
SECOND SUBSTITUTE HOUSE BILL 2551

State of Washington

61st Legislature

2010 Regular Session

By House Ways & Means (originally sponsored by Representatives Cody, Green, Sullivan, Pedersen, Darneille, and Moeller)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to the establishment of the Washington vaccine
2 association; amending RCW 43.70.720; adding a new section to chapter
3 43.24 RCW; adding a new section to chapter 48.43 RCW; adding a new
4 section to chapter 82.04 RCW; adding a new chapter to Title 70 RCW;
5 prescribing penalties; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Association" means the Washington vaccine association.

10 (2) "Covered lives" means all persons under the age of nineteen in
11 Washington state who are:

12 (a) Covered under an individual or group health benefit plan issued
13 or delivered in Washington state or an individual or group health
14 benefit plan that otherwise provides benefits to Washington residents;
15 or

16 (b) Enrolled in a group health benefit plan administered by a
17 third-party administrator. Persons under the age of nineteen for whom
18 federal funding is used to purchase vaccines or who are enrolled in
19 state purchased health care programs covering low-income children

1 including, but not limited to, apple health for kids under RCW
2 74.09.470 and the basic health plan under chapter 70.47 RCW are not
3 considered "covered lives" under this chapter.

4 (3) "Estimated vaccine cost" means the estimated cost to the state
5 over the course of a state fiscal year for the purchase and
6 distribution of vaccines purchased at the federal discount rate by the
7 department of health.

8 (4) "Health benefit plan" has the same meaning as defined in RCW
9 48.43.005.

10 (5) "Health carrier" has the same meaning as defined in RCW
11 48.43.005.

12 (6) "Secretary" means the secretary of the department of health.

13 (7) "State supplied vaccine" means vaccine purchased by the state
14 department of health for covered lives for whom the state is purchasing
15 vaccine using state funds raised via assessments on health carriers and
16 third-party administrators as provided in this chapter.

17 (8) "Third-party administrator" means any person or entity who, on
18 behalf of a health insurer or health care purchaser, receives or
19 collects charges, contributions, or premiums for, or adjusts or settles
20 claims on or for, residents of Washington state or Washington health
21 care providers and facilities.

22 (9) "Total nonfederal program cost" means the estimated vaccine
23 cost less the amount of federal revenue available to the state for the
24 purchase and distribution of vaccines.

25 (10) "Vaccine" means a preparation of killed or attenuated living
26 microorganisms, or fraction thereof, that upon administration
27 stimulates immunity that protects against disease and is approved by
28 the federal food and drug administration as safe and effective and
29 recommended by the advisory committee on immunization practices of the
30 centers for disease control and prevention for administration to
31 children under the age of nineteen years.

32 NEW SECTION. **Sec. 2.** There is created a nonprofit corporation to
33 be known as the Washington vaccine association. The association is
34 formed for the primary purpose of collecting and remitting adequate
35 funds from health carriers and third-party administrators for the cost
36 of vaccines provided to certain children in Washington state. The
37 association may also undertake other activities in support of a broader

1 private/public initiative to protect Washington's children from the
2 effects of preventable infectious diseases through increasing
3 immunization rates.

4 NEW SECTION. **Sec. 3.** (1) The association is comprised of all
5 health carriers issuing or renewing health benefit plans in Washington
6 state and all third-party administrators conducting business on behalf
7 of residents of Washington state or Washington health care providers
8 and facilities. Third-party administrators are subject to registration
9 under section 9 of this act.

10 (2) The association is a nonprofit corporation under chapter 24.03
11 RCW and has the powers granted under that chapter.

12 (3) The board of directors includes the following voting members:

13 (a) Four members, selected from health carriers or third-party
14 administrators, excluding health maintenance organizations, that have
15 the most fully insured and self-funded covered lives in Washington
16 state. The count of total covered lives includes enrollment in all
17 companies included in their holding company system. Each health
18 carrier or third-party administrator is entitled to no more than a
19 single position on the board to represent all entities under common
20 ownership or control.

21 (b) One member selected from the health maintenance organization
22 having the most fully insured and self-insured covered lives in
23 Washington state. The count of total lives includes enrollment in all
24 companies included in its holding company system. Each health
25 maintenance organization is entitled to no more than a single position
26 on the board to represent all entities under common ownership or
27 control.

28 (c) One member, representing health carriers not otherwise
29 represented on the board under (a) or (b) of this subsection, who is
30 elected from among the health carrier members not designated under (a)
31 or (b) of this subsection.

