
SUBSTITUTE SENATE BILL 5793

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Labor, Commerce & Financial Institutions
(originally sponsored by Senators Thibaudeau, Deccio, Winsley and
Prentice; by request of Insurance Commissioner)

READ FIRST TIME 03/05/2001.

1 AN ACT Relating to the holding company act for health care service
2 contractors and health maintenance organizations; adding a new section
3 to chapter 42.17 RCW; adding a new chapter to Title 48 RCW; prescribing
4 penalties; and declaring an emergency.

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

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

8 (1) "Acquisition" or "acquire" means an agreement, arrangement, or
9 activity, the consummation of which results in a person acquiring
10 directly or indirectly the control of another person, and includes but
11 is not limited to the acquisition of voting securities, all or
12 substantially all of the assets, bulk reinsurance, consolidations,
13 affiliations, and mergers.

14 (2) "Affiliate" of, or person "affiliated" with, a specific person,
15 means a person who directly, or indirectly through one or more
16 intermediaries, controls, or is controlled by, or is under common
17 control with, the person specified.

18 (3) "Control," including the terms "controlling," "controlled by,"
19 and "under common control with," means the possession, direct or

1 indirect, of the power to direct or cause the direction of the
2 management and policies of a person whether through the ownership of
3 voting securities, voting rights, by contract other than a commercial
4 contract for goods, nonmanagement services, a debt obligation which is
5 not convertible into a right to acquire a voting security, or
6 otherwise, unless the power is the result of an official position with
7 or corporate office held by the person.

8 (a) For a for-profit person, control is presumed to exist if a
9 person, directly or indirectly, owns, controls, holds with the power to
10 vote, or holds proxies representing, ten percent or more of the voting
11 securities of any other person. This presumption may be rebutted by a
12 showing that control does not exist in fact. A person may file with
13 the commissioner a disclaimer of control of a health carrier. The
14 disclaimer must fully disclose all material relationships and bases for
15 affiliation between the person and the health carrier as well as the
16 basis for disclaiming the control. After furnishing all persons in
17 interest notice and opportunity to be heard and making specific
18 findings of fact to support such a determination, the commissioner may:

19 (i) Allow a disclaimer; or

20 (ii) Disallow a disclaimer notwithstanding the absence of a
21 presumption to that effect.

22 (b) For a nonprofit corporation organized under chapters 24.03 and
23 24.06 RCW, control is presumed to exist if a person, directly or
24 indirectly, owns, controls, holds with the power to vote, or holds
25 proxies representing a majority of voting rights of the person or the
26 power to elect or appoint a majority of the board of directors,
27 trustees, or other governing body of the person, unless the power is
28 the result of an official position of, or corporate office held by, the
29 person.

30 (c) Control includes either permanent or temporary control, or
31 both.

32 (4) "Domestic health carrier" means a health care service
33 contractor as defined in RCW 48.44.010, or a health maintenance
34 organization as defined in RCW 48.46.020, that is formed under the laws
35 of this state.

36 (5) "Foreign health carrier" means a health care service contractor
37 as defined in RCW 48.44.010, or a health maintenance organization as
38 defined in RCW 48.46.020, that is formed under the laws of the United

1 States, of a state or territory of the United States other than this
2 state, or the District of Columbia.

3 (6) "Health carrier holding company system" means two or more
4 affiliated persons, one or more of which is a health care service
5 contractor or health maintenance organization.

6 (7) "Health coverage business" means the business of a disability
7 insurer authorized under chapter 48.05 RCW, a health care service
8 contractor registered under chapter 48.44 RCW, and a health maintenance
9 organization registered under chapter 48.46 RCW, entering into any
10 policy, contract, or agreement to arrange, reimburse, or pay for health
11 care services.

12 (8) "Involved carrier" means an insurer, health care service
13 contractor, or health maintenance organization, which either acquires
14 or is acquired, is affiliated with an acquirer or acquired, or is the
15 result of a merger.

16 (9) "Person" means an individual, corporation, partnership,
17 association, joint stock company, limited liability company, trust,
18 unincorporated organization, similar entity, or any combination acting
19 in concert, but does not include a joint venture partnership
20 exclusively engaged in owning, managing, leasing, or developing real or
21 personal property.

22 (10) "Security holder" of a specified person means one who owns a
23 security of that person, including (a) common stock, (b) preferred
24 stock, (c) debt obligations convertible into the right to acquire
25 voting securities, and any other security convertible into or
26 evidencing the right to acquire (a) through (c) of this subsection.

27 (11) "Subsidiary" of a specified person means an affiliate
28 controlled by that person directly or indirectly through one or more
29 intermediaries.

30 (12) "Voting security" includes a security convertible into or
31 evidencing a right to acquire a voting security.

32 NEW SECTION. **Sec. 2.** (1) No person may acquire control of a
33 foreign health carrier registered to do business in this state unless
34 a preacquisition notification is filed with the commissioner under this
35 section and the waiting period has expired. If a preacquisition
36 notification is not filed with the commissioner an involved carrier may
37 be subject to an order under subsection (3) of this section. The
38 acquired person may file a preacquisition notification.

1 (a) The preacquisition notification must be in the form and contain
2 the information prescribed by the commissioner. The commissioner may
3 require additional material and information necessary to determine
4 whether the proposed acquisition, if consummated, would have the effect
5 of substantially lessening competition, or tending to create a
6 monopoly, in the health coverage business in this state. The required
7 information may include an opinion of an economist as to the
8 competitive impact of the acquisition in this state accompanied by a
9 summary of the education and experience of the person indicating his or
10 her ability to render an informed opinion.

11 (b) The waiting period required under this section begins on the
12 date the commissioner receives the preacquisition notification and ends
13 on the earlier of the sixtieth day after the date of the receipt by the
14 commissioner of the preacquisition notification or the termination of
15 the waiting period by the commissioner. Before the end of the waiting
16 period, the commissioner may require the submission of additional
17 needed information relevant to the proposed acquisition. If additional
18 information is required, the waiting period ends on the earlier of the
19 thirtieth day after the commissioner has received the additional
20 information or the termination of the waiting period by the
21 commissioner.

