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**SUBSTITUTE SENATE BILL 6062**

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**State of Washington**

**65th Legislature**

**2018 Regular Session**

**By** Senate Health & Long Term Care (originally sponsored by Senators Cleveland, Frockt, Rolfes, Liias, Keiser, Saldaña, and Kuderer; by request of Insurance Commissioner)

READ FIRST TIME 01/24/18.

1 AN ACT Relating to establishment of an individual health  
2 insurance market claims-based reinsurance program; reenacting and  
3 amending RCW 42.56.400; adding a new chapter to Title 48 RCW; and  
4 declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this  
7 section apply throughout this chapter unless the context clearly  
8 requires otherwise.

9 (1) "Association" means the Washington vaccine association  
10 established in chapter 70.290 RCW.

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

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

19 (4) "Board" means the Washington reinsurance program management  
20 board.

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

6 (6) "Commissioner" means the insurance commissioner.

7 (7) "Covered lives" means all persons residing in Washington  
8 state who are:

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

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

14 (8) "Eligible health carrier" means a health carrier offering  
15 nongrandfathered individual health plans to consumers in Washington  
16 state.

17 (9) "Health carrier" or "carrier" has the same meaning as in RCW  
18 48.43.005.

19 (10) "Health plan" means any arrangement by which persons,  
20 including dependents or spouses, have access to hospital and medical  
21 benefits or reimbursement including any group or individual  
22 disability insurance policy; health care service contract; health  
23 maintenance agreement; uninsured arrangements of group or group-type  
24 contracts including employer self-insured, cost-plus, or other  
25 benefit methodologies not involving insurance or not governed by  
26 Title 48 RCW; coverage under group-type contracts which are not  
27 available to the general public and can be obtained only because of  
28 connection with a particular organization or group; and coverage by  
29 governmental benefits. "Health plan" does not include short-term  
30 care, long-term care, dental, vision, accident, fixed indemnity,  
31 disability income contracts, limited benefit or credit insurance,  
32 coverage issued as a supplement to liability insurance, insurance  
33 arising out of the worker's compensation or similar law, automobile  
34 medical payment insurance, insurance under which benefits are payable  
35 with or without regard to fault and which is statutorily required to  
36 be contained in any liability insurance policy or equivalent self-  
37 insurance, a direct practice as defined in RCW 48.150.010, coverage  
38 provided pursuant to Title XIX of the social security act, 42 U.S.C.  
39 Sec. 1396 et seq., or coverage where the federal government is the  
40 primary payor, including, but not limited to, coverage provided under

1 the federal employees health benefit program, the triccare program, or  
2 the medicare program.

3 (11) "Individual health plan" means a health plan as defined in  
4 RCW 48.43.005 that is offered by a health carrier to individuals  
5 other than in connection with a group health plan, and that is not a  
6 grandfathered health plan as defined in RCW 48.43.005.

7 (12) "Individual market" has the same meaning as in RCW  
8 48.43.005.

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

11 (14) "Payment parameters" means the attachment point, reinsurance  
12 cap, and coinsurance rate for the Washington reinsurance program.

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

17 (16) "Reinsurance payments" means an amount paid by the  
18 Washington reinsurance program to an eligible health carrier under  
19 the program.

20 (17) "Reinsurance plan of operation" means the plan of operation  
21 proposed by the board and approved by the commissioner under section  
22 4 of this act.

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

28 (19) "Washington reinsurance program," "reinsurance program," or  
29 "program" means the state-based reinsurance program established under  
30 this chapter.

31 NEW SECTION. **Sec. 2.** WASHINGTON REINSURANCE PROGRAM—CREATION,  
32 ADMINISTRATION, BOARD DUTIES. (1) The Washington reinsurance program  
33 is established for the purposes of stabilizing the rates and premiums  
34 for individual health plans and providing greater financial certainty  
35 to consumers of health insurance in this state.

