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**SENATE BILL 6427**

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**State of Washington**

**53rd Legislature**

**1994 Regular Session**

**By Senator Quigley**

Read first time 01/21/94. Referred to Committee on Health & Human Services.

1 AN ACT Relating to health care employer mandates; amending RCW  
2 70.47.020, 43.72.090, 43.72.120, 43.72.140, 43.72.220, 82.24.020, and  
3 82.26.020; and providing for submission of this act to a vote of the  
4 people.

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

6 **Sec. 1.** RCW 70.47.020 and 1993 c 492 s 209 are each amended to  
7 read as follows:

8 As used in this chapter:

9 (1) "Washington basic health plan" or "plan" means the system of  
10 enrollment and payment on a prepaid capitated basis for basic health  
11 care services, administered by the plan administrator through  
12 participating managed health care systems, created by this chapter.

13 (2) "Administrator" means the Washington basic health plan  
14 administrator, who also holds the position of administrator of the  
15 Washington state health care authority.

16 (3) "Managed health care system" means any health care  
17 organization, including health care providers, insurers, health care  
18 service contractors, health maintenance organizations, or any  
19 combination thereof, that provides directly or by contract basic health

1 care services, as defined by the administrator and rendered by duly  
2 licensed providers, on a prepaid capitated basis to a defined patient  
3 population enrolled in the plan and in the managed health care system.  
4 On and after July 1, 1995, "managed health care system" means a  
5 certified health plan, as defined in RCW 43.72.010.

6 (4) "Subsidized enrollee" means an individual, ~~((or))~~ an individual  
7 plus the individual's spouse or dependent children, or a dependent of  
8 an employee covered under RCW 43.72.120 or 43.72.220, not eligible for  
9 medicare, who resides in an area of the state served by a managed  
10 health care system participating in the plan, whose gross family income  
11 at the time of enrollment does not exceed twice the federal poverty  
12 level as adjusted for family size and determined annually by the  
13 federal department of health and human services, who the administrator  
14 determines at the time of application does not have health insurance  
15 more comprehensive than that offered by the plan, and who chooses to  
16 obtain basic health care coverage from a particular managed health care  
17 system in return for periodic payments to the plan.

18 (5) "Nonsubsidized enrollee" means an individual, or an individual  
19 plus the individual's spouse or dependent children, not eligible for  
20 medicare, who resides in an area of the state served by a managed  
21 health care system participating in the plan, who the administrator  
22 determines at the time of application does not have health insurance  
23 more comprehensive than that offered by the plan, who chooses to obtain  
24 basic health care coverage from a particular managed health care  
25 system, and who pays or on whose behalf is paid the full costs for  
26 participation in the plan, without any subsidy from the plan.

27 (6) "Subsidy" means the difference between the amount of periodic  
28 payment the administrator makes to a managed health care system on  
29 behalf of a subsidized enrollee plus the administrative cost to the  
30 plan of providing the plan to that subsidized enrollee, and the amount  
31 determined to be the subsidized enrollee's responsibility under RCW  
32 70.47.060(2).

33 (7) "Premium" means a periodic payment, based upon gross family  
34 income which an individual, their employer or another financial sponsor  
35 makes to the plan as consideration for enrollment in the plan as a  
36 subsidized enrollee or a nonsubsidized enrollee.

37 (8) "Rate" means the per capita amount, negotiated by the  
38 administrator with and paid to a participating managed health care

1 system, that is based upon the enrollment of subsidized and  
2 nonsubsidized enrollees in the plan and in that system.

3 **Sec. 2.** RCW 43.72.090 and 1993 c 492 s 427 are each amended to  
4 read as follows:

5 (1) On and after July 1, 1995, no person or entity in this state  
6 shall provide the uniform benefits package and supplemental benefits as  
7 defined in RCW 43.72.010 without being certified as a certified health  
8 plan by the insurance commissioner.

9 (2) On and after July 1, 1995, no certified health plan may offer  
10 less than the uniform benefits package to residents of this state and  
11 no registered employer health plan may provide less than the uniform  
12 benefits package to its employees (~~(and their dependents)~~).

13 **Sec. 3.** RCW 43.72.120 and 1993 c 492 s 430 are each amended to  
14 read as follows:

15 Consistent with the provisions of RCW 43.72.220, a registered  
16 employer health plan shall:

17 (1) Register with the insurance commissioner by filing its plan of  
18 management and operation including but not limited to information  
19 required by the commissioner sufficient for a determination by the  
20 commissioner that such plan meets the requirements of this section and  
21 any rules adopted by the health services commission and the insurance  
22 commissioner pertaining to such plans.

