
SENATE BILL 6089

State of Washington

64th Legislature

2015 Regular Session

By Senator Hill

Read first time 03/31/15. Referred to Committee on Ways & Means.

1 AN ACT Relating to health benefit exchange sustainability;
2 amending RCW 43.71.010, 43.71.030, 43.71.060, 43.71.080, 48.14.0201,
3 and 48.14.020; and declaring an emergency.

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

5 **Sec. 1.** RCW 43.71.010 and 2013 2nd sp.s. c 6 s 1 are each
6 amended to read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise. Terms and phrases used
9 in this chapter that are not defined in this section must be defined
10 as consistent with implementation of a state health benefit exchange
11 pursuant to the affordable care act.

12 (1) "Affordable care act" means the federal patient protection
13 and affordable care act, P.L. 111-148, as amended by the federal
14 health care and education reconciliation act of 2010, P.L. 111-152,
15 or federal regulations or guidance issued under the affordable care
16 act.

17 (2) "Authority" means the Washington state health care authority,
18 established under chapter 41.05 RCW.

19 (3) "Board" means the governing board established in RCW
20 43.71.020.

1 (4) "Commissioner" means the insurance commissioner, established
2 in Title 48 RCW.

3 (5) "Exchange" means the Washington health benefit exchange
4 established in RCW 43.71.020.

5 (6) "Self-sustaining" means capable of operating with revenue
6 attributable to the operations of the exchange. Self-sustaining
7 sources include, but are not limited to, federal grants, federal
8 premium tax subsidies and credits, charges to health carriers, and
9 premiums paid by enrollees(~~(, and premium taxes under RCW~~
10 ~~48.14.0201(5)(b) and 48.14.020(2))~~)).

11 **Sec. 2.** RCW 43.71.030 and 2012 c 87 s 4 are each amended to read
12 as follows:

13 (1) The exchange may, consistent with the purposes of this
14 chapter: (a) Sue and be sued in its own name; (b) make and execute
15 agreements, contracts, and other instruments, with any public or
16 private person or entity; (c) employ, contract with, or engage
17 personnel; (d) pay administrative costs; (e) accept grants,
18 donations, loans of funds, and contributions in money, services,
19 materials or otherwise, from the United States or any of its
20 agencies, from the state of Washington and its agencies or from any
21 other source, and use or expend those moneys, services, materials, or
22 other contributions; and (f) (~~aggregate or delegate the aggregation~~
23 ~~of funds that comprise the premium for a health plan; and (g))~~)
24 complete other duties necessary to begin open enrollment in qualified
25 health plans through the exchange beginning October 1, 2013.

26 (2) The board shall develop a methodology to ensure the exchange
27 is self-sustaining after December 31, 2014. The board shall seek
28 input from health carriers to develop funding mechanisms that fairly
29 and equitably apportion among carriers the reasonable administrative
30 costs and expenses incurred to implement the provisions of this
31 chapter. The board shall submit its recommendations to the
32 legislature by December 1, 2012. If the legislature does not enact
33 legislation during the 2013 regular session to modify or reject the
34 board's recommendations, the board may proceed with implementation of
35 the recommendations.

36 (3) The board shall establish policies that permit city and
37 county governments, Indian tribes, tribal organizations, urban Indian
38 organizations, private foundations, and other entities to pay
39 premiums on behalf of qualified individuals.

1 (4) The employees of the exchange may participate in the public
2 employees' retirement system under chapter 41.40 RCW and the public
3 employees' benefits board under chapter 41.05 RCW.

4 (5) Qualified employers may access coverage for their employees
5 through the exchange for small groups under section 1311 of P.L.
6 111-148 of 2010, as amended. The exchange shall enable any qualified
7 employer to specify a level of coverage so that any of its employees
8 may enroll in any qualified health plan offered through the small
9 group exchange at the specified level of coverage.

10 (6) The exchange shall report its activities and status to the
11 governor and the legislature as requested, and no less often than
12 annually.

13 **Sec. 3.** RCW 43.71.060 and 2013 2nd sp.s. c 6 s 2 are each
14 amended to read as follows:

15 (1) The health benefit exchange account is created in the state
16 treasury. Moneys in the account may be spent only after
17 appropriation. Expenditures from the account may only be used to fund
18 the operation of the exchange and identification, collection, and
19 distribution of premium taxes collected under RCW 48.14.0201(5)(b)
20 and 48.14.020(2) prior to July 1, 2015.

