
SUBSTITUTE HOUSE BILL 1052

State of Washington

67th Legislature

2021 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Bateman, Cody, Kloba, and Macri)

READ FIRST TIME 01/19/21.

1 AN ACT Relating to group insurance contract performance
2 standards; amending RCW 48.30.140 and 48.30.150; adding a new section
3 to chapter 48.30 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature intends to align the
6 insurance code and performance-based contracting to ensure the
7 continued practice of using performance standards and performance
8 guarantees in group insurance contracts, including those entered into
9 by the health care authority.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.30
11 RCW to read as follows:

12 (1) For purposes of this section, "performance standard" means a
13 contractual provision in a group insurance contract that establishes
14 a specific standard for the insurer's or health carrier's performance
15 of an obligation in the contract, and under which the insurer or
16 health carrier is required to remit a penalty payment, based on a
17 percentage of the premium or a set dollar amount, to the group
18 policyholder for the next policy term if the insurer or health
19 carrier fails to comply with the standard. Group policyholders and
20 insurers or health carriers may calculate the amount of the penalty

1 based on a percentage of the overall premium owed to the insurer or
2 health carrier by the policyholder.

3 (2) Remittance of a performance payment to the group policyholder
4 in compliance with this section does not constitute a premium under
5 RCW 48.18.170 and 48.43.005. Nothing in this section prevents the
6 health care authority from including performance standards in
7 contracts.

8 (3) If a group insurance contract includes any performance
9 standards, the insurer or health carrier must describe the
10 performance standards in the group insurance contract and file the
11 contract with the commissioner.

12 (4) Remittance of a performance payment to the group policyholder
13 in compliance with this section must not be considered a return
14 premium for purposes of RCW 48.14.020 and 48.14.0201.

15 (5) This section does not apply to small groups as defined in RCW
16 48.43.005.

17 (6) The commissioner may adopt rules to implement this section.

18 (7) For the purposes of this section, "health carrier" has the
19 meaning provided in RCW 48.43.005.

20 **Sec. 3.** RCW 48.30.140 and 2020 c 197 s 1 are each amended to
21 read as follows:

22 (1) Except to the extent provided for in an applicable filing
23 with the commissioner then in effect, no insurer, insurance producer,
24 or title insurance agent shall, as an inducement to insurance, or
25 after insurance has been effected, directly or indirectly, offer,
26 promise, allow, give, set off, or pay to the insured or to any
27 employee of the insured, any rebate, discount, abatement, or
28 reduction of premium or any part thereof named in any insurance
29 contract, or any commission thereon, or earnings, profits, dividends,
30 or other benefit, or any other valuable consideration or inducement
31 whatsoever which is not expressly provided for in the policy.

32 (2) Subsection (1) of this section shall not apply as to
33 commissions paid to a licensed insurance producer, or title insurance
34 agent for insurance placed on that person's own property or risks.

35 (3) This section shall not apply to the allowance by any marine
36 insurer, or marine insurance producer, to any insured, in connection
37 with marine insurance, of such discount as is sanctioned by custom
38 among marine insurers as being additional to the insurance producer's
39 commission.

1 (4) This section shall not apply to advertising or promotional
2 programs conducted by insurers or insurance producers whereby prizes,
3 goods, wares, gift cards, gift certificates, or merchandise, not
4 exceeding one hundred dollars in value per person in the aggregate in
5 any twelve-month period, are given to all insureds or prospective
6 insureds under similar qualifying circumstances. This subsection does
7 not apply to title insurers or title insurance agents.

8 (5) This section does not apply to an offset or reimbursement of
9 all or part of a fee paid to an insurance producer as provided in RCW
10 48.17.270.

11 (6) (a) Subsection (1) of this section shall not be construed to
12 prohibit a health carrier or disability insurer from including as
13 part of a group or individual health benefit plan or contract
14 containing health benefits, a wellness program which meets the
15 requirements for an exception from the prohibition against
16 discrimination based on a health factor under the health insurance
17 portability and accountability act (P.L. 104-191; 110 Stat. 1936) and
18 regulations adopted pursuant to that act.

