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**SUBSTITUTE SENATE BILL 5149**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Health & Long Term Care (originally sponsored by Senators Robinson, Conway, Das, Dhingra, Kuderer, Liias, Nobles, Saldaña, and Wilson, C.; by request of Office of the Governor)

AN ACT Relating to funding foundational public health services; amending RCW 48.14.060, 70.290.060, and 82.25.015; adding new sections to chapter 48.02 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that:

(1) A strong public health system improves the health and well-being of all state residents. Prevention of chronic diseases and illness and health promotion activities benefit all state residents and communities, including residents receiving medicaid.

(2) COVID-19 has dramatically exposed the vulnerabilities and limitations of the public health system. The shortcomings of the system are front and center during the pandemic response. Additionally, the lack of a national pandemic strategy has significantly burdened state and local health departments and further strained the system. As the worst of COVID-19 comes to an end in the coming year, there is a need to address the chronically underfunded public health system.

(3) Health status is impacted both by social determinants of health and untreated or inadequately treated health conditions. Consequently, it is vital that public and private sectors work to enhance public health capabilities and capacity.

(4) Medicaid treats patients who generally have poorer health outcomes than the overall population, and adults with medicaid coverage are more likely to have chronic conditions. Therefore, public health investments will benefit medicaid enrollees with improving their overall health and well-being. Additionally, there are over 800,000 children enrolled in medicaid who benefit from the strong vaccination programs that public health provides.

(5) With any state funding of foundational public health services, the state expects that measurable benefits will be realized to the health of communities in Washington as a result of the improved capacity of the governmental public health system.

NEW SECTION. **Sec.**  A new section is added to chapter 48.02 RCW to read as follows:

(1) Beginning March 1, 2022, and annually thereafter, each health carrier, medicaid managed care organization, and third-party administrator must file with the commissioner a statement of covered lives using the form or forms prescribed and furnished by the commissioner.

(2)(a) For assessments collected in fiscal year 2022, the commissioner shall assess health carriers, medicaid managed care organizations, and third-party administrators for a per member per month assessment of up to $1.54, for a total assessment not to exceed $100,000,000.

(b) For assessments collected in fiscal year 2023, the commissioner shall assess health carriers, medicaid managed care organizations, and third-party administrators for a per member per month assessment of up to $1.92, for a total assessment not to exceed $125,000,000.

(c) For assessments collected in fiscal year 2024, the commissioner shall assess health carriers, medicaid managed care organizations, and third-party administrators for a per member per month assessment of up to $2.30, for a total assessment not to exceed $150,000,000.

(d) For assessments collected in fiscal year 2025, the commissioner shall assess health carriers, medicaid managed care organizations, and third-party administrators for a per member per month assessment of up to $2.69, for a total assessment not to exceed $175,000,000.

(e) For assessments collected in fiscal year 2026 and beyond, the commissioner shall assess health carriers, medicaid managed care organizations, and third-party administrators for a per member per month assessment of up to $3.07, for a total assessment not to exceed $200,000,000.

(3) The covered lives assessment collected from each health carrier, medicaid managed care organization, and third-party administrator is that proportion of the total assessment amount for the ensuing fiscal year that is represented by the health carrier's, medicaid managed care organization's, or third-party administrator's proportion of covered lives in this state during the previous fiscal year.

(4) The commissioner must annually, on or before June 1st, calculate and bill each health carrier, medicaid managed care organization, and third-party administrator for the amount of the covered lives assessment. The assessment is due and payable by July 1st of each year. However, if the necessary financial records are not available in time to carry out such calculations and bill such assessments within the time specified, the commissioner may use the assessment factors from the prior year as the basis for the assessment and, if necessary, the commissioner may impose supplemental assessments to fully and properly charge the health carriers, medicaid managed care organizations, and third-party administrators. Any health carrier, medicaid managed care organization, or third-party administrator failing to pay the assessment by July 31st must pay the same penalties as the penalties for failure to pay taxes when due under RCW 48.14.060. The assessment required by this section is in addition to all other taxes and fees now imposed or that may be subsequently imposed.

