

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6112

Chapter 260, Laws of 2004

58th Legislature
2004 Regular Session

SELF-FUNDED MULTIPLE EMPLOYER ARRANGEMENTS

EFFECTIVE DATE: 3/31/04

Passed by the Senate March 10, 2004
YEAS 49 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 9, 2004
YEAS 95 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
certify that the attached is
**ENGROSSED SUBSTITUTE SENATE BILL
6112** as passed by the Senate and
the House of Representatives on
the dates hereon set forth.

MILTON H. DOUMIT JR.

Secretary

Approved March 31, 2004.

FILED

March 31, 2004 - 3:09 p.m.

GARY F. LOCKE

Governor of the State of Washington

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6112

AS AMENDED BY THE HOUSE

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By Senate Committee on Financial Services, Insurance & Housing
(originally sponsored by Senators Prentice, Benton, Winsley, Keiser
and Kohl-Welles)

READ FIRST TIME 01/29/04.

1 AN ACT Relating to self-funded multiple employer welfare
2 arrangements; amending RCW 48.02.190, 48.03.060, 48.14.0201, 48.41.030,
3 and 48.41.060; adding a new section to chapter 48.43 RCW; adding a new
4 section to chapter 48.31 RCW; adding a new section to chapter 48.99
5 RCW; adding a new chapter to Title 48 RCW; prescribing penalties; and
6 declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** This chapter may be cited as the "self-
9 funded multiple employer welfare arrangement regulation act."

10 NEW SECTION. **Sec. 2.** The purposes of this chapter are to:

11 (1) Provide for the authorization and registration of self-funded
12 multiple employer welfare arrangements;

13 (2) Regulate self-funded multiple employer welfare arrangements in
14 order to ensure the financial integrity of the arrangements;

15 (3) Provide reporting requirements for self-funded multiple
16 employer welfare arrangements; and

17 (4) Provide for sanctions against self-funded multiple employer

1 welfare arrangements organized, operated, providing benefits, or
2 maintained in this state that do not comply with this chapter.

3 NEW SECTION. **Sec. 3.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Bona fide association" means an association of employers that
6 has been in existence for a period of not less than ten years prior to
7 sponsoring a self-funded multiple employer welfare arrangement, during
8 which time the association has engaged in substantial activities
9 relating to the common interests of member employers, and that
10 continues to engage in substantial activities in addition to sponsoring
11 an arrangement. However, an association that was formed and began
12 sponsoring an arrangement prior to October 1, 1995, is not subject to
13 the requirement that the association be in existence for ten years
14 prior to sponsoring an arrangement.

15 (2) "Employer" means any person, firm, corporation, partnership,
16 business trust, legal representative, or other business entity which
17 engages in any business, industry, profession, or activity in this
18 state and employs one or more other persons or who contracts with one
19 or more persons, the essence of which is the personal labor of that
20 person or persons.

21 (3) "Health care service" means that service offered or provided by
22 health care facilities and health care providers relating to the
23 prevention, cure, or treatment of illness, injury, or disease.

24 (4) "Incurred claims" means the value of all amounts paid or
25 payable under a multiple employer welfare arrangement determined by
26 contract to be a liability with an incurred claims date during the
27 valuation period. It includes all payments during the valuation period
28 plus a reasonable estimate of unpaid claims liabilities.

29 (5) "Multiple employer welfare arrangement" means a multiple
30 employer welfare arrangement as defined by 29 U.S.C. Sec. 1002, but
31 does not include an arrangement, plan, program, or interlocal agreement
32 of or between any political subdivisions of this state, any federal
33 agencies, or any contractors or subcontractors with federal agencies at
34 a federal government facility within this state.

35 (6) "Qualified actuary" means an individual who:

36 (a) Is a member in good standing of the American academy of
37 actuaries; and

1 (b) Is qualified to sign statements of actuarial opinion for health
2 annual statements in accordance with the American academy of actuaries
3 qualification standards for actuaries signing the statements.

4 (7) "Self-funded multiple employer welfare arrangement" or
5 "arrangement" means a multiple employer welfare arrangement that does
6 not provide for payment of benefits under the arrangement solely
7 through a policy or policies of insurance issued by one or more
8 insurance companies licensed under this title.

9 (8) "Surplus" means the excess of the assets of a self-funded
10 multiple employer welfare arrangement over the liabilities of the
11 arrangement. The assets and liabilities should be determined in
12 accordance with the accounting practices and procedures manuals as
13 adopted by the national association of insurance commissioners, unless
14 otherwise provided by law.

15 NEW SECTION. **Sec. 4.** (1) Except as provided in subsection (3) of
16 this section, a person may not establish, operate, provide benefits, or
17 maintain a self-funded multiple employer welfare arrangement in this
18 state unless the arrangement first obtains a certificate of authority
19 from the commissioner.

