

CERTIFICATION OF ENROLLMENT

**SECOND SUBSTITUTE HOUSE BILL 2551**

Chapter 174, Laws of 2010

61st Legislature  
2010 Regular Session

WASHINGTON VACCINE ASSOCIATION--CREATION

EFFECTIVE DATE: 03/23/10

Passed by the House March 6, 2010  
Yeas 95 Nays 0

FRANK CHOPP

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**Speaker of the House of Representatives**

Passed by the Senate March 2, 2010  
Yeas 44 Nays 2

BRAD OWEN

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**President of the Senate**

Approved March 23, 2010, 2:14 p.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 2551** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

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**Chief Clerk**

FILED

March 23, 2010

**Secretary of State  
State of Washington**

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**SECOND SUBSTITUTE HOUSE BILL 2551**

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AS AMENDED BY THE SENATE

Passed Legislature - 2010 Regular Session

**State of Washington                      61st Legislature                      2010 Regular Session**

**By** House Ways & Means (originally sponsored by Representatives Cody, Green, Sullivan, Pedersen, Darneille, and Moeller)

READ FIRST TIME 02/09/10.

1            AN ACT Relating to the establishment of the Washington vaccine  
2 association; amending RCW 43.70.720; adding a new section to chapter  
3 43.24 RCW; adding a new section to chapter 48.43 RCW; adding a new  
4 section to chapter 82.04 RCW; adding a new chapter to Title 70 RCW;  
5 prescribing penalties; and declaring an emergency.

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

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

9            (1) "Association" means the Washington vaccine association.

10           (2) "Covered lives" means all persons under the age of nineteen in  
11 Washington state who are:

12           (a) Covered under an individual or group health benefit plan issued  
13 or delivered in Washington state or an individual or group health  
14 benefit plan that otherwise provides benefits to Washington residents;  
15 or

16           (b) Enrolled in a group health benefit plan administered by a  
17 third-party administrator. Persons under the age of nineteen for whom  
18 federal funding is used to purchase vaccines or who are enrolled in  
19 state purchased health care programs covering low-income children

1 including, but not limited to, apple health for kids under RCW  
2 74.09.470 and the basic health plan under chapter 70.47 RCW are not  
3 considered "covered lives" under this chapter.

4 (3) "Estimated vaccine cost" means the estimated cost to the state  
5 over the course of a state fiscal year for the purchase and  
6 distribution of vaccines purchased at the federal discount rate by the  
7 department of health.

8 (4) "Health benefit plan" has the same meaning as defined in RCW  
9 48.43.005 and also includes health benefit plans administered by a  
10 third-party administrator.

11 (5) "Health carrier" has the same meaning as defined in RCW  
12 48.43.005.

13 (6) "Secretary" means the secretary of the department of health.

14 (7) "State supplied vaccine" means vaccine purchased by the state  
15 department of health for covered lives for whom the state is purchasing  
16 vaccine using state funds raised via assessments on health carriers and  
17 third-party administrators as provided in this chapter.

18 (8) "Third-party administrator" means any person or entity who, on  
19 behalf of a health insurer or health care purchaser, receives or  
20 collects charges, contributions, or premiums for, or adjusts or settles  
21 claims on or for, residents of Washington state or Washington health  
22 care providers and facilities.

23 (9) "Total nonfederal program cost" means the estimated vaccine  
24 cost less the amount of federal revenue available to the state for the  
25 purchase and distribution of vaccines.

26 (10) "Vaccine" means a preparation of killed or attenuated living  
27 microorganisms, or fraction thereof, that upon administration  
28 stimulates immunity that protects against disease and is approved by  
29 the federal food and drug administration as safe and effective and  
30 recommended by the advisory committee on immunization practices of the  
31 centers for disease control and prevention for administration to  
32 children under the age of nineteen years.

33 NEW SECTION. **Sec. 2.** There is created a nonprofit corporation to  
34 be known as the Washington vaccine association. The association is  
35 formed for the purpose of collecting and remitting adequate funds from  
36 health carriers and third-party administrators for the cost of vaccines  
37 provided to certain children in Washington state.

