

CERTIFICATION OF ENROLLMENT

SENATE BILL 5957

Chapter 7, Laws of 2005

59th Legislature
2005 Regular Session

MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

EFFECTIVE DATE: 3/15/05

Passed by the Senate March 9, 2005
YEAS 47 NAYS 1

BRAD OWEN

President of the Senate

Passed by the House March 9, 2005
YEAS 97 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved March 15, 2005.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5957** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

March 15, 2005 - 10:34 a.m.

**Secretary of State
State of Washington**

SENATE BILL 5957

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Senators Fairley, Benton and Brown

Read first time 02/16/2005. Referred to Committee on Financial Institutions, Housing & Consumer Protection.

1 AN ACT Relating to escrow accounts required of self-funded multiple
2 employer welfare arrangements; amending RCW 48.14.0201 and 48.41.060;
3 and declaring an emergency.

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

5 **Sec. 1.** RCW 48.14.0201 and 2004 c 260 s 24 are each amended to
6 read as follows:

7 (1) As used in this section, "taxpayer" means a health maintenance
8 organization as defined in RCW 48.46.020, a health care service
9 contractor as defined in RCW 48.44.010, or a self-funded multiple
10 employer welfare arrangement as defined in RCW 48.125.010.

11 (2) Each taxpayer shall pay a tax on or before the first day of
12 March of each year to the state treasurer through the insurance
13 commissioner's office. The tax shall be equal to the total amount of
14 all premiums and prepayments for health care services received by the
15 taxpayer during the preceding calendar year multiplied by the rate of
16 two percent.

17 (3) Taxpayers shall prepay their tax obligations under this
18 section. The minimum amount of the prepayments shall be percentages of
19 the taxpayer's tax obligation for the preceding calendar year

1 recomputed using the rate in effect for the current year. For the
2 prepayment of taxes due during the first calendar year, the minimum
3 amount of the prepayments shall be percentages of the taxpayer's tax
4 obligation that would have been due had the tax been in effect during
5 the previous calendar year. The tax prepayments shall be paid to the
6 state treasurer through the commissioner's office by the due dates and
7 in the following amounts:

8 (a) On or before June 15, forty-five percent;

9 (b) On or before September 15, twenty-five percent;

10 (c) On or before December 15, twenty-five percent.

11 (4) For good cause demonstrated in writing, the commissioner may
12 approve an amount smaller than the preceding calendar year's tax
13 obligation as recomputed for calculating the health maintenance
14 organization's, health care service contractor's, self-funded multiple
15 employer welfare arrangement's, or certified health plan's prepayment
16 obligations for the current tax year.

17 (5) Moneys collected under this section shall be deposited in the
18 general fund through March 31, 1996, and in the health services account
19 under RCW 43.72.900 after March 31, 1996.

20 (6) The taxes imposed in this section do not apply to:

21 (a) Amounts received by any taxpayer from the United States or any
22 instrumentality thereof as prepayments for health care services
23 provided under Title XVIII (medicare) of the federal social security
24 act.

25 (b) Amounts received by any health care service contractor, as
26 defined in RCW 48.44.010, as prepayments for health care services
27 included within the definition of practice of dentistry under RCW
28 18.32.020.

29 (c) Participant contributions to self-funded multiple employer
30 welfare arrangements that are not taxable in this state.

31 (7) Beginning January 1, 2000, the state does hereby preempt the
32 field of imposing excise or privilege taxes upon taxpayers and no
33 county, city, town, or other municipal subdivision shall have the right
34 to impose any such taxes upon such taxpayers. This subsection shall be
35 limited to premiums and payments for health benefit plans offered by
36 health care service contractors under chapter 48.44 RCW, health
37 maintenance organizations under chapter 48.46 RCW, and self-funded
38 multiple employer welfare arrangements as defined in RCW 48.125.010.

1 The preemption authorized by this subsection shall not impair the
2 ability of a county, city, town, or other municipal subdivision to
3 impose excise or privilege taxes upon the health care services directly
4 delivered by the employees of a health maintenance organization under
5 chapter 48.46 RCW.

