

Eastern Washington Association of Health Underwriters (EWAHU) Final Legislative Update for Week of March 16, 2020

2020 Regular Session Adjourns

The 2020 Regular Legislative Session adjourned on Thursday, March 12, just a couple of hours before the end of the 60-day limit set in the State Constitution. Adjournment came following the passage of a supplemental budget for the remainder of the 2019-'21 biennium. Legislators approved \$200 million, drawn from the state's "rainy day" fund, to provide funding to address the coronavirus outbreak in Washington. The supplemental budget totals \$53.4 billion in spending for the biennium.

April 4 is the last day for Governor Inslee to take action on bills that have been passed during the 2020 Regular Session. Because there is no "pocket veto" in Washington State, if the Governor fails to take action on a measure, it becomes effective without the Governor's signature. Unless otherwise specified, measures passed by the Legislature become effective 90 days after the close of the session. There are no plans for a special session.

Legislature Approves Revised Bill Regulating Benefit Managers— Bill Goes to Governor Inslee for Consideration

The Legislature has approved an amended version of 2SSB 5601, and the measure has been sent to Governor Inslee for consideration. The Senate concurred in House amendments to the bill, and the measure moved forward to the Governor.

The measure would require benefit managers to be registered by the OIC and would impose a variety of regulatory requirements on PBM's and benefit managers, including the submission of contracts to the OIC.

Health plans, PBM's, and benefit managers cautioned that the original version of the bill could impair care management activities, which could result in cost increases for health plans and the insurance-buying public, but several key amendments have been adopted that make the bill more workable. The bills are supported by provider groups including the Washington State Pharmacy Association, the Washington State Chiropractic Association, and the Physical Therapy Association of Washington.

On Tuesday, February 25, the House Health Care & Wellness Committee held a hearing to consider the Senate-passed bill. Additional stakeholder meetings were held, and the amendments that were adopted in the House Health Care & Wellness Committee, and by the House Appropriations Committee, reflect the results of those meetings. The amendments specifically include revisions that were suggested by the Pharmaceutical Care Management Association and health plans. This is the version of the bill that was passed by the House, and which was approved by the Senate concurrence vote.

Legislature Approves Revised Prior Authorization Bill

The legislature has approved a revised version of SSB 6404—a measure that has been introduced by Senator David Frockt (D, 46th District). The bill passed on a final vote of 97-0 with one member excused. The amendments adopted by the House committee remove the prior authorization work group that was included in the Senate-passed version of the bill.

The original version of the bill would have required the Office of the Insurance Commissioner to adopt rules related to prior authorization activities, consistent with recommendations made by a new 15-member work group to be appointed by the Governor. The bill was developed by the Washington State Medical Association and other provider groups. The amended bill calls for the work group to review prior authorization standards and make recommendations to the Legislature.

At the hearing for the original measure, physician groups testified that health plans use inconsistent prior authorization programs, which adversely impacts patients and causes physicians and other providers to waste time on negotiations with health plan prior authorization staff. The Association of Washington Health Plans and America's Health Insurance Plans testified in opposition to the measure, pointing out that prior authorization is an important function to address the significant gaps that exist between evidence-based practice and care that is actually being delivered to patients. The purpose is also to reduce the amount of inappropriate care that is being delivered to patients, include overuse, misuse, or underuse of services. AWHP and AHIP also expressed concern about the delegation of authority provided in the bill to the 15-member work group. The Health Care Authority also expressed concerns about the bill.

Legislature Approves Bills Capping Out-of-Pocket Costs for Insulin

The Legislature has approved an amended version of SSB 6087—a Senate-passed measure that would cap patient out-of-pocket costs for insulin at \$100 per month. The bill was supported by patient advocacy groups when the measure was considered at a hearing of the measure on February 25. The measure has been sent to Governor Inslee for consideration.

The Legislature has also approved a similar House bill—2SHB 2662—and the measure has been sent to Governor Inslee for consideration.