20 (2) An arrangement is considered to be established, operated,
21 providing benefits, or maintained in this state if (a) one or more of
22 the employer members participating in the arrangement is either
23 domiciled in or maintains a place of business in this state, or (b) the
24 activities of the arrangement or employer members fall under the scope
25 of RCW 48.01.020.

26 (3) An arrangement established, operated, providing benefits, or
27 maintained in this state prior to December 31, 2003, has until April 1,
28 2005, to file a substantially complete application for a certificate of
29 authority. An arrangement that files a substantially complete
30 application for a certificate of authority by that date is allowed to
31 continue to operate without a certificate of authority until the
32 commissioner approves or denies the arrangement's application for a
33 certificate of authority.

34 NEW SECTION. **Sec. 5.** The commissioner may not issue a certificate
35 of authority to a self-funded multiple employer welfare arrangement

1 unless the arrangement establishes to the satisfaction of the
2 commissioner that the following requirements have been satisfied by the
3 arrangement:

4 (1) The employers participating in the arrangement are members of
5 a bona fide association;

6 (2) The employers participating in the arrangement exercise control
7 over the arrangement, as follows:

8 (a) Subject to (b) of this subsection, control exists if the board
9 of directors of the bona fide association or the employers
10 participating in the arrangement have the right to elect at least
11 seventy-five percent of the individuals designated in the arrangement's
12 organizational documents as having control over the operations of the
13 arrangement and the individuals designated in the arrangement's
14 organizational documents in fact exercise control over the operation of
15 the arrangement; and

16 (b) The use of a third-party administrator to process claims and to
17 assist in the administration of the arrangement is not evidence of the
18 lack of exercise of control over the operation of the arrangement;

19 (3) In this state, the arrangement provides only health care
20 services;

21 (4) In this state, the arrangement provides or arranges benefits
22 for health care services in compliance with those provisions of this
23 title that mandate particular benefits or offerings and with provisions
24 that require access to particular types or categories of health care
25 providers and facilities;

26 (5) In this state, the arrangement provides or arranges benefits
27 for health care services in compliance with RCW 48.43.500 through
28 48.43.535, 48.43.545, and 48.43.550;

29 (6) The arrangement provides health care services to not less than
30 twenty employers and not less than seventy-five employees;

31 (7) The arrangement may not solicit participation in the
32 arrangement from the general public. However, the arrangement may
33 employ licensed insurance agents who receive a commission, unlicensed
34 individuals who do not receive a commission, and may contract with a
35 licensed insurance producer who may be paid a commission or other
36 remuneration, for the purpose of enrolling and renewing the enrollments
37 of employers in the arrangement;

1 (8) The arrangement has been in existence and operated actively for
2 a continuous period of not less than ten years as of December 31, 2003,
3 except for an arrangement that has been in existence and operated
4 actively since December 31, 2000, and is sponsored by an association
5 that has been in existence more than twenty-five years; and

6 (9) The arrangement is not organized or maintained solely as a
7 conduit for the collection of premiums and the forwarding of premiums
8 to an insurance company.

9 NEW SECTION. **Sec. 6.** (1) In addition to the requirements under
10 section 5 of this act, self-funded multiple employer welfare
11 arrangements are subject to the following requirements:

12 (a) Arrangements must maintain a calendar year for operations and
13 reporting purposes;

14 (b) Arrangements must satisfy one of the following requirements:

15 (i)(A) The arrangement must deposit two hundred thousand dollars
16 with the commissioner to be used for the payment of claims in the event
17 that the arrangement becomes insolvent; and

18 (B) The arrangement must submit to the commissioner a written plan
19 of operation that, in the reasonable discretion of the commissioner,
20 ensures the financial integrity of the arrangement; or

21 (ii) The arrangement demonstrates to the reasonable satisfaction of
22 the commissioner the ability of the arrangement to remain financially
23 solvent, for which purpose the commissioner may consider:

24 (A) The pro forma financial statements of the arrangement;

25 (B) The types and levels of excess of loss insurance coverage,
26 including the attachment points of the coverage and whether the points
27 are reflected as annual or monthly levels;

28 (C) Whether a deposit is required for each employee covered under
29 the arrangement equal to at least one month's cost of providing
30 benefits under the arrangement;

31 (D) The experience of the individuals who will be involved in the
32 management of the arrangement, including employees, independent
33 contractors, and consultants; and

34 (E) Other factors as reasonably determined by the commissioner to
35 be relevant to a determination of whether the arrangement is able to
36 operate in a financially solvent manner.

1 (2) The commissioner may require that the articles, bylaws,
2 agreements, trusts, or other documents or instruments describing the
3 rights and obligations of the employers, employees, and beneficiaries
4 of the arrangement provide that employers participating in the
5 arrangement are subject to pro rata assessment for all liabilities of
6 the arrangement.