22 (2)(a) The commissioner may enter an order under subsection (3)(a)
23 of this section with respect to an acquisition if:

24 (i) The health carrier fails to file adequate information in
25 compliance with subsection (1)(a) of this section; or

26 (ii) The antitrust section of the office of the attorney general
27 and any federal antitrust enforcement agency has chosen not to
28 undertake a review of the proposed acquisition and the commissioner
29 pursuant to his or her own review finds that there is substantial
30 evidence that the effect of the acquisition may substantially lessen
31 competition or tend to create a monopoly in the health coverage
32 business.

33 (b) If the antitrust section of the office of the attorney general
34 undertakes a review of the proposed transaction then the attorney
35 general shall seek input from the commissioner throughout the review.

36 (c) If the antitrust section of the office of the attorney general
37 does not undertake a review of the proposed acquisition and the review
38 is being conducted by the commissioner, then the commissioner shall
39 seek input from the attorney general throughout the review.

1 (3)(a)(i) If an acquisition violates the standards of this section,
2 the commissioner may enter an order:

3 (A) Requiring an involved carrier to cease and desist from doing
4 business in this state with respect to business as a health care
5 service contractor or health maintenance organization; or

6 (B) Denying the application of an acquired or acquiring carrier for
7 a license, certificate of authority, or registration to do business in
8 this state.

9 (ii) The commissioner may not enter the order unless:

10 (A) There is a hearing;

11 (B) Notice of the hearing is issued before the end of the waiting
12 period and not less than fifteen days before the hearing; and

13 (C) The hearing is concluded and the order is issued no later than
14 thirty days after the conclusion of the hearing.

15 Every order must be accompanied by a written decision of the
16 commissioner setting forth his or her findings of fact and conclusions
17 of law.

18 (iii) An order entered under (a) of this subsection may not become
19 final earlier than thirty days after it is issued, during which time
20 the involved carrier may submit a plan to remedy the anticompetitive
21 impact of the acquisition within a reasonable time. Based upon the
22 plan or other information, the commissioner shall specify the
23 conditions, if any, under the time period during which the aspects of
24 the acquisition causing a violation of the standards of this section
25 would be remedied and the order vacated or modified.

26 (iv) An order under (a) of this subsection does not apply if the
27 acquisition is not consummated.

28 (b) A person who violates a cease and desist order of the
29 commissioner under (a) of this subsection and while the order is in
30 effect, may, after notice and hearing and upon order of the
31 commissioner, be subject at the discretion of the commissioner to one
32 or more of the following:

33 (i) A monetary penalty of not more than ten thousand dollars for
34 every day of violation; or

35 (ii) Suspension or revocation of the person's license, certificate
36 of authority, or registration; or

37 (iii) Both (b)(i) and (b)(ii) of this subsection.

38 (c) A carrier or other person who fails to make a filing required
39 by this section and who also fails to demonstrate a good faith effort

1 to comply with the filing requirement, is subject to a civil penalty of
2 not more than fifty thousand dollars.

3 (4) An order may not be entered under subsection (3)(a) of this
4 section if:

5 (a) The acquisition will yield substantial economies of scale or
6 economies in resource use that cannot be feasibly achieved in any other
7 way, and the public benefits that would arise from the economies exceed
8 the public benefits that would arise from more competition; or

9 (b) The acquisition will substantially increase the availability of
10 health care coverage, and the public benefits of the increase exceed
11 the public benefits that would arise from more competition.

12 (5)(a) Sections 8 (2) and (3) and 9 of this act do not apply to
13 acquisitions covered under this section.

14 (b) This section does not apply to the following:

15 (i) An acquisition subject to approval or disapproval by the
16 commissioner under section 3 of this act;

17 (ii) A purchase of securities solely for investment purposes so
18 long as the securities are not used by voting or otherwise to cause or
19 attempt to cause the substantial lessening of competition in the health
20 coverage business in this state;

21 (iii) The acquisition of a person by another person when neither
22 person is directly, nor through affiliates, primarily engaged in the
23 business of a domestic or foreign health carrier, if preacquisition
24 notification is filed with the commissioner in accordance with
25 subsection (1) of this section sixty days before the proposed effective
26 date of the acquisition. However, preacquisition notification is not
27 required for exclusion from this section if the acquisition would
28 otherwise be excluded from this section by this subsection (5)(b);

29 (iv) The acquisition of already affiliated persons;

30 (v) An acquisition if, as an immediate result of the acquisition:

31 (A) In no market would the combined market share of the involved
32 carriers exceed five percent of the total market;

33 (B) There would be no increase in any market share; or

34 (C) In no market would:

35 (I) The combined market share of the involved carriers exceed
36 twelve percent of the total market; and

37 (II) The market share increase by more than two percent of the
38 total market.

1 For the purpose of (b)(v) of this subsection, "market" means direct
2 written premium in this state for a line of business as contained in
3 the annual statement required to be filed by carriers licensed to do
4 business in this state;

5 (vi) An acquisition of a health carrier whose domiciliary
6 commissioner affirmatively finds: That the health carrier is in
7 failing condition; there is a lack of feasible alternatives to
8 improving such a condition; and the public benefits of improving the
9 health carrier's condition through the acquisition exceed the public
10 benefits that would arise from more competition, and the findings are
11 communicated by the domiciliary commissioner to the commissioner of
12 this state.

13 NEW SECTION. **Sec. 3.** (1) No person may acquire control of a
14 domestic health carrier unless the person has filed with the
15 commissioner and has sent to the health carrier a statement containing
16 the information required by this section and the acquisition has been
17 approved by the commissioner as prescribed in this section.

18 (2) The statement to be filed with the commissioner under this
19 section must be made under oath or affirmation and must contain the
20 following information:

21 (a) The name and address of the acquiring party. For purposes of
22 this section, "acquiring party" means each person by whom or on whose
23 behalf the acquisition of control under subsection (1) of this section
24 is to be effected:

25 (i) If the acquiring party is an individual, his or her principal
26 occupation and all offices and positions held during the past five
27 years, and any conviction of crimes other than minor traffic violations
28 during the past ten years;

29 (ii) If the acquiring party is not an individual, a report of the
30 nature of its business operations during the past five years or for
31 such lesser period as the person and any predecessors have been in
32 existence; an informative description of the business intended to be
33 done by the person's subsidiaries; any convictions of crimes during the
34 past ten years; and a list of all individuals who are or who have been
35 selected to become directors, trustees, or executive officers of the
36 person, or who perform or will perform functions appropriate to those
37 positions. The list must include for each such individual the
38 information required by (a)(i) of this subsection.

