
SENATE BILL 5793

State of Washington

57th Legislature

2001 Regular Session

By Senators Thibaudeau, Deccio, Winsley and Prentice; by request of Insurance Commissioner

Read first time 02/02/2001. Referred to Committee on Health & Long-Term Care.

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

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

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

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

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

16 (3) "Control," including the terms "controlling," "controlled by,"
17 and "under common control with," means the possession, direct or
18 indirect, of the power to direct or cause the direction of the
19 management and policies of a person.

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

5 (5) "Foreign health carrier" means a health care service contractor
6 as defined in RCW 48.44.010, or a health maintenance organization as
7 defined in RCW 48.46.020, that is formed under the laws of the United
8 States, of a state or territory of the United States other than this
9 state, or the District of Columbia.

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

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

17 (8) "Person" means an individual, corporation, partnership,
18 association, joint stock company, limited liability company, trust,
19 unincorporated organization, similar entity, or any combination acting
20 in concert.

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

25 (10) "Subsidiary" of a specified person means an affiliate
26 controlled by that person directly or indirectly through one or more
27 intermediaries.

28 (11) "Voting security" includes a security convertible into or
29 evidencing a right to acquire a voting security.

30 NEW SECTION. **Sec. 2.** (1) No person may acquire, merge,
31 consolidate, or obtain control of a foreign health carrier registered
32 to do business in this state unless a preacquisition notification is
33 filed with the commissioner under this section. If a preacquisition
34 notification is not filed with the commissioner an involved carrier may
35 be subject to an order under subsection (3) of this section. The
36 acquired person may file a preacquisition notification.

37 (a) The preacquisition notification must be in the form and contain
38 the information prescribed by the commissioner. The commissioner may

1 require the additional material and information necessary to determine
2 whether the proposed acquisition, if consummated, would have the effect
3 of substantially lessening competition, or tending to create a
4 monopoly, in the business of: (i) Disability insurance, (ii) health
5 care service contractors, or (iii) health maintenance organizations, in
6 this state. The required information may include an opinion of an
7 economist as to the competitive impact of the acquisition in this state
8 accompanied by a summary of the education and experience of the person
9 indicating his or her ability to render an informed opinion.

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

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

23 (a) There is substantial evidence that the effect of the
24 acquisition may be substantially to lessen competition in the business
25 of health care coverage in this state or tend to create a health care
26 monopoly; or

27 (b) The health carrier fails to file adequate information in
28 compliance with subsection (1)(a) of this section.

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

31 (A) Requiring an involved carrier to cease and desist from doing
32 business in this state with respect to disability insurance, or
33 business as a health care service contractor or health maintenance
34 organization; or

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

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

39 (A) There is a hearing;

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

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

5 Every order must be accompanied by a written decision of the
6 commissioner setting forth his or her findings of fact and conclusions
7 of law.

8 (iii) An order entered under (a) of this subsection may not become
9 final earlier than thirty days after it is issued, during which time
10 the involved carrier may submit a plan to remedy the anticompetitive
11 impact of the acquisition within a reasonable time. Based upon the
12 plan or other information, the commissioner shall specify the
13 conditions, if any, under the time period during which the aspects of
14 the acquisition causing a violation of the standards of this section
15 would be remedied and the order vacated or modified.

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

18 (b) A person who violates a cease and desist order of the
19 commissioner under (a) of this subsection and while the order is in
20 effect, may, after notice and hearing and upon order of the
21 commissioner, be subject at the discretion of the commissioner to one
22 or more of the following:

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

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

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

28 (c) A carrier or other person who fails to make a filing required
29 by this section and who also fails to demonstrate a good faith effort
30 to comply with the filing requirement, is subject to a civil penalty of
31 not more than fifty thousand dollars.

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

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

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

4 (5)(a) Sections 9 (2) and (3) and 10 of this act do not apply to
5 acquisitions covered under this section.