7 (3) Self-funded multiple employer welfare arrangements with fewer
8 than one thousand covered persons are required to have aggregate stop
9 loss coverage, with an attachment point of one hundred twenty-five
10 percent of expected claims. If the arrangement is allowed to assess
11 the participating employers to cover actual or projected claims in
12 excess of plan assets, then the attachment point shall be increased by
13 the amount of the allowable assessments. If the required attachment
14 point exceeds one hundred seventy-five percent of expected claims,
15 aggregate stop loss coverage shall be waived. Arrangements with one
16 thousand covered persons or more are not required to have aggregate
17 stop loss coverage.

18 (4) The arrangement must demonstrate continued compliance with
19 respect to the conditions set forth in this section as a condition of
20 receiving and maintaining a certificate of authority. The commissioner
21 may waive continued compliance with respect to the conditions in this
22 section at any time after the commissioner has granted a certificate of
23 authority to an arrangement.

24 NEW SECTION. **Sec. 7.** A self-funded multiple employer welfare
25 arrangement must apply for a certificate of authority on a form
26 prescribed by the commissioner and must submit the application,
27 together with the following documents, to the commissioner:

28 (1) A copy of all articles, bylaws, agreements, trusts, or other
29 documents or instruments describing the rights and obligations of the
30 employers, employees, and beneficiaries of the arrangement;

31 (2) A copy of the summary plan description or summary plan
32 descriptions of the arrangement, including those filed or required to
33 be filed with the United States department of labor, together with any
34 amendments to the description;

35 (3) Evidence of coverage of or letters of intent to participate
36 executed by at least twenty employers providing allowable benefits to
37 at least seventy-five employees;

1 (4) A copy of the arrangement's most recent year's financial
2 statements that must include, at a minimum, a balance sheet, an income
3 statement, a statement of changes in financial position, and an
4 actuarial opinion signed by a qualified actuary stating that the unpaid
5 claim liability of the arrangement satisfies the standards under this
6 title;

7 (5) Proof that the arrangement maintains or will maintain fidelity
8 bonds required by the United States department of labor under the
9 employee retirement income security act of 1974, 29 U.S.C. Sec. 1001 et
10 seq.;

11 (6) A copy of any excess of loss insurance coverage policies
12 maintained or proposed to be maintained by the arrangement;

13 (7) Biographical reports on forms prescribed by the national
14 association of insurance commissioners evidencing the general
15 trustworthiness and competence of each individual who is serving or who
16 will serve as an officer, director, trustee, employee, or fiduciary of
17 the arrangement;

18 (8) Fingerprint cards and current fees payable to the Washington
19 state patrol to perform a state and national criminal history
20 background check of any person who exercises control over the financial
21 dealings and operations of the self-funded multiple employer welfare
22 arrangement, including collection of employer contributions, investment
23 of assets, payment of claims, rate setting, and claims adjudication.
24 The fingerprints and any additional information may be submitted to the
25 federal bureau of investigation and any results of the check must be
26 returned to the office of the insurance commissioner. The results may
27 be disseminated to any governmental agency or entity authorized to
28 receive them; and

29 (9) A statement executed by a representative of the arrangement
30 certifying, to the best knowledge and belief of the representative,
31 that:

32 (a) The arrangement is in compliance with section 5 of this act;

33 (b) The arrangement is in compliance with the requirements of the
34 employee retirement income security act of 1974, 29 U.S.C. Sec. 1001 et
35 seq., or a statement of any requirements with which the arrangement is
36 not in compliance and a statement of proposed corrective actions; and

37 (c) The arrangement is in compliance with sections 8 and 9 of this
38 act.

1 NEW SECTION. **Sec. 8.** Self-funded multiple employer welfare
2 arrangements must maintain continuously a surplus equal to at least ten
3 percent of the next twelve months projected incurred claims or two
4 million dollars, whichever is greater. The commissioner may proceed
5 against self-funded multiple employer welfare arrangements that fail to
6 maintain the level of surplus required by this section in any manner
7 that the commissioner is authorized to proceed against a health care
8 service contractor that failed to maintain minimum net worth.

9 NEW SECTION. **Sec. 9.** A self-funded multiple employer welfare
10 arrangement must establish and maintain contribution rates for
11 participation under the arrangement that satisfy either of the
12 following requirements:

13 (1) Contribution rates must equal or exceed the sum of projected
14 incurred claims for the year, plus all projected costs of operation of
15 the arrangement for the year, plus an amount equal to any deficiency in
16 the surplus of the arrangement for the prior year, minus an amount
17 equal to the surplus of the arrangement in excess of the minimum
18 required level of surplus; or

19 (2) Contribution rates must equal or exceed a funding level
20 established by a report prepared by a qualified actuary.

21 NEW SECTION. **Sec. 10.** (1) The commissioner shall grant or deny an
22 application for a certificate of authority within one hundred eighty
23 days of the date that a completed application, together with the items
24 designated in section 7 of this act, is submitted to the commissioner.

25 (2) The commissioner shall grant the application of an arrangement
26 that satisfies the applicable requirements of sections 5 through 9 of
27 this act.

