

CERTIFICATION OF ENROLLMENT

SENATE BILL 5581

Chapter 221, Laws of 2017

65th Legislature
2017 Regular Session

PUBLIC BENEFIT HOSPITAL ENTITIES--JOINT SELF-INSURANCE PROGRAMS

EFFECTIVE DATE: 7/23/2017

Passed by the Senate April 17, 2017
Yeas 47 Nays 1

CYRUS HABIB

President of the Senate

Passed by the House April 11, 2017
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 5, 2017 10:52 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5581** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

May 5, 2017

**Secretary of State
State of Washington**

SENATE BILL 5581

AS AMENDED BY THE HOUSE

Passed Legislature - 2017 Regular Session

State of Washington

65th Legislature

2017 Regular Session

By Senators Angel and Mullet

Read first time 01/30/17. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to authorizing public hospital districts to
2 participate in self-insurance risk pools with nonprofit hospitals;
3 adding a new chapter to Title 48 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** This chapter is intended to provide
6 authority for two or more public benefit hospital entities to
7 participate in a joint self-insurance program covering property or
8 liability risks. This chapter provides public benefit hospital
9 entities with the exclusive source of authority to jointly self-
10 insure property and liability risks, jointly purchase insurance or
11 reinsurance, and to contract for risk management, claims, and
12 administrative services with other public benefit hospital entities,
13 except as otherwise provided in this chapter. This chapter must be
14 liberally construed to grant public benefit hospital entities maximum
15 flexibility in jointly self-insuring to the extent the self-insurance
16 programs are operated in a safe and sound manner. This chapter is
17 intended to require prior approval for the establishment of every
18 joint self-insurance program. In addition, this chapter is intended
19 to require every joint self-insurance program for public benefit
20 hospital entities established under this chapter to notify the state
21 of the existence of the program and to comply with the regulatory and

1 statutory standards governing the management and operation of the
2 programs as provided in this chapter. This chapter is not intended to
3 authorize or regulate self-insurance of unemployment compensation
4 under chapter 50.44 RCW or industrial insurance under chapter 51.14
5 RCW.

6 NEW SECTION. **Sec. 2.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

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

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

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

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

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

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

29 (ii) The nonprofit corporation is engaged in providing hospital
30 services.

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

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

37 NEW SECTION. **Sec. 3.** (1) The governing body of a public benefit
38 hospital entity may join or form a self-insurance program together

1 with one or more other public benefit hospital entities, and may
2 jointly purchase insurance or reinsurance with one or more other
3 public benefit hospital entities for property and liability risks
4 only as permitted under this chapter. Public benefit hospital
5 entities may contract for or hire personnel to provide risk
6 management, claims, and administrative services in accordance with
7 this chapter.

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

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

13 (a) Contract or otherwise provide for risk management and loss
14 control services;

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

17 (c) Consult with the state insurance commissioner and the state
18 risk manager;

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

21 (e) Obligate the program's participants to pledge revenues or
22 contribute money to secure the obligations or pay the expenses of the
23 program, including the establishment of a reserve or fund for
24 coverage; and

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

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

32 (a) Service upon the state risk manager as attorney constitutes
33 service upon the program. Service upon joint self-insurance programs
34 subject to this chapter may only occur by service upon the state risk
35 manager. At the time of service, the plaintiff shall pay to the state
36 risk manager a fee to be set by the state risk manager, taxable as
37 costs in the action.

38 (b) With the initial filing for approval with the state risk
39 manager, each joint self-insurance program must designate by name and
40 address the person to whom the state risk manager must forward legal

1 process that is served upon him or her. The joint self-insurance
2 program may change this person by filing a new designation.

3 (c) The appointment of the state risk manager as attorney is
4 irrevocable, binds any successor in interest or to the assets or
5 liabilities of the joint self-insurance program, and remains in
6 effect as long as there is in force in this state any contract made
7 by the joint self-insurance program or liabilities or duties arising
8 from the contract.

