

ESHB 1846 - S COMM AMD
By Committee on Ways & Means

ADOPTED 04/15/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 48.43.715 and 2012 c 87 s 13 are each amended to read
4 as follows:

5 (1) Consistent with federal law, the commissioner, in consultation
6 with the board and the health care authority, shall, by rule, select
7 the largest small group plan in the state by enrollment as the
8 benchmark plan for the individual and small group market for purposes
9 of establishing the essential health benefits in Washington state under
10 P.L. 111-148 of 2010, as amended.

11 (2) If the essential health benefits benchmark plan for the
12 individual and small group market does not include all of the ten
13 benefit categories specified by section 1302 of P.L. 111-148, as
14 amended, the commissioner, in consultation with the board and the
15 health care authority, shall, by rule, supplement the benchmark plan
16 benefits as needed to meet the minimum requirements of section 1302.

17 (3) A health plan required to offer the essential health benefits,
18 other than a health plan offered through the federal basic health
19 program or medicaid, under P.L. 111-148 of 2010, as amended, may not be
20 offered in the state unless the commissioner finds that it is
21 substantially equal to the benchmark plan. When making this
22 determination, the commissioner (~~must~~):

23 (a) Must ensure that the plan covers the ten essential health
24 benefits categories specified in section 1302 of P.L. 111-148 of 2010,
25 as amended; (~~and~~)

26 (b) May consider whether the health plan has a benefit design that
27 would create a risk of biased selection based on health status and
28 whether the health plan contains meaningful scope and level of benefits
29 in each of the ten essential health benefit categories specified by
30 section 1302 of P.L. 111-148 of 2010, as amended;

1 (c) Notwithstanding the foregoing, for benefit years beginning
2 January 1, 2015, and only to the extent permitted by federal law and
3 guidance, must establish by rule the review and approval requirements
4 and procedures for pediatric oral services when offered in stand-alone
5 dental plans in the nongrandfathered individual and small group markets
6 outside of the exchange; and

7 (d) Unless prohibited by federal law and guidance, must allow
8 health carriers to also offer pediatric oral services within the health
9 benefit plan in the nongrandfathered individual and small group markets
10 outside of the exchange.

11 (4) Beginning December 15, 2012, and every year thereafter, the
12 commissioner shall submit to the legislature a list of state-mandated
13 health benefits, the enforcement of which will result in federally
14 imposed costs to the state related to the plans sold through the
15 exchange because the benefits are not included in the essential health
16 benefits designated under federal law. The list must include the
17 anticipated costs to the state of each state-mandated health benefit on
18 the list and any statutory changes needed if funds are not appropriated
19 to defray the state costs for the listed mandate. The commissioner may
20 enforce a mandate on the list for the entire market only if funds are
21 appropriated in an omnibus appropriations act specifically to pay the
22 state portion of the identified costs.

23 **Sec. 2.** RCW 48.46.243 and 2008 c 217 s 56 are each amended to read
24 as follows:

25 (1) Subject to subsection (2) of this section, every contract
26 between a health maintenance organization and its participating
27 providers of health care services shall be in writing and shall set
28 forth that in the event the health maintenance organization fails to
29 pay for health care services as set forth in the agreement, the
30 enrolled participant shall not be liable to the provider for any sums
31 owed by the health maintenance organization. Every such contract shall
32 provide that this requirement shall survive termination of the
33 contract.

34 (2) The provisions of subsection (1) of this section shall not
35 apply:

36 (a) To emergency care from a provider who is not a participating
37 provider((τ))i

1 **(b)** To out-of-area services;

2 **(c)** To the delivery of covered pediatric oral services that are
3 substantially equal to the essential health benefits benchmark plan;
4 or((τ))

5 **(d)** In exceptional situations approved in advance by the
6 commissioner, if the health maintenance organization is unable to
7 negotiate reasonable and cost-effective participating provider
8 contracts.

9 (3)(a) Each participating provider contract form shall be filed
10 with the commissioner fifteen days before it is used.

11 (b) Any contract form not affirmatively disapproved within fifteen
12 days of filing shall be deemed approved, except that the commissioner
13 may extend the approval period an additional fifteen days upon giving
14 notice before the expiration of the initial fifteen-day period. The
15 commissioner may approve such a contract form for immediate use at any
16 time. Approval may be subsequently withdrawn for cause.

17 (c) Subject to the right of the health maintenance organization to
18 demand and receive a hearing under chapters 48.04 and 34.05 RCW, the
19 commissioner may disapprove such a contract form if it is in any
20 respect in violation of this chapter or if it fails to conform to
21 minimum provisions or standards required by the commissioner by rule
22 under chapter 34.05 RCW.

