Z-0808.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 2355**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Cody, McBride, Tharinger, Robinson, Ormsby, Appleton, and Jinkins; by request of Insurance Commissioner

AN ACT Relating to establishment of an individual health insurance market claims-based reinsurance program; amending RCW 48.41.030; reenacting and amending RCW 42.56.400; adding a new section to chapter 48.43 RCW; adding new sections to chapter 48.41 RCW; making appropriations; and declaring an emergency.

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

**Sec.**  RCW 48.41.030 and 2004 c 260 s 25 are each amended to read as follows:

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

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

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

(3) "Attachment point" means the threshold amount for claims costs incurred by an eligible health carrier for an enrolled individual's covered benefits in a benefit year, above which the claims costs for benefits are eligible for reinsurance payments under the Washington reinsurance program.

(4) "Benefit year" means the calendar year during which an eligible health carrier provides coverage through an individual health plan.

(5) "Board" means the board of directors of the pool.

((~~(4)~~)) (6) "Coinsurance rate" means the percentage rate at which the program will reimburse an eligible health carrier for claims incurred for an enrolled individual's covered benefits in a benefit year above the attachment point and below the reinsurance cap.

(7) "Commissioner" means the insurance commissioner.

((~~(5)~~)) (8) "Covered lives" for purposes of the Washington reinsurance program means all persons in Washington state who are:

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

(b) Enrolled in a group health plan administered by a third-party administrator.

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

((~~(6)~~)) (10) "Eligible health carrier" means a health carrier offering nongrandfathered individual health plans to consumers in Washington state.

(11) "Health care facility" has the same meaning as in RCW 70.38.025.

((~~(7)~~)) (12) "Health care provider" means any physician, facility, or health care professional, who is licensed in Washington state and entitled to reimbursement for health care services.

((~~(8)~~)) (13) "Health care services" means services for the purpose of preventing, alleviating, curing, or healing human illness or injury.

((~~(9)~~)) (14) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005.

((~~(10)~~)) (15) "Health coverage" means any group or individual disability insurance policy, health care service contract, and health maintenance agreement, except those contracts entered into for the provision of health care services pursuant to Title XVIII of the social security act, 42 U.S.C. Sec. 1395 et seq. The term does not include short-term care, long-term care, dental, vision, accident, fixed indemnity, disability income contracts, limited benefit or credit insurance, coverage issued as a supplement to liability insurance, insurance arising out of the worker's compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance. For purposes of the Washington reinsurance program, "health coverage" does not include contracts entered into for the provision of health care services pursuant to Title XIX of the social security act, 42 U.S.C. Sec. 1396 et seq.

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

((~~(12)~~)) (17) "Individual health plan" means a health plan as defined in RCW 48.43.005 that is offered by a health carrier to individuals other than in connection with a group health plan, and that is not a grandfathered health plan as defined in RCW 48.43.005.

(18) "Individual market" has the same meaning as in RCW 48.43.005.

(19) "Medical assistance" means coverage under Title XIX of the federal social security act (42 U.S.C., Sec. 1396 et seq.) and chapter 74.09 RCW.

((~~(13)~~)) (20) "Medicare" means coverage under Title XVIII of the social security act, (42 U.S.C. Sec. 1395 et seq., as amended).

((~~(14)~~)) (21) "Member" means any commercial insurer which provides disability insurance or stop loss insurance, any health care service contractor, any health maintenance organization licensed under Title 48 RCW, and any self-funded multiple employer welfare arrangement as defined in RCW 48.125.010. "Member" also means the Washington state health care authority as issuer of the state uniform medical plan. "Member" shall also mean, as soon as authorized by federal law, employers and other entities, including a self-funding entity and employee welfare benefit plans that provide health plan benefits in this state on or after May 18, 1987. "Member" does not include any insurer, health care service contractor, or health maintenance organization whose products are exclusively dental products or those products excluded from the definition of "health coverage" set forth in subsection ((~~(10)~~)) (15) of this section.