19 (b) For purposes of this subsection: (i) "Health carrier" and
20 "health benefit plan" have the same meaning as provided in RCW
21 48.43.005; and (ii) "wellness program" has the same meaning as
22 provided in 45 C.F.R. 146.121(f).

23 (7) Subsection (1) of this section does not apply to a payment by
24 an insurer to offset documented expenses incurred by a group
25 policyholder in changing coverages from one insurer to another.
26 Insurers shall describe any such payment in the group insurance
27 policy or in an applicable filing with the commissioner. If an
28 implementation credit is given to a group, the implementation credit
29 is part of the premium for the purposes of RCW 48.14.020 and
30 48.14.0201. This exception to subsection (1) of this section does not
31 apply to "medicare supplemental insurance" or "medicare supplemental
32 insurance policies" as defined in chapter 48.66 RCW.

33 (8) Subsection (7) of this section does not apply to small groups
34 as defined in RCW 48.43.005.

35 (9) Subsection (1) of this section does not apply to products or
36 services related to any policy of life insurance that are intended to
37 incent behavioral changes that improve the health and reduce the risk
38 of death of the insured.

1 (10) Subsection (1) of this section does not apply to a
2 performance standard offered or provided in compliance with section 2
3 of this act.

4 **Sec. 4.** RCW 48.30.150 and 2020 c 197 s 2 are each amended to
5 read as follows:

6 (1) No insurer, insurance producer, title insurance agent, or
7 other person shall, as an inducement to insurance, or in connection
8 with any insurance transaction, provide in any policy for, or offer,
9 or sell, buy, or offer or promise to buy or give, or promise, or
10 allow to, or on behalf of, the insured or prospective insured in any
11 manner whatsoever:

12 (a) Any shares of stock or other securities issued or at any time
13 to be issued on any interest therein or rights thereto; or

14 (b) Any special advisory board contract, or other contract,
15 agreement, or understanding of any kind, offering, providing for, or
16 promising any profits or special returns or special dividends; or

17 (c) Any prizes, goods, wares, gift cards, gift certificates, or
18 merchandise of an aggregate value in excess of one hundred dollars
19 per person in the aggregate in any consecutive twelve-month period.
20 This subsection (1)(c) does not apply to title insurers or title
21 insurance agents.

22 (2) Subsection (1) of this section shall not be deemed to
23 prohibit the sale or purchase of securities as a condition to or in
24 connection with surety insurance insuring the performance of an
25 obligation as part of a plan of financing found by the commissioner
26 to be designed and operated in good faith primarily for the purpose
27 of such financing, nor shall it be deemed to prohibit the sale of
28 redeemable securities of a registered investment company in the same
29 transaction in which life insurance is sold.

30 (3)(a) Subsection (1) of this section shall not be deemed to
31 prohibit a health carrier or disability insurer from including as
32 part of a group or individual health benefit plan or contract
33 providing health benefits, a wellness program which meets the
34 requirements for an exception from the prohibition against
35 discrimination based on a health factor under the health insurance
36 portability and accountability act (P.L. 104-191; 110 Stat. 1936) and
37 regulations adopted pursuant to that act.

38 (b) For purposes of this subsection: (i) "Health carrier" and
39 "health benefit plan" have the same meaning as provided in RCW

1 48.43.005; and (ii) "wellness program" has the same meaning as
2 provided in 45 C.F.R. 146.121(f).

3 (4) Subsection (1) of this section does not prohibit an insurer
4 from issuing any payment to offset documented expenses incurred by a
5 group policyholder in changing coverages from one insurer to another
6 as provided in RCW 48.30.140. If an implementation credit is given to
7 a group, the implementation credit is part of the premium for the
8 purposes of RCW 48.14.020 and 48.14.0201. This exception to
9 subsection (1) of this section does not apply to "medicare
10 supplemental insurance" or "medicare supplemental insurance policies"
11 as defined in chapter 48.66 RCW.

12 (5) Subsection (4) of this section does not apply to small groups
13 as defined in RCW 48.43.005.

14 (6) Subsection (1) of this section does not apply to products or
15 services related to any policy of life insurance that are intended to
16 incent behavioral changes that improve the health and reduce the risk
17 of death of the insured.

18 (7) Subsection (1) of this section does not apply to a
19 performance standard offered or provided in compliance with section 2
20 of this act.

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