1 (b) The source, nature, and amount of the consideration used or to
2 be used in effecting the acquisition of control, a description of any
3 transaction in which funds were or are to be obtained for any such
4 purpose, including a pledge of assets, a pledge of the health carrier's
5 stock, or the stock of any of its subsidiaries or controlling
6 affiliates, and the identity of persons furnishing the consideration.
7 However, where a source of the consideration is a loan made in the
8 lender's ordinary course of business, the identity of the lender must
9 remain confidential if the person filing the statement so requests.

10 (c) Fully audited financial information as to the earnings and
11 financial condition of each acquiring party for the preceding five
12 fiscal years of each acquiring party, or for such lesser period as the
13 acquiring party and any predecessors have been in existence, and
14 similar unaudited information as of a date not earlier than ninety days
15 before the filing of the statement. If the acquiring party and any
16 predecessor has not had fully audited financial statements prepared
17 during any of the preceding five years, then reviewed financial
18 statements may be substituted for those years, except for the latest
19 fiscal year which must be fully audited financial statements.

20 (d) Any plans or proposals that each acquiring party may have to
21 liquidate the health carrier, to sell its assets or merge or
22 consolidate it with any person, or to make any other material change in
23 its business or corporate structure or management.

24 (e) The number of shares of any security or number and description
25 of other voting rights referred to in section 1(3) of this act that
26 each acquiring party proposes to acquire, the terms of the offer,
27 request, invitation, agreement, or acquisition under section 1(3) of
28 this act, and a statement as to the method by which the fairness of the
29 proposal was arrived at.

30 (f) The amount of each class of any security referred to in section
31 1(3) of this act that is beneficially owned or concerning which there
32 is a right to acquire beneficial ownership by each acquiring party.

33 (g) A full description of any contracts, arrangements, or
34 understandings with respect to any security referred to in section 1(3)
35 of this act in which an acquiring party is involved, including but not
36 limited to transfer of any of the securities, joint ventures, loan or
37 option arrangements, puts or calls, guarantees of loans, guarantees
38 against loss or guarantees of profits, division of losses or profits,
39 or the giving or withholding of proxies. The description must identify

1 the persons with whom the contracts, arrangements, or understandings
2 have been entered into.

3 (h) A description of the purchase of any security referred to in
4 section 1(3) of this act during the twelve calendar months before the
5 filing of the statement, by an acquiring party, including the dates of
6 purchase, names of the purchasers, and consideration paid or agreed to
7 be paid for the security.

8 (i) A description of any recommendations to purchase any security
9 referred to in section 1(3) of this act made during the twelve calendar
10 months before the filing of the statement, by an acquiring party, or by
11 anyone based upon interviews with outside parties or at the suggestion
12 of the acquiring party.

13 (j) Copies of all tender offers for, requests or invitations for
14 tenders of, exchange offers for, and agreements to acquire or exchange
15 any securities referred to in section 1(3) of this act, and, if
16 distributed, of additional soliciting material relating to the
17 securities.

18 (k) The term of an agreement, contract, or understanding made with
19 or proposed to be made with a broker-dealer as to solicitation or
20 securities referred to in section 1(3) of this act for tender, and the
21 amount of fees, commissions, or other compensation to be paid to
22 broker-dealers with regard to the securities.

23 (l) Such additional information as the commissioner may prescribe
24 by rule as necessary or appropriate for the protection of subscribers
25 of the health carrier or in the public interest.

26 If the person required to file the statement referred to in
27 subsection (1) of this section is a partnership, limited partnership,
28 syndicate, or other group, the commissioner may require that the
29 information required under (a) through (l) of this subsection must be
30 given with respect to each partner of the partnership or limited
31 partnership, each member of the syndicate or group, and each person who
32 controls a partner or member. If a partner, member, or person is a
33 corporation, or the person required to file the statement referred to
34 in subsection (1) of this section is a corporation, the commissioner
35 may require that the information required under (a) through (l) of this
36 subsection must be given with respect to the corporation, each officer
37 and director of the corporation, and each person who is directly or
38 indirectly the beneficial owner of more than ten percent of the
39 outstanding voting securities of the corporation.

1 If a material change occurs in the facts set forth in the statement
2 filed with the commissioner and sent to the health carrier under this
3 section, an amendment setting forth the change, together with copies of
4 all documents and other material relevant to the change, must be filed
5 with the commissioner and sent to the health carrier within two
6 business days after the person learns of the change.

7 (3) If an offer, request, invitation, agreement, or acquisition
8 referred to in subsection (1) of this section is proposed to be made by
9 means of a registration statement under the Securities Act of 1933 or
10 in circumstances requiring the disclosure of similar information under
11 the Securities Exchange Act of 1934, or under a state law requiring
12 similar registration or disclosure, the person required to file the
13 statement referred to in subsection (1) of this section may use those
14 documents in furnishing the information called for by that statement.

15 (4) The commissioner shall approve an exchange or other acquisition
16 of control referred to in this section within sixty days after he or
17 she declares the statement filed under this section to be complete and
18 if a hearing is requested by the commissioner or either party to the
19 transaction, after holding a public hearing. Unless the commissioner
20 declares the statement to be incomplete and requests additional
21 information, the statement is deemed complete sixty days after receipt
22 of the statement by the commissioner. If the commissioner declares the
23 statement to be incomplete and requests additional information, the
24 sixty-day time period in which the statement is deemed complete shall
25 be tolled until fifteen days after receipt by the commissioner of the
26 additional information. If the commissioner declares the statement to
27 be incomplete, the commissioner shall promptly notify the person filing
28 the statement of the filing deficiencies and shall set forth with
29 specificity the additional information required to make the filing
30 complete. At the hearing, the person filing the statement, the health
31 carrier, and any person whose significant interest is determined by the
32 commissioner to be affected may present evidence, examine and
33 cross-examine witnesses, and offer oral and written arguments, and in
34 connection therewith may conduct discovery proceedings in the same
35 manner as is allowed in the superior court of this state. All
36 discovery proceedings must be concluded not later than three business
37 days before the commencement of the public hearing.