32 (d) One member, representing Taft Hartley plans, and one member
33 representing Washington state employers offering self-funded health
34 coverage, appointed by the secretary from a list of nominees submitted
35 by the Puget Sound health alliance.

36 (e) Two physician members appointed by the secretary, including at
37 least one board certified pediatrician.

1 (f) The secretary, or a designee of the secretary with expertise in
2 childhood immunization purchasing and distribution.

3 (4) The directors' terms and appointments must be specified in the
4 plan of operation adopted by the association.

5 (5) The board of directors of the association shall:

6 (a) Prepare and adopt articles of association and bylaws;

7 (b) Prepare and adopt a plan of operation;

8 (c) Submit the plan of operation to the secretary for approval;

9 (d) Conduct all activities in accordance with the approved plan of
10 operation;

11 (e) Enter into contracts as necessary or proper to collect and
12 disburse the assessment;

13 (f) Enter into contracts as necessary or proper to administer the
14 plan of operation;

15 (g) Sue or be sued, including taking any legal action necessary or
16 proper for the recovery of any assessment for, on behalf of, or against
17 members of the association or other participating person;

18 (h) Appoint, from among its directors, committees as necessary to
19 provide technical assistance in the operation of the association,
20 including the hiring of independent consultants as necessary;

21 (i) Obtain such liability and other insurance coverage for the
22 benefit of the association, its directors, officers, employees, and
23 agents as may in the judgment of the board of directors be helpful or
24 necessary for the operation of the association;

25 (j) By May 1, 2010, establish the estimated amount of the
26 assessment needed for the period of May 1, 2010, through December 31,
27 2010, based upon the estimate provided to the association under section
28 4(1) of this act; and notify, in writing, each health carrier and
29 third-party administrator of the health carrier's or third-party
30 administrator's total assessment for this period by May 15, 2010;

31 (k) On an annual basis, beginning no later than November 1, 2010,
32 and by November 1st of each year thereafter, establish the estimated
33 amount of the assessment;

34 (l) Notify, in writing, each health carrier and third-party
35 administrator of the health carrier's or third-party administrator's
36 estimated total assessment by November 15th of each year;

37 (m) Submit a periodic report to the secretary listing those health

1 carriers or third-party administrators that failed to remit their
2 assessments and audit health carrier and third-party administrator
3 books and records for accuracy of assessment payment submission;

4 (n) Allow each health carrier or third-party administrator no more
5 than ninety days after the notification required by (l) of this
6 subsection to remit any amounts in arrears or submit a payment plan,
7 subject to approval by the association and initial payment under an
8 approved payment plan;

9 (o) Deposit annual assessments collected by the association, less
10 the association's administrative costs, with the state treasurer to the
11 credit of the universal vaccine purchase account established in RCW
12 43.70.720;

13 (p) Borrow and repay such working capital, reserve, or other funds
14 as, in the judgment of the board of directors, may be helpful or
15 necessary for the operation of the association; and

16 (q) Perform any other functions as may be necessary or proper to
17 carry out the plan of operation and to affect any or all of the
18 purposes for which the association is organized.

19 (6) The secretary shall convene the initial meeting of the
20 association board of directors.

21 NEW SECTION. **Sec. 4.** (1) The secretary shall estimate the total
22 nonfederal program cost for the upcoming calendar year by October 1,
23 2010, and October 1st of each year thereafter. Additionally, the
24 secretary shall subtract any amounts needed to serve children enrolled
25 in state purchased health care programs covering low-income children
26 for whom federal vaccine funding is not available, and report the final
27 amount to the association. In addition, the secretary shall perform
28 such calculation for the period of May 1st through December 31st, 2010,
29 as soon as feasible but in no event later than April 1, 2010. The
30 estimates shall be timely communicated to the association.

31 (2) The board of directors of the association shall determine the
32 method and timing of assessment collection in consultation with the
33 department of health. The board shall use a formula designed by the
34 board to ensure the total anticipated nonfederal program cost, minus
35 costs for other children served through state-purchased health care
36 programs covering low-income children, calculated under subsection (1)
37 of this section, is collected and transmitted to the universal vaccine

1 purchase account created in RCW 43.70.720 in order to ensure adequacy
2 of state funds to order state-supplied vaccine from federal centers for
3 disease control and prevention.