((~~(15)~~)) (22) "Network provider" means a health care provider who has contracted in writing with the pool administrator or a health carrier contracting with the pool administrator to offer pool coverage to accept payment from and to look solely to the pool or health carrier according to the terms of the pool health plans.

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

~~(17)~~)) (23) "Payment parameters" means the attachment point, reinsurance cap, and coinsurance rate for the program.

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

((~~(18)~~)) (25) "Pool" means the Washington state health insurance pool as created in RCW 48.41.040.

(26) "Pool plan of operation" means the pool, including articles, bylaws, and operating rules, adopted by the board pursuant to RCW 48.41.050.

(27) "Reinsurance cap" means the threshold amount for claims costs incurred by an eligible health carrier for an enrolled individual's covered benefits, over which the claims costs for benefits are no longer eligible for reinsurance payments.

(28) "Reinsurance payments" means an amount paid by the Washington reinsurance program administrator to an eligible health carrier under the program.

(29) "Reinsurance plan of operation" means the Washington reinsurance program, including operational processes adopted by the board pursuant to section 4 of this act.

(30) "Reinsurance program" or "program" means the Washington reinsurance program established in section 2 of this act.

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

(32) "Washington reinsurance program" means the state-based reinsurance program authorized under section 2 of this act.

NEW SECTION. **Sec.**  WASHINGTON REINSURANCE PROGRAM—CREATION, ADMINISTRATION, BOARD DUTIES. (1) The Washington reinsurance program is established for the purposes of stabilizing the rates and premiums for individual health plans and providing greater financial certainty to consumers of health insurance in this state.

(2) The program must be operated by the Washington state health insurance pool and the board. The board must undertake the following activities related to operation of the Washington reinsurance program:

(a) Prepare and adopt amendments to the articles of organization and bylaws of the Washington state health insurance pool to provide for operation of the Washington reinsurance program;

(b) Prepare and adopt a reinsurance plan of operation as provided in section 4 of this act and submit it to the commissioner for approval;

(c) Conduct all activities in accordance with the approved reinsurance plan of operation;

(d) Enter into contracts as necessary to collect and disburse the assessment for reinsurance payments;

(e) Enter into contracts as necessary to operate and administer the Washington reinsurance program;

(f) Sue or be sued, including taking any legal action necessary or proper for the recovery of any assessment for, on behalf of, or against health carriers and third-party administrators or other participating persons for reinsurance payments;

(g) Appoint, from among members of the board, committees as necessary to provide technical assistance in the operation of the program;

(h) Hire independent consultants as necessary for operation of the Washington reinsurance program;

(i) Conduct periodic audits to assure the general accuracy of the financial data submitted to the program. In designing the audit procedures, the board shall take into consideration the auditing conducted by the federal department of health and human services' risk adjustment program under 42 U.S.C. Sec. 18063;

(j) Cause the reinsurance program to be audited by an independent certified public accountant, who may be the same accountant as the administrator for the pool;

(k) Borrow and repay such working capital, reserve, or other funds as, in the judgment of the board, may be necessary for the operation of the program; and

(l) Perform any other functions to carry out the reinsurance plan of operation and to affect any or all of the purposes for which the program is organized.

(3) This section does not require or authorize the adoption of rules by the board under chapter 34.05 RCW.

NEW SECTION. **Sec.**  EXAMINATION AND REPORT. (1) The program is subject to examination by the commissioner as provided under chapter 48.03 RCW.

(2) The board shall submit to the commissioner, by November 1st of the year following the applicable benefit year or sixty calendar days following the final disbursement of reinsurance payments for the applicable benefit year, whichever is later, a financial report for the applicable benefit year in a form approved by the commissioner. The report must include the following information for the benefit year that is the subject of the report, at a minimum:

(a) Funds deposited in the Washington reinsurance program account created in section 8 of this act;

(b) Requests for reinsurance payments received from eligible health carriers;

(c) Reinsurance payments made to eligible health carriers; and

(d) Administrative and operational expenses incurred for the program.

(3) The report must be posted on the Washington state health insurance pool web site.