1 (5)(a) The commissioner shall approve an acquisition of control
2 referred to in subsection (1) of this section unless, after a public
3 hearing, he or she finds that:

4 (i) After the change of control, the domestic health carrier
5 referred to in subsection (1) of this section would not be able to
6 satisfy the requirements for registration as a health carrier;

7 (ii) The antitrust section of the office of the attorney general
8 and any federal antitrust enforcement agency has chosen not to
9 undertake a review of the proposed acquisition and the commissioner
10 pursuant to his or her own review finds that there is substantial
11 evidence that the effect of the acquisition may substantially lessen
12 competition or tend to create a monopoly in the health coverage
13 business.

14 If the antitrust section of the office of the attorney general does
15 not undertake a review of the proposed acquisition and the review is
16 being conducted by the commissioner, then the commissioner shall seek
17 input from the attorney general throughout the review.

18 If the antitrust section of the office of the attorney general
19 undertakes a review of the proposed transaction then the attorney
20 general shall seek input from the commissioner throughout the review.
21 As to the commissioner, in making this determination:

22 (A) The informational requirements of section 2(1)(a) of this act
23 apply;

24 (B) The commissioner may not disapprove the acquisition if the
25 commissioner finds that:

26 (I) The acquisition will yield substantial economies of scale or
27 economies in resource use that cannot be feasibly achieved in any other
28 way, and the public benefits that would arise from the economies exceed
29 the public benefits that would arise from more competition; or

30 (II) The acquisition will substantially increase or will prevent
31 significant deterioration in the availability of health care coverage,
32 and the public benefits of the increase exceed the public benefits that
33 would arise from more competition;

34 (C) The commissioner may condition the approval of the acquisition
35 on the removal of the basis of disapproval, as follows, within a
36 specified period of time:

37 (I) The financial condition of an acquiring party is such as might
38 jeopardize the financial stability of the health carrier, or prejudice
39 the interest of its subscribers;

1 (II) The plans or proposals that the acquiring party has to
2 liquidate the health carrier, sell its assets, consolidate or merge it
3 with any person, or to make any other material change in its business
4 or corporate structure or management, are unfair and unreasonable to
5 subscribers of the health carrier and not in the public interest;

6 (III) The competence, experience, and integrity of those persons
7 who would control the operation of the health carrier are such that it
8 would not be in the interest of subscribers of the health carrier and
9 of the public to permit the merger or other acquisition of control; or

10 (IV) The acquisition is likely to be hazardous or prejudicial to
11 the insurance-buying public.

12 (b) The commissioner may retain at the acquiring person's expense
13 any attorneys, actuaries, accountants, and other experts not otherwise
14 a part of the commissioner's staff as may be reasonably necessary to
15 assist the commissioner in reviewing the proposed acquisition of
16 control. All reasonable costs of a hearing held under this section, as
17 determined by the commissioner, including reasonable costs associated
18 with the commissioner's use of investigatory, professional, and other
19 necessary personnel, mailing of required notices and other information,
20 and use of equipment or facilities, must be paid before issuance of the
21 commissioner's order by the acquiring person.

22 (c) The commissioner may condition approval of an acquisition on
23 the removal of the basis of disapproval within a specified period of
24 time.

25 (6) Upon the request of a party to the acquisition the commissioner
26 may order that this section does not apply to an offer, request,
27 invitation, agreement, or acquisition as:

28 (a) Not having been made or entered into for the purpose and not
29 having the effect of changing or influencing the control of a domestic
30 health carrier; or

31 (b) Otherwise not comprehended within the purposes of this section.

32 (7) The following are violations of this section:

33 (a) The failure to file a statement, amendment, or other material
34 required to be filed under subsection (1) or (2) of this section; or

35 (b) The effectuation or an attempt to effectuate an acquisition of
36 control of a domestic health carrier unless the commissioner has given
37 approval.

38 (8) The courts of this state have jurisdiction over every person
39 not resident, domiciled, or authorized to do business in this state who

1 files a statement with the commissioner under this section, and over
2 all actions involving that person arising out of violations of this
3 section, and such a person has performed acts equivalent to and
4 constituting an appointment by that person of the commissioner to be
5 the person's true and lawful attorney upon whom may be served all
6 lawful process in an action, suit, or proceeding arising out of
7 violations of this section. Copies of all such lawful process shall be
8 served on the commissioner and transmitted by registered or certified
9 mail by the commissioner to such a person at the person's last known
10 address.

11 NEW SECTION. **Sec. 4.** (1) Every health carrier registered to do
12 business in this state that is a member of a health carrier holding
13 company system shall register with the commissioner, except a foreign
14 health carrier subject to registration requirements and standards
15 adopted by statute or regulation in the jurisdiction of its domicile
16 that are substantially similar to those contained in:

17 (a) This section;

18 (b) Sections 5(1) and 6 of this act; and

19 (c) Either section 5(1)(b) of this act or a provision such as the
20 following: Each registered health carrier shall keep current the
21 information required to be disclosed in its registration statement by
22 reporting all material changes or additions within fifteen days after
23 the end of the month in which it learns of each change or addition.

24 A health carrier subject to registration under this section shall
25 register within one hundred twenty days of the effective date of this
26 act and thereafter within fifteen days after it becomes subject to
27 registration, and annually thereafter by May 15th of each year for the
28 previous calendar year, unless the commissioner for good cause shown
29 extends the time for registration, and then within the extended time.
30 The commissioner may require a health carrier authorized to do business
31 in the state that is a member of a health carrier holding company
32 system, but that is not subject to registration under this section, to
33 furnish a copy of the registration statement, the summary specified in
34 subsection (3) of this section, or other information filed by the
35 health carrier with the regulatory authority of its domiciliary
36 jurisdiction.