28 (3) The commissioner shall deny the application of an arrangement
29 that does not satisfy the applicable requirements of sections 5 through
30 9 of this act. Denial of an application for a certificate of authority
31 is subject to appeal under chapter 34.05 RCW.

32 (4) A certificate of authority granted to an arrangement is
33 effective unless revoked by the commissioner under section 12 of this
34 act.

1 NEW SECTION. **Sec. 11.** (1) A self-funded multiple employer welfare
2 arrangement must comply with the reporting requirements of this
3 section.

4 (2) Every arrangement holding a certificate of authority from the
5 commissioner must file its financial statements as required by this
6 title and by the commissioner in accordance with the accounting
7 practices and procedures manuals as adopted by the national association
8 of insurance commissioners, unless otherwise provided by law.

9 (3) Every arrangement must comply with the provisions of chapters
10 48.12 and 48.13 RCW.

11 (4) Every arrangement holding a certificate of authority shall,
12 annually, before the first day of March, file with the commissioner a
13 true statement of its financial condition, transactions, and affairs as
14 of the thirty-first day of December of the preceding year. The
15 statement forms must be those forms approved by the national
16 association of insurance commissioners for health insurance. The
17 statement must be verified by the oaths of at least two officers of the
18 arrangement. Additional information may be required by this title or
19 by the request of the commissioner.

20 (5) Every arrangement must report their annual and other statements
21 in the same manner required of other insurers by rule of the
22 commissioner.

23 (6) The arrangement must file with the commissioner a copy of the
24 arrangement's internal revenue service form 5500 together with all
25 attachments to the form, at the time required for filing the form.

26 NEW SECTION. **Sec. 12.** (1) The commissioner may impose sanctions
27 against a self-funded multiple employer welfare arrangement that fails
28 to comply with this chapter. The maximum fine may not exceed ten
29 thousand dollars for each violation.

30 (2) The commissioner may issue a notice of intent to revoke the
31 certificate of authority of a self-funded multiple employer welfare
32 arrangement that fails to comply with section 8, 9, or 11 of this act.
33 If, within sixty days of receiving notice under this subsection, the
34 arrangement fails to file with the commissioner a plan to bring the
35 arrangement into compliance with section 8, 9, or 11 of this act, the
36 commissioner may revoke the arrangement's certificate of authority. A

1 revocation of a certificate of authority is subject to appeal under
2 chapter 34.05 RCW.

3 (3) An arrangement that fails to maintain the level of surplus
4 required by section 8 of this act is subject to the sanctions
5 authorized in RCW 48.44.160 through 48.44.166.

6 NEW SECTION. **Sec. 13.** A self-funded multiple employer welfare
7 arrangement organized, operated, providing benefits, or maintained in
8 this state without a certificate of authority is in violation of this
9 title.

10 NEW SECTION. **Sec. 14.** Each policy issued by a self-funded
11 multiple employer welfare arrangement must contain, in ten-point type
12 on the front page and the declaration page, the following notice:

13 "NOTICE

14 This policy is issued by a self-funded multiple employer welfare
15 arrangement. A self-funded multiple employer welfare arrangement may
16 not be subject to all of the insurance laws and regulations of your
17 state. State insurance insolvency guaranty funds are not available for
18 a self-funded multiple employer welfare arrangement."

19 NEW SECTION. **Sec. 15.** A self-funded multiple employer welfare
20 arrangement is subject to RCW 48.43.300 through 48.43.370, the
21 rehabilitation provisions under chapter 48.31 RCW, and chapter 48.99
22 RCW.

23 NEW SECTION. **Sec. 16.** (1) The commissioner may make an
24 examination of the operations of any self-funded multiple employer
25 welfare arrangement as often as he or she deems necessary in order to
26 carry out the purposes of this chapter.

27 (2) Every self-funded multiple employer welfare arrangement shall
28 submit its books and records relating to its operation for financial
29 condition and market conduct examinations and in every way facilitate
30 them. For the purpose of examinations, the commissioner may issue
31 subpoenas, administer oaths, and examine the officers and principals of
32 the multiple employer welfare arrangement.

33 (3) The commissioner may elect to accept and rely on audit reports
34 made by an independent certified public accountant for the self-funded

1 multiple employer welfare arrangement in the course of that part of the
2 commissioner's examination covering the same general subject matter as
3 the audit. The commissioner may incorporate the audit report in his or
4 her report of the examination.

5 (4)(a) The commissioner may also examine any affiliate of the self-
6 funded multiple employer welfare arrangement. An examination of an
7 affiliate is limited to the activities or operations of the affiliate
8 that may impact the financial position of the arrangement.

9 (b) For the purposes of this section, "affiliate" has the same
10 meaning as defined in RCW 48.31C.010.

