

---

**SUBSTITUTE SENATE BILL 5149**

---

**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Health & Long Term Care (originally sponsored by Senators Robinson, Conway, Das, Dhingra, Kuderer, Lias, Nobles, Saldaña, and Wilson, C.; by request of Office of the Governor)

READ FIRST TIME 02/15/21.

1 AN ACT Relating to funding foundational public health services;  
2 amending RCW 48.14.060, 70.290.060, and 82.25.015; adding new  
3 sections to chapter 48.02 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) A strong public health system improves the health and well-  
7 being of all state residents. Prevention of chronic diseases and  
8 illness and health promotion activities benefit all state residents  
9 and communities, including residents receiving medicaid.

10 (2) COVID-19 has dramatically exposed the vulnerabilities and  
11 limitations of the public health system. The shortcomings of the  
12 system are front and center during the pandemic response.  
13 Additionally, the lack of a national pandemic strategy has  
14 significantly burdened state and local health departments and further  
15 strained the system. As the worst of COVID-19 comes to an end in the  
16 coming year, there is a need to address the chronically underfunded  
17 public health system.

18 (3) Health status is impacted both by social determinants of  
19 health and untreated or inadequately treated health conditions.  
20 Consequently, it is vital that public and private sectors work to  
21 enhance public health capabilities and capacity.

1 (4) Medicaid treats patients who generally have poorer health  
2 outcomes than the overall population, and adults with medicaid  
3 coverage are more likely to have chronic conditions. Therefore,  
4 public health investments will benefit medicaid enrollees with  
5 improving their overall health and well-being. Additionally, there  
6 are over 800,000 children enrolled in medicaid who benefit from the  
7 strong vaccination programs that public health provides.

8 (5) With any state funding of foundational public health  
9 services, the state expects that measurable benefits will be realized  
10 to the health of communities in Washington as a result of the  
11 improved capacity of the governmental public health system.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.02  
13 RCW to read as follows:

14 (1) Beginning March 1, 2022, and annually thereafter, each health  
15 carrier, medicaid managed care organization, and third-party  
16 administrator must file with the commissioner a statement of covered  
17 lives using the form or forms prescribed and furnished by the  
18 commissioner.

19 (2)(a) For assessments collected in fiscal year 2022, the  
20 commissioner shall assess health carriers, medicaid managed care  
21 organizations, and third-party administrators for a per member per  
22 month assessment of up to \$1.54, for a total assessment not to exceed  
23 \$100,000,000.

24 (b) For assessments collected in fiscal year 2023, the  
25 commissioner shall assess health carriers, medicaid managed care  
26 organizations, and third-party administrators for a per member per  
27 month assessment of up to \$1.92, for a total assessment not to exceed  
28 \$125,000,000.

29 (c) For assessments collected in fiscal year 2024, the  
30 commissioner shall assess health carriers, medicaid managed care  
31 organizations, and third-party administrators for a per member per  
32 month assessment of up to \$2.30, for a total assessment not to exceed  
33 \$150,000,000.

34 (d) For assessments collected in fiscal year 2025, the  
35 commissioner shall assess health carriers, medicaid managed care  
36 organizations, and third-party administrators for a per member per  
37 month assessment of up to \$2.69, for a total assessment not to exceed  
38 \$175,000,000.

1 (e) For assessments collected in fiscal year 2026 and beyond, the  
2 commissioner shall assess health carriers, medicaid managed care  
3 organizations, and third-party administrators for a per member per  
4 month assessment of up to \$3.07, for a total assessment not to exceed  
5 \$200,000,000.

6 (3) The covered lives assessment collected from each health  
7 carrier, medicaid managed care organization, and third-party  
8 administrator is that proportion of the total assessment amount for  
9 the ensuing fiscal year that is represented by the health carrier's,  
10 medicaid managed care organization's, or third-party administrator's  
11 proportion of covered lives in this state during the previous fiscal  
12 year.

13 (4) The commissioner must annually, on or before June 1st,  
14 calculate and bill each health carrier, medicaid managed care  
15 organization, and third-party administrator for the amount of the  
16 covered lives assessment. The assessment is due and payable by July  
17 1st of each year. However, if the necessary financial records are not  
18 available in time to carry out such calculations and bill such  
19 assessments within the time specified, the commissioner may use the  
20 assessment factors from the prior year as the basis for the  
21 assessment and, if necessary, the commissioner may impose  
22 supplemental assessments to fully and properly charge the health  
23 carriers, medicaid managed care organizations, and third-party  
24 administrators. Any health carrier, medicaid managed care  
25 organization, or third-party administrator failing to pay the  
26 assessment by July 31st must pay the same penalties as the penalties  
27 for failure to pay taxes when due under RCW 48.14.060. The assessment  
28 required by this section is in addition to all other taxes and fees  
29 now imposed or that may be subsequently imposed.

