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**SENATE BILL 5718**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Conway, Lovick, Nobles, and C. Wilson; by request of Health Care Authority

AN ACT Relating to insurance benefits for retired or disabled school employees; and amending RCW 41.05.011, 41.05.022, 41.05.080, and 41.05.740.

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

**Sec.**  RCW 41.05.011 and 2019 c 411 s 4 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means the Washington state health care authority.

(2) "Board" means the public employees' benefits board established under RCW 41.05.055 and the school employees' benefits board established under RCW 41.05.740.

(3) "Dependent care assistance program" means a benefit plan whereby employees and school employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 129 or other sections of the internal revenue code.

(4) "Director" means the director of the authority.

(5) "Emergency service personnel killed in the line of duty" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010 who die as a result of injuries sustained in the course of employment as determined consistent with Title 51 RCW by the department of labor and industries.

(6)(a) "Employee" for the public employees' benefits board program includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (i) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021(1)(g); (ii) employees of employee organizations representing state civil service employees, at the option of each such employee organization; (iii) through December 31, 2019, employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (iv) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021(1) (f) and (g); (v) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021(1) (g) and (n); and (vi) through December 31, 2019, employees of a charter school established under chapter 28A.710 RCW. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under this chapter or by the authority under this chapter.

(b) Effective January 1, 2020, "school employee" for the school employees' benefits board program includes:

(i) All employees of school districts and charter schools established under chapter 28A.710 RCW;

(ii) Represented employees of educational service districts; and

(iii) Effective January 1, 2024, all employees of educational service districts.

(7) "Employee group" means employees of a similar employment type, such as administrative, represented classified, nonrepresented classified excluding such employees in educational service districts until December 31, 2023, confidential, represented certificated, or nonrepresented certificated excluding such employees in educational service districts until December 31, 2023, within a school employees' benefits board organization.

(8)(a) "Employer" for the public employees' benefits board program means the state of Washington.

(b) "Employer" for the school employees' benefits board program means school districts and educational service districts and charter schools established under chapter 28A.710 RCW.

(9) "Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, employee organizations representing state civil service employees, and through December 31, 2019, school districts, charter schools, and through December 31, 2023, educational service districts obtaining employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the public employees' benefits board.

(10)(a) "Employing agency" for the public employees' benefits board program means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, or other political subdivision; and a tribal government covered by this chapter.

(b) "Employing agency" for the school employees' benefits board program means school districts, educational service districts, and charter schools.

(11) "Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

(12) "Flexible benefit plan" means a benefit plan that allows employees and school employees to choose the level of health care coverage provided and the amount of employee or school employee contributions from among a range of choices offered by the authority.

(13) "Insuring entity" means an insurer as defined in chapter 48.01 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW.

(14) "Medical flexible spending arrangement" means a benefit plan whereby state and school employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(15) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the salary reduction plan.

(16) "Plan year" means the time period established by the authority.

(17) "Premium payment plan" means a benefit plan whereby public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(18) "Public employee" has the same meaning as employee and school employee.

(19) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiving a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district, educational service district, or charter school on or after October 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32, 41.35, or 41.40 RCW;

(c) Persons who separate from employment with a school district, educational service district, or charter school due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35, or 41.40 RCW.

(20) "Retired or disabled state employee" means:

(a) Persons who separated from employment with the state and are receiving a retirement allowance under chapter 2.10, 2.12, 41.37, 41.40, or 43.43 RCW;

(b) Persons who separate from employment with the state, and immediately upon separation receive a retirement allowance under chapter 2.10, 2.12, 41.37, 41.40, or 43.43 RCW;

(c) Persons who separate from employment with the state due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 2.10, 2.12, 41.37, 41.40, or 43.43 RCW;

(d) Persons who separate from employment with a higher education institution, and immediately upon separation receive a retirement allowance from an annuity or retirement plan authorized under RCW 28B.10.400 for employees in various positions within higher education institutions; and

(e) Members of the legislature who voluntarily or involuntarily leave state office whether receiving a retirement allowance or not.

(21) "Salary" means a state or school employee's monthly salary or wages.

((~~(21)~~)) (22) "Salary reduction plan" means a benefit plan whereby public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

((~~(22)~~)) (23) "School employees' benefits board organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees' benefits board.

((~~(23)~~)) (24) "School year" means school year as defined in RCW 28A.150.203(11).