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

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

9 (ii) A purchase of securities solely for investment purposes so
10 long as the securities are not used by voting or otherwise to cause or
11 attempt to cause the substantial lessening of competition in the
12 business of: (A) Disability insurance, (B) health care service
13 contractors, or (C) health maintenance organizations, in this state;

14 (iii) The acquisition of a person by another person when neither
15 person is directly, nor through affiliates, primarily engaged in the
16 business of: (A) Disability insurance, (B) health care service
17 contractors, or (C) health maintenance organizations, if preacquisition
18 notification is filed with the commissioner in accordance with
19 subsection (1) of this section sixty days before the proposed effective
20 date of the acquisition. However, preacquisition notification is not
21 required for exclusion from this section if the acquisition would
22 otherwise be excluded from this section by this subsection (5)(b);

23 (iv) The acquisition of already affiliated persons;

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

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

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

28 (C) In no market would:

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

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

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

37 (vi) An acquisition of a health carrier whose domiciliary
38 commissioner affirmatively finds: That the health carrier is in
39 failing condition; there is a lack of feasible alternatives to

1 improving such a condition; and the public benefits of improving the
2 health carrier's condition through the acquisition exceed the public
3 benefits that would arise from more competition, and the findings are
4 communicated by the domiciliary commissioner to the commissioner of
5 this state.

6 NEW SECTION. **Sec. 3.** (1) No person may acquire, merge,
7 consolidate, or obtain control of a domestic health carrier unless the
8 person has filed with the commissioner and has sent to the health
9 carrier a statement containing the information required by this section
10 and the acquisition, merger, or consolidation has been approved by the
11 commissioner as prescribed in this section.

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

15 (a) The name and address of the acquiring party. For purposes of
16 this section, "acquiring party" means each person by whom or on whose
17 behalf the merger or other acquisition of control under subsection (1)
18 of this section is to be effected:

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

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

33 (b) The source, nature, and amount of the consideration used or to
34 be used in effecting the merger or other acquisition of control, a
35 description of any transaction in which funds were or are to be
36 obtained for any such purpose, including a pledge of assets, a pledge
37 of the health carrier's stock, or the stock of any of its subsidiaries
38 or controlling affiliates, and the identity of persons furnishing the

1 consideration. However, where a source of the consideration is a loan
2 made in the lender's ordinary course of business, the identity of the
3 lender must remain confidential if the person filing the statement so
4 requests.

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

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

19 (e) The number of shares of any security referred to in subsection
20 (1) of this section that each acquiring party proposes to acquire, the
21 terms of the offer, request, invitation, agreement, or acquisition
22 under subsection (1) of this section, and a statement as to the method
23 by which the fairness of the proposal was arrived at.

24 (f) The amount of each class of any security referred to in
25 subsection (1) of this section that is beneficially owned or concerning
26 which there is a right to acquire beneficial ownership by each
27 acquiring party.

28 (g) A full description of any contracts, arrangements, or
29 understandings with respect to any security referred to in subsection
30 (1) of this section in which an acquiring party is involved, including
31 but not limited to transfer of any of the securities, joint ventures,
32 loan or option arrangements, puts or calls, guarantees of loans,
33 guarantees against loss or guarantees of profits, division of losses or
34 profits, or the giving or withholding of proxies. The description must
35 identify the persons with whom the contracts, arrangements, or
36 understandings have been entered into.

37 (h) A description of the purchase of any security referred to in
38 subsection (1) of this section during the twelve calendar months before
39 the filing of the statement, by an acquiring party, including the dates

1 of purchase, names of the purchasers, and consideration paid or agreed
2 to be paid for the security.

3 (i) A description of any recommendations to purchase any security
4 referred to in subsection (1) of this section made during the twelve
5 calendar months before the filing of the statement, by an acquiring
6 party, or by anyone based upon interviews with outside parties or at
7 the suggestion of the acquiring party.

8 (j) Copies of all tender offers for, requests or invitations for
9 tenders of, exchange offers for, and agreements to acquire or exchange
10 any securities referred to in subsection (1) of this section, and, if
11 distributed, of additional soliciting material relating to the
12 securities.

13 (k) The term of an agreement, contract, or understanding made with
14 or proposed to be made with a broker-dealer as to solicitation or
15 securities referred to in subsection (1) of this section for tender,
16 and the amount of fees, commissions, or other compensation to be paid
17 to broker-dealers with regard to the securities.

18 (l) All documents describing the transaction.

19 (m) All documents filed with any other state or federal agency.

20 (n) All plans, studies, or marketing reports related to the
21 transaction.

22 (o) All advertisements, brochures, or other marketing materials for
23 the parties' products or services within the state of Washington for
24 the last calendar year.