23 (4) No participating provider, or insurance producer, trustee, or
24 assignee thereof, may maintain an action against an enrolled
25 participant to collect sums owed by the health maintenance
26 organization.

27 **Sec. 3.** RCW 48.14.0201 and 2011 c 47 s 8 are each amended to read
28 as follows:

29 (1) As used in this section, "taxpayer" means a health maintenance
30 organization as defined in RCW 48.46.020, a health care service
31 contractor as defined in ((RCW 48.44.010)) chapter 48.44 RCW, or a
32 self-funded multiple employer welfare arrangement as defined in RCW
33 48.125.010.

34 (2) Each taxpayer must pay a tax on or before the first day of
35 March of each year to the state treasurer through the insurance
36 commissioner's office. The tax must be equal to the total amount of
37 all premiums and prepayments for health care services collected or

1 received by the taxpayer under RCW 48.14.090 during the preceding
2 calendar year multiplied by the rate of two percent. For tax purposes,
3 the reporting of premiums and prepayments must be on a written basis or
4 on a paid-for basis consistent with the basis required by the annual
5 statement.

6 (3) Taxpayers must prepay their tax obligations under this section.
7 The minimum amount of the prepayments is the percentages of the
8 taxpayer's tax obligation for the preceding calendar year recomputed
9 using the rate in effect for the current year. For the prepayment of
10 taxes due during the first calendar year, the minimum amount of the
11 prepayments is the percentages of the taxpayer's tax obligation that
12 would have been due had the tax been in effect during the previous
13 calendar year. The tax prepayments must be paid to the state treasurer
14 through the commissioner's office by the due dates and in the following
15 amounts:

- 16 (a) On or before June 15, forty-five percent;
- 17 (b) On or before September 15, twenty-five percent;
- 18 (c) On or before December 15, twenty-five percent.

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

25 (5) Moneys collected under this section are deposited in the
26 general fund.

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

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

32 (b) Amounts received by any taxpayer from the state of Washington
33 as prepayments for health care services provided under:

34 (i) The medical care services program as provided in RCW 74.09.035;

35 or

36 (ii) The Washington basic health plan on behalf of subsidized
37 enrollees as provided in chapter 70.47 RCW.

1 (c) Amounts received by any health care service contractor((~~7~~)) as
2 defined in ((~~RCW 48.44.010~~)) chapter 48.44 RCW, or any health
3 maintenance organization as defined in chapter 48.46 RCW, as
4 prepayments for health care services included within the definition of
5 practice of dentistry under RCW 18.32.020, except amounts received for
6 pediatric oral services that qualify as coverage for the minimum
7 essential coverage requirement under P.L. 111-148 (2010), as amended.

8 (d) Participant contributions to self-funded multiple employer
9 welfare arrangements that are not taxable in this state.

10 (7) Beginning January 1, 2000, the state preempts the field of
11 imposing excise or privilege taxes upon taxpayers and no county, city,
12 town, or other municipal subdivision has the right to impose any such
13 taxes upon such taxpayers. This subsection is limited to premiums and
14 payments for health benefit plans offered by health care service
15 contractors under chapter 48.44 RCW, health maintenance organizations
16 under chapter 48.46 RCW, and self-funded multiple employer welfare
17 arrangements as defined in RCW 48.125.010. The preemption authorized
18 by this subsection must not impair the ability of a county, city, town,
19 or other municipal subdivision to impose excise or privilege taxes upon
20 the health care services directly delivered by the employees of a
21 health maintenance organization under chapter 48.46 RCW.

22 (8)(a) The taxes imposed by this section apply to a self-funded
23 multiple employer welfare arrangement only in the event that they are
24 not preempted by the employee retirement income security act of 1974,
25 as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the
26 commissioner must initially request an advisory opinion from the United
27 States department of labor or obtain a declaratory ruling from a
28 federal court on the legality of imposing state premium taxes on these
29 arrangements. Once the legality of the taxes has been determined, the
30 multiple employer welfare arrangement certified by the insurance
31 commissioner must begin payment of these taxes.

32 (b) If there has not been a final determination of the legality of
33 these taxes, then beginning on the earlier of (i) the date the fourth
34 multiple employer welfare arrangement has been certified by the
35 insurance commissioner, or (ii) April 1, 2006, the arrangement must
36 deposit the taxes imposed by this section into an interest bearing
37 escrow account maintained by the arrangement. Upon a final
38 determination that the taxes are not preempted by the employee

1 retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001
2 et seq., all funds in the interest bearing escrow account must be
3 transferred to the state treasurer.