1 (2) A health carrier subject to registration shall file the
2 registration statement on a form prescribed by the commissioner,
3 containing the following current information:

4 (a) The capital structure, general financial condition, ownership,
5 and management of the health carrier and any person controlling the
6 health carrier;

7 (b) The identity and relationship of every member of the health
8 carrier holding company system;

9 (c) The following agreements in force, and transactions currently
10 outstanding or that have occurred during the last calendar year between
11 the health carrier and its affiliates:

12 (i) Loans, other investments, or purchases, sales, or exchanges of
13 securities of the affiliates by the health carrier or of the health
14 carrier by its affiliates;

15 (ii) Purchases, sales, or exchange of assets;

16 (iii) Transactions not in the ordinary course of business;

17 (iv) Guarantees or undertakings for the benefit of an affiliate
18 that result in an actual contingent exposure of the health carrier's
19 assets to liability, other than subscriber contracts entered into in
20 the ordinary course of the health carrier's business;

21 (v) All management agreements, service contracts, and cost-sharing
22 arrangements;

23 (vi) Reinsurance agreements;

24 (vii) Dividends and other distributions to shareholders; and

25 (viii) Consolidated tax allocation agreements;

26 (d) Any pledge of the health carrier's stock, including stock of a
27 subsidiary or controlling affiliate, for a loan made to a member of the
28 health carrier holding company system; and

29 (e) Other matters concerning transactions between registered health
30 carriers and affiliates as may be included from time to time in
31 registration forms adopted or approved by the commissioner by rule.

32 (3) Registration statements must contain a summary outlining all
33 items in the current registration statement representing changes from
34 the prior registration statement.

35 (4) No information need be disclosed on the registration statement
36 filed under subsection (2) of this section if the information is not
37 material for the purposes of this section. Unless the commissioner by
38 rule or order provides otherwise, sales, purchases, exchanges, loans or
39 extensions of credit, investments, or guarantees, involving two percent

1 or less of a health carrier's admitted assets as of the 31st day of the
2 previous December are not material for purposes of this section.

3 (5) A person within a health carrier holding company system subject
4 to registration shall provide complete and accurate information to a
5 health carrier, where the information is reasonably necessary to enable
6 the health carrier to comply with this chapter.

7 (6) The commissioner shall terminate the registration of a health
8 carrier under this section that demonstrates that it no longer is a
9 member of a health carrier holding company system.

10 (7) The commissioner may require or allow two or more affiliated
11 health carriers subject to registration under this section to file a
12 consolidated registration statement.

13 (8) The commissioner may allow a health carrier registered to do
14 business in this state and part of a health carrier holding company
15 system to register on behalf of an affiliated health carrier that is
16 required to register under subsection (1) of this section and to file
17 all information and material required to be filed under this section.

18 (9) This section does not apply to a health carrier, information,
19 or transaction if, and to the extent that, the commissioner by rule or
20 order exempts the health carrier, information, or transaction from this
21 section.

22 (10) A person may file with the commissioner a disclaimer of
23 affiliation with an authorized health carrier, or a health carrier or
24 a member of a health carrier holding company system may file the
25 disclaimer. The disclaimer must fully disclose all material
26 relationships and bases for affiliation between the person and the
27 health carrier as well as the basis for disclaiming the affiliation.
28 After a disclaimer has been filed, the health carrier is relieved of
29 any duty to register or report under this section that may arise out of
30 the health carrier's relationship with the person unless and until the
31 commissioner disallows the disclaimer. The commissioner shall disallow
32 the disclaimer only after furnishing all parties in interest with
33 notice and opportunity to be heard and after making specific findings
34 of fact to support the disallowance.

35 (11) Failure to file a registration statement or a summary of the
36 registration statement required by this section within the time
37 specified for the filing is a violation of this section.

1 NEW SECTION. **Sec. 5.** (1) Transactions within a health carrier
2 holding company system to which a health carrier subject to
3 registration is a party are subject to the following standards:

4 (a) The terms must be fair and reasonable;

5 (b) Charges or fees for services performed must be fair and
6 reasonable;

7 (c) Expenses incurred and payment received must be allocated to the
8 health carrier in conformity with customary statutory accounting
9 practices consistently applied;

10 (d) The books, accounts, and records of each party to all such
11 transactions must be so maintained as to clearly and accurately
12 disclose the nature and details of the transactions, including such
13 accounting information as is necessary to support the reasonableness of
14 the charges or fees to the respective parties; and

15 (e) The health carrier's net worth after the transaction must
16 exceed the health carrier's company action level risk-based capital.
17 In addition, the commissioner may disapprove a transaction if the
18 health carrier's risk-based capital net worth is less than the product
19 of 2.5 and the health carrier's authorized control level risk-based
20 capital and the commissioner reasonably believes that the health
21 carrier's net worth is at risk of falling below its company action
22 level risk-based capital due to anticipated future financial losses not
23 reflected in the risk-based capital calculation. This subsection
24 (1)(e) does not prohibit transactions that improve or help maintain the
25 health carrier's net worth.

26 (2) The following transactions, excepting those transactions which
27 are subject to approval by the commissioner elsewhere within this
28 title, involving a domestic health carrier and a person in its health
29 carrier holding company system may not be entered into unless the
30 health carrier has notified the commissioner in writing of its
31 intention to enter into the transaction and the commissioner does not
32 declare the notice to be incomplete at least thirty days before, or
33 such shorter period as the commissioner may permit, and the
34 commissioner has not disapproved it within that period. Unless the
35 commissioner declares the notice to be incomplete and requests
36 additional information, the notice is deemed complete thirty days after
37 receipt of the notice by the commissioner. If the commissioner
38 declares the notice to be incomplete, the thirty-day time period in

1 which the notice is deemed complete shall be tolled until fifteen days
2 after the receipt by the commissioner of the additional information:

3 (a) Sales, purchases, exchanges, loans or extensions of credit,
4 guarantees, or investments if the transactions are equal to or exceed
5 the lesser of (i) two months of the health carrier's annualized claims
6 and administrative costs, (ii) five percent of the health carrier's
7 admitted assets, or (iii) twenty-five percent of net worth, as of the
8 31st day of the previous December;