1        NEW SECTION.    **Sec. 3.**    (1) The association is comprised of all  
2 health carriers issuing or renewing health benefit plans in Washington  
3 state and all third-party administrators conducting business on behalf  
4 of residents of Washington state or Washington health care providers  
5 and facilities. Third-party administrators are subject to registration  
6 under section 9 of this act.

7        (2) The association is a nonprofit corporation under chapter 24.03  
8 RCW and has the powers granted under that chapter.

9        (3) The board of directors includes the following voting members:

10        (a) Four members, selected from health carriers or third-party  
11 administrators, excluding health maintenance organizations, that have  
12 the most fully insured and self-funded covered lives in Washington  
13 state. The count of total covered lives includes enrollment in all  
14 companies included in their holding company system. Each health  
15 carrier or third-party administrator is entitled to no more than a  
16 single position on the board to represent all entities under common  
17 ownership or control.

18        (b) One member selected from the health maintenance organization  
19 having the most fully insured and self-insured covered lives in  
20 Washington state. The count of total lives includes enrollment in all  
21 companies included in its holding company system. Each health  
22 maintenance organization is entitled to no more than a single position  
23 on the board to represent all entities under common ownership or  
24 control.

25        (c) One member, representing health carriers not otherwise  
26 represented on the board under (a) or (b) of this subsection, who is  
27 elected from among the health carrier members not designated under (a)  
28 or (b) of this subsection.

29        (d) One member, representing Taft Hartley plans, appointed by the  
30 secretary from a list of nominees submitted by the Northwest  
31 administrators association.

32        (e) One member representing Washington state employers offering  
33 self-funded health coverage, appointed by the secretary from a list of  
34 nominees submitted by the Puget Sound health alliance.

35        (f) Two physician members appointed by the secretary, including at  
36 least one board certified pediatrician.

37        (g) The secretary, or a designee of the secretary with expertise in  
38 childhood immunization purchasing and distribution.

- 1 (4) The directors' terms and appointments must be specified in the  
2 plan of operation adopted by the association.
- 3 (5) The board of directors of the association shall:
- 4 (a) Prepare and adopt articles of association and bylaws;
- 5 (b) Prepare and adopt a plan of operation. The plan of operation  
6 shall include a dispute mechanism through which a carrier or third-  
7 party administrator can challenge an assessment determination by the  
8 board under section 4 of this act. The board shall include a means to  
9 bring unresolved disputes to an impartial decision maker as a component  
10 of the dispute mechanism;
- 11 (c) Submit the plan of operation to the secretary for approval;
- 12 (d) Conduct all activities in accordance with the approved plan of  
13 operation;
- 14 (e) Enter into contracts as necessary or proper to collect and  
15 disburse the assessment;
- 16 (f) Enter into contracts as necessary or proper to administer the  
17 plan of operation;
- 18 (g) Sue or be sued, including taking any legal action necessary or  
19 proper for the recovery of any assessment for, on behalf of, or against  
20 members of the association or other participating person;
- 21 (h) Appoint, from among its directors, committees as necessary to  
22 provide technical assistance in the operation of the association,  
23 including the hiring of independent consultants as necessary;
- 24 (i) Obtain such liability and other insurance coverage for the  
25 benefit of the association, its directors, officers, employees, and  
26 agents as may in the judgment of the board of directors be helpful or  
27 necessary for the operation of the association;
- 28 (j) By May 1, 2010, establish the estimated amount of the  
29 assessment needed for the period of May 1, 2010, through December 31,  
30 2010, based upon the estimate provided to the association under section  
31 4(1) of this act; and notify, in writing, each health carrier and  
32 third-party administrator of the health carrier's or third-party  
33 administrator's total assessment for this period by May 15, 2010;
- 34 (k) On an annual basis, beginning no later than November 1, 2010,  
35 and by November 1st of each year thereafter, establish the estimated  
36 amount of the assessment;
- 37 (l) Notify, in writing, each health carrier and third-party