NEW SECTION. **Sec.**  REINSURANCE PROGRAM PLAN OF OPERATION. (1) The reinsurance plan of operation for the Washington reinsurance program must be submitted by the board to the commissioner for review and approval on or before May 1, 2018, and must:

(a) Provide for the operation of the Washington reinsurance program separate and apart from the pool;

(b) Establish procedures for the handling and accounting of assets and moneys of the program;

(c) Establish regular times and places for meetings of the board in connection with operation of the program;

(d) Establish data and information requirements for submission of reinsurance payment requests by eligible health carriers, processes for notification of eligible health carriers regarding reinsurance payments and issuing payments, and processes to resolve eligible health carrier appeals related to the amount of reinsurance payments, as provided in section 5 of this act;

(e) Establish procedures for the collection of assessments from all health carriers and third-party administrators to provide for reinsurance claims paid under the program and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made as provided in section 6 of this act;

(f) Establish procedures for records to be kept of all financial transactions and for an annual fiscal reporting to the commissioner as provided in section 3 of this act;

(g) Establish procedures for the submission of data by the program administrator to the commissioner for preparation of quarterly and annual reports required under the terms of a waiver approved under section 9 of this act; and

(h) Contain additional provisions necessary for the execution of the powers and duties of the program.

(2) The board shall contract with those entities that are under contract with the board on the effective date of this section as needed for operation of the Washington reinsurance program for the period of the current contract. Any subsequent contract for administration of the pool under RCW 48.41.080 must include duties as may be assigned by the board that are necessary for operation of the Washington reinsurance program for the period during which the program will be in effect.

NEW SECTION. **Sec.**  PROGRAM PAYMENTS TO ELIGIBLE HEALTH CARRIERS. (1)(a) The commissioner shall determine the payment parameters for the program annually, in order to:

(i) Manage the program within available assessment resources and federal funding not to exceed the total program funding authorized by the legislature;

(ii) Mitigate the impact of high-cost individuals on premium rates in the individual market;

(iii) Stabilize or reduce premium rates in the individual market; and

(iv) Increase participation in the individual market.

(b) The payment parameters for benefit year 2019 must be consistent with the parameters included in the state innovation waiver approved by the federal government as provided in section 9 of this act. The payment parameters for subsequent years must be established by the commissioner by March 31st of the year before the applicable benefit year. The commissioner must identify any data needed from the program to determine annual payment parameters for each upcoming benefit year, and such data must be timely provided to the commissioner by the program upon the commissioner's request.

(c) The attachment point for the program must be set by the commissioner at an amount between seventy-five thousand dollars and the reinsurance cap. The coinsurance rate shall be set by the commissioner at a percentage rate between fifty and eighty percent. The reinsurance cap shall be set by the commissioner at an amount between five hundred thousand dollars and one million dollars.

(2) An eligible health carrier becomes eligible for a reinsurance payment when:

(a) The claims costs for a reinsurance eligible individual's covered benefits in a benefit year exceed the attachment point. The amount of the payment shall be the product of the coinsurance rate and the carrier's claims costs for the reinsurance eligible individual that exceed the attachment point, up to the reinsurance cap;

(b) The eligible health carrier has implemented care management practices for enrollees who are the subject of reinsurance claims through the program;

(c) The eligible health carrier makes its requests for reinsurance payments in accordance with any requirements established by the board including, but not limited to, requirements related to the format, structure, and timing for submission of claims for reinsurance payments. The claims data needed for submission of claims for reinsurance payments must be drawn from the dedicated data environment established by the eligible health carrier under the federal risk adjustment program under 42 U.S.C. Sec. 18063.

(3) Claims submitted under this section are confidential and are not subject to public disclosure under chapter 42.56 RCW.

(4) For each applicable benefit year, on April 1st of the year following the applicable benefit year, the program administrator must send an initial settlement report to each eligible health carrier in response to their final claims submission for the applicable benefit year. By June 30th of the year following the applicable benefit year, after resolution of any appeals related to the amount of reinsurance payments received, the program administrator shall disburse all applicable reinsurance payments to an eligible health carrier.

