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

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

Approved March 15, 2005.

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

CHRISTINE GREGOIRE
Governor of the State of Washington

SECRETARY OF STATE
State of Washington
AN ACT Relating to escrow accounts required of self-funded multiple employer welfare arrangements; amending RCW 48.14.0201 and 48.41.060; and declaring an emergency.

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

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

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

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

    (3) Taxpayers shall prepay their tax obligations under this section. The minimum amount of the prepayments shall be percentages of the taxpayer's tax obligation for the preceding calendar year.
recomputed using the rate in effect for the current year. For the
prepayment of taxes due during the first calendar year, the minimum
amount of the prepayments shall be percentages of the taxpayer's tax
obligation that would have been due had the tax been in effect during
the previous calendar year. The tax prepayments shall be paid to the
state treasurer through the commissioner's office by the due dates and
in the following amounts:
  (a) On or before June 15, forty-five percent;
  (b) On or before September 15, twenty-five percent;
  (c) On or before December 15, twenty-five percent.
(4) For good cause demonstrated in writing, the commissioner may
approve an amount smaller than the preceding calendar year's tax
obligation as recomputed for calculating the health maintenance
organization's, health care service contractor's, self-funded multiple
employer welfare arrangement's, or certified health plan's prepayment
obligations for the current tax year.
(5) Moneys collected under this section shall be deposited in the
general fund through March 31, 1996, and in the health services account
under RCW 43.72.900 after March 31, 1996.
(6) The taxes imposed in this section do not apply to:
  (a) Amounts received by any taxpayer from the United States or any
instrumentality thereof as prepayments for health care services
provided under Title XVIII (medicare) of the federal social security
act.
  (b) Amounts received by any health care service contractor, as
defined in RCW 48.44.010, as prepayments for health care services
included within the definition of practice of dentistry under RCW
18.32.020.
  (c) Participant contributions to self-funded multiple employer
welfare arrangements that are not taxable in this state.
(7) Beginning January 1, 2000, the state does hereby preempt the
field of imposing excise or privilege taxes upon taxpayers and no
county, city, town, or other municipal subdivision shall have the right
to impose any such taxes upon such taxpayers. This subsection shall be
limited to premiums and payments for health benefit plans offered by
health care service contractors under chapter 48.44 RCW, health
maintenance organizations under chapter 48.46 RCW, and self-funded
multiple employer welfare arrangements as defined in RCW 48.125.010.
The preemption authorized by this subsection shall not impair the ability of a county, city, town, or other municipal subdivision to impose excise or privilege taxes upon the health care services directly delivered by the employees of a health maintenance organization under chapter 48.46 RCW.

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

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

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

(1) The board shall have the general powers and authority granted
under the laws of this state to insurance companies, health care
service contractors, and health maintenance organizations, licensed or
registered to offer or provide the kinds of health coverage defined
under this title. In addition thereto, the board shall:

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

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

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

(d) Establish appropriate rates, rate schedules, rate adjustments,
expense allowances, claim reserve formulas and any other actuarial
functions appropriate to the operation of the pool. Rates shall not be
unreasonable in relation to the coverage provided, the risk experience,
and expenses of providing the coverage. Rates and rate schedules may
be adjusted for appropriate risk factors such as age and area variation
in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial underwriting practices consistent with Washington state individual plan rating requirements under RCW 48.44.022 and 48.46.064;

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

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

(iii) If there has not been a final determination (by the United States department of labor or a federal court that the assessments are not preempted by federal law, the assessments provided for in this subsection become effective on March 1, 2005, or thirty days following the issuance of a certificate of authority, whichever is later. During the time period between March 1, 2005, or thirty days following the issuance of a certificate of authority, whichever is later, and the final determination by the United States department of labor or a federal court, any assessments shall be deposited in an interest bearing escrow account maintained by the [self-funded] multiple employer welfare arrangement) of the legality of these assessments, then beginning on the earlier of (A) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (B) April 1, 2006, the arrangement shall deposit the assessments imposed by this subsection into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the assessments are not preempted by the employee retirement income
security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all
funds in the interest bearing escrow account shall be transferred to
the board;

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

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

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

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

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

(2) In addition thereto, the board may:

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

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

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

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

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

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

Passed by the Senate March 9, 2005.
Passed by the House March 9, 2005.
Approved by the Governor March 15, 2005.
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