6 (8)(a) The taxes imposed by this section apply to a self-funded
7 multiple employer welfare arrangement only in the event that they are
8 not preempted by the employee retirement income security act of 1974,
9 as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the
10 commissioner shall initially request an advisory opinion from the
11 United States department of labor or obtain a declaratory ruling from
12 a federal court on the legality of imposing state premium taxes on
13 these arrangements. Once the legality of the taxes has been
14 determined, the multiple employer welfare arrangement certified by the
15 insurance commissioner must begin payment of these taxes.

16 (b) If there has not been a final determination (~~by the United~~
17 ~~States department of labor or a federal court that the taxes are not~~
18 ~~preempted by federal law, the taxes provided for in this section become~~
19 ~~effective on March 1, 2005, or thirty days following the issuance of a~~
20 ~~certificate of authority, whichever is later. During the time period~~
21 ~~between March 1, 2005, or thirty days following the issuance of a~~
22 ~~certificate of authority, whichever is later, and the final~~
23 ~~determination by the United States department of labor or a federal~~
24 ~~court, any taxes shall be deposited in an interest bearing escrow~~
25 ~~account maintained by the [self funded] multiple employer welfare~~
26 ~~arrangement)) of the legality of these taxes, then beginning on the~~
27 earlier of (i) the date the fourth multiple employer welfare
28 arrangement has been certified by the insurance commissioner, or (ii)
29 April 1, 2006, the arrangement shall deposit the taxes imposed by this
30 section into an interest bearing escrow account maintained by the
31 arrangement. Upon a final determination that the taxes are not
32 preempted by the employee retirement income security act of 1974, as
33 amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing
34 escrow account shall be transferred to the state treasurer.

35 **Sec. 2.** RCW 48.41.060 and 2004 c 260 s 26 are each amended to read
36 as follows:

37 (1) The board shall have the general powers and authority granted

1 under the laws of this state to insurance companies, health care
2 service contractors, and health maintenance organizations, licensed or
3 registered to offer or provide the kinds of health coverage defined
4 under this title. In addition thereto, the board shall:

5 (a) Designate or establish the standard health questionnaire to be
6 used under RCW 48.41.100 and 48.43.018, including the form and content
7 of the standard health questionnaire and the method of its application.
8 The questionnaire must provide for an objective evaluation of an
9 individual's health status by assigning a discreet measure, such as a
10 system of point scoring to each individual. The questionnaire must not
11 contain any questions related to pregnancy, and pregnancy shall not be
12 a basis for coverage by the pool. The questionnaire shall be designed
13 such that it is reasonably expected to identify the eight percent of
14 persons who are the most costly to treat who are under individual
15 coverage in health benefit plans, as defined in RCW 48.43.005, in
16 Washington state or are covered by the pool, if applied to all such
17 persons;

18 (b) Obtain from a member of the American academy of actuaries, who
19 is independent of the board, a certification that the standard health
20 questionnaire meets the requirements of (a) of this subsection;

21 (c) Approve the standard health questionnaire and any modifications
22 needed to comply with this chapter. The standard health questionnaire
23 shall be submitted to an actuary for certification, modified as
24 necessary, and approved at least every eighteen months. The
25 designation and approval of the standard health questionnaire by the
26 board shall not be subject to review and approval by the commissioner.
27 The standard health questionnaire or any modification thereto shall not
28 be used until ninety days after public notice of the approval of the
29 questionnaire or any modification thereto, except that the initial
30 standard health questionnaire approved for use by the board after March
31 23, 2000, may be used immediately following public notice of such
32 approval;

33 (d) Establish appropriate rates, rate schedules, rate adjustments,
34 expense allowances, claim reserve formulas and any other actuarial
35 functions appropriate to the operation of the pool. Rates shall not be
36 unreasonable in relation to the coverage provided, the risk experience,
37 and expenses of providing the coverage. Rates and rate schedules may
38 be adjusted for appropriate risk factors such as age and area variation

1 in claim costs and shall take into consideration appropriate risk
2 factors in accordance with established actuarial underwriting practices
3 consistent with Washington state individual plan rating requirements
4 under RCW 48.44.022 and 48.46.064;

5 (e)(i) Assess members of the pool in accordance with the provisions
6 of this chapter, and make advance interim assessments as may be
7 reasonable and necessary for the organizational or interim operating
8 expenses. Any interim assessments will be credited as offsets against
9 any regular assessments due following the close of the year.