36 (2) The program must be operated by the association through the  
37 board in accordance with the reinsurance plan of operation approved  
38 by the commissioner under section 4 of this act. The association must

1 appoint the Washington reinsurance program management board  
2 consisting of the following members:

3 (a) The insurance commissioner or his or her designee;

4 (b) A member representing small employers with fifty or fewer  
5 employees;

6 (c) A member representing self-insured large employers with more  
7 than fifty employees;

8 (d) A member representing fully insured large employers with more  
9 than fifty employees;

10 (e) A member representing third-party administrators;

11 (f) A member representing health carriers offering individual  
12 market coverage in Washington;

13 (g) A member with technical expertise in reinsurance;

14 (h) A member of the association's board of directors; and

15 (i) A public member representing consumers who purchase  
16 individual market health insurance in Washington.

17 (3) The board has the following powers and duties related to  
18 operation of the Washington reinsurance program:

19 (a) Prepare and propose to the association amendments to the  
20 articles of organization and bylaws of the association to provide for  
21 operation of the Washington reinsurance program;

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

25 (c) Conduct all activities in accordance with the reinsurance  
26 plan of operation approved by the commissioner under section 4 of  
27 this act;

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

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

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

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

1 (h) Hire independent consultants, including accountants,  
2 actuaries, attorneys, investment advisors, and auditors, as the board  
3 deems necessary for operation of the Washington reinsurance program;

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

9 (j) Cause the reinsurance program to be audited by an independent  
10 certified public accountant;

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

14 (l) Contract with an entity for program administration. The board  
15 may contract with any entity that is under contract with the board on  
16 the effective date of this section as needed for operation of the  
17 Washington reinsurance program for the period of the current  
18 contract. Any subsequent contract for administration of the  
19 association's other duties must include duties as may be assigned by  
20 the board that are necessary for operation of the Washington  
21 reinsurance program for the period during which the program will be  
22 in effect; and

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

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

28 NEW SECTION. **Sec. 3.** EXAMINATION, REPORT, AND ENFORCEMENT. (1)

29 The Washington reinsurance program is subject to examination by the  
30 commissioner as provided under chapter 48.03 RCW.

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

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

- 1 (b) Requests for reinsurance payments received from eligible  
2 health carriers;
- 3 (c) Reinsurance payments made to eligible health carriers; and
- 4 (d) Administrative and operational expenses incurred for the  
5 program.
- 6 (3) The report must be posted on the association's web site.

7 NEW SECTION. **Sec. 4.** REINSURANCE PROGRAM PLAN OF OPERATION. The  
8 reinsurance plan of operation for the Washington reinsurance program  
9 must be submitted by the board to the commissioner for review and by  
10 May 15, 2018, and must be approved by the commissioner by June 1,  
11 2018. The plan of operation must:

- 12 (1) Provide for the operation of the Washington reinsurance  
13 program separate and apart from the association's other duties;
- 14 (2) Establish procedures for the handling and accounting of  
15 assets and moneys of the program;
- 16 (3) Establish regular times and places for meetings of the board  
17 in connection with operation of the program;
- 18 (4) Establish data and information requirements for submission of  
19 reinsurance payment requests by eligible health carriers, processes  
20 for notification of eligible health carriers regarding reinsurance  
21 payments and issuing payments, and processes to resolve eligible  
22 health carrier appeals related to the amount of reinsurance payments,  
23 as provided in section 5 of this act;
- 24 (5) Establish procedures for the collection of assessments from  
25 all health carriers and third-party administrators to provide for  
26 reinsurance claims paid under the program and for administrative  
27 expenses incurred or estimated to be incurred during the period for  
28 which the assessment is made as provided in section 6 of this act;
- 29 (6) Establish procedures for records to be kept of all financial  
30 transactions and for an annual fiscal reporting to the commissioner  
31 as provided in section 3 of this act;
- 32 (7) Establish procedures for the submission of data by the  
33 program to the commissioner for preparation of quarterly and annual  
34 reports required under the terms of a waiver approved under section 9  
35 of this act;
- 36 (8) Determine the amount of contingency funding necessary to  
37 ensure the continued operation of the program, not to exceed ten  
38 percent of gross program assessments;