9 (b) Loans or extensions of credit to any person who is not an
10 affiliate, if the health carrier makes the loans or extensions of
11 credit with the agreement or understanding that the proceeds of the
12 transactions, in whole or in substantial part, are to be used to make
13 loans or extensions of credit to, to purchase assets of, or to make
14 investments in, an affiliate of the health carrier making the loans or
15 extensions of credit, if the transactions are equal to or exceed the
16 lesser of (i) two months of the health carrier's annualized claims and
17 administrative costs, (ii) three percent of the health carrier's
18 admitted assets, or (iii) twenty-five percent of net worth, as of the
19 31st day of the previous December;

20 (c) Reinsurance agreements or modifications to them in which the
21 reinsurance premium or a change in the health carrier's liabilities
22 equals or exceeds five percent of the health carrier's net worth, as of
23 the 31st day of the previous December, including those agreements that
24 may require as consideration the transfer of assets from a health
25 carrier to a nonaffiliate, if an agreement or understanding exists
26 between the health carrier and nonaffiliate that any portion of the
27 assets will be transferred to one or more affiliates of the health
28 carrier;

29 (d) Management agreements, service contracts, and cost-sharing
30 arrangements; and

31 (e) Other acquisitions or dispositions of assets involving more
32 than five percent of the health carrier's admitted assets, specified by
33 rule, that the commissioner determines may adversely affect the
34 interests of the health carrier's subscribers.

35 (3) A domestic health carrier may not enter into transactions that
36 are part of a plan or series of like transactions with persons within
37 the health carrier holding company system if the aggregate amount of
38 the transactions within a twelve-month period exceed the statutory
39 threshold amount. If the commissioner determines that the separate

1 transactions entered into over a twelve-month period exceed the
2 statutory threshold amount, the commissioner may apply for an order as
3 described in section 8(1) of this act.

4 (4) The commissioner, in reviewing transactions under subsection
5 (2) of this section, shall consider whether the transactions comply
6 with the standards set forth in subsection (1) of this section.

7 (5) If a health carrier complies with the terms of a management
8 agreement, service contract, or cost-sharing agreement that has not
9 been disapproved by the commissioner under subsection (2) of this
10 section, then the health carrier is not required to obtain additional
11 approval from the commissioner for individual transactions conducted
12 under the terms of the management agreement, service contract, or cost-
13 sharing agreement. The commissioner, however, retains the authority to
14 examine the individual transactions to determine their compliance with
15 the terms of the management agreement, service contract, or cost-
16 sharing agreement and subsection (1) of this section.

17 (6) This section does not authorize or permit a transaction that,
18 in the case of a health carrier not a member of the same health carrier
19 holding company system, would be otherwise contrary to law.

20 NEW SECTION. **Sec. 6.** (1)(a) Subject to subsection (2) of this
21 section, each registered health carrier shall report to the
22 commissioner all dividends and other distributions to shareholders or
23 members not within the ordinary course of business within five business
24 days after their declaration and at least fifteen business days before
25 payment and shall provide the commissioner such other information as
26 may be required by rule.

27 (b) Any payment of a dividend or other distribution to shareholders
28 or members which would reduce the net worth of the health carrier below
29 the greater of (i) the minimum required by RCW 48.44.037 for a health
30 care service contractor or RCW 48.46.235 for a health maintenance
31 organization or (ii) the company action level RBC under RCW
32 48.43.300(9)(a) is prohibited.

33 (2)(a) No domestic health carrier may pay an extraordinary dividend
34 or make any other extraordinary distribution to its shareholders or
35 members until: (i) Thirty days after the commissioner has received
36 sufficient notice of the declaration, unless the commissioner declares
37 the notice to be incomplete and requests additional information in
38 which event the thirty days shall be tolled until fifteen days after

1 receipt by the commissioner of the additional information or thirty
2 days after the original receipt of the notice by the commissioner,
3 whichever is later, and the commissioner has not within that period
4 disapproved the payment; or (ii) the commissioner has approved the
5 payment within the thirty-day period.

6 (b) For purposes of this section, an extraordinary dividend or
7 distribution is a dividend or distribution of cash or other property
8 whose fair market value, together with that of other dividends or
9 distributions not within the ordinary course of business made within
10 the period of twelve consecutive months ending on the date on which the
11 proposed dividend is scheduled for payment or distribution, exceeds the
12 lesser of: (i) Ten percent of the health carrier's net worth as of the
13 31st day of the previous December; or (ii) the net income of the health
14 carrier for the twelve-month period ending the 31st day of the previous
15 December, but does not include pro rata distributions of any class of
16 the company's own securities.

17 (c) Notwithstanding any other provision of law, a health carrier
18 may declare an extraordinary dividend or distribution that is
19 conditional upon the commissioner's approval. The declaration confers
20 no rights upon shareholders or members until: (i) The commissioner has
21 approved the payment of the dividend or distribution; or (ii) the
22 commissioner has not disapproved the payment within the thirty-day
23 period referred to in (a) of this subsection.

24 (3) For the purpose of this section, "distribution" means a direct
25 or indirect transfer of money or other property, except its own shares,
26 or incurrence of indebtedness by a health carrier to or for the benefit
27 of its members or shareholders in respect to any of its shares. A
28 distribution may be in the form of a declaration or payment of a
29 dividend; a distribution in partial or complete liquidation, or upon
30 voluntary or involuntary dissolution; a purchase, redemption, or other
31 acquisition of shares; or a distribution of indebtedness in respect to
32 any of its shares. It does not include any remuneration to a
33 shareholder or member made as consideration for services or items
34 provided by such shareholder or member, including but not limited to
35 remuneration in exchange for health care services, equipment or
36 supplies, or administrative support services or equipment.