(5) Reinsurance payments to eligible health carriers cannot exceed two hundred million dollars for any applicable benefit year. If, for any applicable benefit year, the final disbursement of reinsurance payments to eligible health carriers is less than two hundred million dollars, funds remaining in the Washington reinsurance program account created in section 8 of this act must be used to reduce assessments for the subsequent applicable calendar year.

NEW SECTION. **Sec.**  PROGRAM ASSESSMENTS. (1) On or before September 1, 2018, for calendar year 2019 assessments and on or before September 1st of each subsequent year for upcoming calendar year assessments, the board shall determine the covered lives assessment necessary to generate two hundred million dollars per year in the upcoming benefit year for reinsurance claims payments to eligible health carriers for eligible claims incurred during that year, plus program expenses of administration, including those incurred in connection with start-up of the program prior to January 1, 2019. The aggregate amount to be raised through the assessment in any year may be reduced by any surpluses in the account remaining from prior years.

(2) In developing the procedures for collection of assessments under sections 2 through 9, 11 through 13, and 15 of this act and section 10 of this act, the board shall give strong consideration to the procedures utilized in the federal transitional reinsurance program established under 42 U.S.C. Sec. 18061. The board must notify, in writing, each health carrier and third-party administrator on behalf of its clients' health plans of their estimated total assessment by October 1st of each year and its payment obligation for the upcoming year. The board must determine a payment schedule for receipt of assessments under this section.

(3)(a) Each health carrier's and third-party administrator's assessment is determined based on annual statements and other reports deemed necessary by the board and is determined by multiplying the amount determined under subsection (1) of this section by a fraction. The numerator of the fraction equals that health carrier's or third-party administrator's total number of covered lives, including spouse and dependents, covered under all health plans in the state by that health carrier or third-party administrator during the preceding calendar year. The denominator of the fraction equals the total number of covered lives, including spouses and dependents, covered under all health plans in the state by all health carriers and third-party administrators during the preceding calendar year.

(b) If an assessment against a health carrier or third-party administrator is prohibited by court order, the assessment that would have been collected but for the prohibition must be assessed against the other health carriers and third-party administrators under this subsection.

(4) The board shall allow each health carrier and third-party administrator no more than ninety days after the notification required by subsection (2) of this section to remit any amounts in arrears or submit a payment plan, subject to approval by the board and initial payment under an approved payment plan.

(5) The board may abate or defer, in whole or in part, the assessment of a health carrier or third-party administrator if, in the opinion of the board, payment of the assessment would endanger the ability of the health carrier or third-party administrator to fulfill its contractual obligations. If an assessment against a health carrier or third-party administrator is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other health carriers and third-party administrators in a manner consistent with the basis for assessments in subsection (3) of this section. The health carrier or third-party administrator receiving such abatement or deferment shall remain liable to the program for the deficiency. Upon receipt of payment of any abatement or deferment by a health carrier or third-party administrator, the board shall adjust future assessments made against other health carriers and third-party administrators under this subsection to reflect receipt of the payment.

(6) The board shall cause the program administrator to submit an annual report to the commissioner listing those health carriers and third-party administrators that failed to remit their assessments.

(7) The board shall cause the program administrator to deposit annual assessments collected under this section, less the reinsurance program's administrative expenses, with the state treasurer to the credit of the Washington reinsurance program account created in section 8 of this act.

(8) If the legislature, after receiving the study and recommendations submitted under section 13 of this act, does not enact an alternative financing source for the program on or before June 30, 2019, the board shall determine and collect assessments as provided in this section for calendar years 2021 through 2023 or until the legislature has enacted an alternative financing source, whichever is earlier.

NEW SECTION. **Sec.**  THIRD-PARTY ADMINISTRATOR—REGISTRATION. (1) A third-party administrator shall register and renew annually with the office of the insurance commissioner, on or before January 1, 2019. Registrants shall report a change of legal name, business name, business address, or business telephone number to the commissioner within ten days after the change.

