

HOUSE BILL REPORT

SHB 1052

As Passed House:

January 27, 2021

Title: An act relating to group insurance contract performance standards.

Brief Description: Concerning group insurance contract performance standards.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Bateman, Cody, Kloba and Macri).

Brief History:

Committee Activity:

Health Care & Wellness: 1/13/21, 1/14/21 [DPS].

Floor Activity:

Passed House: 1/27/21, 95-0.

Brief Summary of Substitute Bill

- Requires performance standards included in group insurance contracts to be explained in the contract and filed with the Insurance Commissioner.
- Exempts performance payments to group policyholders required by contractual performance from the definition of a premium and return of a premium for purposes of premium taxes.
- Specifies that the prohibitions on rebates, discounts, and reductions in premiums and inducements to insure do not apply to the use of performance standards.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Cody, Chair; Bateman, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Bronoske, Davis,

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Harris, Macri, Maycumber, Riccelli, Rude, Simmons, Stonier, Tharinger and Ybarra.

Staff: Kim Weidenaar (786-7120).

Background:

Rebating.

Insurers are limited in the noncontractual benefits they may offer insureds or prospective insureds. No insurer may, as an inducement for the sale of insurance, offer or pay to the insured or the insured's employee, any rebate, reduction of premium, commission, or any other valuable consideration not expressly provided for in the policy.

Illegal Inducements.

No insurer, insurance producer, title insurance agent, or other person, as an inducement for the sale of insurance, may provide in any policy for, offer, sell, buy, offer or promise to buy or give, promise, or allow to or on behalf of, the insured or prospective insured: (1) any shares of stock or other securities; (2) certain contracts or other agreements; or (3) any prizes, goods, wares, or merchandise exceeding \$100 in value.

Insurance Premiums Tax.

The net premiums collected or received by authorized insurers, except title insurers and fraternal benefit societies, are subject to an insurance premium tax. This includes private insurers, health maintenance organizations, health care service contractors; and self-funded multiple employer welfare arrangements, if not preempted by the Employee Retirement Income Act of 1974.

Summary of Substitute Bill:

"Performance standard" is defined as a contractual provision in a group insurance contract that establishes a specific standard for the insurer's or health carrier's performance of an obligation in the contract, and under which the insurer or health carrier is required to remit a penalty payment, based on a percentage of the premium or a set dollar amount, to the group policyholder for the next policy term if the insurer or health carrier fails to comply with the standard.

The amount of the penalty may be based on a percentage of the overall premium owed to the insurer or health carrier by the policyholder. If a group insurance contract includes performance standards, the standards must be described in the group insurance contract and filed with the Insurance Commissioner.

Remittance of a performance payment to the group policyholder as required by a performance standard does not constitute a premium or a return of a premium for purposes of insurance premium taxes and health insurance premium taxes.

The prohibitions on an insurer offering, promising, giving, or paying the insured any rebate, discount, or reduction of premium and the prohibition on an insurer selling, buying, or offering the insured any stocks or other securities, any contract promising any profits or special returns or dividends, or any prizes, goods, or gift certificates over \$100 do not apply to performance standards that comply with these requirements.

The provisions relating to the use of performance standards do not apply to small group health plans.

The Insurance Commissioner may adopt rules to implement these provisions on performance standards.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Office of the Insurance Commissioner (OIC) supports this bill with several technical amendments. This bill would legalize a beneficial, existing industry practice that runs afoul of current law. Two years ago, the OIC raised concerns that certain Health Care Authority (HCA) contracts, including those for state employee health coverage, included performance standards, which violated current law and could be considered a change in the approved premium rates. These payments under current law also constitute an illegal inducement or rebate. Accordingly, the OIC worked with the HCA to develop language that would allow this practice to continue as performance standards can incentivize insurers to act more efficiently, which is beneficial for policy holders. This bill aligns the practice of using performance standards with the insurance code.

(Opposed) None.

(Other) While there are no concerns with the intent of the bill to ensure that HCA's use of performance standards can continue, there is some concern and uncertainty about the applicability of the bill and how it intersects with current insurance regulation.

Persons Testifying: (In support) Representative Bateman, prime sponsor; and Jon Noski and Darryl Colman, Office of the Insurance Commissioner.

(Other) Chris Bandoli, Association of Washington Healthcare Plans.

Persons Signed In To Testify But Not Testifying: None.