11 (5) Whenever an examination is made, all of the provisions of
12 chapter 48.03 RCW not inconsistent with this chapter shall be
13 applicable. In lieu of making an examination himself or herself, the
14 commissioner may, in the case of a foreign self-funded multiple
15 employer welfare arrangement, accept an examination report of the
16 applicant by the regulatory official in its state of domicile. In the
17 case of a domestic self-funded multiple employer welfare arrangement,
18 the commissioner may accept an examination report of the applicant by
19 the regulatory official of a state that has already licensed the
20 arrangement.

21 NEW SECTION. **Sec. 17.** This chapter does not apply to:

- 22 (1) Single employer entities;
23 (2) Taft-Hartley plans; or
24 (3) Self-funded multiple employer welfare arrangements that do not
25 provide coverage for health care services.

26 NEW SECTION. **Sec. 18.** Participant contributions used to determine
27 the taxable amounts in this state under RCW 48.14.0201 shall be
28 determined in the same manner as premiums taxable in this state are
29 determined under RCW 48.14.090.

30 NEW SECTION. **Sec. 19.** A new section is added to chapter 48.43 RCW
31 to be codified between RCW 48.43.300 and 48.43.370 to read as follows:

32 A self-funded multiple employer welfare arrangement, as defined in
33 section 3 of this act, is subject to the same RBC reporting
34 requirements as a domestic carrier under RCW 48.43.300 through
35 48.43.370.

1 NEW SECTION. **Sec. 20.** A new section is added to chapter 48.31 RCW
2 to read as follows:

3 A self-funded multiple employer welfare arrangement, as defined in
4 section 3 of this act, is an insurer under this chapter.

5 NEW SECTION. **Sec. 21.** A new section is added to chapter 48.99 RCW
6 to read as follows:

7 A self-funded multiple employer welfare arrangement, as defined in
8 section 3 of this act, is an insurer under this chapter.

9 **Sec. 22.** RCW 48.02.190 and 2003 1st sp.s. c 25 s 923 are each
10 amended to read as follows:

11 (1) As used in this section:

12 (a) "Organization" means every insurer, as defined in RCW
13 48.01.050, having a certificate of authority to do business in this
14 state and every health care service contractor or multiple employer
15 welfare arrangement registered to do business in this state. "Class
16 one" organizations shall consist of all insurers as defined in RCW
17 48.01.050. "Class two" organizations shall consist of all
18 organizations registered under provisions of chapter 48.44 RCW. "Class
19 three" organizations shall consist of self-funded multiple employer
20 welfare arrangements as defined in section 3 of this act.

21 (b)(i) "Receipts" means ((+i+)) (A) net direct premiums consisting
22 of direct gross premiums, as defined in RCW 48.18.170, paid for
23 insurance written or renewed upon risks or property resident, situated,
24 or to be performed in this state, less return premiums and premiums on
25 policies not taken, dividends paid or credited to policyholders on
26 direct business, and premiums received from policies or contracts
27 issued in connection with qualified plans as defined in RCW 48.14.021,
28 and ((+ii+)) (B) prepayments to health care service contractors as set
29 forth in RCW 48.44.010(3) or participant contributions to self-funded
30 multiple employer welfare arrangements as defined in section 3 of this
31 act less experience rating credits, dividends, prepayments returned to
32 subscribers, and payments for contracts not taken.

33 (ii) Participant contributions, under chapter 48.-- RCW (sections
34 1 through 18 of this act), used to determine the receipts in this state
35 under this section shall be determined in the same manner as premiums
36 taxable in this state are determined under RCW 48.14.090.

1 (2) The annual cost of operating the office of insurance
2 commissioner shall be determined by legislative appropriation. A pro
3 rata share of the cost shall be charged to all organizations. Each
4 class of organization shall contribute sufficient in fees to the
5 insurance commissioner's regulatory account to pay the reasonable
6 costs, including overhead, of regulating that class of organization.

7 (3) Fees charged shall be calculated separately for each class of
8 organization. The fee charged each organization shall be that portion
9 of the cost of operating the insurance commissioner's office, for that
10 class of organization, for the ensuing fiscal year that is represented
11 by the organization's portion of the receipts collected or received by
12 all organizations within that class on business in this state during
13 the previous calendar year: PROVIDED, That the fee shall not exceed
14 one-eighth of one percent of receipts: PROVIDED FURTHER, That the
15 minimum fee shall be one thousand dollars.

16 (4) The commissioner shall annually, on or before June 1, calculate
17 and bill each organization for the amount of its fee. Fees shall be
18 due and payable no later than June 15 of each year: PROVIDED, That if
19 the necessary financial records are not available or if the amount of
20 the legislative appropriation is not determined in time to carry out
21 such calculations and bill such fees within the time specified, the
22 commissioner may use the fee factors for the prior year as the basis
23 for the fees and, if necessary, the commissioner may impose
24 supplemental fees to fully and properly charge the organizations. The
25 penalties for failure to pay fees when due shall be the same as the
26 penalties for failure to pay taxes pursuant to RCW 48.14.060. The fees
27 required by this section are in addition to all other taxes and fees
28 now imposed or that may be subsequently imposed.