When SB 6087 bill was considered at a hearing before the Senate Health and Long Term Care Committee earlier this session, the Association of Washington Health Care Plans, AHIP, Regence, Premera, and Keiser Permanente expressed concern that the bill would result in higher premium costs, and that insulin manufacturers would remain free to increase the cost of insulin. Insurers also expressed concern that the proposal could be inconsistent with federal standards for high deductible health plans, which are premised on high deductibles for covered individuals combined with a health savings account. Prior to passage, an amendment was added to make it clear that high deductible health plans are exempt from the bill if Federal guidance on the issue changes.

Similar amendments were incorporated into HB 2662, and the measure would additionally establish a total cost of insulin work group to review and design strategies to reduce the total cost of insulin.

House Passes Bill Allowing Group Prescription Drug Benefits for Medicare-Eligible Retirees—Bill Goes to Governor Inslee for Consideration

On Tuesday, March 3 the House passed SSB 6051. The measure was introduced by Senator Annette Cleveland (D, 49th District). SSB 6051 would authorize insurers to provide group policyholders with optional prescription drug benefits that are designed for Medicare-eligible retirees. The bill passed the House on a final margin of 96-0, with two members excused. The measure was previously approved by the Senate on Thursday, February 13 on a final vote of 47-0, with two members excused. Because the House passed the bill without adding any amendments to the Senate-passed version of the bill, the measure will now go directly to Governor Inslee for consideration.

The health plans addressed in the bill are intended to provide coverage to assist policyholders with the “donut hold” in Medicare part D coverage. Cigna and the OIC testified in support of the measure. Following negotiations that led to an agreement between the OIC and proponents on an amendment to the bill, the amendments were adopted in the Senate prior to the passage of the bill.

House Kills Bill Imposing New Tax on Health Insurance Claims

The House has killed HB 2901—a measure that has been introduced by Representative Marcus Riccelli (D, 3rd District) that would impose a new 1% tax on the amount of health claims paid. The tax would have been imposed on health carriers, third party administrators, and self-insured employers. The Association of Washington Health Plans, the American Council of Life Insurers and America’s Health Insurance Plans testified against the bill, expressing concern about the adverse impact that the increased taxes would have on the insurance-buying public. The tax would have been imposed on virtually all health-related claims, including dental. The bill was killed when it was not brought to a vote in the House before the end of the 2020 Legislative session.

House Kills Health Insurance Tax

The House has killed HB 2821—a proposal that would have imposed a new 2.2% premium tax on health plans for 2021, with the increase being reduced to 1.5% in 2022 and following years. The revenue obtained from the taxes would be directed to help fund health coverage for low income health insurance programs. Health insurers expressed opposition to the proposal when it was considered at a hearing on February 7. The proposed increase in premium taxes would more than double the current premium taxes imposed on health plans—from the current 2% premium tax to 4.2% in 2021. The measure was killed with the House Finance Committee failed to bring the bill to a vote before the end of the 2020 Legislative session.

Proponents of the tax have argued that the proposed increase would simply replace a tax that has been imposed by the Federal Health Insurance Tax (HIT). The HIT tax was repealed last year, effective in 2021.

House Kills Bill Imposing New Tax on Excessive Surplus of Non-Profit Health Plans

The House has killed SHB 2679—a bill that would have imposed a new tax on non-profit health plans with over 600% of the carrier's risk based capital requirements. The bill would have imposed a 3% tax on risk based capital that exceeds 600% of the carrier's requirements. The measure was killed when it was not brought to a vote on the House floor before the end of the 2020 Legislative session.

At the hearing for the bill before the House Appropriations Committee, the Association of Washington Health Plans, together with several individual health carriers, expressed opposition to the bill. AHIP also indicated opposition to the measure. Representatives of various disease advocacy groups, local governments, and provider groups testified in support of the measure. The future of the bill appears uncertain.

Legislature Kills OIC Request Bill Adding New Health Plan Members to the Washington Life & Disability Insurance Guaranty Association

Although the House approved key amendments, and passed SSB 6050—a measure that has been introduced at the request of the OIC to add HMO's and Health Care Service Contractors to the membership of the Washington Life & Disability Insurance Guaranty Association—the bill died when the Senate refused to concur in the House amendments, and the measure received no further attention before the adjournment of the Legislative session.

The amendments approved by the House returned the bill to be consistent with the NAIC model, with a 50/50 division of assessment responsibility between life insurance and health insurance members of the WLDGA, and the new health carrier members added to the membership of the WLDGA. As amended by the House, the bill conformed to the NAIC model, which has been enacted by a majority of the states.