4 (9) The effect of transferring contracts for health care services
5 from one taxpayer to another taxpayer is to transfer the tax prepayment
6 obligation with respect to the contracts.

7 (10) On or before June 1st of each year, the commissioner must
8 notify each taxpayer required to make prepayments in that year of the
9 amount of each prepayment and must provide remittance forms to be used
10 by the taxpayer. However, a taxpayer's responsibility to make
11 prepayments is not affected by failure of the commissioner to send, or
12 the taxpayer to receive, the notice or forms.

13 **Sec. 4.** RCW 48.14.020 and 2009 c 161 s 3 are each amended to read
14 as follows:

15 (1) Subject to other provisions of this chapter, each authorized
16 insurer except title insurers shall on or before the first day of March
17 of each year pay to the state treasurer through the commissioner's
18 office a tax on premiums. Except as provided in subsection ~~((+2))~~ (3)
19 of this section, such tax shall be in the amount of two percent of all
20 premiums, excluding amounts returned to or the amount of reductions in
21 premiums allowed to holders of industrial life policies for payment of
22 premiums directly to an office of the insurer, collected or received by
23 the insurer under RCW 48.14.090 during the preceding calendar year
24 other than ocean marine and foreign trade insurances, after deducting
25 premiums paid to policyholders as returned premiums, upon risks or
26 property resident, situated, or to be performed in this state. For tax
27 purposes, the reporting of premiums shall be on a written basis or on
28 a paid-for basis consistent with the basis required by the annual
29 statement. For the purposes of this section the consideration received
30 by an insurer for the granting of an annuity shall not be deemed to be
31 a premium.

32 (2) The taxes imposed in this section do not apply to amounts
33 received by any life and disability insurer for health care services
34 included within the definition of practice of dentistry under RCW
35 18.32.020 except amounts received for pediatric oral services that
36 qualify as coverage for the minimum essential coverage requirement
37 under P.L. 111-148 (2010), as amended.

1 (3) In the case of insurers which require the payment by their
2 policyholders at the inception of their policies of the entire premium
3 thereon in the form of premiums or premium deposits which are the same
4 in amount, based on the character of the risks, regardless of the
5 length of term for which such policies are written, such tax shall be
6 in the amount of two percent of the gross amount of such premiums and
7 premium deposits upon policies on risks resident, located, or to be
8 performed in this state, in force as of the thirty-first day of
9 December next preceding, less the unused or unabsorbed portion of such
10 premiums and premium deposits computed at the average rate thereof
11 actually paid or credited to policyholders or applied in part payment
12 of any renewal premiums or premium deposits on one-year policies
13 expiring during such year.

14 ~~((+3))~~ (4) Each authorized insurer shall with respect to all ocean
15 marine and foreign trade insurance contracts written within this state
16 during the preceding calendar year, on or before the first day of March
17 of each year pay to the state treasurer through the commissioner's
18 office a tax of ninety-five one-hundredths of one percent on its gross
19 underwriting profit. Such gross underwriting profit shall be
20 ascertained by deducting from the net premiums (i.e., gross premiums
21 less all return premiums and premiums for reinsurance) on such ocean
22 marine and foreign trade insurance contracts the net losses paid (i.e.,
23 gross losses paid less salvage and recoveries on reinsurance ceded)
24 during such calendar year under such contracts. In the case of
25 insurers issuing participating contracts, such gross underwriting
26 profit shall not include, for computation of the tax prescribed by this
27 subsection, the amounts refunded, or paid as participation dividends,
28 by such insurers to the holders of such contracts.

29 ~~((+4))~~ (5) The state does hereby preempt the field of imposing
30 excise or privilege taxes upon insurers or their appointed insurance
31 producers, other than title insurers, and no county, city, town or
32 other municipal subdivision shall have the right to impose any such
33 taxes upon such insurers or these insurance producers.

34 ~~((+5))~~ (6) If an authorized insurer collects or receives any such
35 premiums on account of policies in force in this state which were
36 originally issued by another insurer and which other insurer is not
37 authorized to transact insurance in this state on its own account, such

1 collecting insurer shall be liable for and shall pay the tax on such
2 premiums."

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3 On page 1, line 1 of the title, after "coverage;" strike the
4 remainder of the title and insert "and amending RCW 48.43.715,
5 48.46.243, 48.14.0201, and 48.14.020."

EFFECT: Corrects the references to the premium tax for the pediatric dental plans, removing the carriers licensed as disability insurance from one section and adding the appropriate reference in the disability insurance tax section (parallel language exists in two sections depending on the license type).

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