

ESHB 1947 - S COMM AMD
By Committee on Health Care

NOT CONSIDERED

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

3 "Sec. 1. RCW 43.71.010 and 2012 c 87 s 2 are each amended to read
4 as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise. Terms and phrases used
7 in this chapter that are not defined in this section must be defined as
8 consistent with implementation of a state health benefit exchange
9 pursuant to the affordable care act.

10 (1) "Affordable care act" means the federal patient protection and
11 affordable care act, P.L. 111-148, as amended by the federal health
12 care and education reconciliation act of 2010, P.L. 111-152, or federal
13 regulations or guidance issued under the affordable care act.

14 (2) "Authority" means the Washington state health care authority,
15 established under chapter 41.05 RCW.

16 (3) "Board" means the governing board established in RCW 43.71.020.

17 (4) "Commissioner" means the insurance commissioner, established in
18 Title 48 RCW.

19 (5) "Exchange" means the Washington health benefit exchange
20 established in RCW 43.71.020.

21 (6) "Self-sustaining" means capable of operating (~~without direct~~
22 ~~state tax subsidy~~) with revenue attributable to the operations of the
23 exchange. Self-sustaining sources include, but are not limited to,
24 federal grants, federal premium tax subsidies and credits, charges to
25 health carriers, (~~and~~) premiums paid by enrollees, and premium taxes
26 under RCW 48.14.0201(5)(b).

27 **Sec. 2.** RCW 43.71.060 and 2012 c 87 s 5 are each amended to read
28 as follows:

29 ((+1)) The health benefit exchange account is created in the

1 (~~eustody of the state treasurer~~) state treasury. Moneys in the
2 account may be spent only after appropriation. Expenditures from the
3 account may only be used to fund the operation of the exchange and
4 identification, collection, and distribution of premium taxes collected
5 under RCW 48.14.0201(5)(b). The following funds must be deposited in
6 the account:

7 (1) All receipts from federal grants received under the affordable
8 care act may be deposited into the account. Expenditures from the
9 account may be used only for purposes consistent with the grants(~~-~~
10 ~~Until March 15, 2012, only the administrator of the health care~~
11 ~~authority, or his or her designee, may authorize expenditures from the~~
12 ~~account. Beginning March 15, 2012, only the board of the Washington~~
13 ~~health benefit exchange or designee may authorize expenditures from the~~
14 ~~account. The account is subject to allotment procedures under chapter~~
15 ~~43.88 RCW, but an appropriation is not required for expenditures.~~

16 ~~(2) This section expires January 1, 2014))~~;

17 (2) Premium taxes collected under RCW 48.14.0201(5)(b); and

18 (3) Assessments authorized under section 3 of this act.

19 NEW SECTION. Sec. 3. A new section is added to chapter 43.71 RCW
20 to read as follows:

21 (1) Beginning January 1, 2014, the exchange may require each
22 carrier writing premiums for qualified health benefits plans or dental
23 plans through the exchange to pay an assessment in an amount necessary
24 to fund the operations of the exchange. Assessments of carriers may be
25 made only if the amount of expected premium taxes, as provided under
26 RCW 48.14.0201(5)(b), and other funds deposited in the health benefit
27 exchange account in the current calendar year are insufficient to fund
28 exchange operations in the following calendar year at the level
29 appropriated by the legislature for that purpose in the omnibus
30 appropriations act. If the exchange is charging an assessment, the
31 exchange shall set forth the amount of the assessment per member per
32 month on monthly billing statements. Nothing shall prohibit a health
33 benefit plan or dental plan from including the amount of the assessment
34 on a monthly billing statement to enrollees.

35 (2) The board shall determine the amount of the assessment by
36 multiplying, by a fraction, for each carrier offering health or dental
37 coverage in the exchange, the number of its covered lives in qualified

1 health plans and dental plans in the exchange, however the assessment
2 for the dental plans must be proportional to the premiums paid to the
3 exchange. The numerator of the fraction is an estimate of the
4 shortfall in revenues in the health benefit exchange account necessary
5 to operate the exchange at the level appropriated for that purpose by
6 the legislature in the omnibus appropriations act for the following
7 calendar year. The denominator of the fraction equals the total number
8 of expected covered lives in the exchange for the calendar year that
9 the assessment will be collected in.

10 (3) The exchange shall collect the assessments required under this
11 section from carriers in quarterly installments. Upon determination of
12 the amount of the assessment, the exchange shall notify carriers of the
13 due dates of the quarterly installments. The exchange shall deposit
14 proceeds from the assessments in the health benefit exchange account
15 under RCW 43.71.060.

16 (4) The exchange shall reconcile assessment payments based on
17 actual covered lives at the end of the calendar year of the assessment.
18 At the end of the calendar year, the exchange shall compare the amount
19 of the assessment for each carrier calculated in subsection (2) of this
20 section to the amount of the assessment that would have been collected
21 from each carrier based on each carrier's actual covered lives in
22 qualified health plans and dental plans in the exchange during that
23 calendar year. If a carrier's share of the assessment would have been
24 smaller if it were based on actual covered lives, the exchange shall
25 refund the carrier for the difference between the collected amount of
26 the assessment and the amount of the assessment that would have been
27 collected based on the carrier's actual covered lives. If the
28 carrier's share of the assessment would have been larger if it were
29 based on actual covered lives, the exchange shall collect from the
30 carrier the difference between the collected amount of the assessment
31 and the amount of the assessment that would have been collected based
32 on the carrier's actual covered lives.