25 (p) For each party to the transaction, the market share for each of
26 the products or services offered for the last three calendar years,
27 identified by relevant geographic markets.

28 (q) Such additional information as the commissioner may prescribe
29 by rule as necessary or appropriate for the protection of subscribers
30 of the health carrier or in the public interest.

31 If the person required to file the statement referred to in
32 subsection (1) of this section is a partnership, limited partnership,
33 syndicate, or other group, the commissioner may require that the
34 information required under (a) through (p) of this subsection must be
35 given with respect to each partner of the partnership or limited
36 partnership, each member of the syndicate or group, and each person who
37 controls a partner or member. If a partner, member, or person is a
38 corporation, or the person required to file the statement referred to
39 in subsection (1) of this section is a corporation, the commissioner

1 may require that the information required under (a) through (p) of this
2 subsection must be given with respect to the corporation, each officer
3 and director of the corporation, and each person who is directly or
4 indirectly the beneficial owner of more than ten percent of the
5 outstanding voting securities of the corporation.

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

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

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

1 (5)(a) The commissioner shall approve a merger or other acquisition
2 of control referred to in subsection (1) of this section unless, after
3 a public 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 merger or other acquisition of control would have the
8 effect of substantially lessening competition, or tending to create a
9 monopoly, in the business of disability insurance, a health care
10 service contractor, or a health maintenance organization, in this
11 state. In making this determination:

12 (A) The informational requirements of section 2(1)(a) of this act
13 apply;

14 (B) The commissioner may not disapprove the merger or other
15 acquisition if the commissioner finds that:

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

20 (II) The acquisition will substantially increase the availability
21 of health care coverage, and the public benefits of the increase exceed
22 the public benefits that would arise from more competition;

23 (C) The commissioner may condition the approval of the merger or
24 other acquisition on the removal of the basis of disapproval, as
25 follows, within a specified period of time:

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

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

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

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

1 (b) The commissioner may retain at the acquiring person's expense
2 any attorneys, actuaries, accountants, and other experts not otherwise
3 a part of the commissioner's staff as may be reasonably necessary to
4 assist the commissioner in reviewing the proposed acquisition of
5 control. All reasonable costs of a hearing held under this section, as
6 determined by the commissioner, including reasonable costs associated
7 with the commissioner's use of investigatory, professional, and other
8 necessary personnel, mailing of required notices and other information,
9 and use of equipment or facilities, must be paid before issuance of the
10 commissioner's order by the acquiring person.

11 (6) This section does not apply to an offer, request, invitation,
12 agreement, or acquisition that the commissioner by order has exempted
13 from this section as:

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

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

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

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

21 (b) The effectuation or an attempt to effectuate an acquisition of
22 control of, or merger with, a domestic health carrier unless the
23 commissioner has given approval.

24 (8) The courts of this state have jurisdiction over every person
25 not resident, domiciled, or authorized to do business in this state who
26 files a statement with the commissioner under this section, and over
27 all actions involving that person arising out of violations of this
28 section, and such a person has performed acts equivalent to and
29 constituting an appointment by that person of the commissioner to be
30 the person's true and lawful attorney upon whom may be served all
31 lawful process in an action, suit, or proceeding arising out of
32 violations of this section. Copies of all such lawful process shall be
33 served on the commissioner and transmitted by registered or certified
34 mail by the commissioner to such a person at the person's last known
35 address.

36 NEW SECTION. **Sec. 4.** (1) Every health carrier registered to do
37 business in this state that is a member of a health carrier holding
38 company system shall register with the commissioner, except a foreign

1 health carrier subject to registration requirements and standards
2 adopted by statute or regulation in the jurisdiction of its domicile
3 that are substantially similar to those contained in:

4 (a) This section;

5 (b) Sections 5(1)(a), 6, and 7 of this act; and

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

11 A health carrier subject to registration under this section shall
12 register within fifteen days after it becomes subject to registration,
13 and annually thereafter by May 15th of each year for the previous
14 calendar year, unless the commissioner for good cause shown extends the
15 time for registration, and then within the extended time. The
16 commissioner may require a health carrier authorized to do business in
17 the state that is a member of a health carrier holding company system,
18 but that is not subject to registration under this section, to furnish
19 a copy of the registration statement, the summary specified in
20 subsection (3) of this section, or other information filed by the
21 health carrier with the regulatory authority of its domiciliary
22 jurisdiction.