21 (2)(a) The following funds must be deposited in the account:

22 ((+a)) (i) Premium taxes collected under RCW 48.14.0201(5)(b)
23 and 48.14.020(2) prior to July 1, 2015;

24 ((+b)) (ii) Assessments authorized under RCW 43.71.080; (~~and~~

25 +e)) (iii) Amounts transferred by the pool administrator as
26 specified in the state omnibus appropriations act pursuant to RCW
27 48.41.090((-)); and

28 ((+3)) (iv) All receipts from federal grants (~~(received under~~
29 ~~the affordable care act may be deposited into the account)~~).

30 (b) Expenditures from the account may be used only for purposes
31 consistent with the grants.

32 ((+4)) (3) During the 2013-2015 fiscal biennium, the legislature
33 may transfer from the health benefit exchange account to the state
34 general fund such amounts as reflect the excess fund balance of the
35 account.

36 **Sec. 4.** RCW 43.71.080 and 2013 2nd sp.s. c 6 s 3 are each
37 amended to read as follows:

1 (1)(a) Beginning January 1, 2015, the exchange may require each
2 issuer writing premiums for qualified health benefit plans or stand-
3 alone dental plans offered through the exchange to pay an assessment
4 in an amount necessary to fund the operations of the exchange,
5 applicable to operational costs incurred beginning ~~((January))~~ July
6 1, 2015.

7 (b) The assessment is an exchange user fee as that term is used
8 in 45 C.F.R. 156.80. Assessments of issuers may be made only ~~((if the
9 amount of expected premium taxes, as provided under RCW
10 48.14.0201(5)(b) and 48.14.020(2), and other funds deposited in the
11 health benefit exchange account in the current calendar year are
12 insufficient to fund exchange operations in the following calendar
13 year))~~ at the level authorized by the legislature ~~((for that
14 purpose))~~ in the omnibus appropriations act.

15 (c) If the exchange is charging an assessment, the exchange shall
16 display the amount of the assessment per member per month for
17 enrollees. A health benefit plan or stand-alone dental plan may
18 identify the amount of the assessment to enrollees, but must not bill
19 the enrollee for the amount of the assessment separately from the
20 premium.

21 (2) The board, in collaboration with the issuers, the health care
22 authority, and the commissioner, must establish a fair and
23 transparent process for calculating the assessment amount. The
24 process must meet the following requirements:

25 (a) The assessment only applies to issuers that offer coverage in
26 the exchange and only for those market segments offered and must be
27 based on the number of enrollees in qualified health plans and stand-
28 alone dental plans in the exchange for a calendar year;

29 (b) The assessment must be established on a flat dollar and cents
30 amount per member per month, and the assessment for dental plans must
31 be proportional to the premiums paid for stand-alone dental plans in
32 the exchange;

33 (c) Issuers must be notified of the assessment amount by the
34 exchange on a timely basis;

35 (d) An appropriate assessment reconciliation process must be
36 established by the exchange that is administratively efficient;

37 (e) Issuers must remit the assessment due to the exchange in
38 quarterly installments after receiving notification from the exchange
39 of the due dates of the quarterly installments;

1 (f) A procedure must be established to allow issuers subject to
2 assessments under this section to have grievances reviewed by an
3 impartial body and reported to the board; and

4 (g) A procedure for enforcement must be established if an issuer
5 fails to remit its assessment amount to the exchange within ten
6 business days of the quarterly installment due date.

7 (3) The exchange shall deposit proceeds from the assessments in
8 the health benefit exchange account under RCW 43.71.060.

9 (4) The assessment described in this section shall be considered
10 a special purpose obligation or assessment in connection with
11 coverage described in this section for the purpose of funding the
12 operations of the exchange, and may not be applied by issuers to vary
13 premium rates at the plan level.

14 (5) The exchange shall monitor enrollment and provide periodic
15 reports which must be available on its web site.

16 (6) The board shall offer all qualified health plans through the
17 exchange, and the exchange shall not add criteria for certification
18 of qualified health plans beyond those set out in RCW 43.71.065
19 without specific statutory direction. Nothing shall be construed to
20 limit duties, obligations, and authority otherwise legislatively
21 delegated or granted to the exchange.

22 (7) The exchange shall report to the joint select committee on
23 health care oversight on a quarterly basis with an update on budget
24 expenses and operations.