33 (5) The assessment described in this section shall be considered a
34 special purpose obligation or assessment in connection with coverage
35 described in this section for the purpose of funding the operations of
36 the exchange.

37 (6) The board shall establish procedures allowing carriers subject

1 to assessments under this section to have grievances reviewed by an
2 impartial body and reported to the board.

3 (7) The board shall establish procedures to ensure that all
4 qualified health plans are to be available to consumers through the
5 exchange, and the exchange shall not restrict consumer choices of
6 qualified health plans without specific authority conferred by statute.
7 The board shall not take any action to add or redefine qualified health
8 plan criteria in RCW 43.71.065 without specific statutory direction.

9 (8) By July 1, 2016, the state auditor shall conduct a performance
10 review of the cost of exchange operations and shall make
11 recommendations to the board and the health care committees of the
12 legislature addressing improvements in cost performance and adoption of
13 best practices. The auditor shall further evaluate the potential cost
14 and customer service benefits through regionalization with other states
15 of some exchange operation functions or through a partnership with the
16 federal government. The cost of the state auditor review must be borne
17 by the exchange.

18 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.135 RCW
19 to read as follows:

20 RCW 43.135.034(4) does not apply to the dedication of premium taxes
21 established under RCW 48.14.0201(5)(b).

22 **Sec. 5.** RCW 48.14.0201 and 2011 c 47 s 8 are each amended to read
23 as follows:

24 (1) As used in this section, "taxpayer" means a health maintenance
25 organization as defined in RCW 48.46.020, a health care service
26 contractor as defined in RCW 48.44.010, a limited health care service
27 contractor, disability carrier, or health maintenance organization
28 offering pediatric oral services as an essential health benefit, or a
29 self-funded multiple employer welfare arrangement as defined in RCW
30 48.125.010.

31 (2) Each taxpayer must pay a tax on or before the first day of
32 March of each year to the state treasurer through the insurance
33 commissioner's office. The tax must be equal to the total amount of
34 all premiums and prepayments for health care services collected or
35 received by the taxpayer under RCW 48.14.090 during the preceding
36 calendar year multiplied by the rate of two percent. For tax purposes,

1 the reporting of premiums and prepayments must be on a written basis or
2 on a paid-for basis consistent with the basis required by the annual
3 statement.

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

14 (a) On or before June 15, forty-five percent;

15 (b) On or before September 15, twenty-five percent;

16 (c) On or before December 15, twenty-five percent.

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

23 (5)(a) Except as provided in (b) of this subsection, moneys
24 collected under this section are deposited in the general fund.

25 (b) Beginning January 1, 2014, moneys collected from taxpayers for
26 premiums written on qualified health benefit plans and dental plans
27 offered through the health benefit exchange under chapter 43.71 RCW and
28 on premiums written on medicaid plans provided to newly eligible
29 clients enrolling in the medicaid expansion under the federal patient
30 protection and affordable care act of 2010 (42 U.S.C.
31 1396a(a)(10)(A)(i)(VIII)) must be deposited in the health benefit
32 exchange account under RCW 43.71.060.

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

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

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

3 (i) The medical care services program as provided in RCW 74.09.035;
4 or

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

7 (c) Amounts received by any health care service contractor, as
8 defined in RCW 48.44.010, any limited health care service contractor as
9 defined in RCW 48.44.035, any disability carrier as defined in chapters
10 48.20 and 48.21 RCW, or health maintenance organization as defined in
11 chapter 48.46 RCW, as prepayments for health care services included
12 within the definition of practice of dentistry under RCW 18.32.020
13 except amounts received for pediatric oral services offered as
14 essential health benefits outside the health benefit exchange under
15 chapter 43.71 RCW.

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

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

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

1 multiple employer welfare arrangement certified by the insurance
2 commissioner must begin payment of these taxes.

3 (b) If there has not been a final determination of the legality of
4 these taxes, then beginning on the earlier of (i) the date the fourth
5 multiple employer welfare arrangement has been certified by the
6 insurance commissioner, or (ii) April 1, 2006, the arrangement must
7 deposit the taxes imposed by this section into an interest bearing
8 escrow account maintained by the arrangement. Upon a final
9 determination that the taxes are not preempted by the employee
10 retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001
11 et seq., all funds in the interest bearing escrow account must be
12 transferred to the state treasurer.

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

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

22 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.04 RCW
23 to read as follows:

24 (1) The taxes imposed by this chapter do not apply to amounts
25 received by the Washington health benefit exchange established under
26 chapter 43.71 RCW.

27 (2) This section expires on July 1, 2023.

28 NEW SECTION. **Sec. 7.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 8.** Section 6 of this act applies both
33 prospectively and retroactively."

NOT CONSIDERED

1 On page 1, line 3 of the title, after "expenses;" strike the
2 remainder of the title and insert "amending RCW 43.71.010, 43.71.060,
3 and 48.14.0201; adding a new section to chapter 43.71 RCW; adding a new
4 section to chapter 43.135 RCW; adding a new section to chapter 82.04
5 RCW; creating a new section; and providing an expiration date."

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