1 (9) Establish procedures to prevent the double-counting of  
2 covered lives in the calculation of the assessment in section 6 of  
3 this act;

4 (10) Establish a schedule and procedures for health carriers and  
5 third-party administrators to submit annual statements and other  
6 reports deemed necessary by the board to calculate the assessment in  
7 section 6 of this act; and

8 (11) Contain additional provisions necessary for the execution of  
9 the powers and duties of the program.

10 NEW SECTION. **Sec. 5.** PROGRAM PAYMENTS TO ELIGIBLE HEALTH

11 CARRIERS. (1)(a) The commissioner shall determine the payment  
12 parameters for the program annually, in order to:

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

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

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

20 (iv) Increase participation in the individual market.

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

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

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

1 (a) The claims costs for the covered benefits of an individual  
2 enrolled in the eligible health carrier's individual health plan  
3 exceed the attachment point;

4 (b) The eligible health carrier has implemented care management  
5 practices for enrollees who are the subject of reinsurance claims  
6 through the program. The eligible health carrier must submit an  
7 attestation to the board describing the care management strategies it  
8 will use and committing to offer each enrollee on whose behalf it has  
9 submitted claims the opportunity to participate in the care  
10 management program; and

11 (c) The eligible health carrier makes its requests for  
12 reinsurance payments by April 30th in accordance with any  
13 requirements established by the board including, but not limited to,  
14 requirements related to the format and structure for submission of  
15 claims for reinsurance payments. The claims data needed for  
16 submission of claims for reinsurance payments must be drawn from the  
17 dedicated data environment established by the eligible health carrier  
18 under the federal risk adjustment program under 42 U.S.C. Sec. 18063.

19 (3) The amount of the reinsurance payment is the product of the  
20 coinsurance rate and the carrier's claims costs for the individual  
21 enrolled in the eligible health carrier's individual health plan that  
22 exceed the attachment point, up to the reinsurance cap.

23 (4) For each applicable benefit year, on May 30th of the year  
24 following the applicable benefit year, the program must send an  
25 initial settlement report to each eligible health carrier in response  
26 to their final claims submission for the applicable benefit year. By  
27 August 1st of the year following the applicable benefit year, after  
28 resolution of any appeals related to the amount of reinsurance  
29 payments received, the program must disburse all applicable  
30 reinsurance payments to an eligible health carrier.

31 (5)(a) The total annual reinsurance payments made to all eligible  
32 health carriers may not exceed two hundred million dollars for any  
33 applicable benefit year.

34 (b)(i) If, for any applicable benefit year, the claims submitted  
35 under this section exceed two hundred million dollars, the board must  
36 make a pro rata reduction in claims payments necessary to keep  
37 reimbursement amounts at or below two hundred million dollars;

38 (ii) If, for any applicable benefit year, the funds available for  
39 reinsurance claims are less than two hundred million dollars and  
40 insufficient to fund the claims payments required by this section,



1 the board must make a pro rata reduction in claims necessary to  
2 remain within the funds available for reinsurance payments.

3 (c) If, for any applicable benefit year, the final disbursement  
4 of reinsurance payments to eligible health carriers is less than two  
5 hundred million dollars, funds remaining in the Washington  
6 reinsurance program account created in section 8 of this act must be  
7 used to reduce assessments for the subsequent applicable calendar  
8 year or to establish contingency funds consistent with the plan of  
9 operation.

10 NEW SECTION. **Sec. 6.** PROGRAM ASSESSMENTS. (1)(a) All health  
11 carriers and third-party administrators must pay an annual assessment  
12 under this section. On or before October 1, 2018, and on or before  
13 May 15th of each subsequent year, the board must determine the  
14 covered lives assessment for the subsequent calendar year and report  
15 the amount to the commissioner for review and approval. The board  
16 must determine the covered lives assessment in the following manner:

17 (i) The gross assessment amount must be two hundred million  
18 dollars plus anticipated administrative expenses not to exceed one  
19 and one-half percent of gross program assessments for the subsequent  
20 calendar year. The gross assessment amount calculated in 2018 may  
21 include contingency funds. The gross assessment calculated in  
22 subsequent years may not include contingency funds.