1 administrator of the health carrier's or third-party administrator's  
2 estimated total assessment by November 15th of each year;

3 (m) Submit a periodic report to the secretary listing those health  
4 carriers or third-party administrators that failed to remit their  
5 assessments and audit health carrier and third-party administrator  
6 books and records for accuracy of assessment payment submission;

7 (n) Allow each health carrier or third-party administrator no more  
8 than ninety days after the notification required by (l) of this  
9 subsection to remit any amounts in arrears or submit a payment plan,  
10 subject to approval by the association and initial payment under an  
11 approved payment plan;

12 (o) Deposit annual assessments collected by the association, less  
13 the association's administrative costs, with the state treasurer to the  
14 credit of the universal vaccine purchase account established in RCW  
15 43.70.720;

16 (p) Borrow and repay such working capital, reserve, or other funds  
17 as, in the judgment of the board of directors, may be helpful or  
18 necessary for the operation of the association; and

19 (q) Perform any other functions as may be necessary or proper to  
20 carry out the plan of operation and to affect any or all of the  
21 purposes for which the association is organized.

22 (6) The secretary shall convene the initial meeting of the  
23 association board of directors.

24 NEW SECTION. **Sec. 4.** (1) The secretary shall estimate the total  
25 nonfederal program cost for the upcoming calendar year by October 1,  
26 2010, and October 1st of each year thereafter. Additionally, the  
27 secretary shall subtract any amounts needed to serve children enrolled  
28 in state purchased health care programs covering low-income children  
29 for whom federal vaccine funding is not available, and report the final  
30 amount to the association. In addition, the secretary shall perform  
31 such calculation for the period of May 1st through December 31st, 2010,  
32 as soon as feasible but in no event later than April 1, 2010. The  
33 estimates shall be timely communicated to the association.

34 (2) The board of directors of the association shall determine the  
35 method and timing of assessment collection in consultation with the  
36 department of health. The board shall use a formula designed by the  
37 board to ensure the total anticipated nonfederal program cost, minus

1 costs for other children served through state-purchased health care  
2 programs covering low-income children, calculated under subsection (1)  
3 of this section, is collected and transmitted to the universal vaccine  
4 purchase account created in RCW 43.70.720 in order to ensure adequacy  
5 of state funds to order state-supplied vaccine from federal centers for  
6 disease control and prevention.

7 (3) Each licensed health carrier and each third-party administrator  
8 on behalf of its clients' health benefit plans must be assessed and is  
9 required to timely remit payment for its share of the total amount  
10 needed to fund nonfederal program costs calculated by the department of  
11 health. Such an assessment includes additional funds as determined  
12 necessary by the board to cover the reasonable costs for the  
13 association's administration. The board shall determine the assessment  
14 methodology, with the intent of ensuring that the nonfederal costs are  
15 based on actual usage of vaccine for a health carrier or third-party  
16 administrator's covered lives. State and local governments and school  
17 districts must pay their portion of vaccine expense for covered lives  
18 under this chapter.

19 (4) The board of the association shall develop a mechanism through  
20 which the number and cost of doses of vaccine purchased under this  
21 chapter that have been administered to children covered by each health  
22 carrier, and each third-party administrator's clients health benefit  
23 plans, are attributed to each such health carrier and third-party  
24 administrator. Except as otherwise permitted by the board, this  
25 mechanism must include at least the following: Date of service;  
26 patient name; vaccine received; and health benefit plan eligibility.  
27 The data must be collected and maintained in a manner consistent with  
28 applicable state and federal health information privacy laws.  
29 Beginning November 1, 2011, and each November 1st thereafter, the board  
30 shall factor the results of this mechanism for the previous year into  
31 the determination of the appropriate assessment amount for each health  
32 carrier and third-party administrator for the upcoming year.