4 (3) Each licensed health carrier and third-party administrator must
5 be assessed and is required to timely remit payment for its share of
6 the total amount needed to fund nonfederal program costs calculated by
7 the department of health. Such an assessment includes additional funds
8 as determined necessary by the board to cover the reasonable costs for
9 the association's administration. The board shall determine the
10 assessment methodology, with the intent of ensuring that the nonfederal
11 costs are based on actual usage of vaccine for a health carrier or
12 third-party administrator's covered lives. The board may in addition
13 provide financial or other incentives for achievement of higher
14 vaccination rates. State and local governments and school districts
15 must pay their portion of vaccine expense for covered lives under this
16 chapter.

17 (4) The board of the association shall develop a mechanism through
18 which the number and cost of doses of vaccine purchased under this
19 chapter that have been administered to children covered by each health
20 carrier and third-party administrator are attributed to each such
21 health carrier and third-party administrator. Except as otherwise
22 permitted by the board, this mechanism must include at least the
23 following: Date of service; patient name; vaccine received; and health
24 benefit plan eligibility. The data must be collected and maintained in
25 a manner consistent with applicable state and federal health
26 information privacy laws. Beginning November 1, 2011, and each
27 November 1st thereafter, the board shall factor the results of this
28 mechanism for the previous year into the determination of the
29 appropriate assessment amount for each health carrier and third-party
30 administrator for the upcoming year.

31 (5) For any year in which the total calculated cost to be received
32 from association members through assessments is less than the total
33 nonfederal program cost, the association must pay the difference to the
34 state for deposit into the universal vaccine purchase account
35 established in RCW 43.70.720. The board may assess, and the health
36 carrier and third-party administrators are obligated to pay, their
37 proportionate share of such costs and appropriate reserves as
38 determined by the board.

1 (6) The aggregate amount to be raised by the association in any
2 year may be reduced by any surpluses remaining from prior years.

3 (7) In order to generate sufficient start-up funding, the
4 association may accept prepayment from member health carriers and
5 third-party administrators, subject to offset of future amounts
6 otherwise owing or other repayment method as determined by the board.
7 The initial deposit of start-up funding must be deposited into the
8 universal vaccine purchase account on or before April 30, 2010.

9 NEW SECTION. **Sec. 5.** (1) The board of the association shall
10 establish a committee for the purposes of developing recommendations to
11 the board regarding selection of vaccines to be purchased in each
12 upcoming year by the department. The committee must be composed of at
13 least five voting board members, including at least three health
14 carrier or third-party administrator members, one physician, and the
15 secretary or the secretary's designee. The committee must also include
16 a representative of vaccine manufacturers, who is a nonvoting member of
17 the committee. The representative of vaccine manufacturers must be
18 chosen by the secretary from a list of three nominees submitted
19 collectively by vaccine manufacturers on an annual basis.

20 (2) In selecting vaccines to purchase, the following factors should
21 be strongly considered by the committee: Patient safety and clinical
22 efficacy, public health and purchaser value, patient and provider
23 choice, and stability of vaccine supply.

24 NEW SECTION. **Sec. 6.** In addition to the duties and powers
25 enumerated elsewhere in this chapter:

26 (1) The association may, pursuant to either vote of its board of
27 directors or request of the secretary, audit compliance by any health
28 carrier or third-party administrator of any reporting obligations
29 established under the association's plan of operation. Upon failure of
30 any health carrier or third-party administrator to reimburse the costs
31 of such audit as certified by vote of the association's board of
32 directors within forty-five days of notice of such vote, the secretary
33 shall assess a civil penalty of one hundred fifty percent of the amount
34 of such costs.

35 (2) The association may establish an interest charge for late
36 payment of any assessment under this chapter. The secretary shall

1 assess a civil penalty against any health carrier or third-party
2 administrator that fails to pay an assessment within three months of
3 notification under section 3 of this act. The civil penalty under this
4 subsection is one hundred fifty percent of such assessment.

5 (3) The secretary and the association are authorized to file liens
6 and seek judgment to recover amounts in arrears and civil penalties,
7 and recover reasonable collection costs, including reasonable
8 attorneys' fees and costs. Civil penalties so levied must be deposited
9 in the universal vaccine purchase account created in RCW 43.70.720.

10 (4) The secretary may adopt rules under chapter 34.05 RCW as
11 necessary to carry out the purposes of this section.

12 NEW SECTION. **Sec. 7.** The board of directors of the association
13 shall submit to the secretary, no later than one hundred twenty days
14 after the close of the association's fiscal year, a financial report in
15 a form approved by the secretary.

16 NEW SECTION. **Sec. 8.** No liability on the part of, and no cause of
17 action of any nature, shall arise against any member of the board of
18 the association, against an employee or agent of the association, or
19 against any health care provider for any lawful action taken by them in
20 the performance of their duties or required activities under this
21 chapter.