37 NEW SECTION. **Sec. 7.** (1) Subject to the limitation contained in
38 this section and in addition to the powers that the commissioner has

1 under RCW 48.44.145 relating to the examination of health care service
2 contractors and under RCW 48.46.120 relating to the examination of
3 health maintenance organizations, the commissioner also may order a
4 health carrier registered under section 4 of this act to produce such
5 records, books, or other information papers in the possession of the
6 health carrier or its affiliates as are reasonably necessary to
7 ascertain the financial condition of the health carrier or to determine
8 compliance with this title. If the health carrier fails to comply with
9 the order, the commissioner may examine the affiliates to obtain the
10 information.

11 (2) The commissioner may retain at the registered health carrier's
12 expense those attorneys, actuaries, accountants, and other experts not
13 otherwise a part of the commissioner's staff as are reasonably
14 necessary to assist in the conduct of the examination under subsection
15 (1) of this section. Persons so retained are under the direction and
16 control of the commissioner and shall act in a purely advisory
17 capacity.

18 (3) Each registered health carrier producing for examination
19 records, books, and papers under subsection (1) of this section are
20 liable for and shall pay the expense of the examination in accordance
21 with RCW 48.03.060.

22 (4) Chapter 48.03 RCW applies to this chapter except to the extent
23 expressly modified by this chapter.

24 NEW SECTION. **Sec. 8.** (1) Whenever it appears to the commissioner
25 that a health carrier or a director, officer, employee, or agent of the
26 health carrier has committed or is about to commit a violation of this
27 chapter or any rule or order of the commissioner under this chapter,
28 the commissioner may apply to the superior court for Thurston county or
29 to the court for the county in which the principal office of the health
30 carrier is located for an order enjoining the health carrier or the
31 director, officer, employee, or agent from violating or continuing to
32 violate this chapter or any such rule or order, and for such other
33 equitable relief as the nature of the case and the interest of the
34 health carrier's subscribers or the public may require.

35 (2) No security that is the subject of an agreement or arrangement
36 regarding acquisition, or that is acquired or to be acquired, in
37 contravention of this chapter or of a rule or order of the commissioner
38 under this chapter may be voted at a shareholders' meeting, or may be

1 counted for quorum purposes. Any action of shareholders requiring the
2 affirmative vote of a percentage of shares may be taken as though the
3 securities were not issued and outstanding, but no action taken at any
4 such meeting may be invalidated by the voting of the securities, unless
5 the action would materially affect control of the health carrier or
6 unless the courts of this state have so ordered. If a health carrier
7 or the commissioner has reason to believe that a security of the health
8 carrier has been or is about to be acquired in contravention of this
9 chapter or of a rule or order of the commissioner under this chapter,
10 the health carrier or the commissioner may apply to the superior court
11 for Thurston county or to the court for the county in which the health
12 carrier has its principal place of business to enjoin an offer,
13 request, invitation, agreement, or acquisition made in contravention of
14 section 3 of this act or a rule or order of the commissioner under that
15 section to enjoin the voting of a security so acquired, to void a vote
16 of the security already cast at a meeting of shareholders, and for such
17 other relief as the nature of the case and the interest of the health
18 carrier's subscribers or the public may require.

19 (3) If a person has acquired or is proposing to acquire voting
20 securities in violation of this chapter or a rule or order of the
21 commissioner under this chapter, the superior court for Thurston county
22 or the court for the county in which the health carrier has its
23 principal place of business may, on such notice as the court deems
24 appropriate, upon the application of the health carrier or the
25 commissioner seize or sequester voting securities of the health carrier
26 owned directly or indirectly by the person, and issue such order with
27 respect to the securities as may be appropriate to carry out this
28 chapter.

29 (4) Notwithstanding any other provisions of law, for the purposes
30 of this chapter, the situs of the ownership of the securities of
31 domestic health carriers is in this state.

32 (5) Subsections (2) and (3) of this section do not apply to
33 acquisitions under section 2 of this act.

34 NEW SECTION. **Sec. 9.** (1) The commissioner may require, after
35 notice and hearing, a health carrier failing, without just cause, to
36 file a registration statement as required in this chapter, to pay a
37 penalty of not more than ten thousand dollars per day. The maximum
38 penalty under this section is one million dollars. The commissioner

1 may reduce the penalty if the health carrier demonstrates to the
2 commissioner that the imposition of the penalty would constitute a
3 financial hardship to the health carrier. The commissioner shall
4 transfer a fine collected under this section to the state treasurer for
5 deposit into the general fund.

6 (2) Every director or officer of a health carrier holding company
7 system who knowingly violates this chapter, or participates in, or
8 assents to, or who knowingly permits an officer or agent of the health
9 carrier to engage in transactions or make investments that have not
10 been properly reported or submitted under section 4(1), 5(2), or 6 of
11 this act, or that violate this chapter, shall pay, in their individual
12 capacity, a civil forfeiture of not more than ten thousand dollars per
13 violation, after notice and hearing. In determining the amount of the
14 civil forfeiture, the commissioner shall take into account the
15 appropriateness of the forfeiture with respect to the gravity of the
16 violation, the history of previous violations, and such other matters
17 as justice may require.

18 (3) Whenever it appears to the commissioner that a health carrier
19 subject to this chapter, or a director, officer, employee, or agent of
20 the health carrier, has engaged in a transaction or entered into a
21 contract that is subject to sections 5 and 6 of this act and that would
22 not have been approved had approval been requested, the commissioner
23 may order the health carrier to cease and desist immediately any
24 further activity under that transaction or contract. After notice and
25 hearing the commissioner may also order the health carrier to void any
26 such contracts and restore the status quo if that action is in the best
27 interest of the subscribers or the public.

28 (4) Whenever it appears to the commissioner that a health carrier
29 or a director, officer, employee, or agent of the health carrier has
30 committed a willful violation of this chapter, the commissioner may
31 refer the matter to the prosecuting attorney of Thurston county or the
32 county in which the principal office of the health carrier is located.
33 A health carrier that willfully violates this chapter may be fined not
34 more than one million dollars. Any individual who willfully violates
35 this chapter may be fined in his or her individual capacity not more
36 than ten thousand dollars, or be imprisoned for not more than three
37 years, or both.