33 (5) For any year in which the total calculated cost to be received  
34 from association members through assessments is less than the total  
35 nonfederal program cost, the association must pay the difference to the  
36 state for deposit into the universal vaccine purchase account  
37 established in RCW 43.70.720. The board may assess, and the health

1 carrier and third-party administrators are obligated to pay, their  
2 proportionate share of such costs and appropriate reserves as  
3 determined by the board.

4 (6) The aggregate amount to be raised by the association in any  
5 year may be reduced by any surpluses remaining from prior years.

6 (7) In order to generate sufficient start-up funding, the  
7 association may accept prepayment from member health carriers and  
8 third-party administrators, subject to offset of future amounts  
9 otherwise owing or other repayment method as determined by the board.  
10 The initial deposit of start-up funding must be deposited into the  
11 universal vaccine purchase account on or before April 30, 2010.

12 NEW SECTION. **Sec. 5.** (1) The board of the association shall  
13 establish a committee for the purposes of developing recommendations to  
14 the board regarding selection of vaccines to be purchased in each  
15 upcoming year by the department. The committee must be composed of at  
16 least five voting board members, including at least three health  
17 carrier or third-party administrator members, one physician, and the  
18 secretary or the secretary's designee. The committee must also include  
19 a representative of vaccine manufacturers, who is a nonvoting member of  
20 the committee. The representative of vaccine manufacturers must be  
21 chosen by the secretary from a list of three nominees submitted  
22 collectively by vaccine manufacturers on an annual basis.

23 (2) In selecting vaccines to purchase, the following factors should  
24 be strongly considered by the committee: Patient safety and clinical  
25 efficacy, public health and purchaser value, compliance with RCW  
26 70.95M.115, patient and provider choice, and stability of vaccine  
27 supply.

28 NEW SECTION. **Sec. 6.** In addition to the duties and powers  
29 enumerated elsewhere in this chapter:

30 (1) The association may, pursuant to either vote of its board of  
31 directors or request of the secretary, audit compliance with reporting  
32 obligations established under the association's plan of operation.  
33 Upon failure of any entity that has been audited to reimburse the costs  
34 of such audit as certified by vote of the association's board of  
35 directors within forty-five days of notice of such vote, the secretary



1 shall assess a civil penalty of one hundred fifty percent of the amount  
2 of such costs.

3 (2) The association may establish an interest charge for late  
4 payment of any assessment under this chapter. The secretary shall  
5 assess a civil penalty against any health carrier or third-party  
6 administrator that fails to pay an assessment within three months of  
7 notification under section 3 of this act. The civil penalty under this  
8 subsection is one hundred fifty percent of such assessment.

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

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

16 NEW SECTION. **Sec. 7.** The board of directors of the association  
17 shall submit to the secretary, no later than one hundred twenty days  
18 after the close of the association's fiscal year, a financial report in  
19 a form approved by the secretary.

20 NEW SECTION. **Sec. 8.** No liability on the part of, and no cause of  
21 action of any nature, shall arise against any member of the board of  
22 the association, against an employee or agent of the association, or  
23 against any health care provider for any lawful action taken by them in  
24 the performance of their duties or required activities under this  
25 chapter.

26 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.24 RCW  
27 to read as follows:

28 (1)(a) Beginning September 1, 2010, a third-party administrator  
29 must register with the department of licensing and renew its  
30 registration on an annual basis thereafter prior to December 31st of  
31 each year, or within ten days after the registrant changes its name,  
32 business name, business address, or business telephone number,  
33 whichever occurs sooner.

34 (b) The registrant shall pay the registration or renewal fee

1 established by the department of licensing as provided in RCW  
2 43.24.086.

3 (c) Any person or entity that is acting as or holding itself out to  
4 be a third-party administrator while failing to have registered under  
5 this section is subject to a civil penalty of not less than one  
6 thousand dollars nor more than ten thousand dollars for each violation.  
7 The civil penalty is in addition to any other penalties that may be  
8 imposed for violations of other laws of this state.

9 (2) For the purposes of this section, "third-party administrator"  
10 has the same meaning as defined in section 1 of this act.