25 (8) By July 1, 2016, the state auditor shall conduct a
26 performance review of the cost of exchange operations and shall make
27 recommendations to the board and the health care committees of the
28 legislature addressing improvements in cost performance and adoption
29 of best practices. The auditor shall further evaluate the potential
30 cost and customer service benefits through regionalization with other
31 states of some exchange operation functions or through a partnership
32 with the federal government. The cost of the state auditor review
33 must be borne by the exchange.

34 **Sec. 5.** RCW 48.14.0201 and 2013 2nd sp.s. c 6 s 5 are each
35 amended to read as follows:

36 (1) As used in this section, "taxpayer" means a health
37 maintenance organization as defined in RCW 48.46.020, a health care
38 service contractor as defined in chapter 48.44 RCW, or a self-funded
39 multiple employer welfare arrangement as defined in RCW 48.125.010.

1 (2) Each taxpayer must pay a tax on or before the first day of
2 March of each year to the state treasurer through the insurance
3 commissioner's office. The tax must be equal to the total amount of
4 all premiums and prepayments for health care services collected or
5 received by the taxpayer under RCW 48.14.090 during the preceding
6 calendar year multiplied by the rate of two percent. For tax
7 purposes, the reporting of premiums and prepayments must be on a
8 written basis or on a paid-for basis consistent with the basis
9 required by the annual statement.

10 (3) Taxpayers must prepay their tax obligations under this
11 section. The minimum amount of the prepayments is the percentages of
12 the taxpayer's tax obligation for the preceding calendar year
13 recomputed using the rate in effect for the current year. For the
14 prepayment of taxes due during the first calendar year, the minimum
15 amount of the prepayments is the percentages of the taxpayer's tax
16 obligation that would have been due had the tax been in effect during
17 the previous calendar year. The tax prepayments must be paid to the
18 state treasurer through the commissioner's office by the due dates
19 and in the following amounts:

- 20 (a) On or before June 15, forty-five percent;
- 21 (b) On or before September 15, twenty-five percent;
- 22 (c) On or before December 15, twenty-five percent.

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

29 (5)(a) Except as provided in (b) of this subsection, moneys
30 collected under this section are deposited in the general fund.

31 (b) Beginning January 1, 2014, and ending June 30, 2015, moneys
32 collected from taxpayers for premiums written on qualified health
33 benefit plans and stand-alone dental plans offered through the health
34 benefit exchange under chapter 43.71 RCW must be deposited in the
35 health benefit exchange account under RCW 43.71.060.

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

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

1 (b) Amounts received by any taxpayer from the state of Washington
2 as prepayments for health care services provided under:

3 (i) The medical care services program as provided in RCW
4 74.09.035; or

5 (ii) The Washington basic health plan on behalf of subsidized
6 enrollees as provided in chapter 70.47 RCW.

7 (c) Amounts received by any health care service contractor as
8 defined in chapter 48.44 RCW, or any health maintenance organization
9 as defined in chapter 48.46 RCW, as prepayments for health care
10 services included within the definition of practice of dentistry
11 under RCW 18.32.020, except amounts received for pediatric oral
12 services that qualify as coverage for the minimum essential coverage
13 requirement under P.L. 111-148 (2010), as amended.

14 (d) Participant contributions to self-funded multiple employer
15 welfare arrangements that are not taxable in this state.

16 (7) Beginning January 1, 2000, the state preempts the field of
17 imposing excise or privilege taxes upon taxpayers and no county,
18 city, town, or other municipal subdivision has the right to impose
19 any such taxes upon such taxpayers. This subsection is limited to
20 premiums and payments for health benefit plans offered by health care
21 service contractors under chapter 48.44 RCW, health maintenance
22 organizations under chapter 48.46 RCW, and self-funded multiple
23 employer welfare arrangements as defined in RCW 48.125.010. The
24 preemption authorized by this subsection must not impair the ability
25 of a county, city, town, or other municipal subdivision to impose
26 excise or privilege taxes upon the health care services directly
27 delivered by the employees of a health maintenance organization under
28 chapter 48.46 RCW.

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

39 (b) If there has not been a final determination of the legality
40 of these taxes, then beginning on the earlier of (i) the date the

1 fourth multiple employer welfare arrangement has been certified by
2 the insurance commissioner, or (ii) April 1, 2006, the arrangement
3 must deposit the taxes imposed by this section into an interest
4 bearing escrow account maintained by the arrangement. Upon a final
5 determination that the taxes are not preempted by the employee
6 retirement income security act of 1974, as amended, 29 U.S.C. Sec.
7 1001 et seq., all funds in the interest bearing escrow account must
8 be transferred to the state treasurer.

