

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5702

Chapter 236, Laws of 2022

67th Legislature
2022 Regular Session

DONOR HUMAN MILK

EFFECTIVE DATE: June 9, 2022

Passed by the Senate March 7, 2022
Yeas 49 Nays 0

DENNY HECK

President of the Senate

Passed by the House March 2, 2022
Yeas 96 Nays 0

Laurie Jinkins

**Speaker of the House of
Representatives**

Approved March 30, 2022 2:54 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5702** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

March 31, 2022

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5702

AS AMENDED BY THE HOUSE

Passed Legislature - 2022 Regular Session

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 48.43.715 and 41.05.017; adding a new section to chapter
3 48.43 RCW; adding a new section to chapter 74.09 RCW; and adding a
4 new section 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) For group health plans other than small group health plans
9 issued or renewed on or after January 1, 2023, a health carrier shall
10 provide coverage for medically necessary donor human milk for
11 inpatient use when ordered by a licensed health care provider with
12 prescriptive authority or an international board certified lactation
13 consultant certified by the international board of lactation
14 consultant examiners for an infant who is medically or physically
15 unable to receive maternal human milk or participate in chest feeding
16 or whose parent is medically or physically unable to produce maternal
17 human milk in sufficient quantities or caloric density or participate
18 in chest feeding, if the infant meets at least one of the following
19 criteria:

20 (a) An infant birth weight of below 2,500 grams;

21 (b) An infant gestational age equal to or less than 34 weeks;

- 1 (c) Infant hypoglycemia;
- 2 (d) A high risk for development of necrotizing enterocolitis,
3 bronchopulmonary dysplasia, or retinopathy of prematurity;
- 4 (e) A congenital or acquired gastrointestinal condition with
5 long-term feeding or malabsorption complications;
- 6 (f) Congenital heart disease requiring surgery in the first year
7 of life;
- 8 (g) An organ or bone marrow transplant;
- 9 (h) Sepsis;
- 10 (i) Congenital hypotonias associated with feeding difficulty or
11 malabsorption;
- 12 (j) Renal disease requiring dialysis in the first year of life;
- 13 (k) Craniofacial anomalies;
- 14 (l) An immunologic deficiency;
- 15 (m) Neonatal abstinence syndrome;
- 16 (n) Any other serious congenital or acquired condition for which
17 the use of pasteurized donor human milk and donor human milk derived
18 products is medically necessary and supports the treatment and
19 recovery of the child; or
- 20 (o) Any baby still inpatient within 72 hours of birth without
21 sufficient human milk available.
- 22 (2) Donor human milk covered under this section must be obtained
23 from a milk bank that meets minimum standards adopted by the
24 department of health pursuant to section 5 of this act.
- 25 (3) For purposes of this section:
- 26 (a) "Donor human milk" means human milk that has been contributed
27 to a milk bank by one or more donors.
- 28 (b) "Milk bank" means an organization that engages in the
29 procurement, processing, storage, distribution, or use of human milk
30 contributed by donors.
- 31 (4) The commissioner may adopt any rules necessary to implement
32 this section.

33 **Sec. 2.** RCW 48.43.715 and 2019 c 33 s 9 are each amended to read
34 as follows:

- 35 (1) The commissioner, in consultation with the board and the
36 health care authority, shall, by rule, select the largest small group
37 plan in the state by enrollment as the benchmark plan for the
38 individual and small group market for purposes of establishing the
39 essential health benefits in Washington state.

1 (2) If the essential health benefits benchmark plan for the
2 individual and small group market does not include all of the ten
3 essential health benefits categories, the commissioner, in
4 consultation with the board and the health care authority, shall, by
5 rule, supplement the benchmark plan benefits as needed.

6 (3) All individual and small group health plans must cover the
7 ten essential health benefits categories, other than a health plan
8 offered through the federal basic health program, a grandfathered
9 health plan, or medicaid. Such a health plan may not be offered in
10 the state unless the commissioner finds that it is substantially
11 equal to the benchmark plan. When making this determination, the
12 commissioner:

13 (a) Must ensure that the plan covers the ten essential health
14 benefits categories;

15 (b) May consider whether the health plan has a benefit design
16 that would create a risk of biased selection based on health status
17 and whether the health plan contains meaningful scope and level of
18 benefits in each of the ten essential health benefits categories;

19 (c) Notwithstanding (a) and (b) of this subsection, for benefit
20 years beginning January 1, 2015, must establish by rule the review
21 and approval requirements and procedures for pediatric oral services
22 when offered in stand-alone dental plans in the nongrandfathered
23 individual and small group markets outside of the exchange; and

24 (d) Must allow health carriers to also offer pediatric oral
25 services within the health benefit plan in the nongrandfathered
26 individual and small group markets outside of the exchange.