23 (ii) The net assessment amount is the gross assessment minus  
24 federal funds received under a state innovation waiver approved by  
25 the federal government under section 9 of this act, minus any surplus  
26 funds to be used to reduce assessments under section 5(5)(c) of this  
27 act, minus any other state or federal funds received for the purposes  
28 of making reinsurance payments or administering the program.

29 (iii) Each health carrier's and third-party administrator's  
30 assessment is determined based on annual statements and other reports  
31 deemed necessary by the board and is determined by multiplying the  
32 net assessment amount by a fraction. The numerator of the fraction  
33 equals that health carrier's or third-party administrator's total  
34 number of covered lives, including spouse and dependents, covered  
35 under all health plans in the state offered by that health carrier or  
36 administered by that third-party administrator during the preceding  
37 calendar year. When calculating the numerator, the board shall use  
38 the procedures to prevent the double-counting of lives established in  
39 section 4 of this act. The denominator of the fraction equals the

1 total number of covered lives, including spouse and dependents,  
2 covered under all health plans in the state offered by all health  
3 carriers and administered by all third-party administrators during  
4 the preceding calendar year.

5 (b) The commissioner must, by October 15, 2018, and May 30th in  
6 subsequent years, approve the assessment and notify the board.

7 (2) A health carrier or third-party administrator is not subject  
8 to an assessment under this section if it has fifty or fewer covered  
9 lives in Washington.

10 (3) If an assessment against a health carrier or third-party  
11 administrator is prohibited by court order, the assessment for the  
12 remaining health carriers and third-party administrators may be  
13 adjusted in a manner consistent with subsection (1) of this section  
14 to ensure that the net assessment amount calculated in subsection  
15 (1)(a)(ii) of this section will be collected.

16 (4)(a) In developing the procedures for collection of assessments  
17 under this chapter, the board must give strong consideration to the  
18 procedures used in the federal transitional reinsurance program  
19 established under 42 U.S.C. Sec. 18061.

20 (b) The board must notify, in writing, each health carrier and  
21 third-party administrator on behalf of the third-party  
22 administrator's clients' health plans of the health carrier's or  
23 third-party administrator's estimated total assessment by October 16,  
24 2018, and June 1st of each subsequent year and its payment obligation  
25 for the upcoming year. The board must determine a payment schedule  
26 for receipt of assessments under this section in accordance with the  
27 reinsurance plan of operation. Payment collections may be made no  
28 more frequently than quarterly.

29 (5) Payments are due to the board within forty-five days of the  
30 payment schedule determined under subsection (4)(b) of this section.  
31 The board must charge interest, which begins to accrue on the forty-  
32 sixth day, on amounts received after the forty-five day period. The  
33 board may allow each health carrier and third-party administrator in  
34 arrears to submit a payment plan, subject to approval by the board  
35 and initial payment under an approved payment plan.

36 (6) The board may abate or defer, in whole or in part, the  
37 assessment of a health carrier or third-party administrator if, in  
38 the opinion of the board, payment of the assessment would endanger  
39 the ability of the health carrier or third-party administrator to  
40 fulfill its contractual obligations. If an assessment against a

1 health carrier or third-party administrator is abated or deferred in  
2 whole or in part, the amount by which such assessment is abated or  
3 deferred may be assessed against the other health carriers and third-  
4 party administrators in a manner consistent with the basis for  
5 assessments in subsection (1) of this section. The health carrier or  
6 third-party administrator receiving such abatement or deferment  
7 remains liable to the program for the deficiency plus interest at a  
8 rate established in the reinsurance plan of operation. Upon receipt  
9 of payment of any abatement or deferment by a health carrier or  
10 third-party administrator, the board shall adjust future assessments  
11 made against other health carriers and third-party administrators  
12 under this subsection to reflect receipt of the payment.