(2) The commissioner shall define the data elements and procedures necessary to implement this section and may establish a registration and renewal fees. To minimize administrative burdens on third-party administrators, in developing the data elements and procedures for registration and renewal, the commissioner must, to the extent practicable, adopt the data elements and procedures adopted by the Washington vaccine association under RCW 70.290.075.

NEW SECTION. **Sec.**  WASHINGTON REINSURANCE PROGRAM ACCOUNT. The Washington reinsurance program account is created in the custody of the state treasurer. All receipts from assessments collected under section 6 of this act, any funds received by the commissioner or other state agency pursuant to a state innovation waiver approved by the federal government as provided in section 9 of this act, any federal funds received by the commissioner under section 13(3) of this act, and any additional funding specifically appropriated to the account must be deposited in the account. Expenditures from the account shall be used to operate the program and to make reinsurance payments to eligible health carriers under the program. Only the board may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. In making expenditures from the account, available federal funding available must be expended first.

NEW SECTION. **Sec.**  STATE INNOVATION WAIVER APPLICATION. (1) The commissioner shall apply to the secretary of health and human services under 42 U.S.C. Sec. 18052 for a state innovation waiver to implement the Washington reinsurance program for benefit years beginning January 1, 2019, and future years to maximize federal funding. The waiver application must clearly state that operation of the Washington reinsurance program is contingent on approval of the waiver request.

(2) The commissioner shall submit the waiver application to the United States secretary of health and human services on or before April 1, 2018. The commissioner shall make a draft application available for tribal consultation and for public review and comment by March 1, 2018. The commissioner shall notify the chairs and ranking minority members of the house of representatives health care and wellness committee and appropriations committee and the senate health care committee and ways and means committee, and the board of directors of the Washington state health insurance pool of any federal actions regarding the waiver request.

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

CARRIER RATE FILINGS.

The commissioner shall require eligible health carriers, as defined in RCW 48.41.030, to calculate the premium amount the eligible health carrier would have charged for the benefit year if the Washington reinsurance program had not been established. The eligible health carrier must submit this information as part of its rate filing. The commissioner must consider this information as part of the rate review.

NEW SECTION. **Sec.**  REINSURANCE PROGRAM CONTINGENT ON FEDERAL WAIVER. If the state innovation waiver request in section 9 of this act is not approved, the Washington state health insurance pool and its board of directors may not operate the Washington reinsurance program or provide reinsurance payments to eligible health carriers.

NEW SECTION. **Sec.**  REQUIRED RULE MAKING. The commissioner may adopt rules necessary to carry out the provisions of sections 2 through 9, 11 through 13, and 15 of this act and section 10 of this act including, but not limited to, rules prescribing the annual establishment of reinsurance payment parameters and measures to enforce payment of applicable assessments.

NEW SECTION. **Sec.**  ALTERNATIVE FINANCING MECHANISMS. (1) The commissioner, in consultation with the office of financial management, the department of revenue, the health care authority, and the health benefit exchange, shall conduct a study and submit recommendations to the legislature related to alternative financing mechanisms for the Washington reinsurance program for calendar years 2021 through 2023. In reviewing alternative financing mechanisms, the commissioner must evaluate the feasibility of a health care paid claims assessment, such as that codified at Michigan Compiled Laws, sections 550.1731 through 550.1741.

(2) The commissioner must solicit input from interested parties in the course of the study and may contract with third parties for actuarial or economic analysis necessary to fully evaluate alternative financing options. The commissioner must submit his or her report to relevant committees of the legislature on or before November 30, 2018.

(3) If additional federal funding to support administration and implementation of state-based reinsurance programs becomes available to states, distinct from an application submitted under section 9 of this act, the commissioner shall notify the relevant policy and fiscal committees of the legislature and pursue such funding to offset state costs associated with the reinsurance program established in sections 2 through 9, 11 through 13, and 15 of this act and section 10 of this act. The commissioner must deposit any funds received under this subsection with the state treasurer to the credit of the Washington reinsurance program account created in section 8 of this act.

