

SB 5581 - H AMD 502

By Representative Santos

ADOPTED 04/11/2017

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

3 "NEW SECTION. **Sec. 1.** This chapter is intended to provide
4 authority for two or more public benefit hospital entities to
5 participate in a joint self-insurance program covering property or
6 liability risks. This chapter provides public benefit hospital
7 entities with the exclusive source of authority to jointly self-
8 insure property and liability risks, jointly purchase insurance or
9 reinsurance, and to contract for risk management, claims, and
10 administrative services with other public benefit hospital entities,
11 except as otherwise provided in this chapter. This chapter must be
12 liberally construed to grant public benefit hospital entities maximum
13 flexibility in jointly self-insuring to the extent the self-insurance
14 programs are operated in a safe and sound manner. This chapter is
15 intended to require prior approval for the establishment of every
16 joint self-insurance program. In addition, this chapter is intended
17 to require every joint self-insurance program for public benefit
18 hospital entities established under this chapter to notify the state
19 of the existence of the program and to comply with the regulatory and
20 statutory standards governing the management and operation of the
21 programs as provided in this chapter. This chapter is not intended to
22 authorize or regulate self-insurance of unemployment compensation
23 under chapter 50.44 RCW or industrial insurance under chapter 51.14
24 RCW.

25 NEW SECTION. **Sec. 2.** The definitions in this section apply
26 throughout this chapter unless the context clearly requires
27 otherwise.

28 (1) "Hospital services" means clinically related (i.e.,
29 preventive, diagnostic, curative, rehabilitative, or palliative)
30 services provided in a hospital setting.

1 (2) "Property and liability risks" include the risk of property
2 damage or loss sustained by a public benefit hospital entity and the
3 risk of claims arising from the tortious or negligent conduct or any
4 error or omission of the entity, its officers, employees, agents, or
5 volunteers as a result of which a claim may be made against the
6 entity.

7 (3) "Public benefit hospital entity" means any of the following:

8 (a) A public hospital district organized under the laws of this
9 state or another state and any agency or instrumentality of a public
10 hospital district including, but not limited to, a legal entity
11 created to conduct a joint self-insurance program for public hospital
12 districts that is operating in accordance with chapter 48.62 RCW; or

13 (b) A nonprofit corporation, whether organized under the laws of
14 this state or another state, that meets the following requirements:

15 (i) The nonprofit corporation operates one or more hospitals each
16 of which is licensed for three hundred sixty or fewer beds by the
17 department of health pursuant to chapter 70.41 RCW; and

18 (ii) The nonprofit corporation is engaged in providing hospital
19 services.

20 (4) "Self-insurance" means a formal program of advance funding
21 and management of entity financial exposure to a risk of loss that is
22 not transferred through the purchase of an insurance policy or
23 contract.

24 (5) "State risk manager" means the risk manager of the office of
25 risk management within the department of enterprise services.

26 NEW SECTION. **Sec. 3.** (1) The governing body of a public benefit
27 hospital entity may join or form a self-insurance program together
28 with one or more other public benefit hospital entities, and may
29 jointly purchase insurance or reinsurance with one or more other
30 public benefit hospital entities for property and liability risks
31 only as permitted under this chapter. Public benefit hospital
32 entities may contract for or hire personnel to provide risk
33 management, claims, and administrative services in accordance with
34 this chapter.

35 (2) The agreement to form a joint self-insurance program may
36 include the organization of a separate legal or administrative entity
37 with powers delegated to the entity.

38 (3) If provided for in the organizational documents, a joint
39 self-insurance program may, in conformance with this chapter:

1 (a) Contract or otherwise provide for risk management and loss
2 control services;

3 (b) Contract or otherwise provide legal counsel for the defense
4 of claims and other legal services;

5 (c) Consult with the state insurance commissioner and the state
6 risk manager;

7 (d) Jointly purchase insurance and reinsurance coverage in a form
8 and amount as provided for in the organizational documents;

9 (e) Obligate the program's participants to pledge revenues or
10 contribute money to secure the obligations or pay the expenses of the
11 program, including the establishment of a reserve or fund for
12 coverage; and

13 (f) Possess any other powers and perform all other functions
14 reasonably necessary to carry out the purposes of this chapter.

15 (4) Every joint self-insurance program governed by this chapter
16 must appoint the state risk manager as its attorney to receive
17 service of, and upon whom must be served, all legal process issued
18 against the program in this state upon causes of action arising in
19 this state.

20 (a) Service upon the state risk manager as attorney constitutes
21 service upon the program. Service upon joint self-insurance programs
22 subject to this chapter may only occur by service upon the state risk
23 manager. At the time of service, the plaintiff shall pay to the state
24 risk manager a fee to be set by the state risk manager, taxable as
25 costs in the action.