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

26 (a) The capital structure, general financial condition, ownership,
27 and management of the health carrier and any person controlling the
28 health carrier;

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

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

34 (i) Loans, other investments, or purchases, sales, or exchanges of
35 securities of the affiliates by the health carrier or of the health
36 carrier by its affiliates;

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

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

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

5 (v) All management agreements, service contracts, and cost-sharing
6 arrangements;

7 (vi) Reinsurance agreements;

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

9 (viii) Consolidated tax allocation agreements;

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

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

16 (3) Registration statements must contain a summary outlining all
17 items in the current registration statement representing changes from
18 the prior registration statement.

19 (4) No information need be disclosed on the registration statement
20 filed under subsection (2) of this section if the information is not
21 material for the purposes of this section. Unless the commissioner by
22 rule or order provides otherwise, sales, purchases, exchanges, loans or
23 extensions of credit, investments, or guarantees, involving one-half of
24 one percent or less of a health carrier's admitted assets as of the
25 31st day of the previous December are not material for purposes of this
26 section.

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

31 (6) The commissioner shall terminate the registration of a health
32 carrier that demonstrates that it no longer is a member of a health
33 carrier holding company system.

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

37 (8) The commissioner may allow a health carrier registered to do
38 business in this state and part of a health carrier holding company
39 system to register on behalf of an affiliated health carrier that is

1 required to register under subsection (1) of this section and to file
2 all information and material required to be filed under this section.

3 (9) This section does not apply to a health carrier, information,
4 or transaction if, and to the extent that, the commissioner by rule or
5 order exempts the health carrier, information, or transaction from this
6 section.

7 (10) A person may file with the commissioner a disclaimer of
8 affiliation with an authorized health carrier, or a health carrier or
9 a member of a health carrier holding company system may file the
10 disclaimer. The disclaimer must fully disclose all material
11 relationships and bases for affiliation between the person and the
12 health carrier as well as the basis for disclaiming the affiliation.
13 After a disclaimer has been filed, the health carrier is relieved of
14 any duty to register or report under this section that may arise out of
15 the health carrier's relationship with the person unless and until the
16 commissioner disallows the disclaimer. The commissioner shall disallow
17 the disclaimer only after furnishing all parties in interest with
18 notice and opportunity to be heard and after making specific findings
19 of fact to support the disallowance.

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

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

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

27 (b) Charges or fees for services performed must be fair and
28 reasonable;

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

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

37 (e) The health carrier's net worth after dividends or distributions
38 to shareholders or affiliates must be reasonable in relation to the

1 health carrier's outstanding liabilities and adequate to its financial
2 needs.

3 (2) The following transactions, excepting those transactions which
4 are subject to approval by the commissioner elsewhere within this
5 chapter, involving a domestic health carrier and a person in its
6 holding company system may not be entered into unless the health
7 carrier has notified the commissioner in writing of its intention to
8 enter into the transaction and the commissioner declares the notice to
9 be complete at least sixty days before, or such shorter period as the
10 commissioner may permit, and the commissioner has not disapproved it
11 within that period. Unless the commissioner declares the notice to be
12 incomplete and requests additional information, the notice is deemed
13 complete sixty days after receipt of the notice by the commissioner.
14 If the commissioner declares the notice to be incomplete, the sixty-day
15 time period in which the notice is deemed complete shall be tolled
16 until fifteen days after the receipt by the commissioner of the
17 additional information:

18 (a) Sales, purchases, exchanges, loans or extensions of credit,
19 guarantees, or investments if the transactions are equal to or exceed
20 (i) the lesser of three percent of the health carrier's admitted
21 assets, or (ii) twenty-five percent of net worth, as of the 31st day of
22 the previous December;

23 (b) Loans or extensions of credit to any person who is not an
24 affiliate, if the health carrier makes the loans or extensions of
25 credit with the agreement or understanding that the proceeds of the
26 transactions, in whole or in substantial part, are to be used to make
27 loans or extensions of credit to, to purchase assets of, or to make
28 investments in, an affiliate of the health carrier making the loans or
29 extensions of credit, if the transactions are equal to or exceed (i)
30 the lesser of three percent of the health carrier's admitted assets, or
31 (ii) twenty-five percent of net worth, as of the 31st day of the
32 previous December;