23 (2) Provide the benefits included in the uniform benefits package  
24 to employees (~~(and their dependents)~~) for a prepaid, community-rated  
25 premium not to exceed the maximum premium established by the commission  
26 and provide such benefits through managed care in accordance with rules  
27 adopted by the commission.

28 (3) Offer supplemental benefits to employees (~~(and their~~  
29 ~~dependents)~~) for a prepaid, community-rated premium and provide such  
30 benefits through managed care in accordance with rules adopted by the  
31 commission. Benefits offered by such plan need not comply with the  
32 provisions of RCW 43.72.160 and 43.72.170.

33 (4) Provide or assure the provision of all services within the  
34 uniform benefits package and offer supplemental benefits regardless of  
35 age, sex, family structure, ethnicity, race, health condition,  
36 socioeconomic status, or other condition or situation, or the  
37 provisions of RCW 49.60.174(2).

1 (5) If the plan provides benefits through contracts with, ownership  
2 of, or management of health care facilities and contracts with or  
3 employs health care providers, demonstrate to the satisfaction of the  
4 insurance commissioner in consultation with the department of health  
5 and the commission that its facilities and personnel are adequate to  
6 provide the uniform benefits package and any supplemental benefits or  
7 has made adequate contractual arrangements with health care providers  
8 and facilities to provide employees (~~and their dependents~~) with such  
9 benefits.

10 (6) Comply with portability of benefits requirements prescribed by  
11 the commission for registered employer health plans.

12 (7) Comply with administrative rules prescribed by the commission,  
13 the insurance commissioner, and other state agencies governing  
14 registered employer health plans.

15 (8) Provide all employees (~~and their dependents~~) enrolled in the  
16 plan with instruction and informational materials to increase  
17 individual and family awareness of injury and illness prevention;  
18 encourage assumption of personal responsibility for protecting personal  
19 health; and stimulate discussion about the use and limits of medical  
20 care in improving the health of individuals and communities.

21 (9) Include in all of its contracts with health care providers and  
22 health care facilities a provision prohibiting such providers and  
23 facilities from billing employees (~~and their dependents~~) enrolled in  
24 the plan for any amounts in excess of applicable enrollee point of  
25 service, cost-sharing obligations for services included in the uniform  
26 benefits package and supplemental benefits.

27 (10) Include in all of its contracts issued for uniform benefits  
28 package and supplemental benefits coverage a subrogation provision that  
29 allows the plan to recover the costs of uniform benefits package and  
30 supplemental benefit services incurred to care for a plan enrollee  
31 injured by a negligent third party. The costs recovered shall be  
32 limited to:

33 (a) If the plan has not intervened in the action by an injured plan  
34 enrollee against a negligent third party, then the amount of costs the  
35 plan can recover shall be limited to the excess remaining after the  
36 plan enrollee has been fully compensated for his or her loss minus a  
37 proportionate share of the enrollee's costs and fees in bringing the  
38 action. The proportionate share shall be determined by:

1 (i) The fees and costs approved by the court in which the action  
2 was initiated; or

3 (ii) The written agreement between the attorney and client that  
4 established fees and costs when fees and costs are not addressed by the  
5 court.

6 When fees and costs have been approved by a court, after notice to  
7 the plan, the plan shall have the right to be heard on the matter of  
8 attorneys' fees and costs or its proportionate share;

9 (b) If the plan has intervened in the action by an injured enrollee  
10 against a negligent third party, then the amount of costs the plan can  
11 recover shall be the excess remaining after the enrollee has been fully  
12 compensated for his or her loss or the amount of the plan's incurred  
13 costs, whichever is less.

14 (11) Establish and maintain a grievance procedure approved by the  
15 insurance commissioner, to provide a reasonable and effective  
16 resolution of complaints initiated by plan enrollees concerning any  
17 matter relating to the provision of benefits under the uniform benefits  
18 package and supplemental benefits, access to health care services, and  
19 quality of services. Each plan shall respond to complaints filed with  
20 the insurance commissioner within fifteen working days. The insurance  
21 commissioner in consultation with the commission shall establish  
22 standards for resolution of grievances by enrollees of registered  
23 employer health plans.

24 (12) Have culturally sensitive health promotion programs that  
25 include approaches that are specifically effective for persons of color  
26 and accommodating to different cultural value systems, gender, and age.

27 (13) Permit every category of health care provider to provide  
28 health services or care for conditions included in the uniform benefits  
29 package to the extent that:

30 (a) The provision of such health services or care is within the  
31 health care providers' permitted scope of practice; and

32 (b) The providers agree to abide by standards related to:

33 (i) Provision, utilization review, and cost containment of health  
34 services;

35 (ii) Management and administrative procedures; and

36 (iii) Provision of cost-effective and clinically efficacious health  
37 services.