29 (5) All moneys collected shall be deposited in the insurance
30 commissioner's regulatory account in the state treasury which is hereby
31 created.

32 (6) Unexpended funds in the insurance commissioner's regulatory
33 account at the close of a fiscal year shall be carried forward in the
34 insurance commissioner's regulatory account to the succeeding fiscal
35 year and shall be used to reduce future fees. During the 2003-2005
36 fiscal biennium, the legislature may transfer from the insurance
37 commissioner's regulatory account to the state general fund such
38 amounts as reflect excess fund balance in the account.

1 **Sec. 23.** RCW 48.03.060 and 1995 c 152 s 2 are each amended to read
2 as follows:

3 (1) Examinations within this state of any insurer or self-funded
4 multiple employer welfare arrangement as defined in section 3 of this
5 act domiciled or having its home offices in this state, other than a
6 title insurer, made by the commissioner or the commissioner's examiners
7 and employees shall, except as to fees, mileage, and expense incurred
8 as to witnesses, be at the expense of the state.

9 (2) Every other examination, whatsoever, or any part of the
10 examination of any person domiciled or having its home offices in this
11 state requiring travel and services outside this state, shall be made
12 by the commissioner or by examiners designated by the commissioner and
13 shall be at the expense of the person examined; but a domestic insurer
14 shall not be liable for the compensation of examiners employed by the
15 commissioner for such services outside this state.

16 (3) When making an examination under this chapter, the commissioner
17 may retain attorneys, appraisers, independent actuaries, independent
18 certified public accountants, or other professionals and specialists as
19 examiners, the cost of which shall be borne by the person who is the
20 subject of the examination, except as provided in subsection (1) of
21 this section.

22 (4) The person examined and liable therefor shall reimburse the
23 state upon presentation of an itemized statement thereof, for the
24 actual travel expenses of the commissioner's examiners, their
25 reasonable living expense allowance, and their per diem compensation,
26 including salary and the employer's cost of employee benefits, at a
27 reasonable rate approved by the commissioner, incurred on account of
28 the examination. Per diem salary and expenses for employees examining
29 insurers domiciled outside the state of Washington shall be established
30 by the commissioner on the basis of the National Association of
31 Insurance Commissioner's recommended salary and expense schedule for
32 zone examiners, or the salary schedule established by the Washington
33 personnel resources board and the expense schedule established by the
34 office of financial management, whichever is higher. A domestic title
35 insurer shall pay the examination expense and costs to the commissioner
36 as itemized and billed by the commissioner.

37 The commissioner or the commissioner's examiners shall not receive
38 or accept any additional emolument on account of any examination.

1 (5) Nothing contained in this chapter limits the commissioner's
2 authority to terminate or suspend any examination in order to pursue
3 other legal or regulatory action under the insurance laws of this
4 state. Findings of fact and conclusions made pursuant to any
5 examination are prima facie evidence in any legal or regulatory action.

6 **Sec. 24.** RCW 48.14.0201 and 1998 c 323 s 1 are each amended to
7 read as follows:

8 (1) As used in this section, "taxpayer" means a health maintenance
9 organization((~~τ~~)) as defined in RCW 48.46.020, ((~~ϕ~~)) a health care
10 service contractor((~~τ~~)) as defined in RCW 48.44.010, or a self-funded
11 multiple employer welfare arrangement as defined in section 3 of this
12 act.

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

19 (3) Taxpayers shall prepay their tax obligations under this
20 section. The minimum amount of the prepayments shall be percentages of
21 the taxpayer's tax obligation for the preceding calendar year
22 recomputed using the rate in effect for the current year. For the
23 prepayment of taxes due during the first calendar year, the minimum
24 amount of the prepayments shall be percentages of the taxpayer's tax
25 obligation that would have been due had the tax been in effect during
26 the previous calendar year. The tax prepayments shall be paid to the
27 state treasurer through the commissioner's office by the due dates and
28 in the following amounts:

- 29 (a) On or before June 15, forty-five percent;
- 30 (b) On or before September 15, twenty-five percent;
- 31 (c) On or before December 15, twenty-five percent.

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

1 (5) Moneys collected under this section shall be deposited in the
2 general fund through March 31, 1996, and in the health services account
3 under RCW 43.72.900 after March 31, 1996.

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

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

9 (b) Amounts received by any health care service contractor, as
10 defined in RCW 48.44.010, as prepayments for health care services
11 included within the definition of practice of dentistry under RCW
12 18.32.020.