30 (5) Assessments and penalties collected under this section must  
31 be deposited in the foundational public health services account and  
32 spent according to RCW 43.70.515.

33 (6) A health carrier, medicaid managed care organization, or  
34 third-party administrator is not subject to an assessment under this  
35 section if it has 50 or fewer covered lives in Washington.

36 (7) If an assessment against a health carrier, medicaid managed  
37 care organization, or third-party administrator is prohibited by  
38 court order, the assessment for the remaining health carriers,  
39 medicaid managed care organizations, and third-party administrators  
40 may be adjusted in a manner consistent with subsection (3) of this

1 section to ensure that the net assessment amount calculated in  
2 subsection (2) of this section will be collected.

3 (8) Premiums paid by enrollees for plans offered on the  
4 individual and small group markets should not reflect assessment  
5 rates.

6 (9) The definitions in this subsection apply throughout this  
7 section unless the context clearly requires otherwise.

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

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

14 (ii) Covered under a self-funded multiple employer welfare  
15 arrangement as defined in RCW 48.125.010; or

16 (iii) Enrolled in a group health plan administered by a third-  
17 party administrator.

18 (b) "Covered lives assessment" means the fees imposed by this  
19 section.

20 (c) "Health carrier" means every health care service contractor,  
21 as defined in RCW 48.44.010, every health maintenance organization,  
22 as defined in RCW 48.46.020, or self-funded multiple employer welfare  
23 arrangement, as defined in RCW 48.125.010, registered to do business  
24 in this state.

25 (d) "Health plan" has the same meaning as defined in RCW  
26 48.43.005.

27 (e) "Medicaid managed care organization" means a managed health  
28 care system under contract with the state of Washington to provide  
29 services to medicaid enrollees under RCW 74.09.522.

30 (f) "Third-party administrator" means any person or entity who,  
31 on behalf of an employer, an affiliated employer under common  
32 management and control, a multiple employer welfare arrangement, a  
33 Taft-Hartley benefit trust, or other health care purchaser, receives  
34 or collects charges, contributions, or premiums for, or adjusts or  
35 settles health services claims on or for, residents of Washington  
36 state. Third-party administrator does not include health care benefit  
37 managers as defined in RCW 48.200.020. An administrator who is  
38 contracted with the state of Washington to administer a self-funded  
39 health benefits plan under chapter 41.05 RCW is a third-party  
40 administrator for purposes of this act.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 48.02  
2    RCW to read as follows:

3        (1)    Every third-party administrator must register with the  
4    commissioner by December 31, 2021, and must annually renew their  
5    registration. Third-party administrators that begin administering  
6    health benefits in Washington state on or after December 31, 2021,  
7    must register with the commissioner within 30 days of when they begin  
8    administering such benefits and must annually renew their  
9    registration. Registrants shall report a change of legal name,  
10   business name, business address, or business telephone number to the  
11   commissioner within 10 days after the change.

12        (2)    The commissioner shall define the data elements and  
13    procedures necessary to implement this section. To minimize  
14    administrative burdens on third-party administrators, in developing  
15    the data elements and procedures for registration and renewal, the  
16    commissioner may adopt the data elements and procedures adopted by  
17    the Washington vaccine association under RCW 70.290.075.

18        (3)    Subject to chapter 48.04 RCW, if the commissioner finds that  
19    a third-party administrator has failed to register or to renew their  
20    registration, or has provided incorrect, misleading, incomplete, or  
21    materially untrue information to the commissioner, the commissioner  
22    may fine the third-party administrator up to \$5,000 per violation and  
23    issue an order requiring the third-party administrator to remedy the  
24    violation of this section.

25        (4)    "Third-party administrator" has the same meaning provided in  
26    section 2 of this act.

27        **Sec. 4.**    RCW 48.14.060 and 2003 c 341 s 1 are each amended to  
28    read as follows:

29        (1)    Any insurer or taxpayer, as defined in RCW 48.14.0201,  
30    failing to file its tax statement and to pay the specified tax or  
31    prepayment of tax on premiums and prepayments for health care  
32    services by the last day of the month in which the tax becomes due  
33    shall be assessed a penalty of five percent of the amount of the tax;  
34    and if the tax is not paid within forty-five days after the due date,  
35    the insurer will be assessed a total penalty of ten percent of the  
36    amount of the tax; and if the tax is not paid within sixty days of  
37    the due date, the insurer will be assessed a total penalty of twenty  
38    percent of the amount of the tax. The tax may be collected by  
39    distraint, and the penalty recovered by any action instituted by the

1 commissioner in any court of competent jurisdiction. The amount of  
2 any penalty collected must be paid to the state treasurer and  
3 credited to the general fund.