The bill was introduced in the wake of the insolvency of Penn Treaty—a major writer of long term care insurance. Significant guaranty fund assessments have been issued to members of the WLDGA related to this insolvency, and the OIC has become concerned that if there is another insolvency of a long term care insurer, the WLDGA may not have sufficient capacity to provide statutory benefits to the policyholders. Accordingly, the OIC decided to introduce the NAIC Model Act containing revisions to the guaranty fund. The NAIC Model would require HMO's and Health Care Service Contractors to be added to the membership of the WLDGA, and would be subject to assessments in the event of further long term care insurer insolvencies.

At the hearing for the measure in the Senate, the American Council of Life Insurers testified in support of the bill, together the OIC and a group of national health insurers. Proponents argued that the bill is consistent with the NAIC model, which has been enacted by a majority of the states. Major HMO's and health care contractors testified against the bill, and suggested that if the bill moves forward, it should be amended to impose 75% of the assessments on life insurer members of the WLDGA, and 25% on health insurance members. This approach was adopted in Utah. The OIC, together with the ACLI and health insurers that have supported SB 6050, expressed opposition to the Utah model.

Prior to approving the bill on February 5, Senate Health & Long Term Committee Chair Annette Cleveland (D, 49th District) offered an amendment based on the controversial Utah structure for assigning assessments between life insurance and health insurance members of the WLDGA. The amendment was adopted, and the revised bill was approved on a divided vote, with most Republicans voting against the measure, and Democrats voting for it. The amended bill was considered and approved by the Senate Ways and Means Committee on a divided vote, with Democrats voting for the measure and Republicans voting against it.

On Friday, February 14, Insurance Commissioner Kreidler circulated a letter to members of the Senate Ways and Means Committee expressing support for the original bill, and opposition to the amendment that was adopted by the Senate Health & Long Term Care Committee.

The OIC and insurance industry proponents successfully worked to maintain support for the House amendments that returned the bill to be consistent with the NAIC model, and removed the amendment that was adopted in the Senate. The bill died in dispute, however, when the Senate and House failed to find common ground on the measure before the end of the 2020 Legislative session.

House Committee Kills Bill that Would Create a State-Run Retirement Program for Private Employers and Employees

On Monday, March 2, the House Appropriations Committee killed E2SSB 5740—a bill that was introduced in 2019 by Senator Mark Mullet that would create a new state-run program to provide 401k and other retirement programs directly to private employers and their employees. The bill was killed when it was not considered and brought to a vote of the House Appropriations Committee before the deadline for passage on Monday, March 2.

Following a hearing of the Senate-passed measure on Tuesday, February 25, the House Consumer Protection and Business Committee adopted a striking amendment and approved the amended bill on Wednesday, February 26. The amendment adopted by the House committee removes all of the language of the Senate-passed bill, and replaces it with key revisions to Washington’s Small Business Retirement Marketplace that operates through the Dept. of Commerce. Unlike the Senate-passed version of SSB 5740, the new amendment does not set up a state-run program for delivering retirement plans to small employers. Additionally, the amendment is built on a voluntary private market, with standard compensation to be provided to licensed professionals who bring small businesses to the market. The amended bill was referred to the House Appropriations Committee for consideration, but the bill was not considered and approved before the March 2 deadline for passage.

The original bill was passed by the Senate in 2019, but was not brought to a vote on the House floor prior to the adjournment of the 2019 session. The measure was returned to the Senate, where it was eligible for action again in 2020.

The original bill is modeled after other state-run programs that have been enacted in Oregon, Illinois and a small group of other states. The new state program would directly compete with existing private market programs that currently offer consumers a robust array of retirement options. This year, the bill passed

the Senate on January 17 on a divided vote of 26-20, with three members excused. Only one Democrat voted against the bill, and only one Republican voted for it.

As passed by the Senate, E2SSB 5740 would apparently replace Washington's marketplace program that was enacted two years ago, and which provides a voluntary market through a web portal operated by the Washington State Dept. of Commerce. The marketplace was intended to provide a venue for insurers, the financial services industry, banks, and others to place private retirement market options on the market through the portal to be available to the employees of small employers. The new House Committee amendment is focused on enhancements to the existing voluntary market that is operated by the Dept. of Commerce.