9 (9) The effect of transferring contracts for health care services
10 from one taxpayer to another taxpayer is to transfer the tax
11 prepayment obligation with respect to the contracts.

12 (10) On or before June 1st of each year, the commissioner must
13 notify each taxpayer required to make prepayments in that year of the
14 amount of each prepayment and must provide remittance forms to be
15 used by the taxpayer. However, a taxpayer's responsibility to make
16 prepayments is not affected by failure of the commissioner to send,
17 or the taxpayer to receive, the notice or forms.

18 **Sec. 6.** RCW 48.14.020 and 2013 2nd sp.s. c 6 s 6 are each
19 amended to read as follows:

20 (1) Subject to other provisions of this chapter, each authorized
21 insurer except title insurers shall on or before the first day of
22 March of each year pay to the state treasurer through the
23 commissioner's office a tax on premiums. Except as provided in
24 subsection (3) of this section, such tax shall be in the amount of
25 two percent of all premiums, excluding amounts returned to or the
26 amount of reductions in premiums allowed to holders of industrial
27 life policies for payment of premiums directly to an office of the
28 insurer, collected or received by the insurer under RCW 48.14.090
29 during the preceding calendar year other than ocean marine and
30 foreign trade insurances, after deducting premiums paid to
31 policyholders as returned premiums, upon risks or property resident,
32 situated, or to be performed in this state. For tax purposes, the
33 reporting of premiums shall be on a written basis or on a paid-for
34 basis consistent with the basis required by the annual statement. For
35 the purposes of this section the consideration received by an insurer
36 for the granting of an annuity shall not be deemed to be a premium.

37 (2)(a) The taxes imposed in this section do not apply to amounts
38 received by any life and disability insurer for health care services
39 included within the definition of practice of dentistry under RCW

1 18.32.020 except amounts received for pediatric oral services that
2 qualify as coverage for the minimum essential coverage requirement
3 under P.L. 111-148 (2010), as amended.

4 (b) Beginning January 1, 2014, and ending June 30, 2015, moneys
5 collected for premiums written on qualified health benefit plans and
6 stand-alone dental plans offered through the health benefit exchange
7 under chapter 43.71 RCW must be deposited in the health benefit
8 exchange account under RCW 43.71.060.

9 (3) In the case of insurers which require the payment by their
10 policyholders at the inception of their policies of the entire
11 premium thereon in the form of premiums or premium deposits which are
12 the same in amount, based on the character of the risks, regardless
13 of the length of term for which such policies are written, such tax
14 shall be in the amount of two percent of the gross amount of such
15 premiums and premium deposits upon policies on risks resident,
16 located, or to be performed in this state, in force as of the thirty-
17 first day of December next preceding, less the unused or unabsorbed
18 portion of such premiums and premium deposits computed at the average
19 rate thereof actually paid or credited to policyholders or applied in
20 part payment of any renewal premiums or premium deposits on one-year
21 policies expiring during such year.

22 (4) Each authorized insurer shall with respect to all ocean
23 marine and foreign trade insurance contracts written within this
24 state during the preceding calendar year, on or before the first day
25 of March of each year pay to the state treasurer through the
26 commissioner's office a tax of ninety-five one-hundredths of one
27 percent on its gross underwriting profit. Such gross underwriting
28 profit shall be ascertained by deducting from the net premiums (i.e.,
29 gross premiums less all return premiums and premiums for reinsurance)
30 on such ocean marine and foreign trade insurance contracts the net
31 losses paid (i.e., gross losses paid less salvage and recoveries on
32 reinsurance ceded) during such calendar year under such contracts. In
33 the case of insurers issuing participating contracts, such gross
34 underwriting profit shall not include, for computation of the tax
35 prescribed by this subsection, the amounts refunded, or paid as
36 participation dividends, by such insurers to the holders of such
37 contracts.

38 (5) The state does hereby preempt the field of imposing excise or
39 privilege taxes upon insurers or their appointed insurance producers,
40 other than title insurers, and no county, city, town or other

1 municipal subdivision shall have the right to impose any such taxes
2 upon such insurers or these insurance producers.

3 (6) If an authorized insurer collects or receives any such
4 premiums on account of policies in force in this state which were
5 originally issued by another insurer and which other insurer is not
6 authorized to transact insurance in this state on its own account,
7 such collecting insurer shall be liable for and shall pay the tax on
8 such premiums.

9 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of
11 the state government and its existing public institutions, and takes
12 effect immediately.

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