26 (b) With the initial filing for approval with the state risk
27 manager, each joint self-insurance program must designate by name and
28 address the person to whom the state risk manager must forward legal
29 process that is served upon him or her. The joint self-insurance
30 program may change this person by filing a new designation.

31 (c) The appointment of the state risk manager as attorney is
32 irrevocable, binds any successor in interest or to the assets or
33 liabilities of the joint self-insurance program, and remains in
34 effect as long as there is in force in this state any contract made
35 by the joint self-insurance program or liabilities or duties arising
36 from the contract.

37 (d) The state risk manager shall keep a record of the day and
38 hour of service upon him or her of all legal process. A copy of the
39 process, by registered mail with return receipt requested, must be
40 sent by the state risk manager to the person designated to receive

1 legal process by the joint self-insurance program in its most recent
2 designation filed with the state risk manager. Proceedings must not
3 commence against the joint self-insurance program, and the program
4 must not be required to appear, plead, or answer, until the
5 expiration of forty days after the date of service upon the state
6 risk manager.

7 NEW SECTION. **Sec. 4.** This chapter does not apply to a public
8 benefit hospital entity that:

9 (1) Individually self-insures for property and liability risks;
10 or

11 (2) Participates in a risk pooling arrangement, including a risk
12 retention group or a risk purchasing group, regulated under chapter
13 48.92 RCW, is a captive insurer authorized in its state of domicile,
14 or participates in a local government risk pool formed under chapter
15 48.62 RCW.

16 NEW SECTION. **Sec. 5.** The state risk manager shall adopt rules
17 governing the management and operation of joint self-insurance
18 programs for public benefit hospital entities that cover property or
19 liability risks. All rules must be appropriate for the type of
20 program and class of risk covered. The state risk manager's rules
21 must include:

22 (1) Standards for the management, operation, and solvency of
23 joint self-insurance programs, including the necessity and frequency
24 of actuarial analyses and claims audits;

25 (2) Standards for claims management procedures;

26 (3) Standards for contracts between joint self-insurance programs
27 and private businesses, including standards for contracts between
28 third-party administrators and programs; and

29 (4) Standards that preclude public hospital districts or other
30 public entities participating in the joint self-insurance program
31 from subsidizing, regardless of the form of subsidy, public benefit
32 hospital entities that are not public hospital districts or public
33 entities. These standards do not apply to the consideration
34 attributable to the ownership interest of a public hospital district
35 or other public entity in a separate legal or administrative entity
36 organized with respect to the program.

1 NEW SECTION. **Sec. 6.** Before the establishment of a joint self-
2 insurance program covering property or liability risks by public
3 benefit hospital entities, the entities must obtain the approval of
4 the state risk manager. The entities proposing the creation of a
5 joint self-insurance program requiring prior approval shall submit a
6 plan of management and operation to the state risk manager that
7 provides at least the following information:

8 (1) The risk or risks to be covered, including any coverage
9 definitions, terms, conditions, and limitations;

10 (2) The amount and method of funding the covered risks, including
11 the initial capital and proposed rates and projected premiums;

12 (3) The proposed claim reserving practices;

13 (4) The proposed purchase and maintenance of insurance or
14 reinsurance in excess of the amounts retained by the joint self-
15 insurance program;

16 (5) The legal form of the program including, but not limited to,
17 any articles of incorporation, bylaws, charter, or trust agreement or
18 other agreement among the participating entities;

19 (6) The agreements with participants in the program defining the
20 responsibilities and benefits of each participant and management;

21 (7) The proposed accounting, depositing, and investment practices
22 of the program;

23 (8) The proposed time when actuarial analysis will be first
24 conducted and the frequency of future actuarial analysis;

25 (9) A designation of the individual to whom service of process
26 must be forwarded by the state risk manager on behalf of the program;

27 (10) All contracts between the program and private persons
28 providing risk management, claims, or other administrative services;

29 (11) A professional analysis of the feasibility of the creation
30 and maintenance of the program;

31 (12) A legal determination of the potential federal and state tax
32 liabilities of the program; and

33 (13) Any other information required by rule of the state risk
34 manager that is necessary to determine the probable financial and
35 management success of the program or that is necessary to determine
36 compliance with this chapter.

