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**ENGROSSED SUBSTITUTE HOUSE BILL 1222**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** House Health Care & Wellness (originally sponsored by Representatives Orwall, Simmons, Reeves, Reed, Leavitt, Kloba, Farivar, Doglio, Morgan, Slatter, Ramel, Goodman, Callan, Fosse, Pollet, Lekanoff, and Macri)

READ FIRST TIME 01/30/23.

1       AN ACT Relating to requiring coverage for hearing instruments;  
2 amending RCW 48.43.715 and 41.05.830; adding a new section to chapter  
3 48.43 RCW; adding a new section to chapter 41.05 RCW; and providing  
4 an expiration date.

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

6       NEW SECTION.   **Sec. 1.** A new section is added to chapter 48.43  
7 RCW to read as follows:

8       (1) For nongrandfathered group health plans other than small  
9 group health plans issued or renewed on or after January 1, 2024, a  
10 health carrier shall include coverage for hearing instruments,  
11 including bone conduction hearing devices. This section does not  
12 include coverage of over-the-counter hearing instruments.

13       (2) Coverage shall also include the initial assessment, fitting,  
14 adjustment, auditory training, and ear molds as necessary to maintain  
15 optimal fit. Coverage of the services in this subsection shall  
16 include services for enrollees who intend to obtain or have already  
17 obtained any hearing instrument, including an over-the-counter  
18 hearing instrument.

19       (3) A health carrier shall provide coverage for hearing  
20 instruments as provided in subsection (1) of this section at no less  
21 than \$3,000 per ear with hearing loss every 36 months.

1 (4) The services and hearing instruments covered under this  
2 section are not subject to the enrollee's deductible unless the  
3 health plan is offered as a qualifying health plan for a health  
4 savings account. For such a qualifying health plan, the carrier may  
5 apply a deductible to coverage of the services covered under this  
6 section only at the minimum level necessary to preserve the  
7 enrollee's ability to claim tax exempt contributions and withdrawals  
8 from the enrollee's health savings account under internal revenue  
9 service laws and regulations.

10 (5) Coverage for a minor under 18 years of age shall be available  
11 under this section only after the minor has received medical  
12 clearance within the preceding six months from:

13 (a) An otolaryngologist for an initial evaluation of hearing  
14 loss; or

15 (b) A licensed physician, which indicates there has not been a  
16 substantial change in clinical status since the initial evaluation by  
17 an otolaryngologist.

18 (6) For the purposes of this section:

19 (a) "Hearing instrument" has the same meaning as defined in RCW  
20 18.35.010.

21 (b) "Over-the-counter hearing instrument" has the same meaning as  
22 "over-the-counter hearing aid" in 21 C.F.R. Sec. 800.30 as of  
23 December 28, 2022.

24 **Sec. 2.** RCW 48.43.715 and 2022 c 236 s 2 are each amended to  
25 read as follows:

26 (1) The commissioner, in consultation with the board and the  
27 health care authority, shall, by rule, select the largest small group  
28 plan in the state by enrollment as the benchmark plan for the  
29 individual and small group market for purposes of establishing the  
30 essential health benefits in Washington state.

31 (2) If the essential health benefits benchmark plan for the  
32 individual and small group market does not include all of the ten  
33 essential health benefits categories, the commissioner, in  
34 consultation with the board and the health care authority, shall, by  
35 rule, supplement the benchmark plan benefits as needed.

36 (3) All individual and small group health plans must cover the  
37 ten essential health benefits categories, other than a health plan  
38 offered through the federal basic health program, a grandfathered  
39 health plan, or medicaid. Such a health plan may not be offered in

1 the state unless the commissioner finds that it is substantially  
2 equal to the benchmark plan. When making this determination, the  
3 commissioner:

4 (a) Must ensure that the plan covers the ten essential health  
5 benefits categories;

6 (b) May consider whether the health plan has a benefit design  
7 that would create a risk of biased selection based on health status  
8 and whether the health plan contains meaningful scope and level of  
9 benefits in each of the ten essential health benefits categories;

10 (c) Notwithstanding (a) and (b) of this subsection, for benefit  
11 years beginning January 1, 2015, must establish by rule the review  
12 and approval requirements and procedures for pediatric oral services  
13 when offered in stand-alone dental plans in the nongrandfathered  
14 individual and small group markets outside of the exchange; and

15 (d) Must allow health carriers to also offer pediatric oral  
16 services within the health benefit plan in the nongrandfathered  
17 individual and small group markets outside of the exchange.

18 (4) Beginning December 15, 2012, and every year thereafter, the  
19 commissioner shall submit to the legislature a list of state-mandated  
20 health benefits, the enforcement of which will result in federally  
21 imposed costs to the state related to the plans sold through the  
22 exchange because the benefits are not included in the essential  
23 health benefits designated under federal law. The list must include  
24 the anticipated costs to the state of each state-mandated health  
25 benefit on the list and any statutory changes needed if funds are not  
26 appropriated to defray the state costs for the listed mandate. The  
27 commissioner may enforce a mandate on the list for the entire market  
28 only if funds are appropriated in an omnibus appropriations act  
29 specifically to pay the state portion of the identified costs.

30 (5) Upon authorization by the legislature to modify the state's  
31 essential health benefits benchmark plan under 45 C.F.R. Sec.  
32 156.111, the commissioner shall include coverage for donor human milk  
33 under RCW 48.43.815 and hearing instruments and services required  
34 under section 1 of this act in the updated plan.

35 **Sec. 3.** RCW 41.05.830 and 2018 c 159 s 1 are each amended to  
36 read as follows:

37 (1) Subject to appropriation, a health plan offered to employees  
38 and their covered dependents under this chapter issued or renewed on  
39 or after January 1, 2019, must include coverage for hearing

1 instruments. Coverage must include a new hearing instrument every  
2 five years and services and supplies such as the initial assessment,  
3 fitting, adjustment, and auditory training.

4 (2) The hearing instrument must be recommended by a licensed  
5 audiologist, hearing aid specialist, or a licensed physician or  
6 osteopathic physician who specializes in otolaryngology and dispensed  
7 by a licensed audiologist, hearing aid specialist, or a licensed  
8 physician or osteopathic physician who specializes in otolaryngology.

9 (3) For the purposes of this section, "hearing instrument" and  
10 "hearing aid specialist" have the same meaning as defined in RCW  
11 18.35.010.

12 (4) This section expires December 31, 2023.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 41.05  
14 RCW to read as follows:

15 A health plan offered to public employees and their covered  
16 dependents under this chapter issued or renewed on or after January  
17 1, 2024, is subject to section 1 of this act.

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