33 (c) Reinsurance agreements or modifications to them in which the
34 reinsurance premium or a change in the health carrier's liabilities
35 equals or exceeds five percent of the health carrier's net worth, as of
36 the 31st day of the previous December, including those agreements that
37 may require as consideration the transfer of assets from a health
38 carrier to a nonaffiliate, if an agreement or understanding exists
39 between the health carrier and nonaffiliate that any portion of the

1 assets will be transferred to one or more affiliates of the health
2 carrier;

3 (d) Management agreements, service contracts, and cost-sharing
4 arrangements; and

5 (e) Material transactions, specified by rule, that the commissioner
6 determines may adversely affect the interests of the health carrier's
7 subscribers.

8 (3) A domestic health carrier may not enter into transactions that
9 are part of a plan or series of like transactions with persons within
10 the holding company system if the aggregate amount of the transactions
11 within a twelve-month period exceed the statutory threshold amount. If
12 the commissioner determines that the separate transactions entered into
13 over a twelve-month period exceed the statutory threshold amount, the
14 commissioner may apply for an order as described in section 9(1) of
15 this act.

16 (4) The commissioner, in reviewing transactions under subsection
17 (2) of this section, shall consider whether the transactions comply
18 with the standards set forth in subsection (1) of this section and
19 whether they may adversely affect the interests of subscribers.

20 (5) If a health carrier complies with the terms of a management
21 agreement, service contract, or cost-sharing agreement that has not
22 been disapproved by the commissioner under subsection (2) of this
23 section, then the health carrier is not required to obtain additional
24 approval from the commissioner for individual transactions conducted
25 under the terms of the management agreement, service contract, or cost-
26 sharing agreement. The commissioner, however, retains the authority to
27 examine the individual transactions to determine their compliance with
28 the terms of the management agreement, service contract, or cost-
29 sharing agreement and subsection (1) of this section.

30 (6) The commissioner shall be notified within thirty days of an
31 investment of the domestic health carrier in any one corporation if the
32 total investment in the corporation by the health carrier holding
33 company system exceeds ten percent of the corporation's voting
34 securities.

35 (7) This section does not authorize or permit a transaction that,
36 in the case of a health carrier not a member of the same holding
37 company system, would be otherwise contrary to law.

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

8 (b) Any payment of a dividend or other distribution to shareholders
9 or members which would reduce the net worth of the health carrier below
10 the minimum required by RCW 48.44.037 for a health care service
11 contractor or RCW 48.46.235 for a health maintenance organization is
12 prohibited.

13 (2)(a) No domestic health carrier may pay an extraordinary dividend
14 or make any other extraordinary distribution to its shareholders or
15 members until: (i) Thirty days after the commissioner has received
16 sufficient notice of the declaration, unless the commissioner declares
17 the notice to be incomplete and requests additional information in
18 which event the thirty days shall be tolled until fifteen days after
19 receipt by the commissioner of the additional information or thirty
20 days after the original receipt of the notice by the commissioner,
21 whichever is later, and the commissioner has not within that period
22 disapproved the payment; or (ii) the commissioner has approved the
23 payment within the thirty-day period.

24 (b) For purposes of this section, an extraordinary dividend or
25 distribution is a dividend or distribution of cash or other property
26 whose fair market value, together with that of other dividends or
27 distributions not within the ordinary course of business made within
28 the period of twelve consecutive months ending on the date on which the
29 proposed dividend is scheduled for payment or distribution, exceeds the
30 lesser of: (i) Ten percent of the health carrier's net worth as of the
31 31st day of the previous December; or (ii) the net gain from operations
32 of the health carrier for the twelve-month period ending the 31st day
33 of the previous December, but does not include pro rata distributions
34 of any class of the company's own securities.

35 (c) Notwithstanding any other provision of law, a health carrier
36 may declare an extraordinary dividend or distribution that is
37 conditional upon the commissioner's approval. The declaration confers
38 no rights upon shareholders or members until: (i) The commissioner has
39 approved the payment of the dividend or distribution; or (ii) the

1 commissioner has not disapproved the payment within the thirty-day
2 period referred to in (a) of this subsection.