37 NEW SECTION. **Sec. 7.** A public benefit hospital entity may
38 participate in a joint self-insurance program covering property or

1 liability risks with similar public benefit hospital entities from
2 other states if the program satisfies the following requirements:

3 (1) An ownership interest in the program is limited to some or
4 all of the public benefit hospital entities of this state and public
5 benefit hospital entities of other states that are provided insurance
6 by the program;

7 (2) The participating public benefit hospital entities of this
8 state and other states shall elect a board of directors to manage the
9 program, a majority of whom must be affiliated with one or more of
10 the participating public benefit hospital entities;

11 (3) The program must provide coverage through the delivery to
12 each participating public benefit hospital entity of one or more
13 written policies affecting insurance of covered risks;

14 (4) The program must be financed, including the payment of
15 premiums and the contribution of initial capital, in accordance with
16 the plan of management and operation submitted to the state risk
17 manager in accordance with this chapter;

18 (5) The financial statements of the program must be audited
19 annually by the certified public accountants for the program, and
20 these audited financial statements must be delivered to the state
21 risk manager not more than one hundred twenty days after the end of
22 each fiscal year of the program;

23 (6) The investments of the program must be initiated only with
24 financial institutions or broker-dealers, or both, doing business in
25 those states in which participating public benefit hospital entities
26 are located, and these investments must be audited annually by the
27 certified public accountants for the program;

28 (7) The treasurer of a multistate joint self-insurance program
29 must be designated by resolution of the program and the treasurer
30 must be located in the state of one of the participating entities;

31 (8) The participating entities may have no contingent liabilities
32 for covered claims, other than liabilities for unpaid premiums,
33 retrospective premiums, or assessments, if assets of the program are
34 insufficient to cover the program's liabilities; and

35 (9) The program must obtain approval from the state risk manager
36 in accordance with this chapter and must remain in compliance with
37 this chapter, except if provided otherwise under this section.

38 NEW SECTION. **Sec. 8.** (1) Within one hundred twenty days of
39 receipt of a plan of management and operation, the state risk manager

1 shall either approve or disapprove of the formation of the joint
2 self-insurance program after reviewing the plan to determine whether
3 the proposed program complies with this chapter and all rules adopted
4 in accordance with this chapter.

5 (2) If the state risk manager denies a request for approval, the
6 state risk manager shall specify in detail the reasons for denial and
7 the manner in which the program fails to meet the requirements of
8 this chapter or any rules adopted in accordance with this chapter.

9 (3) If the state risk manager determines that a joint self-
10 insurance program covering property or liability risks is in
11 violation of this chapter or is operating in an unsafe financial
12 condition, the state risk manager may issue and serve upon the
13 program an order to cease and desist from the violation or practice.

14 (a) The state risk manager shall deliver the order to the
15 appropriate entity or entities directly or mail it to the appropriate
16 entity or entities by certified mail with return receipt requested.

17 (b) If the program violates the order or has not taken steps to
18 comply with the order after the expiration of twenty days after the
19 cease and desist order has been received by the program, the program
20 is deemed to be operating in violation of this chapter, and the state
21 risk manager shall notify the attorney general of the violation.

22 (c) After hearing or with the consent of a program governed under
23 this chapter and in addition to or in lieu of a continuation of the
24 cease and desist order, the state risk manager may levy a fine upon
25 the program in an amount not less than three hundred dollars and not
26 more than ten thousand dollars. The order levying the fine must
27 specify the period within which the fine must be fully paid. The
28 period within which the fine must be paid must not be less than
29 fifteen and no more than thirty days from the date of the order. Upon
30 failure to pay the fine when due, the state risk manager shall
31 request the attorney general to bring a civil action on the state
32 risk manager's behalf to collect the fine. The state risk manager
33 shall pay any fine collected to the state treasurer for the account
34 of the general fund.

35 (4) Each joint self-insurance program approved by the state risk
36 manager shall annually file a report with the state risk manager
37 providing:

38 (a) Details of any changes in the articles of incorporation,
39 bylaws, charter, or trust agreement or other agreement among the
40 participating public benefit hospital entities;

- 1 (b) Copies of all the insurance coverage documents;
- 2 (c) A description of the program structure, including
- 3 participants' retention, program retention, and excess insurance
- 4 limits and attachment point;
- 5 (d) An actuarial analysis;
- 6 (e) A list of contractors and service providers;
- 7 (f) The financial and loss experience of the program; and
- 8 (g) Other information as required by rule of the state risk
- 9 manager.

10 (5) A joint self-insurance program requiring the state risk
11 manager's approval may not engage in an act or practice that in any
12 respect significantly differs from the management and operation plan
13 that formed the basis for the state risk manager's approval of the
14 program unless the program first notifies the state risk manager in
15 writing and obtains the state risk manager's approval. The state risk
16 manager shall approve or disapprove the proposed change within sixty
17 days of receipt of the notice. If the state risk manager denies a
18 requested change, the state risk manager shall specify in detail the
19 reasons for the denial and the manner in which the program would fail
20 to meet the requirements of this chapter or any rules adopted in
21 accordance with this chapter.