4 (2) In addition to the penalties set forth in subsection (1) of  
5 this section, interest will accrue on the amount of the unpaid tax or  
6 prepayment at the maximum legal rate of interest permitted under RCW  
7 19.52.020 commencing sixty-one days after the tax is due until paid.  
8 This interest will not accrue on taxes imposed under RCW 48.15.120.

9 (3) The commissioner may revoke the certificate of authority or  
10 registration of any delinquent insurer or taxpayer, and the  
11 certificate of authority or registration will not be reissued until  
12 all taxes, prepayments of tax, interest, and penalties have been  
13 fully paid and the insurer or taxpayer has otherwise qualified for  
14 the certificate of authority or registration.

15 (4) Any health carrier, medicaid managed care organization, or  
16 third-party administrator who fails to pay the assessment under  
17 section 2 of this act is subject to the penalties provided under  
18 subsection (1) and (2) of this section.

19 **Sec. 5.** RCW 70.290.060 and 2020 c 291 s 8 are each amended to  
20 read as follows:

21 In addition to the duties and powers enumerated elsewhere in this  
22 chapter:

23 (1) The association may, pursuant to either vote of its board of  
24 directors or request of the secretary, audit compliance with  
25 reporting obligations established under the association's plan of  
26 operation. Upon failure of any entity that has been audited to  
27 reimburse the costs of such audit as certified by vote of the  
28 association's board of directors within forty-five days of notice of  
29 such vote, the secretary shall assess a civil penalty of one hundred  
30 fifty percent of the amount of such costs.

31 (2) The association may establish an interest charge for late  
32 payment of any assessment under this chapter. The secretary shall  
33 assess a civil penalty against any health carrier or third-party  
34 administrator that fails to pay an assessment within three months of  
35 notification under RCW 70.290.030. The civil penalty under this  
36 subsection is one hundred fifty percent of such assessment.

37 (3) The secretary and the association are authorized to file  
38 liens and seek judgment to recover amounts in arrears and civil  
39 penalties, and recover reasonable collection costs, including

1 reasonable attorneys' fees and costs. Civil penalties so levied must  
2 be deposited in the universal vaccine purchase account created in RCW  
3 43.70.720.

4 (4) The secretary may adopt rules under chapter 34.05 RCW as  
5 necessary to carry out the purposes of this section.

6 (5) Upon request of the health care authority, the secretary and  
7 the association must provide the health care authority with any  
8 available information maintained by the association needed to  
9 calculate the proportional share of program costs under RCW  
10 71.24.064.

11 (6) Upon request of the insurance commissioner, the secretary and  
12 the association must provide the insurance commissioner with any  
13 available information maintained by the association needed to  
14 initiate third-party administrator registration under section 3 of  
15 this act.

16 **Sec. 6.** RCW 82.25.015 and 2019 c 445 s 103 are each amended to  
17 read as follows:

18 (1) The foundational public health services account is created in  
19 the state treasury. Half of all of the moneys collected from the tax  
20 imposed on vapor products under RCW ((66.44.010)) 82.25.010 and all  
21 revenues collected under section 2 of this act must be deposited into  
22 the account. Moneys in the account may be spent only after  
23 appropriation.

24 (2) Moneys in the account collected from the tax imposed on vapor  
25 products under RCW 82.25.010 are to be used for the following  
26 purposes:

27 ((+1)) (a) To fund foundational health services. In the  
28 2019-2021 biennium, at least twelve million dollars of the funds  
29 deposited into the account must be appropriated for this purpose.  
30 Beginning in the 2021-2023 biennium, fifty percent of the funds  
31 deposited into the account, but not less than twelve million dollars  
32 each biennium, are to be used for this purpose;

33 ((+2)) (b) To fund tobacco, vapor product, and nicotine control  
34 and prevention, and other substance use prevention and education.  
35 Beginning in the 2021-2023 biennium, seventeen percent of the funds  
36 deposited into the account are to be used for this purpose;

37 ((+3)) (c) To support increased access and training of public  
38 health professionals at public health programs at accredited public  
39 institutions of higher education in Washington. Beginning in the

1 2021-2023 biennium, five percent of the funds deposited into the  
2 account are to be used for this purpose; and

3 ~~((4))~~ (d) To fund enforcement by the state liquor and cannabis  
4 board of the provisions of this chapter to prevent sales of vapor  
5 products to minors and related provisions for control of marketing  
6 and product safety, provided that no more than eight percent of the  
7 funds deposited into the account may be appropriated for these  
8 enforcement purposes.

9 (3) Moneys in the account collected under section 2 of this act  
10 must be used to fund foundational health services.

11 NEW SECTION. **Sec. 7.** If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected.

--- END ---