13 (7) The board must submit an annual report to the commissioner  
14 listing those health carriers and third-party administrators that  
15 failed to remit their assessments.

16 (8) The board must deposit annual assessments collected under  
17 this section, less the reinsurance program's administrative expenses,  
18 with the state treasurer to the credit of the Washington reinsurance  
19 program account created in section 8 of this act.

20 (9) If the legislature, after receiving the study and  
21 recommendations submitted under section 13 of this act, does not  
22 enact an alternative financing source for the program on or before  
23 June 30, 2019, the board shall determine and collect assessments as  
24 provided in this section until the legislature has enacted an  
25 alternative financing source.

26 (10) A health carrier or third-party administrator must submit  
27 any annual statements or other reports deemed necessary by the board  
28 to calculate the assessment under this section in a manner consistent  
29 with the schedule and procedures in the plan of operation.

30 NEW SECTION. **Sec. 7.** THIRD-PARTY ADMINISTRATOR—REGISTRATION.

31 (1) A third-party administrator shall register and renew annually  
32 with the office of the insurance commissioner, on or before January  
33 1, 2019. Registrants shall report a change of legal name, business  
34 name, business address, or business telephone number to the  
35 commissioner within ten days after the change.

36 (2) The commissioner shall define the data elements and  
37 procedures necessary to implement this section and may establish a  
38 registration and renewal fees. To minimize administrative burdens on  
39 third-party administrators, in developing the data elements and

1 procedures for registration and renewal, the commissioner must, to  
2 the extent practicable, adopt the data elements and procedures  
3 adopted by the Washington vaccine association under RCW 70.290.075.

4 NEW SECTION. **Sec. 8.** WASHINGTON REINSURANCE PROGRAM ACCOUNT.

5 (1) The Washington reinsurance program account is created in the  
6 custody of the state treasurer. All receipts from assessments  
7 collected under section 6 of this act, any funds received by the  
8 commissioner or other state agency pursuant to a state innovation  
9 waiver approved by the federal government as provided in section 9 of  
10 this act, any federal funds received by the commissioner under  
11 section 13(3) of this act, and any additional funding specifically  
12 appropriated to the account must be deposited in the account.  
13 Expenditures from the account shall be used to operate the program  
14 and to make reinsurance payments to eligible health carriers under  
15 the program. Only the commissioner may authorize expenditures from  
16 the account. The account is subject to the allotment procedures under  
17 chapter 43.88 RCW, but an appropriation is not required for  
18 expenditures. In making expenditures from the account, available  
19 federal funding available must be expended first.

20 (2) The account may maintain an initial cash deficit in the  
21 account for a period of no more than one fiscal year to defray its  
22 initial program costs. The legislature may make appropriations into  
23 the account to reduce program administration costs.

24 (3) If the reinsurance program is terminated, any funds remaining  
25 in the Washington reinsurance program account, after allowances for  
26 remaining expenses and costs associated with the termination of the  
27 program, must be returned to the health carriers and third-party  
28 administrators who have paid an assessment in the most recent  
29 assessment period in a manner consistent with the basis for  
30 assessments in section 6(1) of this act.

31 NEW SECTION. **Sec. 9.** STATE INNOVATION WAIVER APPLICATION. (1)

32 The commissioner must apply to the secretary of health and human  
33 services under 42 U.S.C. Sec. 18052 for a state innovation waiver to  
34 implement the Washington reinsurance program for benefit years  
35 beginning January 1, 2019, and future years to maximize federal  
36 funding. The waiver application must clearly state that operation of  
37 the Washington reinsurance program is contingent on approval of the  
38 waiver request.

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

10 (3) The office of the insurance commissioner must post on its web  
11 site any reports submitted to the federal government on the  
12 implementation of a waiver granted under this section.