1 (14) Pay to the state treasurer a tax equivalent to the tax applied  
2 to taxpayers under RCW 48.14.0201 in accordance with rules adopted by  
3 the department of revenue.

4 (15) File their uniform benefits package and supplemental benefits  
5 with the insurance commissioner who may disapprove and order a  
6 modification of such package or benefits if such package or benefits  
7 fail to meet any standards or rules adopted by the commission  
8 pertaining to maximum premiums, enrollee financial participation, point  
9 of service cost-sharing, benefit design, or health service delivery.

10 (16) Comply with and shall be subject to RCW 48.43.170, 43.72.300,  
11 and 43.72.310.

12 (17) Pay an annual fee to the insurance commissioner's office in an  
13 amount established by rule of the commissioner necessary for the  
14 performance of the commissioner's responsibilities under this section  
15 consistent with and subject to the collection, depositing, and spending  
16 provisions applicable to fees collected pursuant to RCW 48.02.190.

17 (18) File an annual report with the commissioner containing such  
18 information as the commissioner may require to determine compliance  
19 with this section.

20 (19) In addition to any other penalties prescribed by law, be  
21 subject to the penalties contained in RCW 48.43.010 for violations of  
22 this section.

23 **Sec. 4.** RCW 43.72.140 and 1993 c 492 s 450 are each amended to  
24 read as follows:

25 (1) In conjunction with submission of the uniform benefits package  
26 as provided in RCW 43.72.130(7), the commission also shall submit a  
27 small business economic impact statement, prepared in consultation with  
28 the small business advisory committee. The impact statement shall  
29 address the economic impact on businesses with twenty-five or fewer  
30 full-time equivalent employees of participating in the cost of the  
31 uniform benefits package for their employees ((and—employees'  
32 dependents)). As an aid in preparing the small business economic  
33 impact statement, the commission shall conduct a survey of a  
34 statistically valid sample of small businesses.

35 (2) If the small business economic impact statement indicates a  
36 need to address the economic consequences of mandating employer  
37 participation in the cost of uniform benefits package coverage for  
38 employees ((and—their—dependents)), the commission shall submit

1 proposed strategies to address such consequences. Strategies may  
2 include: The level of employer participation in uniform benefits  
3 package costs; (~~coverage of dependents;~~) application of the uniform  
4 benefits package as the minimum benefits package offered to employees  
5 (~~or dependents~~); and any other strategies deemed appropriate by the  
6 commission.

7 **Sec. 5.** RCW 43.72.220 and 1993 c 494 s 3 are each amended to read  
8 as follows:

9 (1) The legislature recognizes that small businesses play an  
10 essential and increasingly important role in the state's economy. The  
11 legislature further recognizes that many of the state's small business  
12 owners provide health insurance to their employees through small group  
13 policies at a cost that directly affects their profitability. Other  
14 small business owners are prevented from providing health benefits to  
15 their employees by the lack of access to affordable health insurance  
16 coverage. The legislature intends that the provisions of chapter 492,  
17 Laws of 1993 make health insurance more available and affordable to  
18 small businesses in Washington state through strong cost control  
19 mechanisms and the option to purchase health benefits through the basic  
20 health plan, the Washington state group purchasing association, and  
21 health insurance purchasing cooperatives.

22 (2) On July 1, 1995, every employer employing more than five  
23 hundred qualified employees shall:

24 (a) Offer a choice of the uniform benefits package as provided by  
25 at least three available certified health plans, one of which shall be  
26 the lowest cost available package within their geographic region, and  
27 for employers who have established a registered employer health plan,  
28 one of which may be its own registered employer health plan, to all  
29 qualified employees. The employer shall be required to pay no less  
30 than fifty percent of the premium cost of the lowest cost available  
31 package within their geographic region. (~~On July 1, 1996, all  
32 dependents of qualified employees of these firms shall be offered a  
33 choice of packages as provided in this section with the employer paying  
34 no less than fifty percent of the premium of the lowest cost package  
35 within their geographic region.~~)

36 (b) For employees who work fewer than thirty hours during a week or  
37 one hundred twenty hours during a calendar month, three hundred sixty  
38 hours during a calendar quarter or one thousand four hundred forty

1 hours during a calendar year(~~(, and their dependents)~~), pay, for the  
2 period of time adopted by the employer under this subsection, the  
3 amount resulting from application of the following formula: The number  
4 of hours worked by the employee in a month is multiplied by the amount  
5 of a qualified employee's premium, and that amount is then divided by  
6 one hundred twenty.