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

15 (7) Beginning January 1, 2000, the state does hereby preempt the
16 field of imposing excise or privilege taxes upon taxpayers and no
17 county, city, town, or other municipal subdivision shall have the right
18 to impose any such taxes upon such taxpayers. This subsection shall be
19 limited to premiums and payments for health benefit plans offered by
20 health care service contractors under chapter 48.44 RCW (~~and~~), health
21 maintenance organizations under chapter 48.46 RCW, and self-funded
22 multiple employer welfare arrangements as defined in section 3 of this
23 act. The preemption authorized by this subsection shall not impair the
24 ability of a county, city, town, or other municipal subdivision to
25 impose excise or privilege taxes upon the health care services directly
26 delivered by the employees of a health maintenance organization under
27 chapter 48.46 RCW.

28 (8) The taxes imposed by this section apply to a self-funded
29 multiple employer welfare arrangement only in the event that they are
30 not preempted by the employee retirement income security act of 1974,
31 as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the
32 commissioner shall initially request an advisory opinion from the
33 United States department of labor or obtain a declaratory ruling from
34 a federal court on the legality of imposing state premium taxes on
35 these arrangements. If there has not been a final determination by the
36 United States department of labor or a federal court that the taxes are
37 not preempted by federal law, the taxes provided for in this section
38 become effective on March 1, 2005, or thirty days following the

1 issuance of a certificate of authority, whichever is later. During the
2 time period between March 1, 2005, or thirty days following the
3 issuance of a certificate of authority, whichever is later, and the
4 final determination by the United States department of labor or a
5 federal court, any taxes shall be deposited in an interest bearing
6 escrow account maintained by the multiple employer welfare arrangement.
7 Upon a final determination that the taxes are not preempted by the
8 employee retirement income security act of 1974, as amended, 29 U.S.C.
9 Sec. 1001 et seq., all funds in the interest bearing escrow account
10 shall be transferred to the state treasurer.

11 **Sec. 25.** RCW 48.41.030 and 2001 c 196 s 2 are each amended to read
12 as follows:

13 The definitions in this section apply throughout this chapter
14 unless the context clearly requires otherwise.

15 (1) "Accounting year" means a twelve-month period determined by the
16 board for purposes of record-keeping and accounting. The first
17 accounting year may be more or less than twelve months and, from time
18 to time in subsequent years, the board may order an accounting year of
19 other than twelve months as may be required for orderly management and
20 accounting of the pool.

21 (2) "Administrator" means the entity chosen by the board to
22 administer the pool under RCW 48.41.080.

23 (3) "Board" means the board of directors of the pool.

24 (4) "Commissioner" means the insurance commissioner.

25 (5) "Covered person" means any individual resident of this state
26 who is eligible to receive benefits from any member, or other health
27 plan.

28 (6) "Health care facility" has the same meaning as in RCW
29 70.38.025.

30 (7) "Health care provider" means any physician, facility, or health
31 care professional, who is licensed in Washington state and entitled to
32 reimbursement for health care services.

33 (8) "Health care services" means services for the purpose of
34 preventing, alleviating, curing, or healing human illness or injury.

35 (9) "Health carrier" or "carrier" has the same meaning as in RCW
36 48.43.005.

1 (10) "Health coverage" means any group or individual disability
2 insurance policy, health care service contract, and health maintenance
3 agreement, except those contracts entered into for the provision of
4 health care services pursuant to Title XVIII of the Social Security
5 Act, 42 U.S.C. Sec. 1395 et seq. The term does not include short-term
6 care, long-term care, dental, vision, accident, fixed indemnity,
7 disability income contracts, limited benefit or credit insurance,
8 coverage issued as a supplement to liability insurance, insurance
9 arising out of the worker's compensation or similar law, automobile
10 medical payment insurance, or insurance under which benefits are
11 payable with or without regard to fault and which is statutorily
12 required to be contained in any liability insurance policy or
13 equivalent self-insurance.

14 (11) "Health plan" means any arrangement by which persons,
15 including dependents or spouses, covered or making application to be
16 covered under this pool, have access to hospital and medical benefits
17 or reimbursement including any group or individual disability insurance
18 policy; health care service contract; health maintenance agreement;
19 uninsured arrangements of group or group-type contracts including
20 employer self-insured, cost-plus, or other benefit methodologies not
21 involving insurance or not governed by Title 48 RCW; coverage under
22 group-type contracts which are not available to the general public and
23 can be obtained only because of connection with a particular
24 organization or group; and coverage by medicare or other governmental
25 benefits. This term includes coverage through "health coverage" as
26 defined under this section, and specifically excludes those types of
27 programs excluded under the definition of "health coverage" in
28 subsection (10) of this section.

29 (12) "Medical assistance" means coverage under Title XIX of the
30 federal Social Security Act (42 U.S.C., Sec. 1396 et seq.) and chapter
31 74.09 RCW.

32 (13) "Medicare" means coverage under Title XVIII of the Social
33 Security Act, (42 U.S.C. Sec. 1395 et seq., as amended).