((~~(24)~~)) (25) "Seasonal employee" means a state employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

((~~(25)~~)) (26) "Separated employees" means persons who separate from employment with an employer as defined in((~~: (a)~~)) RCW 41.32.010(17) on or after July 1, 1996((~~;~~)), or ((~~(b)~~)) RCW 41.35.010 on or after September 1, 2000((~~;~~)), or ((~~(c)~~)) RCW 41.40.010 on or after March 1, 2002((~~;~~)), and who are at least age fifty-five and have at least ten years of service under ((~~the~~)):

(a) The teachers' retirement system plan 3 as defined in RCW 41.32.010(33)((~~, the~~));

(b) The Washington school employees' retirement system plan 3 as defined in RCW 41.35.010((~~,~~)); or

((~~the~~)) (c) The public employees' retirement system plan 3 as defined in RCW 41.40.010.

((~~(26)~~)) (27) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, the department of health, the basic health plan, the state health care authority, the department of labor and industries, the department of corrections, the department of veterans affairs, and local school districts.

((~~(27)~~)) (28) "Tribal government" means an Indian tribal government as defined in section 3(32) of the employee retirement income security act of 1974, as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

**Sec.**  RCW 41.05.022 and 2018 c 260 s 7 are each amended to read as follows:

(1) The health care authority is hereby designated as the single state agent for purchasing health services.

(2) On and after January 1, 1995, ((~~at least the following state-purchased health services programs shall be merged into a single, community-rated risk pool: Health benefits for groups of employees of school districts and educational service districts that voluntarily purchase health benefits as provided in RCW 41.05.011 through December 31, 2019; health benefits for employees; health benefits for eligible retired or disabled school employees not eligible for parts A and B of medicare; and health benefits for eligible state retirees not eligible for parts A and B of medicare~~)) the state purchased health benefits for the following groups shall be merged into a single, community-rated risk pool:

(a) Employees;

(b) Retired or disabled state employees who are not eligible for parts A and B of medicare;

(c) Retired or disabled school employees who are not eligible for parts A and B of medicare and who are enrolled in public employees' benefits board benefits as of December 31, 2022;

(d) Separated employees as defined in RCW 41.05.011(26)(c) and who are not eligible for parts A and B of medicare; and

(e) Separated employees as defined in RCW 41.05.011(26) (a) and (b) who are not eligible for parts A and B of medicare and who are enrolled in public employees' benefits board benefits as of December 31, 2022.

(3) On and after January 1, 2020, the state purchased health benefits for the following groups ((~~of school~~)) employees ((~~of school employees' benefits board organizations shall be merged into a single, community-rated risk pool separate and distinct from the pool described in subsection (2) of this section~~)) shall be merged into a single, community-rated risk pool separate and distinct from the pool established in subsection (2) of this section:

(a) School employees;

(b) Retired or disabled school employees who are not eligible for parts A and B of medicare and who are not enrolled in public employees' benefits board benefits as of January 1, 2023; and

(c) Separated employees as defined in RCW 41.05.011(26) (a) and (b) who are not eligible for parts A and B of medicare and who are not enrolled in public employees' benefits board benefits as of January 1, 2023.

(4) ((~~By December 15, 2018, the health care authority, in consultation with the board, shall submit to the appropriate committees of the legislature a complete analysis of the most appropriate risk pool for the retired and disabled school employees, to include at a minimum an analysis of the size of the nonmedicare and medicare retiree enrollment pools, the impacts on cost for state and school district retirees of moving retirees from one pool to another, the need for and the amount of an ongoing retiree subsidy allocation from the active school employees, and the timing and suggested approach for a transition from one risk pool to another.~~

~~(5)~~)) At a minimum, and regardless of other legislative enactments, the state health services purchasing agent shall:

(a) Require that a public agency that provides subsidies for a substantial portion of services now covered under the basic health plan use uniform eligibility processes, insofar as may be possible, and ensure that multiple eligibility determinations are not required;

(b) Require that a health care provider or a health care facility that receives funds from a public program provide care to state residents receiving a state subsidy who may wish to receive care from them, and that an insuring entity that receives funds from a public program accept enrollment from state residents receiving a state subsidy who may wish to enroll with them;

(c) Strive to integrate purchasing for all publicly sponsored health services in order to maximize the cost control potential and promote the most efficient methods of financing and coordinating services;

(d) Consult regularly with the governor, the legislature, and state agency directors whose operations are affected by the implementation of this section; and

(e) Ensure the control of benefit costs under managed competition by adopting rules to prevent an employing agency from entering into an agreement with employees or employee organizations when the agreement would result in increased utilization in board plans or reduce the expected savings of managed competition.