7 ~~(c) ((If an employee under (b) of this subsection is the dependent  
8 of a qualified employee, and is therefore covered as a dependent by the  
9 qualified employee's employer, then the employer of the employee under  
10 (b) of this subsection shall not be required to participate in the cost  
11 of the uniform benefits package for that employee.~~

12 ~~(d))~~ If an employee working on a seasonal basis is a qualified  
13 employee of another employer, and therefore has uniform benefits  
14 package coverage through that primary employer, then the seasonal  
15 employer of the employee shall not be required to participate in the  
16 cost of the uniform benefits package for that employee.

17 (3) By July 1, 1996, every employer employing more than one hundred  
18 qualified employees shall:

19 (a) Offer a choice of the uniform benefits package as provided by  
20 at least three available certified health plans, one of which shall be  
21 the lowest cost available package within their geographic region, to  
22 all qualified employees. The employer shall be required to pay no less  
23 than fifty percent of the premium cost of the lowest cost available  
24 package within their geographic region. ~~((On July 1, 1997, all  
25 dependents of qualified employees in these firms shall be offered a  
26 choice of packages as provided in this section with the employer paying  
27 no less than fifty percent of the premium of the lowest cost package  
28 within their geographic region.))~~

29 (b) For employees who work fewer than thirty hours during a week or  
30 one hundred twenty hours during a calendar month, three hundred sixty  
31 hours during a calendar quarter or one thousand four hundred forty  
32 hours during a calendar year(~~(, and their dependents)~~), pay, for the  
33 period of time adopted by the employer under this subsection, the  
34 amount resulting from application of the following formula: The number  
35 of hours worked by the employee in a month is multiplied by the amount  
36 of a qualified employee's premium, and that amount is then divided by  
37 one hundred twenty.

38 ~~(c) ((If an employee under (b) of this subsection is the dependent  
39 of a qualified employee, and is therefore covered as a dependent by the~~



1 ~~qualified employee's employer, then the employer of the employee under~~  
2 ~~(b) of this subsection shall not be required to participate in the cost~~  
3 ~~of the uniform benefits package for that employee.~~

4 ~~(d)) If an employee working on a seasonal basis is a qualified~~  
5 ~~employee of another employer, and therefore has uniform benefits~~  
6 ~~package coverage through that primary employer, then the seasonal~~  
7 ~~employer of the employee shall not be required to participate in the~~  
8 ~~cost of the uniform benefits package for that employee.~~

9 (4) By July 1, 1997, every employer shall:

10 (a) Offer a choice of the uniform benefits package as provided by  
11 at least three available certified health plans, one of which shall be  
12 the lowest cost available package within their geographic region, to  
13 all qualified employees. The employer shall be required to pay no less  
14 than fifty percent of the premium cost of the lowest cost available  
15 package within their geographic region. ~~((On July 1, 1999, all~~  
16 ~~dependents of qualified employees in all firms shall be offered a~~  
17 ~~choice of packages as provided in this section with the employer paying~~  
18 ~~no less than fifty percent of the premium of the lowest cost package~~  
19 ~~within their geographic region.))~~

20 (b) For employees who work fewer than thirty hours during a week or  
21 one hundred twenty hours during a calendar month, three hundred sixty  
22 hours during a calendar quarter or one thousand four hundred forty  
23 hours during a calendar year~~((, and their dependents))~~, pay, for the  
24 period of time adopted by the employer under this subsection, the  
25 amount resulting from application of the following formula: The number  
26 of hours worked by the employee in a month is multiplied by the amount  
27 of a qualified employee's premium, and that amount is then divided by  
28 one hundred twenty.

29 ~~(c) ((If an employee under (b) of this subsection is the dependent~~  
30 ~~of a qualified employee, and is therefore covered as a dependent by the~~  
31 ~~qualified employee's employer, then the employer of the employee under~~  
32 ~~(b) of this subsection shall not be required to participate in the cost~~  
33 ~~of the uniform benefits package for that employee.~~

34 ~~(d)) If an employee working on a seasonal basis is a qualified~~  
35 ~~employee of another employer, and therefore has uniform benefits~~  
36 ~~package coverage through that primary employer, then the seasonal~~  
37 ~~employer of the employee shall not be required to participate in the~~  
38 ~~cost of the uniform benefits package for that employee.~~

1 (5) This employer participation requirement shall be waived if  
2 imposition of the requirement would constitute a violation of the  
3 freedom of religion provisions of the First Amendment of the United  
4 States Constitution or Article I, section 11, of the state  
5 Constitution. In such case the employer shall, pursuant to commission  
6 rules, set aside an amount equal to the applicable employer  
7 contribution level in a manner that would permit his or her employee to  
8 fully comply with the requirements of this chapter.