27 (4) Beginning December 15, 2012, and every year thereafter, the
28 commissioner shall submit to the legislature a list of state-mandated
29 health benefits, the enforcement of which will result in federally
30 imposed costs to the state related to the plans sold through the
31 exchange because the benefits are not included in the essential
32 health benefits designated under federal law. The list must include
33 the anticipated costs to the state of each state-mandated health
34 benefit on the list and any statutory changes needed if funds are not
35 appropriated to defray the state costs for the listed mandate. The
36 commissioner may enforce a mandate on the list for the entire market
37 only if funds are appropriated in an omnibus appropriations act
38 specifically to pay the state portion of the identified costs.

39 (5) Upon authorization by the legislature to modify the state's
40 essential health benefits benchmark plan under 45 C.F.R. Sec.

1 156.111, the commissioner shall include coverage for donor human milk
2 in the updated plan.

3 **Sec. 3.** RCW 41.05.017 and 2021 c 280 s 2 are each amended to
4 read as follows:

5 Each health plan that provides medical insurance offered under
6 this chapter, including plans created by insuring entities, plans not
7 subject to the provisions of Title 48 RCW, and plans created under
8 RCW 41.05.140, are subject to the provisions of RCW 48.43.500,
9 70.02.045, 48.43.505 through 48.43.535, 48.43.537, 48.43.545,
10 48.43.550, 70.02.110, 70.02.900, 48.43.190, 48.43.083, 48.43.0128,
11 section 1 of this act, and chapter 48.49 RCW.

12 NEW SECTION. **Sec. 4.** A new section is added to chapter 74.09
13 RCW to read as follows:

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

- 24 (a) An infant birth weight of below 2,500 grams;
25 (b) An infant gestational age equal to or less than 34 weeks;
26 (c) Infant hypoglycemia;
27 (d) A high risk for development of necrotizing enterocolitis,
28 bronchopulmonary dysplasia, or retinopathy of prematurity;
29 (e) A congenital or acquired gastrointestinal condition with
30 long-term feeding or malabsorption complications;
31 (f) Congenital heart disease requiring surgery in the first year
32 of life;
33 (g) An organ or bone marrow transplant;
34 (h) Sepsis;
35 (i) Congenital hypotonias associated with feeding difficulty or
36 malabsorption;
37 (j) Renal disease requiring dialysis in the first year of life;
38 (k) Craniofacial anomalies;

1 (l) An immunologic deficiency;

2 (m) Neonatal abstinence syndrome;

3 (n) Any other serious congenital or acquired condition for which
4 the use of pasteurized donor human milk and donor human milk derived
5 products is medically necessary and supports the treatment and
6 recovery of the child; or

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

9 (2) Donor human milk covered under this section must be obtained
10 from a milk bank that meets minimum standards adopted by the
11 department of health pursuant to section 5 of this act.

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

15 (4) In administering this program, the authority must seek any
16 available federal financial participation under the medical
17 assistance program, as codified at Title XIX of the federal social
18 security act, the state children's health insurance program, as
19 codified at Title XXI of the federal social security act, and any
20 other federal funding sources that are now available or may become
21 available.

22 (5) For purposes of this section:

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

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

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.70
29 RCW to read as follows:

30 The department shall adopt standards for ensuring milk bank
31 safety. The standards adopted by the department must, at a minimum,
32 consider the clinical, evidence-based guidelines established by a
33 national accrediting organization. The standards must address donor
34 screening, milk handling and processing, and recordkeeping. The
35 department shall also review and consider requiring additional
36 testing standards, including but not limited to testing for the
37 presence of viruses, bacteria, and prescription and nonprescription
38 drugs in donated milk.

Passed by the Senate March 7, 2022.
Passed by the House March 2, 2022.
Approved by the Governor March 30, 2022.
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