**Sec.**  RCW 41.05.080 and 2018 c 260 s 15 are each amended to read as follows:

(1) Under the qualifications, terms, conditions, and benefits set by the public employees' benefits board:

(a) Retired or disabled state employees, retired or disabled school employees who are not eligible for parts A and B of medicare who are enrolled in public employees' benefits board benefits as of December 31, 2022, retired or disabled school employees who are eligible for parts A and B of medicare, retired or disabled employees of county, municipal, or other political subdivisions, or retired or disabled employees of tribal governments covered by this chapter may continue their participation in insurance plans and contracts after retirement or disablement;

(b) Separated employees as defined in RCW 41.05.011(26)(c), separated employees as defined in RCW 41.05.011(26) (a) and (b) who are eligible for parts A and B of medicare, and separated employees as defined in RCW 41.05.011(26) (a) and (b) who are not eligible for parts A and B of medicare who are enrolled in public employees' benefits board benefits as of December 31, 2022, may continue their participation in insurance plans and contracts if participation is selected immediately upon separation from employment;

(c) Surviving spouses, surviving state registered domestic partners, and dependent children of emergency service personnel killed in the line of duty may participate in insurance plans and contracts.

(2) Rates charged ((~~surviving spouses and surviving state registered domestic partners of emergency service personnel killed in the line of duty, retired or disabled employees, separated employees, spouses, or dependent children~~)) to those defined in subsection (1)(a) through (c) of this section who are not eligible for parts A and B of medicare shall be based on the experience of the community-rated risk pool established under RCW 41.05.022(2).

(3) Rates charged to ((~~surviving spouses and surviving state registered domestic partners of emergency service personnel killed in the line of duty, retired or disabled employees, separated employees, spouses, or children~~)) those defined in subsection (1)(a) through (c) of this section who are eligible for parts A and B of medicare shall be calculated from a separate experience risk pool comprised only of individuals eligible for parts A and B of medicare; however, the premiums charged to medicare-eligible retired and disabled state employees and medicare-eligible retirees and disabled school employees shall be reduced by the amount of the subsidy provided under RCW 41.05.085.

(4) ((~~Surviving spouses, surviving state registered domestic partners, and dependent children of emergency service personnel killed in the line of duty and retired or disabled and separated employees~~)) Those defined in subsection (1)(a) through (c) of this section shall be responsible for payment of premium rates developed by the authority which shall include the cost to the authority of providing insurance coverage including any amounts necessary for reserves and administration in accordance with this chapter. These self pay rates will be established based on a separate rate for the employee, the spouse, state registered domestic partners, and the children.

((~~(5) The term "retired state employees" for the purpose of this section shall include but not be limited to members of the legislature whether voluntarily or involuntarily leaving state office.~~))

**Sec.**  RCW 41.05.740 and 2018 c 260 s 1 are each amended to read as follows:

(1) The school employees' benefits board is created within the authority. The function of the school employees' benefits board is to design and approve insurance benefit plans for school employees and to establish eligibility criteria for participation in insurance benefit plans.

(2) By September 30, 2017, the governor shall appoint the following voting members to the school employees' benefits board as follows:

(a) Two members from associations representing certificated employees;

(b) Two members from associations representing classified employees;

(c) Four members with expertise in employee health benefits policy and administration, one of which is nominated by an association representing school business officials; and

(d) The director of the authority or his or her designee.

(3) Initial members of the school employees' benefits board shall serve staggered terms not to exceed four years. Members appointed thereafter shall serve two-year terms.

(4) Compensation and reimbursement related to school employees' benefits board member service are as follows:

(a) Members of the school employees' benefits board must be compensated in accordance with RCW 43.03.250 and must be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060.

(b) While school employees' benefits board members are carrying out their powers and duties under this chapter ((~~41.05 RCW~~)), if the service of any certificated or classified employee results in a need for a school employees' benefits board organization to employ a substitute for such certificated or classified employee during such service, payment for such a substitute may be made by the authority from funds appropriated by the legislature for the school employees' benefits board program. If such substitute is paid by the authority, no deduction shall be made from the salary of the certificated or classified employee. In no event shall a school employees' benefits board organization deduct from the salary of a certificated or classified employee serving on the school employees' benefits board more than the amount paid the substitute employed by the school employees' benefits board organization.