10 (ii) Self-funded multiple employer welfare arrangements are subject
11 to assessment under this subsection only in the event that assessments
12 are not preempted by the employee retirement income security act of
13 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the
14 commissioner shall initially request an advisory opinion from the
15 United States department of labor or obtain a declaratory ruling from
16 a federal court on the legality of imposing assessments on these
17 arrangements before imposing the assessment. Once the legality of the
18 assessments has been determined, the multiple employer welfare
19 arrangement certified by the insurance commissioner must begin payment
20 of these assessments.

21 (iii) ~~If there has not been a final determination ((by the United~~
22 ~~States department of labor or a federal court that the assessments are~~
23 ~~not preempted by federal law, the assessments provided for in this~~
24 ~~subsection become effective on March 1, 2005, or thirty days following~~
25 ~~the issuance of a certificate of authority, whichever is later. During~~
26 ~~the time period between March 1, 2005, or thirty days following the~~
27 ~~issuance of a certificate of authority, whichever is later, and the~~
28 ~~final determination by the United States department of labor or a~~
29 ~~federal court, any assessments shall be deposited in an interest~~
30 ~~bearing escrow account maintained by the [self funded] multiple~~
31 ~~employer welfare arrangement)) of the legality of these assessments,~~
32 then beginning on the earlier of (A) the date the fourth multiple
33 employer welfare arrangement has been certified by the insurance
34 commissioner, or (B) April 1, 2006, the arrangement shall deposit the
35 assessments imposed by this subsection into an interest bearing escrow
36 account maintained by the arrangement. Upon a final determination that
37 the assessments are not preempted by the employee retirement income

1 security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all
2 funds in the interest bearing escrow account shall be transferred to
3 the board;

4 (f) Issue policies of health coverage in accordance with the
5 requirements of this chapter;

6 (g) Establish procedures for the administration of the premium
7 discount provided under RCW 48.41.200(3)(a)(iii);

8 (h) Contract with the Washington state health care authority for
9 the administration of the premium discounts provided under RCW
10 48.41.200(3)(a) (i) and (ii);

11 (i) Set a reasonable fee to be paid to an insurance agent licensed
12 in Washington state for submitting an acceptable application for
13 enrollment in the pool; and

14 (j) Provide certification to the commissioner when assessments will
15 exceed the threshold level established in RCW 48.41.037.

16 (2) In addition thereto, the board may:

17 (a) Enter into contracts as are necessary or proper to carry out
18 the provisions and purposes of this chapter including the authority,
19 with the approval of the commissioner, to enter into contracts with
20 similar pools of other states for the joint performance of common
21 administrative functions, or with persons or other organizations for
22 the performance of administrative functions;

23 (b) Sue or be sued, including taking any legal action as necessary
24 to avoid the payment of improper claims against the pool or the
25 coverage provided by or through the pool;

26 (c) Appoint appropriate legal, actuarial, and other committees as
27 necessary to provide technical assistance in the operation of the pool,
28 policy, and other contract design, and any other function within the
29 authority of the pool; and

30 (d) Conduct periodic audits to assure the general accuracy of the
31 financial data submitted to the pool, and the board shall cause the
32 pool to have an annual audit of its operations by an independent
33 certified public accountant.

34 (3) Nothing in this section shall be construed to require or
35 authorize the adoption of rules under chapter 34.05 RCW.

36 NEW SECTION. **Sec. 3.** This act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the
2 state government and its existing public institutions, and takes effect
3 immediately.

Passed by the Senate March 9, 2005.

Passed by the House March 9, 2005.

Approved by the Governor March 15, 2005.

Filed in Office of Secretary of State March 15, 2005.