22 NEW SECTION. **Sec. 9.** (1) A joint self-insurance program may by
23 resolution of the program designate a person having experience with
24 investments or financial matters as treasurer of the program. The
25 program must require a bond obtained from a surety company in an
26 amount and under the terms and conditions that the program finds will
27 protect against loss arising from mismanagement or malfeasance in
28 investing and managing program funds. The program may pay the premium
29 on the bond.

30 (2) All interest and earnings collected on joint self-insurance
31 program funds belong to the program and must be deposited to the
32 program's credit in the proper program account.

33 NEW SECTION. **Sec. 10.** (1) An employee or official of a
34 participating public benefit hospital entity in a joint self-
35 insurance program may not directly or indirectly receive anything of
36 value for services rendered in connection with the operation and
37 management of a self-insurance program other than the salary and
38 benefits provided by his or her employer or the reimbursement of

1 expenses reasonably incurred in furtherance of the operation or
2 management of the program. An employee or official of a participating
3 public benefit hospital entity in a joint self-insurance program may
4 not accept or solicit anything of value for personal benefit or for
5 the benefit of others under circumstances in which it can be
6 reasonably inferred that the employee's or official's independence of
7 judgment is impaired with respect to the management and operation of
8 the program.

9 (2) RCW 48.30.140, 48.30.150, and 48.30.157 apply to the use of
10 insurance producers by a joint self-insurance program.

11 NEW SECTION. **Sec. 11.** A joint self-insurance program approved
12 in accordance with this chapter is exempt from insurance premium
13 taxes, fees assessed under chapter 48.02 RCW, chapters 48.32 and
14 48.32A RCW, business and occupation taxes imposed under chapter 82.04
15 RCW, and any assigned risk plan or joint underwriting association
16 otherwise required by law. This section does not apply to, and no
17 exemption is provided for, insurance companies issuing policies to
18 cover program risks, and does not apply to or provide an exemption
19 for third-party administrators or insurance producers serving the
20 joint self-insurance program.

21 NEW SECTION. **Sec. 12.** (1) The state risk manager shall
22 establish and charge an investigation fee in an amount necessary to
23 cover the costs for the initial review and approval of a joint self-
24 insurance program. The fee must accompany the initial submission of
25 the plan of operation and management.

26 (2) The costs of subsequent reviews and investigations must be
27 charged to the joint self-insurance program being reviewed or
28 investigated in accordance with the actual time and expenses incurred
29 in the review or investigation.

30 (3) Any program failing to remit its assessment when due is
31 subject to denial of permission to operate or to a cease and desist
32 order until the assessment is paid.

33 NEW SECTION. **Sec. 13.** (1) Any person who files reports or
34 furnishes other information required under this title, required by
35 the state risk manager under the authority granted under this title,
36 or which is useful to the state risk manager in the administration of
37 this title, is immune from liability in any civil action or suit

1 arising from the filing of any such report or furnishing such
2 information to the state risk manager, unless actual malice, fraud,
3 or bad faith is shown.

4 (2) The state risk manager and his or her agents and employees
5 are immune from liability in any civil action or suit arising from
6 the publication of any report or bulletins or arising from
7 dissemination of information related to the official activities of
8 the state risk manager unless actual malice, fraud, or bad faith is
9 shown.

10 (3) The immunity granted under this section is in addition to any
11 common law or statutory privilege or immunity enjoyed by such person.
12 This section is not intended to abrogate or modify in any way such
13 common law or statutory privilege or immunity.

14 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
15 constitute a new chapter in Title 48 RCW."

16 Correct the title.

EFFECT: (1) Removes general or limited partnerships and limited
liability companies that operate hospitals from the definition of
"public benefit hospital entity," so that only public hospital
districts and nonprofit corporations that operate hospitals may
participate in a joint self-insurance program for property or
liability risks for public benefit hospital entities.

(2) Provides that a nonprofit corporation must operate one or
more hospitals each of which is licensed for 360 or fewer beds by the
department of health to meet the definition of a "public benefit
hospital entity" and be eligible to participate in a joint self-
insurance program for property or liability risks with public
hospital districts and other nonprofit corporations that operate
hospitals.

(3) Eliminates the examples of specific types of entities from
the authorization for the formation of a separate legal or
administrative entity pursuant to an agreement to form a joint self-
insurance program for public benefit hospital entities.

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