**Sec.**  RCW 42.56.400 and 2017 3rd sp.s. c 30 s 2 and 2017 c 193 s 2 are each reenacted and amended to read as follows:

The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30A.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Documents, materials, or information obtained by the insurance commissioner under RCW 48.31B.015(2) (l) and (m), 48.31B.025, 48.31B.030, and 48.31B.035, all of which are confidential and privileged;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595;

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court;

(18) Documents, materials, or information obtained by the insurance commissioner under RCW 48.13.151;

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010;

(20) Information in a filing of usage-based insurance about the usage-based component of the rate pursuant to RCW 48.19.040(5)(b);

(21) Data, information, and documents, other than those described in RCW 48.02.210(2) as it existed prior to repeal by 2017 3rd sp.s. c 7 s 2, that are submitted to the office of the insurance commissioner by an entity providing health care coverage pursuant to RCW 28A.400.275 as it existed prior to elimination of the report by 2017 3rd sp.s. c 7 s 1, and 48.02.210 as it existed prior to repeal by 2017 3rd sp.s. c 7 s 2;

(22) Data, information, and documents obtained by the insurance commissioner under RCW 48.29.017;

(23) Information not subject to public inspection or public disclosure under RCW 48.43.730(5);

(24) Documents, materials, or information obtained by the insurance commissioner under chapter 48.05A RCW;

(25) Documents, materials, or information obtained by the insurance commissioner under RCW 48.74.025, 48.74.028, 48.74.100(6), 48.74.110(2) (b) and (c), and 48.74.120 to the extent such documents, materials, or information independently qualify for exemption from disclosure as documents, materials, or information in possession of the commissioner pursuant to a financial conduct examination and exempt from disclosure under RCW 48.02.065; ((~~and~~))

(26) Nonpublic personal health information obtained by, disclosed to, or in the custody of the insurance commissioner, as provided in RCW 48.02.068; ((~~and~~))

(27) Data, information, and documents obtained by the insurance commissioner under RCW 48.02.230; and

(28) Data, information, and documents necessary to prepare the state innovation waiver application submitted under section 9 of this act, to determine reinsurance parameters obtained by the commissioner under section 5 of this act and to determine reinsurance claims payments.

NEW SECTION. **Sec.**  CIVIL AND CRIMINAL IMMUNITY. The program, health carriers, and third-party administrators assessed by the program, board directors of the program, officers of the program, employees of the program, the commissioner, the commissioner's representatives, and the commissioner's employees are not civilly or criminally liable and may not have any penalty or cause of action of any nature arise against them for any action taken or not taken, including any discretionary decision or failure to make a discretionary decision, when the action or inaction is done in good faith and in the performance of the powers and duties under this chapter. This section does not prohibit legal actions against the program to enforce the program's statutory or contractual duties or obligations.

NEW SECTION. **Sec.**  APPROPRIATIONS. (1) The sum of four hundred fifty thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal biennium ending June 30, 2019, from the general fund to the Washington reinsurance program account created in section 8 of this act for the purposes of implementation and operation of the Washington reinsurance program for the period between the effective date of this section and the receipt of program assessments collected under section 6 of this act.

(2) The sum of two hundred ninety thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal biennium ending June 30, 2019, from the insurance commissioner's regulatory account to the office of the insurance commissioner for the purposes of carrying out the commissioner's duties under sections 2 through 9, 11 through 13, and 15 of this act and section 10 of this act, including rule making, annual establishment of reinsurance program payment parameters, program oversight, and implementation of a state innovation waiver granted pursuant to section 9 of this act.

(3) The sum of one hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal biennium ending June 30, 2019, from the general fund-state to the office of the insurance commissioner for implementation of section 13 of this act.

NEW SECTION. **Sec.**  CODIFICATION. Sections 2 through 9, 11 through 13, and 15 of this act are each added to chapter 48.41 RCW.

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

NEW SECTION. **Sec.**  EMERGENCY EFFECTIVE DATE. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**