13 NEW SECTION. **Sec. 10.** CARRIER RATE FILINGS. The commissioner  
14 must require eligible health carriers to calculate the premium amount  
15 the eligible health carrier would have charged for the benefit year  
16 if the Washington reinsurance program had not been established. The  
17 eligible health carrier must submit this information as part of its  
18 rate filing. The commissioner must consider this information as part  
19 of the rate review.

20 NEW SECTION. **Sec. 11.** REINSURANCE PROGRAM CONTINGENT ON FEDERAL  
21 WAIVER. If the state innovation waiver request in section 9 of this  
22 act is not approved, or if an approved waiver is terminated or is not  
23 renewed, the association and the board may not operate the Washington  
24 reinsurance program, collect assessments, or provide reinsurance  
25 payments to eligible health carriers.

26 NEW SECTION. **Sec. 12.** REQUIRED RULE MAKING. The commissioner  
27 may adopt rules necessary to carry out this chapter including, but  
28 not limited to, rules prescribing the annual establishment of  
29 reinsurance payment parameters and measures to enforce reporting of  
30 covered lives, audits of covered lives reporting, and payment of  
31 applicable assessments.

32 NEW SECTION. **Sec. 13.** ALTERNATIVE FINANCING MECHANISMS. (1) The  
33 commissioner, in consultation with the office of financial  
34 management, the department of revenue, the health care authority, and  
35 the health benefit exchange, shall conduct a study and submit  
36 recommendations to the legislature related to alternative financing

1 mechanisms for the Washington reinsurance program. In reviewing  
2 alternative financing mechanisms, the commissioner must evaluate the  
3 feasibility of a health care paid claims assessment, such as that  
4 codified at Michigan Compiled Laws, sections 550.1731 through  
5 550.1741.

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

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

22 NEW SECTION. **Sec. 14.** CIVIL AND CRIMINAL IMMUNITY. The program,  
23 health carriers and third-party administrators assessed by the  
24 program, the board, officers of the program, employees of the  
25 program, contractors of the program and the contractors' employees,  
26 officers, and directors, the commissioner, the commissioner's  
27 representatives, and the commissioner's employees are not civilly or  
28 criminally liable and may not have any penalty or cause of action of  
29 any nature arise against them for any action or inaction, including  
30 any discretionary decision or failure to make a discretionary  
31 decision, when the action or inaction is done in good faith and in  
32 the performance of the powers and duties under this chapter. This  
33 section does not prohibit legal actions against the program to  
34 enforce the program's statutory or contractual duties or obligations.

35 **Sec. 15.** RCW 42.56.400 and 2017 3rd sp.s. c 30 s 2 and 2017 c  
36 193 s 2 are each reenacted and amended to read as follows:

37 The following information relating to insurance and financial  
38 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) as it existed prior to repeal by 2017 3rd sp.s. c  
37 7 s 2, that are submitted to the office of the insurance commissioner  
38 by an entity providing health care coverage pursuant to RCW  
39 28A.400.275 as it existed prior to elimination of the report by 2017



1 3rd sp.s. c 7 s 1, and 48.02.210 as it existed prior to repeal by  
2 2017 3rd sp.s. c 7 s 2;

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

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

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

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

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

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

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

26 (29) Claims submitted under section 5 of this act.

27 NEW SECTION. Sec. 16. CODIFICATION. Sections 1 through 14 of  
28 this act constitute a new chapter in Title 48 RCW.

29 NEW SECTION. Sec. 17. SEVERABILITY. If any provision of this  
30 act or its application to any person or circumstance is held invalid,  
31 the remainder of the act or the application of the provision to other  
32 persons or circumstances is not affected.

33 NEW SECTION. Sec. 18. EMERGENCY EFFECTIVE DATE. This act is  
34 necessary for the immediate preservation of the public peace, health,

1 or safety, or support of the state government and its existing public  
2 institutions, and takes effect immediately.

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