related (i.e.,
9 preventive, diagnostic, curative, rehabilitative, or palliative)
10 services provided in a hospital setting.

11 (2) "Property and liability risks" include the risk of property
12 damage or loss sustained by a public benefit hospital entity and the
13 risk of claims arising from the tortious or negligent conduct or any
14 error or omission of the entity, its officers, employees, agents, or
15 volunteers as a result of which a claim may be made against the
16 entity.

17 (3) "Public benefit hospital entity" means any of the following:

18 (a) A public hospital district organized under the laws of this
19 state or another state and any agency or instrumentality of a public
20 hospital district including, but not limited to, a legal entity
21 created to conduct a joint self-insurance program for public hospital
22 districts that is operating in accordance with chapter 48.62 RCW;

23 (b) A nonprofit corporation, whether organized under the laws of
24 this state or another state, that operates a hospital and is engaged
25 in providing hospital services; or

26 (c) A general or limited partnership or limited liability
27 company, whether organized under the laws of this state or another
28 state, that is engaged in providing hospital services as defined in
29 this section. A partnership or limited liability company may only be
30 considered a public benefit hospital entity if a public hospital
31 district or nonprofit corporation, as described in this subsection,
32 satisfies any of the following conditions: (i) It has, or has the
33 right to acquire, a financial or ownership interest in the
34 partnership or limited liability company; (ii) it possesses the power
35 to direct management or policies of the partnership or limited
36 liability company; or (iii) it has entered into a contract to lease,
37 manage, or operate the hospital owned by the partnership or limited
38 liability company.

1 (4) "Self-insurance" means a formal program of advance funding
2 and management of entity financial exposure to a risk of loss that is
3 not transferred through the purchase of an insurance policy or
4 contract.

5 (5) "State risk manager" means the risk manager of the office of
6 risk management within the department of enterprise services.

7 NEW SECTION. **Sec. 3.** (1) The governing body of a public benefit
8 hospital entity may join or form a self-insurance program together
9 with one or more other public benefit hospital entities, and may
10 jointly purchase insurance or reinsurance with one or more other
11 public benefit hospital entities for property and liability risks
12 only as permitted under this chapter. Public benefit hospital
13 entities may contract for or hire personnel to provide risk
14 management, claims, and administrative services in accordance with
15 this chapter.

16 (2) The agreement to form a joint self-insurance program may
17 include the organization of a separate legal or administrative entity
18 with powers delegated to the entity. The entity may be a nonprofit
19 corporation, limited liability company, partnership, trust, or other
20 form of entity, whether organized under the laws of this state or
21 another state.

22 (3) If provided for in the organizational documents, a joint
23 self-insurance program may, in conformance with this chapter:

24 (a) Contract or otherwise provide for risk management and loss
25 control services;

26 (b) Contract or otherwise provide legal counsel for the defense
27 of claims and other legal services;

28 (c) Consult with the state insurance commissioner and the state
29 risk manager;

30 (d) Jointly purchase insurance and reinsurance coverage in a form
31 and amount as provided for in the organizational documents;

32 (e) Obligate the program's participants to pledge revenues or
33 contribute money to secure the obligations or pay the expenses of the
34 program, including the establishment of a reserve or fund for
35 coverage; and

36 (f) Possess any other powers and perform all other functions
37 reasonably necessary to carry out the purposes of this chapter.

38 (4) Every joint self-insurance program governed by this chapter
39 must appoint the state risk manager as its attorney to receive

1 service of, and upon whom must be served, all legal process issued
2 against the program in this state upon causes of action arising in
3 this state.

4 (a) Service upon the state risk manager as attorney constitutes
5 service upon the program. Service upon joint self-insurance programs
6 subject to this chapter may only occur by service upon the state risk
7 manager. At the time of service, the plaintiff shall pay to the state
8 risk manager a fee to be set by the state risk manager, taxable as
9 costs in the action.

10 (b) With the initial filing for approval with the state risk
11 manager, each joint self-insurance program must designate by name and
12 address the person to whom the state risk manager must forward legal
13 process that is served upon him or her. The joint self-insurance
14 program may change this person by filing a new designation.