11 (3) The department of licensing may adopt rules under chapter 34.05  
12 RCW as necessary to implement this section.

13 **Sec. 10.** RCW 43.70.720 and 2009 c 564 s 934 are each amended to  
14 read as follows:

15 The universal vaccine purchase account is created in the custody of  
16 the state treasurer. Receipts from public and private sources for the  
17 purpose of increasing access to vaccines for children may be deposited  
18 into the account. Expenditures from the account must be used  
19 exclusively for the purchase of vaccines, at no cost to health care  
20 providers in Washington, to administer to children under nineteen years  
21 old who are not eligible to receive vaccines at no cost through federal  
22 programs. Only the secretary or the secretary's designee may authorize  
23 expenditures from the account. The account is subject to allotment  
24 procedures under chapter 43.88 RCW, but an appropriation is not  
25 required for expenditures.

26 NEW SECTION. **Sec. 11.** Sections 1 through 8 and 12 through 14 of  
27 this act constitute a new chapter in Title 70 RCW.

28 NEW SECTION. **Sec. 12.** (1) The association board may, on or after  
29 June 30, 2015, vote to recommend termination of the association if it  
30 finds that the original intent of its formation and operation, which is  
31 to ensure more cost-effective purchase and distribution of vaccine than  
32 if provided through uncoordinated purchase by health care providers,  
33 has not been achieved. The association board shall provide notice of  
34 the recommendation to the relevant policy and fiscal committees of the  
35 legislature within thirty days of the vote being taken by the

1 association board. If the legislature has not acted by the last day of  
2 the next regular legislative session to reject the board's  
3 recommendation, the board may vote to permanently dissolve the  
4 association.

5 (2) In the event of a voluntary or involuntary dissolution of the  
6 association, funds remaining in the universal purchase vaccine account  
7 created in RCW 43.70.720 that were collected under this chapter must be  
8 returned to the member health carrier and third-party administrators in  
9 proportion to their previous year's contribution, from any balance  
10 remaining following the repayment of any prepayments for start-up  
11 funding not previously recouped by such member.

12 NEW SECTION. **Sec. 13.** Physicians and clinics ordering state  
13 supplied vaccine must ensure they have billing mechanisms and practices  
14 in place that enable the association to accurately track vaccine  
15 delivered to association members' covered lives and must submit  
16 documentation in such a form as may be prescribed by the board in  
17 consultation with state physician organizations. Physicians and other  
18 persons providing childhood immunization are strongly encouraged to use  
19 state supplied vaccine whenever possible. Nothing in this chapter  
20 prohibits health carriers and third-party administrators from denying  
21 claims for vaccine serum costs when the serum or serums providing  
22 similar protection are provided or available via state supplied  
23 vaccine.

24 NEW SECTION. **Sec. 14.** If the requirement that any segment of  
25 health carriers, third-party administrators, or state or local  
26 governmental entities provide funding for the program established in  
27 this chapter is invalidated by a court of competent jurisdiction, the  
28 board of the association may terminate the program one hundred twenty  
29 days following a final judicial determination on the matter.

30 NEW SECTION. **Sec. 15.** A new section is added to chapter 48.43 RCW  
31 to read as follows:

32 Assessments paid by carriers under section 4 of this act may be  
33 considered medical expenses for purposes of rate setting and regulatory  
34 filings.

1        NEW SECTION.   **Sec. 16.**   A new section is added to chapter 82.04 RCW  
2   to read as follows:

3        This chapter does not apply to assessments described in sections 3  
4   and 4 of this act received by a nonprofit corporation established under  
5   section 2 of this act.

6        NEW SECTION.   **Sec. 17.**   This act is necessary for the immediate  
7   preservation of the public peace, health, or safety, or support of the  
8   state government and its existing public institutions, and takes effect  
9   immediately.

      Passed by the House March 6, 2010.

      Passed by the Senate March 2, 2010.

      Approved by the Governor March 23, 2010.

      Filed in Office of Secretary of State March 23, 2010.