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ENGROSSED SUBSTITUTE HOUSE BILL 2222

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State of Washington                      65th Legislature      2017 3rd Special Session

By House Health Care & Wellness (originally sponsored by  
Representatives Cody and Manweller; by request of Insurance  
Commissioner)

1            AN ACT Relating to protection of information obtained to develop  
2 or implement an individual health insurance market stability program;  
3 reenacting and amending RCW 42.56.400; adding a new section to  
4 chapter 48.02 RCW; and declaring an emergency.

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

6            NEW SECTION.    **Sec. 1.**    A new section is added to chapter 48.02  
7 RCW to read as follows:

8            (1) For the purposes of developing or implementing an individual  
9 health insurance market stability program, any reports, data,  
10 documents, or materials that health carriers submit to or receive  
11 from the United States department of health and human services as  
12 part of any health and human services operated risk adjustment or  
13 reinsurance program, or that the Washington state health insurance  
14 pool, established under chapter 48.41 RCW, prepares for purposes of  
15 this section that are obtained by, disclosed to, or in the custody of  
16 the commissioner, regardless of the form or medium, are confidential  
17 and are not subject to public disclosure under chapter 42.56 RCW. The  
18 commissioner shall not disclose these reports, data, documents, or  
19 materials except in the furtherance of developing and implementing an  
20 individual health insurance market stability program.

21            (2) For the purposes of this section:

1 (a) A health and human services operated risk adjustment or  
2 reinsurance program is any of the health insurance risk adjustment or  
3 reinsurance programs established under 42 U.S.C. Secs. 18061 and  
4 18063. The reports, data, documents, and materials that are  
5 confidential under this section include all data and information  
6 carriers are required to provide to health and human services through  
7 the dedicated data environments required by 45 C.F.R. Sec. 153.700 et  
8 seq. for all health carriers participating in any health and human  
9 services health insurance risk adjustment or reinsurance program; and

10 (b) "Health carrier" has the same meaning as in RCW 48.43.005.

11 (3) The commissioner may:

12 (a) Share documents, materials, or other information, including  
13 the confidential documents, materials, or information subject to  
14 subsection (1) of this section, with contractors conducting  
15 actuarial, economic, or other analyses necessary to develop or  
16 implement an individual health insurance market stability program.

17 (b) Enter into agreements governing the sharing and use of  
18 information consistent with this subsection.

19 (4) No waiver of an existing claim of confidentiality or  
20 privilege in the documents, materials, or information may occur as a  
21 result of disclosure to the commissioner under this section or as a  
22 result of sharing as authorized in subsection (3) of this section.

23 (5) Nothing in this section may be construed to authorize the  
24 commissioner to submit a complete application to the federal  
25 government for a waiver of any provision of federal law, including  
26 the federal patient protection and affordable care act, P.L. 111-148,  
27 as amended by the federal health care and education reconciliation  
28 act, P.L. 111-152, or federal regulations or guidance issued under  
29 the affordable care act. The commissioner shall provide the joint  
30 select committee on health care oversight established by RCW  
31 44.82.010 with a progress report prior to submitting a draft waiver  
32 application to the federal government.

33 (6) Reports, data, documents, and materials subject to this  
34 section are those obtained by the commissioner as of December 31,  
35 2019.

36 **Sec. 2.** RCW 42.56.400 and 2016 c 142 s 20, 2016 c 142 s 19, and  
37 2016 c 122 s 4 are each reenacted and amended to read as follows:

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

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

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

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

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

15 (5) Information provided under RCW 48.05.510 through 48.05.535,  
16 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and  
17 48.46.600 through 48.46.625;

18 (6) Examination reports and information obtained by the  
19 department of financial institutions from banks under RCW 30A.04.075,  
20 from savings banks under RCW 32.04.220, from savings and loan  
21 associations under RCW 33.04.110, from credit unions under RCW  
22 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and  
23 from securities brokers and investment advisers under RCW 21.20.100,  
24 all of which is confidential and privileged information;

25 (7) Information provided to the insurance commissioner under RCW  
26 48.110.040(3);

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

30 (9) Documents, materials, or information obtained by the  
31 insurance commissioner under RCW 48.31B.015(2) (l) and (m),  
32 48.31B.025, 48.31B.030, and 48.31B.035, all of which are confidential  
33 and privileged;

34 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and  
35 7.70.140 that, alone or in combination with any other data, may  
36 reveal the identity of a claimant, health care provider, health care  
37 facility, insuring entity, or self-insurer involved in a particular  
38 claim or a collection of claims. For the purposes of this subsection:

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

1 (b) "Health care facility" has the same meaning as in RCW  
2 48.140.010(6).

3 (c) "Health care provider" has the same meaning as in RCW  
4 48.140.010(7).

5 (d) "Insuring entity" has the same meaning as in RCW  
6 48.140.010(8).

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

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

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

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

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

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

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

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

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

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

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

35 (21) Data, information, and documents, other than those described  
36 in RCW 48.02.210(2), that are submitted to the office of the  
37 insurance commissioner by an entity providing health care coverage  
38 pursuant to RCW 28A.400.275 and 48.02.210;

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

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

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

5 (25) Documents, materials, or information obtained by the  
6 insurance commissioner under RCW 48.74.025, 48.74.028, 48.74.100(6),  
7 48.74.110(2) (b) and (c), and 48.74.120 to the extent such documents,  
8 materials, or information independently qualify for exemption from  
9 disclosure as documents, materials, or information in possession of  
10 the commissioner pursuant to a financial conduct examination and  
11 exempt from disclosure under RCW 48.02.065; and

12 (26) Data, information, and documents obtained by the insurance  
13 commissioner under section 1 of this act.

14 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
15 preservation of the public peace, health, or safety, or support of  
16 the state government and its existing public institutions, and takes  
17 effect immediately.

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