15 (c) The appointment of the state risk manager as attorney is
16 irrevocable, binds any successor in interest or to the assets or
17 liabilities of the joint self-insurance program, and remains in
18 effect as long as there is in force in this state any contract made
19 by the joint self-insurance program or liabilities or duties arising
20 from the contract.

21 (d) The state risk manager shall keep a record of the day and
22 hour of service upon him or her of all legal process. A copy of the
23 process, by registered mail with return receipt requested, must be
24 sent by the state risk manager to the person designated to receive
25 legal process by the joint self-insurance program in its most recent
26 designation filed with the state risk manager. Proceedings must not
27 commence against the joint self-insurance program, and the program
28 must not be required to appear, plead, or answer, until the
29 expiration of forty days after the date of service upon the state
30 risk manager.

31 NEW SECTION. **Sec. 4.** This chapter does not apply to a public
32 benefit hospital entity that:

33 (1) Individually self-insures for property and liability risks;
34 or

35 (2) Participates in a risk pooling arrangement, including a risk
36 retention group or a risk purchasing group, regulated under chapter
37 48.92 RCW, is a captive insurer authorized in its state of domicile,
38 or participates in a local government risk pool formed under chapter
39 48.62 RCW.

1 NEW SECTION. **Sec. 5.** The state risk manager shall adopt rules
2 governing the management and operation of joint self-insurance
3 programs for public benefit hospital entities that cover property or
4 liability risks. All rules must be appropriate for the type of
5 program and class of risk covered. The state risk manager's rules
6 must include:

7 (1) Standards for the management, operation, and solvency of
8 joint self-insurance programs, including the necessity and frequency
9 of actuarial analyses and claims audits;

10 (2) Standards for claims management procedures;

11 (3) Standards for contracts between joint self-insurance programs
12 and private businesses, including standards for contracts between
13 third-party administrators and programs; and

14 (4) Standards that preclude public hospital districts or other
15 public entities participating in the joint self-insurance program
16 from subsidizing, regardless of the form of subsidy, public benefit
17 hospital entities that are not public hospital districts or public
18 entities. These standards do not apply to the consideration
19 attributable to the ownership interest of a public hospital district
20 or other public entity in a separate legal or administrative entity
21 organized with respect to the program.

22 NEW SECTION. **Sec. 6.** Before the establishment of a joint self-
23 insurance program covering property or liability risks by public
24 benefit hospital entities, the entities must obtain the approval of
25 the state risk manager. The entities proposing the creation of a
26 joint self-insurance program requiring prior approval shall submit a
27 plan of management and operation to the state risk manager that
28 provides at least the following information:

29 (1) The risk or risks to be covered, including any coverage
30 definitions, terms, conditions, and limitations;

31 (2) The amount and method of funding the covered risks, including
32 the initial capital and proposed rates and projected premiums;

33 (3) The proposed claim reserving practices;

34 (4) The proposed purchase and maintenance of insurance or
35 reinsurance in excess of the amounts retained by the joint self-
36 insurance program;

37 (5) The legal form of the program including, but not limited to,
38 any articles of incorporation, bylaws, charter, or trust agreement or
39 other agreement among the participating entities;

1 (6) The agreements with participants in the program defining the
2 responsibilities and benefits of each participant and management;

3 (7) The proposed accounting, depositing, and investment practices
4 of the program;

5 (8) The proposed time when actuarial analysis will be first
6 conducted and the frequency of future actuarial analysis;

7 (9) A designation of the individual to whom service of process
8 must be forwarded by the state risk manager on behalf of the program;

9 (10) All contracts between the program and private persons
10 providing risk management, claims, or other administrative services;

11 (11) A professional analysis of the feasibility of the creation
12 and maintenance of the program;

13 (12) A legal determination of the potential federal and state tax
14 liabilities of the program; and

15 (13) Any other information required by rule of the state risk
16 manager that is necessary to determine the probable financial and
17 management success of the program or that is necessary to determine
18 compliance with this chapter.