9 (d) The state risk manager shall keep a record of the day and
10 hour of service upon him or her of all legal process. A copy of the
11 process, by registered mail with return receipt requested, must be
12 sent by the state risk manager to the person designated to receive
13 legal process by the joint self-insurance program in its most recent
14 designation filed with the state risk manager. Proceedings must not
15 commence against the joint self-insurance program, and the program
16 must not be required to appear, plead, or answer, until the
17 expiration of forty days after the date of service upon the state
18 risk manager.

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

21 (1) Individually self-insures for property and liability risks;
22 or

23 (2) Participates in a risk pooling arrangement, including a risk
24 retention group or a risk purchasing group, regulated under chapter
25 48.92 RCW, is a captive insurer authorized in its state of domicile,
26 or participates in a local government risk pool formed under chapter
27 48.62 RCW.

28 NEW SECTION. **Sec. 5.** The state risk manager shall adopt rules
29 governing the management and operation of joint self-insurance
30 programs for public benefit hospital entities that cover property or
31 liability risks. All rules must be appropriate for the type of
32 program and class of risk covered. The state risk manager's rules
33 must include:

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

37 (2) Standards for claims management procedures;

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

4 (4) Standards that preclude public hospital districts or other
5 public entities participating in the joint self-insurance program
6 from subsidizing, regardless of the form of subsidy, public benefit
7 hospital entities that are not public hospital districts or public
8 entities. These standards do not apply to the consideration
9 attributable to the ownership interest of a public hospital district
10 or other public entity in a separate legal or administrative entity
11 organized with respect to the program.

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

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

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

23 (3) The proposed claim reserving practices;

24 (4) The proposed purchase and maintenance of insurance or
25 reinsurance in excess of the amounts retained by the joint self-
26 insurance program;

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

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

32 (7) The proposed accounting, depositing, and investment practices
33 of the program;

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

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

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

1 (11) A professional analysis of the feasibility of the creation
2 and maintenance of the program;

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

5 (13) Any other information required by rule of the state risk
6 manager that is necessary to determine the probable financial and
7 management success of the program or that is necessary to determine
8 compliance with this chapter.

9 NEW SECTION. **Sec. 7.** A public benefit hospital entity may
10 participate in a joint self-insurance program covering property or
11 liability risks with similar public benefit hospital entities from
12 other states if the program satisfies the following requirements:

13 (1) An ownership interest in the program is limited to some or
14 all of the public benefit hospital entities of this state and public
15 benefit hospital entities of other states that are provided insurance
16 by the program;

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

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

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

28 (5) The financial statements of the program must be audited
29 annually by the certified public accountants for the program, and
30 these audited financial statements must be delivered to the state
31 risk manager not more than one hundred twenty days after the end of
32 each fiscal year of the program;

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

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

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

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

11 NEW SECTION. **Sec. 8.** (1) Within one hundred twenty days of
12 receipt of a plan of management and operation, the state risk manager
13 shall either approve or disapprove of the formation of the joint
14 self-insurance program after reviewing the plan to determine whether
15 the proposed program complies with this chapter and all rules adopted
16 in accordance with this chapter.

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

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

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

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

34 (c) After hearing or with the consent of a program governed under
35 this chapter and in addition to or in lieu of a continuation of the
36 cease and desist order, the state risk manager may levy a fine upon
37 the program in an amount not less than three hundred dollars and not
38 more than ten thousand dollars. The order levying the fine must
39 specify the period within which the fine must be fully paid. The

1 period within which the fine must be paid must not be less than
2 fifteen and no more than thirty days from the date of the order. Upon
3 failure to pay the fine when due, the state risk manager shall
4 request the attorney general to bring a civil action on the state
5 risk manager's behalf to collect the fine. The state risk manager
6 shall pay any fine collected to the state treasurer for the account
7 of the general fund.