(5) Assessments and penalties collected under this section must be deposited in the foundational public health services account and spent according to RCW 43.70.515.

(6) A health carrier, medicaid managed care organization, or third-party administrator is not subject to an assessment under this section if it has 50 or fewer covered lives in Washington.

(7) If an assessment against a health carrier, medicaid managed care organization, or third-party administrator is prohibited by court order, the assessment for the remaining health carriers, medicaid managed care organizations, and third-party administrators may be adjusted in a manner consistent with subsection (3) of this section to ensure that the net assessment amount calculated in subsection (2) of this section will be collected.

(8) Premiums paid by enrollees for plans offered on the individual and small group markets should not reflect assessment rates.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Covered lives" means all persons residing in Washington state who are:

(i) Covered under an individual or group health plan that is issued or delivered in Washington state or an individual or group health plan that otherwise provides health benefits to Washington residents;

(ii) Covered under a self-funded multiple employer welfare arrangement as defined in RCW 48.125.010; or

(iii) Enrolled in a group health plan administered by a third-party administrator.

(b) "Covered lives assessment" means the fees imposed by this section.

(c) "Health carrier" means every health care service contractor, as defined in RCW 48.44.010, every health maintenance organization, as defined in RCW 48.46.020, or self-funded multiple employer welfare arrangement, as defined in RCW 48.125.010, registered to do business in this state.

(d) "Health plan" has the same meaning as defined in RCW 48.43.005.

(e) "Medicaid managed care organization" means a managed health care system under contract with the state of Washington to provide services to medicaid enrollees under RCW 74.09.522.

(f) "Third-party administrator" means any person or entity who, on behalf of an employer, an affiliated employer under common management and control, a multiple employer welfare arrangement, a Taft-Hartley benefit trust, or other health care purchaser, receives or collects charges, contributions, or premiums for, or adjusts or settles health services claims on or for, residents of Washington state. Third-party administrator does not include health care benefit managers as defined in RCW 48.200.020. An administrator who is contracted with the state of Washington to administer a self-funded health benefits plan under chapter 41.05 RCW is a third-party administrator for purposes of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 48.02 RCW to read as follows:

(1) Every third-party administrator must register with the commissioner by December 31, 2021, and must annually renew their registration. Third-party administrators that begin administering health benefits in Washington state on or after December 31, 2021, must register with the commissioner within 30 days of when they begin administering such benefits and must annually renew their registration. Registrants shall report a change of legal name, business name, business address, or business telephone number to the commissioner within 10 days after the change.

(2) The commissioner shall define the data elements and procedures necessary to implement this section. To minimize administrative burdens on third-party administrators, in developing the data elements and procedures for registration and renewal, the commissioner may adopt the data elements and procedures adopted by the Washington vaccine association under RCW 70.290.075.

(3) Subject to chapter 48.04 RCW, if the commissioner finds that a third-party administrator has failed to register or to renew their registration, or has provided incorrect, misleading, incomplete, or materially untrue information to the commissioner, the commissioner may fine the third-party administrator up to $5,000 per violation and issue an order requiring the third-party administrator to remedy the violation of this section.

(4) "Third-party administrator" has the same meaning provided in section 2 of this act.

**Sec.**  RCW 48.14.060 and 2003 c 341 s 1 are each amended to read as follows:

(1) Any insurer or taxpayer, as defined in RCW 48.14.0201, failing to file its tax statement and to pay the specified tax or prepayment of tax on premiums and prepayments for health care services by the last day of the month in which the tax becomes due shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not paid within forty-five days after the due date, the insurer will be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not paid within sixty days of the due date, the insurer will be assessed a total penalty of twenty percent of the amount of the tax. The tax may be collected by distraint, and the penalty recovered by any action instituted by the commissioner in any court of competent jurisdiction. The amount of any penalty collected must be paid to the state treasurer and credited to the general fund.