19 NEW SECTION. **Sec. 7.** A public benefit hospital entity may
20 participate in a joint self-insurance program covering property or
21 liability risks with similar public benefit hospital entities from
22 other states if the program satisfies the following requirements:

23 (1) An ownership interest in the program is limited to some or
24 all of the public benefit hospital entities of this state and public
25 benefit hospital entities of other states that are provided insurance
26 by the program;

27 (2) The participating public benefit hospital entities of this
28 state and other states shall elect a board of directors to manage the
29 program, a majority of whom must be affiliated with one or more of
30 the participating public benefit hospital entities;

31 (3) The program must provide coverage through the delivery to
32 each participating public benefit hospital entity of one or more
33 written policies affecting insurance of covered risks;

34 (4) The program must be financed, including the payment of
35 premiums and the contribution of initial capital, in accordance with
36 the plan of management and operation submitted to the state risk
37 manager in accordance with this chapter;

38 (5) The financial statements of the program must be audited
39 annually by the certified public accountants for the program, and

1 these audited financial statements must be delivered to the state
2 risk manager not more than one hundred twenty days after the end of
3 each fiscal year of the program;

4 (6) The investments of the program must be initiated only with
5 financial institutions or broker-dealers, or both, doing business in
6 those states in which participating public benefit hospital entities
7 are located, and these investments must be audited annually by the
8 certified public accountants for the program;

9 (7) The treasurer of a multistate joint self-insurance program
10 must be designated by resolution of the program and the treasurer
11 must be located in the state of one of the participating entities;

12 (8) The participating entities may have no contingent liabilities
13 for covered claims, other than liabilities for unpaid premiums,
14 retrospective premiums, or assessments, if assets of the program are
15 insufficient to cover the program's liabilities; and

16 (9) The program must obtain approval from the state risk manager
17 in accordance with this chapter and must remain in compliance with
18 this chapter, except if provided otherwise under this section.

19 NEW SECTION. **Sec. 8.** (1) Within one hundred twenty days of
20 receipt of a plan of management and operation, the state risk manager
21 shall either approve or disapprove of the formation of the joint
22 self-insurance program after reviewing the plan to determine whether
23 the proposed program complies with this chapter and all rules adopted
24 in accordance with this chapter.

25 (2) If the state risk manager denies a request for approval, the
26 state risk manager shall specify in detail the reasons for denial and
27 the manner in which the program fails to meet the requirements of
28 this chapter or any rules adopted in accordance with this chapter.

29 (3) If the state risk manager determines that a joint self-
30 insurance program covering property or liability risks is in
31 violation of this chapter or is operating in an unsafe financial
32 condition, the state risk manager may issue and serve upon the
33 program an order to cease and desist from the violation or practice.

34 (a) The state risk manager shall deliver the order to the
35 appropriate entity or entities directly or mail it to the appropriate
36 entity or entities by certified mail with return receipt requested.

37 (b) If the program violates the order or has not taken steps to
38 comply with the order after the expiration of twenty days after the
39 cease and desist order has been received by the program, the program

1 is deemed to be operating in violation of this chapter, and the state
2 risk manager shall notify the attorney general of the violation.

3 (c) After hearing or with the consent of a program governed under
4 this chapter and in addition to or in lieu of a continuation of the
5 cease and desist order, the state risk manager may levy a fine upon
6 the program in an amount not less than three hundred dollars and not
7 more than ten thousand dollars. The order levying the fine must
8 specify the period within which the fine must be fully paid. The
9 period within which the fine must be paid must not be less than
10 fifteen and no more than thirty days from the date of the order. Upon
11 failure to pay the fine when due, the state risk manager shall
12 request the attorney general to bring a civil action on the state
13 risk manager's behalf to collect the fine. The state risk manager
14 shall pay any fine collected to the state treasurer for the account
15 of the general fund.

16 (4) Each joint self-insurance program approved by the state risk
17 manager shall annually file a report with the state risk manager
18 providing:

19 (a) Details of any changes in the articles of incorporation,
20 bylaws, charter, or trust agreement or other agreement among the
21 participating public benefit hospital entities;

22 (b) Copies of all the insurance coverage documents;

23 (c) A description of the program structure, including
24 participants' retention, program retention, and excess insurance
25 limits and attachment point;

26 (d) An actuarial analysis;

27 (e) A list of contractors and service providers;

28 (f) The financial and loss experience of the program; and

29 (g) Other information as required by rule of the state risk
30 manager.