34 (14) "Member" means any commercial insurer which provides
35 disability insurance or stop loss insurance, any health care service
36 contractor, (~~and~~) any health maintenance organization licensed under
37 Title 48 RCW, and any self-funded multiple employer welfare arrangement
38 as defined in section 3 of this act. "Member" also means the

1 Washington state health care authority as issuer of the state uniform
2 medical plan. "Member" shall also mean, as soon as authorized by
3 federal law, employers and other entities, including a self-funding
4 entity and employee welfare benefit plans that provide health plan
5 benefits in this state on or after May 18, 1987. "Member" does not
6 include any insurer, health care service contractor, or health
7 maintenance organization whose products are exclusively dental products
8 or those products excluded from the definition of "health coverage" set
9 forth in subsection (10) of this section.

10 (15) "Network provider" means a health care provider who has
11 contracted in writing with the pool administrator or a health carrier
12 contracting with the pool administrator to offer pool coverage to
13 accept payment from and to look solely to the pool or health carrier
14 according to the terms of the pool health plans.

15 (16) "Plan of operation" means the pool, including articles, by-
16 laws, and operating rules, adopted by the board pursuant to RCW
17 48.41.050.

18 (17) "Point of service plan" means a benefit plan offered by the
19 pool under which a covered person may elect to receive covered services
20 from network providers, or nonnetwork providers at a reduced rate of
21 benefits.

22 (18) "Pool" means the Washington state health insurance pool as
23 created in RCW 48.41.040.

24 **Sec. 26.** RCW 48.41.060 and 2000 c 79 s 9 are each amended to read
25 as follows:

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

31 (a) Designate or establish the standard health questionnaire to be
32 used under RCW 48.41.100 and 48.43.018, including the form and content
33 of the standard health questionnaire and the method of its application.
34 The questionnaire must provide for an objective evaluation of an
35 individual's health status by assigning a discreet measure, such as a
36 system of point scoring to each individual. The questionnaire must not
37 contain any questions related to pregnancy, and pregnancy shall not be

1 a basis for coverage by the pool. The questionnaire shall be designed
2 such that it is reasonably expected to identify the eight percent of
3 persons who are the most costly to treat who are under individual
4 coverage in health benefit plans, as defined in RCW 48.43.005, in
5 Washington state or are covered by the pool, if applied to all such
6 persons;

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

10 (c) Approve the standard health questionnaire and any modifications
11 needed to comply with this chapter. The standard health questionnaire
12 shall be submitted to an actuary for certification, modified as
13 necessary, and approved at least every eighteen months. The
14 designation and approval of the standard health questionnaire by the
15 board shall not be subject to review and approval by the commissioner.
16 The standard health questionnaire or any modification thereto shall not
17 be used until ninety days after public notice of the approval of the
18 questionnaire or any modification thereto, except that the initial
19 standard health questionnaire approved for use by the board after March
20 23, 2000, may be used immediately following public notice of such
21 approval;

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

32 (e) Assess members of the pool in accordance with the provisions of
33 this chapter, and make advance interim assessments as may be reasonable
34 and necessary for the organizational or interim operating expenses.
35 Any interim assessments will be credited as offsets against any regular
36 assessments due following the close of the year. Self-funded multiple
37 employer welfare arrangements are subject to assessment under this
38 subsection only in the event that assessments are not preempted by the

1 employee retirement income security act of 1974, as amended, 29 U.S.C.
2 Sec. 1001 et seq. The arrangements and the commissioner shall
3 initially request an advisory opinion from the United States department
4 of labor or obtain a declaratory ruling from a federal court on the
5 legality of imposing assessments on these arrangements before imposing
6 the assessment. If there has not been a final determination by the
7 United States department of labor or a federal court that the
8 assessments are not preempted by federal law, the assessments provided
9 for in this subsection become effective on March 1, 2005, or thirty
10 days following the issuance of a certificate of authority, whichever is
11 later. During the time period between March 1, 2005, or thirty days
12 following the issuance of a certificate of authority, whichever is
13 later, and the final determination by the United States department of
14 labor or a federal court, any assessments shall be deposited in an
15 interest bearing escrow account maintained by the multiple employer
16 welfare arrangement. Upon a final determination that the assessments
17 are not preempted by the employee retirement income security act of
18 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the
19 interest bearing escrow account shall be transferred to the board;

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

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

24 (h) Contract with the Washington state health care authority for
25 the administration of the premium discounts provided under RCW
26 48.41.200(3)(a) (i) and (ii);

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

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

32 (2) In addition thereto, the board may:

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

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

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

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

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

14 NEW SECTION. **Sec. 27.** Sections 1 through 18 of this act
15 constitute a new chapter in Title 48 RCW.

16 NEW SECTION. **Sec. 28.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 29.** This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of the
22 state government and its existing public institutions, and takes effect
23 immediately.

Passed by the Senate March 10, 2004.

Passed by the House March 9, 2004.

Approved by the Governor March 31, 2004.

Filed in Office of Secretary of State March 31, 2004.