3 (3) For the purpose of this section, "distribution" means a direct
4 or indirect transfer of money or other property, except its own shares,
5 or incurrence of indebtedness by a health carrier to or for the benefit
6 of its members or shareholders in respect to any of its shares. A
7 distribution may be in the form of a declaration or payment of a
8 dividend; a distribution in partial or complete liquidation, or upon
9 voluntary or involuntary dissolution; a purchase, redemption, or other
10 acquisition of shares; or a distribution of indebtedness in respect to
11 any of its shares. It does not include any remuneration to a
12 shareholder or member made as consideration for services or items
13 provided by such shareholder or member, including but not limited to
14 remuneration in exchange for health care services, equipment or
15 supplies, or administrative support services or equipment.

16 NEW SECTION. **Sec. 7.** For purposes of this chapter and this
17 chapter only, in determining whether a health carrier's net worth is
18 reasonable in relation to the health carrier's outstanding liabilities
19 and adequate to its financial needs the following factors, among
20 others, may be considered:

21 (1) The size of the health carrier as measured by its assets, net
22 worth, reserves, premium writings, individual or group contracts in
23 force, and other appropriate criteria;

24 (2) The extent to which the health carrier's business is
25 diversified among the several lines of insurance;

26 (3) The number and size of risks insured in each line of business;

27 (4) The extent of the geographical dispersion of the health
28 carrier's insured risks;

29 (5) The nature and extent of the health carrier's reinsurance
30 program;

31 (6) The quality, diversification, and liquidity of the health
32 carrier's investment portfolio;

33 (7) The recent past and projected future trend in the size of the
34 health carrier's net worth;

35 (8) The net worth maintained by other comparable insurers;

36 (9) The adequacy of the health carrier's reserves;

37 (10) The quality and liquidity of investments in affiliates. The
38 commissioner may discount such an investment or may treat such an

1 investment as a disallowed asset for purposes of determining the
2 adequacy of net worth whenever in his or her judgment the investment so
3 warrants; and

4 (11) The quality of the health carrier's earnings and the extent to
5 which the reported earnings include extraordinary items.

6 NEW SECTION. **Sec. 8.** (1) Subject to the limitation contained in
7 this section and in addition to the powers that the commissioner has
8 under RCW 48.44.145 relating to the examination of health care service
9 contractors and under RCW 48.46.120 relating to the examination of
10 health maintenance organizations, the commissioner also may order a
11 health carrier registered under section 4 of this act to produce such
12 records, books, or other information papers in the possession of the
13 health carrier or its affiliates as are reasonably necessary to
14 ascertain the financial condition of the health carrier or to determine
15 compliance with this title. If the health carrier fails to comply with
16 the order, the commissioner may examine the affiliates to obtain the
17 information.

18 (2) The commissioner may retain at the registered health carrier's
19 expense those attorneys, actuaries, accountants, and other experts not
20 otherwise a part of the commissioner's staff as are reasonably
21 necessary to assist in the conduct of the examination under subsection
22 (1) of this section. Persons so retained are under the direction and
23 control of the commissioner and shall act in a purely advisory
24 capacity.

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

29 NEW SECTION. **Sec. 9.** (1) Whenever it appears to the commissioner
30 that a health carrier or a director, officer, employee, or agent of the
31 health carrier has committed or is about to commit a violation of this
32 chapter or any rule or order of the commissioner under this chapter,
33 the commissioner may apply to the superior court for Thurston county or
34 to the court for the county in which the principal office of the health
35 carrier is located for an order enjoining the health carrier or the
36 director, officer, employee, or agent from violating or continuing to
37 violate this chapter or any such rule or order, and for such other

1 equitable relief as the nature of the case and the interest of the
2 health carrier's subscribers, creditors, and shareholders or the public
3 may require.

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

27 (3) If a person has acquired or is proposing to acquire voting
28 securities in violation of this chapter or a rule or order of the
29 commissioner under this chapter, the superior court for Thurston county
30 or the court for the county in which the health carrier has its
31 principal place of business may, on such notice as the court deems
32 appropriate, upon the application of the health carrier or the
33 commissioner seize or sequester voting securities of the health carrier
34 owned directly or indirectly by the person, and issue such order with
35 respect to the securities as may be appropriate to carry out this
36 chapter.