9 (6) In lieu of offering the uniform benefits package to employees  
10 (~~and their dependents~~) through direct contracts with certified health  
11 plans, an employer may combine the employer contribution with that of  
12 the employee's contribution and enroll in the basic health plan as  
13 provided in chapter 70.47 RCW or a health insurance purchasing  
14 cooperative established under RCW 43.72.080 and 48.43.160. Any subsidy  
15 that may be provided according to the provisions of chapter 70.47 RCW  
16 shall not lessen the employer's obligation to pay a minimum of fifty  
17 percent of the premium and the full amount of the direct subsidy shall  
18 be for the benefit of the employee (~~or the dependent~~).

19 (7) For purposes of determining the financial obligation of an  
20 employer who enrolls employees (~~or employees and their adult~~  
21 ~~dependents~~) in the basic health plan, the premium shall be the per  
22 adult, per month, cost of coverage in the plan, including  
23 administration.

24 **Sec. 6.** RCW 82.24.020 and 1993 c 492 s 307 are each amended to  
25 read as follows:

26 (1) There is levied and there shall be collected as provided in  
27 this chapter, a tax upon the sale, use, consumption, handling,  
28 possession or distribution of all cigarettes, in an amount equal to the  
29 rate of eleven and one-half mills per cigarette.

30 (2) Until July 1, 1995, an additional tax is imposed upon the sale,  
31 use, consumption, handling, possession, or distribution of all  
32 cigarettes, in an amount equal to the rate of one and one-half mills  
33 per cigarette. All revenues collected during any month from this  
34 additional tax shall be deposited in the drug enforcement and education  
35 account under RCW 69.50.520 by the twenty-fifth day of the following  
36 month.

37 (3) An additional tax is imposed upon the sale, use, consumption,  
38 handling, possession, or distribution of all cigarettes, in an amount

1 equal to the rate of (~~ten~~) ----- mills per cigarette through June  
2 30, 1994, (~~eleven and one-fourth~~) ----- mills per cigarette for  
3 the period July 1, 1994, through June 30, 1995, (~~twenty~~) ----- mills  
4 per cigarette for the period July 1, 1995, through June 30, 1996, and  
5 (~~twenty and one-half~~) ----- mills per cigarette thereafter. All  
6 revenues collected during any month from this additional tax shall be  
7 deposited in the health services account created under RCW 43.72.900 by  
8 the twenty-fifth day of the following month.

9 (4) Wholesalers and retailers subject to the payment of this tax  
10 may, if they wish, absorb one-half mill per cigarette of the tax and  
11 not pass it on to purchasers without being in violation of this section  
12 or any other act relating to the sale or taxation of cigarettes.

13 (5) For purposes of this chapter, "possession" shall mean both (a)  
14 physical possession by the purchaser and, (b) when cigarettes are being  
15 transported to or held for the purchaser or his or her designee by a  
16 person other than the purchaser, constructive possession by the  
17 purchaser or his designee, which constructive possession shall be  
18 deemed to occur at the location of the cigarettes being so transported  
19 or held.

20 **Sec. 7.** RCW 82.26.020 and 1993 c 492 s 309 are each amended to  
21 read as follows:

22 (1) There is levied and there shall be collected a tax upon the  
23 sale, use, consumption, handling, or distribution of all tobacco  
24 products in this state at the rate of forty-five percent of the  
25 wholesale sales price of such tobacco products.

26 (2) Taxes under this section shall be imposed at the time the  
27 distributor (a) brings, or causes to be brought, into this state from  
28 without the state tobacco products for sale, (b) makes, manufactures,  
29 or fabricates tobacco products in this state for sale in this state, or  
30 (c) ships or transports tobacco products to retailers in this state, to  
31 be sold by those retailers.

32 (3) An additional tax is imposed equal to seven percent multiplied  
33 by the tax payable under subsection (1) of this section.

34 (4) An additional tax is imposed equal to (~~ten~~) ----- percent of  
35 the wholesale sales price of tobacco products. The moneys collected  
36 under this subsection shall be deposited in the health services account  
37 created under RCW 43.72.900.

1        NEW SECTION.    **Sec. 8.**    This act shall be submitted to the people  
2 for their adoption and ratification, or rejection, at the next  
3 succeeding general election to be held in this state, in accordance  
4 with Article II, section 1 of the state Constitution, as amended, and  
5 the laws adopted to facilitate the operation thereof.

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