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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5702

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State of Washington

67th Legislature

2022 Regular Session

By Senate Ways & Means (originally sponsored by Senators Trudeau, Dhingra, Lovelett, Lovick, Nguyen, Nobles, Randall, Saldaña, Stanford, Van De Wege, and C. Wilson)

READ FIRST TIME 02/07/22.

1 AN ACT Relating to requiring coverage for donor human milk;  
2 amending RCW 41.05.017; adding a new section to chapter 48.43 RCW;  
3 adding a new section to chapter 74.09 RCW; and adding a new section  
4 to chapter 43.70 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.43  
7 RCW to read as follows:

8 (1) A health plan issued or renewed on or after January 1, 2023,  
9 shall provide coverage for medically necessary donor human milk for  
10 inpatient use when ordered by a licensed health care provider with  
11 prescriptive authority or an international board certified lactation  
12 consultant certified by the international board of lactation  
13 consultant examiners for an infant who is medically or physically  
14 unable to receive maternal human milk or participate in chest feeding  
15 or whose parent is medically or physically unable to produce maternal  
16 human milk in sufficient quantities or caloric density or participate  
17 in chest feeding, if the infant meets at least one of the following  
18 criteria:

- 19 (a) An infant birth weight of below 2,500 grams;  
20 (b) An infant gestational age equal to or less than 34 weeks;  
21 (c) Infant hypoglycemia;

1 (d) A high risk for development of necrotizing enterocolitis,  
2 bronchopulmonary dysplasia, or retinopathy of prematurity;

3 (e) A congenital or acquired gastrointestinal condition with  
4 long-term feeding or malabsorption complications;

5 (f) Congenital heart disease requiring surgery in the first year  
6 of life;

7 (g) An organ or bone marrow transplant;

8 (h) Sepsis;

9 (i) Congenital hypotonias associated with feeding difficulty or  
10 malabsorption;

11 (j) Renal disease requiring dialysis in the first year of life;

12 (k) Craniofacial anomalies;

13 (l) An immunologic deficiency;

14 (m) Neonatal abstinence syndrome;

15 (n) Any other serious congenital or acquired condition for which  
16 the use of pasteurized donor human milk and donor human milk derived  
17 products is medically necessary and supports the treatment and  
18 recovery of the child; or

19 (o) Any baby still inpatient within 72 hours of birth without  
20 sufficient human milk available.

21 (2) Donor human milk covered under this section must be obtained  
22 from a milk bank that meets minimum standards adopted by the  
23 department of health pursuant to section 4 of this act.

24 (3) A health plan may not require an enrollee to obtain prior  
25 authorization to receive coverage for donor human milk as required  
26 under this section.

27 (4) For purposes of this section:

28 (a) "Donor human milk" means human milk that has been contributed  
29 to a milk bank by one or more donors.

30 (b) "Milk bank" means an organization that engages in the  
31 procurement, processing, storage, distribution, or use of human milk  
32 contributed by donors.

33 (5) The commissioner may adopt any rules necessary to implement  
34 this section.

35 **Sec. 2.** RCW 41.05.017 and 2021 c 280 s 2 are each amended to  
36 read as follows:

37 Each health plan that provides medical insurance offered under  
38 this chapter, including plans created by insuring entities, plans not  
39 subject to the provisions of Title 48 RCW, and plans created under

1 RCW 41.05.140, are subject to the provisions of RCW 48.43.500,  
2 70.02.045, 48.43.505 through 48.43.535, 48.43.537, 48.43.545,  
3 48.43.550, 70.02.110, 70.02.900, 48.43.190, 48.43.083, 48.43.0128,  
4 section 1 of this act, and chapter 48.49 RCW.

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 74.09  
6 RCW to read as follows:

7 (1) The authority shall provide coverage under this chapter for  
8 medically necessary donor human milk for inpatient use when ordered  
9 by a licensed health care provider with prescriptive authority or an  
10 international board certified lactation consultant certified by the  
11 international board of lactation consultant examiners for an infant  
12 who is medically or physically unable to receive maternal human milk  
13 or participate in chest feeding or whose parent is medically or  
14 physically unable to produce maternal human milk in sufficient  
15 quantities or caloric density or participate in chest feeding, if the  
16 infant meets at least one of the following criteria:

- 17 (a) An infant birth weight of below 2,500 grams;
- 18 (b) An infant gestational age equal to or less than 34 weeks;
- 19 (c) Infant hypoglycemia;
- 20 (d) A high risk for development of necrotizing enterocolitis,  
21 bronchopulmonary dysplasia, or retinopathy of prematurity;
- 22 (e) A congenital or acquired gastrointestinal condition with  
23 long-term feeding or malabsorption complications;
- 24 (f) Congenital heart disease requiring surgery in the first year  
25 of life;
- 26 (g) An organ or bone marrow transplant;
- 27 (h) Sepsis;
- 28 (i) Congenital hypotonias associated with feeding difficulty or  
29 malabsorption;
- 30 (j) Renal disease requiring dialysis in the first year of life;
- 31 (k) Craniofacial anomalies;
- 32 (l) An immunologic deficiency;
- 33 (m) Neonatal abstinence syndrome;
- 34 (n) Any other serious congenital or acquired condition for which  
35 the use of pasteurized donor human milk and donor human milk derived  
36 products is medically necessary and supports the treatment and  
37 recovery of the child; or
- 38 (o) Any baby still inpatient within 72 hours of birth without  
39 sufficient human milk available.

1 (2) Donor human milk covered under this section must be obtained  
2 from a milk bank that meets minimum standards adopted by the  
3 department of health pursuant to section 4 of this act.

4 (3) The authority may require an enrollee to obtain expedited  
5 prior authorization to receive coverage for donor human milk as  
6 required under this section.

7 (4) In administering this program, the authority must seek any  
8 available federal financial participation under the medical  
9 assistance program, as codified at Title XIX of the federal social  
10 security act, the state children's health insurance program, as  
11 codified at Title XXI of the federal social security act, and any  
12 other federal funding sources that are now available or may become  
13 available.

14 (5) For purposes of this section:

15 (a) "Donor human milk" means human milk that has been contributed  
16 to a milk bank by one or more donors.

17 (b) "Milk bank" means an organization that engages in the  
18 procurement, processing, storage, distribution, or use of human milk  
19 contributed by donors.

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.70  
21 RCW to read as follows:

22 The department shall adopt standards for ensuring milk bank  
23 safety. The standards adopted by the department must, at a minimum,  
24 consider the clinical, evidence-based guidelines established by a  
25 national accrediting organization. The standards must address donor  
26 screening, milk handling and processing, and recordkeeping. The  
27 department shall also review and consider requiring additional  
28 testing standards, including but not limited to testing for the  
29 presence of viruses, bacteria, and prescription and nonprescription  
30 drugs in donated milk.

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