(2) In addition to the penalties set forth in subsection (1) of this section, interest will accrue on the amount of the unpaid tax or prepayment at the maximum legal rate of interest permitted under RCW 19.52.020 commencing sixty-one days after the tax is due until paid. This interest will not accrue on taxes imposed under RCW 48.15.120.

(3) The commissioner may revoke the certificate of authority or registration of any delinquent insurer or taxpayer, and the certificate of authority or registration will not be reissued until all taxes, prepayments of tax, interest, and penalties have been fully paid and the insurer or taxpayer has otherwise qualified for the certificate of authority or registration.

(4) Any health carrier, medicaid managed care organization, or third-party administrator who fails to pay the assessment under section 2 of this act is subject to the penalties provided under subsection (1) and (2) of this section.

**Sec.**  RCW 70.290.060 and 2020 c 291 s 8 are each amended to read as follows:

In addition to the duties and powers enumerated elsewhere in this chapter:

(1) The association may, pursuant to either vote of its board of directors or request of the secretary, audit compliance with reporting obligations established under the association's plan of operation. Upon failure of any entity that has been audited to reimburse the costs of such audit as certified by vote of the association's board of directors within forty-five days of notice of such vote, the secretary shall assess a civil penalty of one hundred fifty percent of the amount of such costs.

(2) The association may establish an interest charge for late payment of any assessment under this chapter. The secretary shall assess a civil penalty against any health carrier or third‑party administrator that fails to pay an assessment within three months of notification under RCW 70.290.030. The civil penalty under this subsection is one hundred fifty percent of such assessment.

(3) The secretary and the association are authorized to file liens and seek judgment to recover amounts in arrears and civil penalties, and recover reasonable collection costs, including reasonable attorneys' fees and costs. Civil penalties so levied must be deposited in the universal vaccine purchase account created in RCW 43.70.720.

(4) The secretary may adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this section.

(5) Upon request of the health care authority, the secretary and the association must provide the health care authority with any available information maintained by the association needed to calculate the proportional share of program costs under RCW 71.24.064.

(6) Upon request of the insurance commissioner, the secretary and the association must provide the insurance commissioner with any available information maintained by the association needed to initiate third-party administrator registration under section 3 of this act.

**Sec.**  RCW 82.25.015 and 2019 c 445 s 103 are each amended to read as follows:

(1) The foundational public health services account is created in the state treasury. Half of all of the moneys collected from the tax imposed on vapor products under RCW ((~~66.44.010~~)) 82.25.010 and all revenues collected under section 2 of this act must be deposited into the account. Moneys in the account may be spent only after appropriation.

(2) Moneys in the account collected from the tax imposed on vapor products under RCW 82.25.010 are to be used for the following purposes:

((~~(1)~~)) (a) To fund foundational health services. In the 2019-2021 biennium, at least twelve million dollars of the funds deposited into the account must be appropriated for this purpose. Beginning in the 2021-2023 biennium, fifty percent of the funds deposited into the account, but not less than twelve million dollars each biennium, are to be used for this purpose;

((~~(2)~~)) (b) To fund tobacco, vapor product, and nicotine control and prevention, and other substance use prevention and education. Beginning in the 2021-2023 biennium, seventeen percent of the funds deposited into the account are to be used for this purpose;

((~~(3)~~)) (c) To support increased access and training of public health professionals at public health programs at accredited public institutions of higher education in Washington. Beginning in the 2021-2023 biennium, five percent of the funds deposited into the account are to be used for this purpose; and

((~~(4)~~)) (d) To fund enforcement by the state liquor and cannabis board of the provisions of this chapter to prevent sales of vapor products to minors and related provisions for control of marketing and product safety, provided that no more than eight percent of the funds deposited into the account may be appropriated for these enforcement purposes.

(3) Moneys in the account collected under section 2 of this act must be used to fund foundational health services.

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

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