31 (5) A joint self-insurance program requiring the state risk
32 manager's approval may not engage in an act or practice that in any
33 respect significantly differs from the management and operation plan
34 that formed the basis for the state risk manager's approval of the
35 program unless the program first notifies the state risk manager in
36 writing and obtains the state risk manager's approval. The state risk
37 manager shall approve or disapprove the proposed change within sixty
38 days of receipt of the notice. If the state risk manager denies a
39 requested change, the state risk manager shall specify in detail the
40 reasons for the denial and the manner in which the program would fail

1 to meet the requirements of this chapter or any rules adopted in
2 accordance with this chapter.

3 NEW SECTION. **Sec. 9.** (1) A joint self-insurance program may by
4 resolution of the program designate a person having experience with
5 investments or financial matters as treasurer of the program. The
6 program must require a bond obtained from a surety company in an
7 amount and under the terms and conditions that the program finds will
8 protect against loss arising from mismanagement or malfeasance in
9 investing and managing program funds. The program may pay the premium
10 on the bond.

11 (2) All interest and earnings collected on joint self-insurance
12 program funds belong to the program and must be deposited to the
13 program's credit in the proper program account.

14 NEW SECTION. **Sec. 10.** (1) An employee or official of a
15 participating public benefit hospital entity in a joint self-
16 insurance program may not directly or indirectly receive anything of
17 value for services rendered in connection with the operation and
18 management of a self-insurance program other than the salary and
19 benefits provided by his or her employer or the reimbursement of
20 expenses reasonably incurred in furtherance of the operation or
21 management of the program. An employee or official of a participating
22 public benefit hospital entity in a joint self-insurance program may
23 not accept or solicit anything of value for personal benefit or for
24 the benefit of others under circumstances in which it can be
25 reasonably inferred that the employee's or official's independence of
26 judgment is impaired with respect to the management and operation of
27 the program.

28 (2) RCW 48.30.140, 48.30.150, and 48.30.157 apply to the use of
29 insurance producers by a joint self-insurance program.

30 NEW SECTION. **Sec. 11.** A joint self-insurance program approved
31 in accordance with this chapter is exempt from insurance premium
32 taxes, fees assessed under chapter 48.02 RCW, chapters 48.32 and
33 48.32A RCW, business and occupation taxes imposed under chapter 82.04
34 RCW, and any assigned risk plan or joint underwriting association
35 otherwise required by law. This section does not apply to, and no
36 exemption is provided for, insurance companies issuing policies to
37 cover program risks, and does not apply to or provide an exemption

1 for third-party administrators or insurance producers serving the
2 joint self-insurance program.

3 NEW SECTION. **Sec. 12.** (1) The state risk manager shall
4 establish and charge an investigation fee in an amount necessary to
5 cover the costs for the initial review and approval of a joint self-
6 insurance program. The fee must accompany the initial submission of
7 the plan of operation and management.

8 (2) The costs of subsequent reviews and investigations must be
9 charged to the joint self-insurance program being reviewed or
10 investigated in accordance with the actual time and expenses incurred
11 in the review or investigation.

12 (3) Any program failing to remit its assessment when due is
13 subject to denial of permission to operate or to a cease and desist
14 order until the assessment is paid.

15 NEW SECTION. **Sec. 13.** (1) Any person who files reports or
16 furnishes other information required under this title, required by
17 the state risk manager under the authority granted under this title,
18 or which is useful to the state risk manager in the administration of
19 this title, is immune from liability in any civil action or suit
20 arising from the filing of any such report or furnishing such
21 information to the state risk manager, unless actual malice, fraud,
22 or bad faith is shown.

23 (2) The state risk manager and his or her agents and employees
24 are immune from liability in any civil action or suit arising from
25 the publication of any report or bulletins or arising from
26 dissemination of information related to the official activities of
27 the state risk manager unless actual malice, fraud, or bad faith is
28 shown.

29 (3) The immunity granted under this section is in addition to any
30 common law or statutory privilege or immunity enjoyed by such person.
31 This section is not intended to abrogate or modify in any way such
32 common law or statutory privilege or immunity.

33 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
34 constitute a new chapter in Title 48 RCW.

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