22 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.24 RCW
23 to read as follows:

24 (1)(a) Beginning September 1, 2010, a third-party administrator
25 must register with the department of licensing and renew its
26 registration on an annual basis thereafter prior to December 31st of
27 each year, or within ten days after the registrant changes its name,
28 business name, business address, or business telephone number,
29 whichever occurs sooner.

30 (b) The registrant shall pay the registration or renewal fee
31 established by the department of licensing as provided in RCW
32 43.24.086.

33 (c) Any person or entity that is acting as or holding itself out to
34 be a third-party administrator while failing to have registered under
35 this section is subject to a civil penalty of not less than one

1 thousand dollars nor more than ten thousand dollars for each violation.
2 The civil penalty is in addition to any other penalties that may be
3 imposed for violations of other laws of this state.

4 (2) For the purposes of this section, "third-party administrator"
5 has the same meaning as defined in section 1 of this act.

6 (3) The department of licensing may adopt rules under chapter 34.05
7 RCW as necessary to implement this section.

8 **Sec. 10.** RCW 43.70.720 and 2009 c 564 s 934 are each amended to
9 read as follows:

10 The universal vaccine purchase account is created in the custody of
11 the state treasurer. Receipts from public and private sources for the
12 purpose of increasing access to vaccines for children may be deposited
13 into the account. Expenditures from the account must be used
14 exclusively for the purchase of vaccines, at no cost to health care
15 providers in Washington, to administer to children under nineteen years
16 old who are not eligible to receive vaccines at no cost through federal
17 programs. Only the secretary or the secretary's designee may authorize
18 expenditures from the account. The account is subject to allotment
19 procedures under chapter 43.88 RCW, but an appropriation is not
20 required for expenditures.

21 NEW SECTION. **Sec. 11.** Sections 1 through 8 and 12 through 14 of
22 this act constitute a new chapter in Title 70 RCW.

23 NEW SECTION. **Sec. 12.** (1) The association board may, on or after
24 June 30, 2015, vote to recommend termination of the association if it
25 finds that the original intent of its formation and operation, which is
26 to ensure more cost-effective purchase and distribution of vaccine than
27 if provided through uncoordinated purchase by health care providers,
28 has not been achieved. The association board shall provide notice of
29 the recommendation to the relevant policy and fiscal committees of the
30 legislature within thirty days of the vote being taken by the
31 association board. If the legislature has not acted by the last day of
32 the next regular legislative session to reject the board's
33 recommendation, the board may vote to permanently dissolve the
34 association.

1 (2) In the event of a voluntary or involuntary dissolution of the
2 association, funds remaining in the universal purchase vaccine account
3 created in RCW 43.70.720 that were collected under this chapter must be
4 returned to the member health carrier and third-party administrators in
5 proportion to their previous year's contribution, from any balance
6 remaining following the repayment of any prepayments for start-up
7 funding not previously recouped by such member.

8 NEW SECTION. **Sec. 13.** Physicians and clinics ordering state
9 supplied vaccine must ensure they have billing mechanisms and practices
10 in place that enable the association to accurately track vaccine
11 delivered to association members' covered lives and must submit
12 documentation in such a form as may be prescribed by the board in
13 consultation with state physician organizations. Physicians and other
14 persons providing childhood immunization are strongly encouraged to use
15 state supplied vaccine whenever possible. Nothing in this chapter
16 prohibits health carriers and third-party administrators from denying
17 claims for vaccine serum costs when the serum or serums providing
18 similar protection are provided or available via state supplied
19 vaccine.

20 NEW SECTION. **Sec. 14.** If the requirement that any segment of
21 health carriers, third-party administrators, or state or local
22 governmental entities provide funding for the program established in
23 this chapter is invalidated by a court of competent jurisdiction, the
24 board of the association may terminate the program one hundred twenty
25 days following a final judicial determination on the matter.

26 NEW SECTION. **Sec. 15.** A new section is added to chapter 48.43 RCW
27 to read as follows:

28 Assessments paid by carriers under section 4 of this act may be
29 considered medical expenses for purposes of rate setting and regulatory
30 filings.

31 NEW SECTION. **Sec. 16.** A new section is added to chapter 82.04 RCW
32 to read as follows:

33 This chapter does not apply to assessments described in sections 3

1 and 4 of this act received by a nonprofit corporation established under
2 section 2 of this act.

3 NEW SECTION. **Sec. 17.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and takes effect
6 immediately.

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