8 (4) Each joint self-insurance program approved by the state risk
9 manager shall annually file a report with the state risk manager
10 providing:

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

14 (b) Copies of all the insurance coverage documents;

15 (c) A description of the program structure, including
16 participants' retention, program retention, and excess insurance
17 limits and attachment point;

18 (d) An actuarial analysis;

19 (e) A list of contractors and service providers;

20 (f) The financial and loss experience of the program; and

21 (g) Other information as required by rule of the state risk
22 manager.

23 (5) A joint self-insurance program requiring the state risk
24 manager's approval may not engage in an act or practice that in any
25 respect significantly differs from the management and operation plan
26 that formed the basis for the state risk manager's approval of the
27 program unless the program first notifies the state risk manager in
28 writing and obtains the state risk manager's approval. The state risk
29 manager shall approve or disapprove the proposed change within sixty
30 days of receipt of the notice. If the state risk manager denies a
31 requested change, the state risk manager shall specify in detail the
32 reasons for the denial and the manner in which the program would fail
33 to meet the requirements of this chapter or any rules adopted in
34 accordance with this chapter.

35 NEW SECTION. **Sec. 9.** (1) A joint self-insurance program may by
36 resolution of the program designate a person having experience with
37 investments or financial matters as treasurer of the program. The
38 program must require a bond obtained from a surety company in an
39 amount and under the terms and conditions that the program finds will

1 protect against loss arising from mismanagement or malfeasance in
2 investing and managing program funds. The program may pay the premium
3 on the bond.

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

7 NEW SECTION. **Sec. 10.** (1) An employee or official of a
8 participating public benefit hospital entity in a joint self-
9 insurance program may not directly or indirectly receive anything of
10 value for services rendered in connection with the operation and
11 management of a self-insurance program other than the salary and
12 benefits provided by his or her employer or the reimbursement of
13 expenses reasonably incurred in furtherance of the operation or
14 management of the program. An employee or official of a participating
15 public benefit hospital entity in a joint self-insurance program may
16 not accept or solicit anything of value for personal benefit or for
17 the benefit of others under circumstances in which it can be
18 reasonably inferred that the employee's or official's independence of
19 judgment is impaired with respect to the management and operation of
20 the program.

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

23 NEW SECTION. **Sec. 11.** A joint self-insurance program approved
24 in accordance with this chapter is exempt from insurance premium
25 taxes, fees assessed under chapter 48.02 RCW, chapters 48.32 and
26 48.32A RCW, business and occupation taxes imposed under chapter 82.04
27 RCW, and any assigned risk plan or joint underwriting association
28 otherwise required by law. This section does not apply to, and no
29 exemption is provided for, insurance companies issuing policies to
30 cover program risks, and does not apply to or provide an exemption
31 for third-party administrators or insurance producers serving the
32 joint self-insurance program.

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

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

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

8 NEW SECTION. **Sec. 13.** (1) Any person who files reports or
9 furnishes other information required under this title, required by
10 the state risk manager under the authority granted under this title,
11 or which is useful to the state risk manager in the administration of
12 this title, is immune from liability in any civil action or suit
13 arising from the filing of any such report or furnishing such
14 information to the state risk manager, unless actual malice, fraud,
15 or bad faith is shown.

16 (2) The state risk manager and his or her agents and employees
17 are immune from liability in any civil action or suit arising from
18 the publication of any report or bulletins or arising from
19 dissemination of information related to the official activities of
20 the state risk manager unless actual malice, fraud, or bad faith is
21 shown.

22 (3) The immunity granted under this section is in addition to any
23 common law or statutory privilege or immunity enjoyed by such person.
24 This section is not intended to abrogate or modify in any way such
25 common law or statutory privilege or immunity.

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

Passed by the Senate April 17, 2017.
Passed by the House April 11, 2017.
Approved by the Governor May 5, 2017.
Filed in Office of Secretary of State May 5, 2017.

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