(5) The director of the authority or his or her designee shall be the chair and another member shall be selected by the school employees' benefits board as vice chair. The chair shall conduct meetings of the school employees' benefits board. The vice chair shall preside over meetings in the absence of the chair. The school employees' benefits board shall develop bylaws for the conduct of its business.

(6) The school employees' benefits board shall:

(a) Study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment, and disability insurance, or any of, or combination of, the enumerated types of insurance for eligible school employees and their dependents on the best basis possible with relation both to the welfare of the school employees and the state. However, liability insurance should not be made available to dependents;

(b) Develop school employee benefit plans that include comprehensive, evidence-based health care benefits for school employees. In developing these plans, the school employees' benefits board shall consider the following elements:

(i) Methods of maximizing cost containment while ensuring access to quality health care;

(ii) Development of provider arrangements that encourage cost containment and ensure access to quality care including, but not limited to, prepaid delivery systems and prospective payment methods;

(iii) Wellness, preventive care, chronic disease management, and other incentives that focus on proven strategies;

(iv) Utilization review procedures to support cost-effective benefits delivery;

(v) Ways to leverage efficient purchasing by coordinating with the public employees' benefits board;

(vi) Effective coordination of benefits; and

(vii) Minimum standards for insuring entities;

(c) Authorize premium contributions for a school employee and the employee's dependents in a manner that encourages the use of cost-efficient health care systems. For participating school employees, the required school employee share of the cost for family coverage premiums may not exceed three times the premiums for a school employee purchasing single coverage for the same coverage plan;

(d) Determine the terms and conditions of school employee and dependent eligibility criteria, enrollment policies, and scope of coverage. At a minimum, the eligibility criteria established by the school employees' benefits board shall address the following:

(i) The effective date of coverage following hire;

(ii) The benefits eligibility criteria, but the school employees' benefits board's criteria shall be no more restrictive than requiring that a school employee be anticipated to work at least six hundred thirty hours per school year to be benefits eligible; and

(iii) Coverage for dependents, including criteria for legal spouses; children up to age twenty-six; children of any age with disabilities, mental illness, or intellectual or other developmental disabilities; and state registered domestic partners, as defined in RCW 26.60.020, and others authorized by the legislature;

(e) Establish terms and conditions for a school employees' benefits board organization to have the ability to locally negotiate eligibility criteria for a school employee who is anticipated to work less than six hundred thirty hours in a school year. A school employees' benefits board organization that elects to use a lower threshold of hours for benefits eligibility must use benefits authorized by the school employees' benefits board and shall do so as an enrichment to the state's definition of basic education;

(f) Establish penalties to be imposed when a school employees' benefits board organization fails to comply with established participation criteria; and

(g) Participate with the authority in the preparation of specifications and selection of carriers contracted for school employee benefit plan coverage of eligible school employees in accordance with the criteria set forth in rules. To the extent possible, the school employees' benefits board shall leverage efficient purchasing by coordinating with the public employees' benefits board.

(7) School employees shall choose participation in one of the health care benefit plans developed by the school employees' benefits board. Individual school employees eligible for benefits under subsection (6)(d) of this section may be permitted to waive coverage under terms and conditions established by the school employees' benefits board.

(8) By November 30, 2021, the authority shall review the benefit plans provided through the school employees' benefits board, complete an analysis of the benefits provided and the administration of the benefits plans, and determine whether provisions in chapter 13, Laws of 2017 3rd sp. sess. have resulted in cost savings to the state. The authority shall submit a report to the relevant legislative policy and fiscal committees summarizing the results of the review and analysis.

(9) As of January 1, 2023, under the qualifications, terms, conditions, and benefits set by the school employees' benefits board, retired or disabled school employees who are not eligible for parts A and B of medicare and who are not enrolled in public employees' benefits board benefits as of December 31, 2022, may continue their participation in insurance plans and contracts after retirement or disablement.

(10) As of January 1, 2023, under the qualifications, terms, conditions, and benefits set by the school employees' benefits board, separated employees defined in RCW 41.05.011(26) (a) and (b) who are not eligible for parts A and B of medicare and who are not enrolled in public employees' benefits board benefits as of December 31, 2022, may continue their participation in insurance plans and contracts if participation is selected immediately upon separation from employment with their school employees' benefits board organization.

(11) Rates charged to those defined in subsections (9) and (10) of this section shall be based on the experience of the community-rated risk pool established under RCW 41.05.022(3).

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