38 (5) An officer, director, or employee of a health carrier holding
39 company system who willfully and knowingly subscribes to or makes or

1 causes to be made a false statement, false report, or false filing with
2 the intent to deceive the commissioner in the performance of his or her
3 duties under this chapter, upon conviction thereof, shall be imprisoned
4 for not more than three years or fined not more than ten thousand
5 dollars or both. The officer, director, or employee upon whom the fine
6 is imposed shall pay the fine in his or her individual capacity.

7 (6) This section does not apply to acquisitions under section 2 of
8 this act.

9 NEW SECTION. **Sec. 10.** Whenever it appears to the commissioner
10 that a person has committed a violation of this chapter that so impairs
11 the financial condition of a domestic health carrier as to threaten
12 insolvency or make the further transaction of business by it hazardous
13 to its subscribers or the public, the commissioner may proceed as
14 provided in RCW 48.31.030 and 48.31.040 to take possession of the
15 property of the domestic health carrier and to conduct the business of
16 the health carrier.

17 NEW SECTION. **Sec. 11.** (1) If an order for liquidation or
18 rehabilitation of a domestic health carrier has been entered, the
19 receiver appointed under the order may recover on behalf of the health
20 carrier:

21 (a) From a parent corporation or a holding company, a person, or an
22 affiliate, who otherwise controlled the health carrier, the amount of
23 distributions, other than distributions of shares of the same class of
24 stock, paid by the health carrier on its capital stock; or

25 (b) A payment in the form of a bonus, termination settlement, or
26 extraordinary lump sum salary adjustment, made by the health carrier or
27 its subsidiary to a director, officer, or employee;

28 Where the distribution or payment under (a) or (b) of this subsection
29 is made at anytime during the one year before the petition for
30 liquidation, conservation, or rehabilitation, as the case may be,
31 subject to the limitations of subsections (2) through (4) of this
32 section.

33 (2) No such distribution is recoverable if it is shown that when
34 paid, the distribution was lawful and reasonable, and that the health
35 carrier did not know and could not reasonably have known that the
36 distribution might adversely affect the ability of the health carrier
37 to fulfill its contractual obligations.

1 (3) A person who was a parent corporation, a holding company, or a
2 person, who otherwise controlled the health carrier, or an affiliate
3 when the distributions were paid, is liable up to the amount of
4 distributions or payments under subsection (1) of this section the
5 person received. A person who controlled the health carrier at the
6 time the distributions were declared is liable up to the amount of
7 distributions he or she would have received if they had been paid
8 immediately. If two or more persons are liable with respect to the
9 same distributions, they are jointly and severally liable.

10 (4) The maximum amount recoverable under this section is the amount
11 needed in excess of all other available assets of the impaired or
12 insolvent health carrier to pay the contractual obligations of the
13 impaired or insolvent health carrier.

14 (5) To the extent that a person liable under subsection (3) of this
15 section is insolvent or otherwise fails to pay claims due from it under
16 those provisions, its parent corporation, holding company, or person,
17 who otherwise controlled it at the time the distribution was paid, is
18 jointly and severally liable for a resulting deficiency in the amount
19 recovered from the parent corporation, holding company, or person, who
20 otherwise controlled it.

21 NEW SECTION. **Sec. 12.** Whenever it appears to the commissioner
22 that a person has committed a violation of this chapter that makes the
23 continued operation of a health carrier contrary to the interests of
24 subscribers or the public, the commissioner may, after giving notice
25 and an opportunity to be heard, suspend, revoke, or refuse to renew the
26 health carrier's registration to do business in this state for such
27 period as he or she finds is required for the protection of subscribers
28 or the public. Such a suspension, revocation, or refusal to renew the
29 health carrier's registration must be accompanied by specific findings
30 of fact and conclusions of law.

31 NEW SECTION. **Sec. 13.** Confidential proprietary and trade secret
32 information provided to the commissioner under sections 2 through 5 and
33 7 of this act are exempt from public inspection and copying and shall
34 not be subject to subpoena directed to the commissioner or any person
35 who received the confidential proprietary financial and trade secret
36 information while acting under the authority of the commissioner. This
37 information shall not be made public by the commissioner, the national

1 association of insurance commissioners, or any other person, except to
2 insurance departments of other states, without the prior written
3 consent of the health carrier to which it pertains unless the
4 commissioner, after giving the health carrier that would be affected by
5 the disclosure notice and hearing under chapter 48.04 RCW, determines
6 that the interest of policyholders, subscribers, members, shareholders,
7 or the public will be served by the publication, in which event the
8 commissioner may publish information related to the transactions or
9 filings in the manner and time frame he or she reasonably deems
10 appropriate and sensitive to the interest in preserving confidential
11 proprietary and trade secret information. The commissioner is
12 authorized to use such documents, materials, or information in the
13 furtherance of any regulatory or legal action brought as part of the
14 commissioner's official duties. The confidentiality created by this
15 act shall apply only to the commissioner, any person acting under the
16 authority of the commissioner, the national association of insurance
17 commissioners and its affiliates and subsidiaries, and the insurance
18 departments of other states.

19 NEW SECTION. **Sec. 14.** A new section is added to chapter 42.17 RCW
20 to read as follows:

21 Confidential proprietary and trade secret information provided to
22 the commissioner under sections 2 through 5 and 7 of this act are
23 exempt from disclosure under this chapter.

24 NEW SECTION. **Sec. 15.** (1) A person aggrieved by an act,
25 determination, rule, order, or any other action of or failure to act by
26 the commissioner under this chapter may proceed in accordance with
27 chapters 34.05 and 48.04 RCW.

28 NEW SECTION. **Sec. 16.** The commissioner may adopt rules to
29 implement and administer this chapter.

30 NEW SECTION. **Sec. 17.** If an insurance company holding a
31 certificate of authority from the commissioner under chapter 48.05 RCW
32 is a member of both a health carrier holding company system under this
33 chapter and an insurance holding company system under chapter 48.31B
34 RCW, then chapter 48.31B RCW applies to the authorized insurance
35 company.

1 NEW SECTION. **Sec. 18.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 19.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and takes effect
8 immediately.

9 NEW SECTION. **Sec. 20.** Sections 1 through 13 and 15 through 18 of
10 this act constitute a new chapter in Title 48 RCW.

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