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

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

3 NEW SECTION. **Sec. 10.** (1) The commissioner shall require, after
4 notice and hearing, a health carrier failing, without just cause, to
5 file a registration statement as required in this chapter, to pay a
6 penalty of not more than ten thousand dollars per day. The maximum
7 penalty under this section is one million dollars. The commissioner
8 may reduce the penalty if the health carrier demonstrates to the
9 commissioner that the imposition of the penalty would constitute a
10 financial hardship to the health carrier. The commissioner shall
11 transfer a fine collected under this section to the state treasurer for
12 deposit into the general fund.

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

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

35 (4) Whenever it appears to the commissioner that a health carrier
36 or a director, officer, employee, or agent of the health carrier has
37 committed a willful violation of this chapter, the commissioner may
38 refer the matter to the prosecuting attorney of Thurston county or the

1 county in which the principal office of the health carrier is located.
2 A health carrier that willfully violates this chapter may be fined not
3 more than one million dollars. Any individual who willfully violates
4 this chapter may be fined in his or her individual capacity not more
5 than ten thousand dollars, or be imprisoned for not more than three
6 years, or both.

7 (5) An officer, director, or employee of a health carrier holding
8 company system who willfully and knowingly subscribes to or makes or
9 causes to be made a false statement, false report, or false filing with
10 the intent to deceive the commissioner in the performance of his or her
11 duties under this chapter, upon conviction thereof, shall be imprisoned
12 for not more than three years or fined not more than ten thousand
13 dollars or both. The officer, director, or employee upon whom the fine
14 is imposed shall pay the fine in his or her individual capacity.

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

17 NEW SECTION. **Sec. 11.** Whenever it appears to the commissioner
18 that a person has committed a violation of this chapter that so impairs
19 the financial condition of a domestic health carrier as to threaten
20 insolvency or make the further transaction of business by it hazardous
21 to its subscribers, creditors, shareholders, or the public, the
22 commissioner may proceed as provided in RCW 48.31.030 and 48.31.040 to
23 take possession of the property of the domestic health carrier and to
24 conduct the business of the health carrier.

25 NEW SECTION. **Sec. 12.** (1) If an order for liquidation or
26 rehabilitation of a domestic health carrier has been entered, the
27 receiver appointed under the order may recover on behalf of the health
28 carrier:

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

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

36 Where the distribution or payment under (a) or (b) of this subsection
37 is made at anytime during the one year before the petition for

1 liquidation, conservation, or rehabilitation, as the case may be,
2 subject to the limitations of subsections (2) through (4) of this
3 section.

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

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

18 (4) The maximum amount recoverable under this section is the amount
19 needed in excess of all other available assets of the impaired or
20 insolvent health carrier to pay the contractual obligations of the
21 impaired or insolvent health carrier.

22 (5) To the extent that a person liable under subsection (3) of this
23 section is insolvent or otherwise fails to pay claims due from it under
24 those provisions, its parent corporation, holding company, or person,
25 who otherwise controlled it at the time the distribution was paid, is
26 jointly and severally liable for a resulting deficiency in the amount
27 recovered from the parent corporation, holding company, or person, who
28 otherwise controlled it.

29 NEW SECTION. **Sec. 13.** Whenever it appears to the commissioner
30 that a person has committed a violation of this chapter that makes the
31 continued operation of a health carrier contrary to the interests of
32 subscribers or the public, the commissioner may, after giving notice
33 and an opportunity to be heard, determine to suspend, revoke, or refuse
34 to renew the health carrier's registration to do business in this state
35 for such period as he or she finds is required for the protection of
36 subscribers or the public. Such a determination must be accompanied by
37 specific findings of fact and conclusions of law.

1 NEW SECTION. **Sec. 14.** (1) A person aggrieved by an act,
2 determination, rule, order, or any other action of the commissioner
3 under this chapter may proceed in accordance with chapter 34.05 RCW.

4 (2) A person aggrieved by a failure of the commissioner to act or
5 make a determination required by this chapter may petition the
6 commissioner under the procedure described in RCW 34.05.330.

7 NEW SECTION. **Sec. 15.** The commissioner may, upon notice and
8 opportunity for all interested persons to be heard:

9 (1) Adopt rules prescribing the information and the forms for the
10 submission of the information required under this chapter; and

11 (2) Issue orders that are necessary to carry out this chapter.

12 NEW SECTION. **Sec. 16.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 17.** Sections 1 through 15 of this act
17 constitute a new chapter in Title 48 RCW.

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