At the hearing for the original measure, the American Council of Life Insurers, together with NAIFA, securities professionals, and the NFIB, testified in opposition to the bill. Opponents argued that the bill puts the state in direct competition with the private sector, including life insurers, financial institutions, and licensed insurance and securities professionals. Testimony in support of the bill was offered AARP.

House Approves Bill Authorizing Life Insurers to Provide Incentives for Policyholders to Engage in Activities Designed to Improve Health Status and Reduce the Risk of Death—Bill Goes to Governor Inslee for Consideration

On Tuesday, March 3, the House approved SSB 6052 on a final vote of 96-0, with two members excused. The bill now goes to Governor Inslee for consideration.

The measure was introduced at the request of John Hancock to amend Washington's inducement and rebating laws to make it clear that life insurers can offer policyholders a program with incentives that are designed to encourage policyholders to do things that improve their health status and reduce the risk of death. SSB 6052 passed the Senate without a dissenting vote on January 31.

At hearings for the measure, John Hancock, the ACLI, and NAIFA, together with the OIC, testified in support of the bill. Proponents and the OIC previously came to agreement on a rulemaking amendment that was adopted in the Senate.

Legislature Approves Bill Allowing School Districts to Offer Employee-Paid Voluntary Benefits

The Legislature has approved HB 2458, and the bill has been sent to Governor Inslee for consideration. The bill was introduced by Rep. Monica Stonier (D, 49th District) to provide authority for school districts to offer voluntary employee-paid benefits such as accident only, specified disease, and other fixed payment benefit insurance. The bill is supported by the Washington Education Association, the American Council of Life Insurers, America's Health Insurance Plans, and individual companies including AFLAC and American Fidelity.

The WEA, together with American Fidelity and AFLAC, successfully negotiated amendments with the HCA in an effort to put the bill into the strongest possible position for passage in the Senate. With

agreement on these amendments in place, the Senate Ways and Means Committee approved the bill without a dissenting vote, and the bill was brought to the Senate Floor where it was approved. After the measure was amended in the Senate, the House concurred in the amendments, sending the measure to the Governor.

Controversial Consumer Data Bill Dies in Dispute

The end of the 2020 Legislative session also meant the end for 2SSB 6281—a measure on consumer data privacy that was passed by the Senate on Friday, February 14. The bill died when House and Senate leaders could not come to agreement on key provisions of the bill.

The bill was intended to establish consumer protections with respect to the handling of personal data and information. The measure was introduced following the failure of SB 5376 during the 2019 Legislative session. The new measure was Senator Carlyle’s most recent effort to enact privacy standards for consumer data that are similar to protections that have been enacted in California and Europe.

Microsoft and other high-tech stakeholders have previously testified in support of the measure. They have consistently supported legislation on the issue, so long as it does not restrict facial recognition technology. Business groups expressed opposition to plaintiff lawyer efforts to add a private right of action to the measure. The ACLU, Black Lives Matter, One America and immigration rights groups have testified in opposition to the bill. On Saturday, February 29, the Seattle Times carried an Op-Ed against the bill that was written by the ACLU and the Consumer Federation of America.

Key House members were not in agreement with the Senate with respect to key sticking points, including facial recognition technology, and that portion of the bill was removed by Rep. Hudgins with an amendment that was adopted on the House floor prior to passage. Plaintiff lawyers succeeded in having an amendment added to the bill providing that the bill is subject to Washington’s Consumer Protection Act. The CPA includes a private right of action, so business groups actively expressed opposition to this portion of the bill. The Senate refused to concur in the House amendment, with large blocks of the business community strongly opposing a private right of action. The bill was put into a conference committee to resolve the differences, but agreement on a final measure could not be reached, and the bill died in dispute between the Senate and the House.

House Approves Senate-Passed OIC Request Bill to Adopt NAIC Revisions to the Model Holding Company Act—Bill Goes to Governor Inslee for Consideration

On Tuesday, March 3, the House approved SSB 6048—a measure that was introduced at the request of the OIC to enact the NAIC revisions to the Model Holding Company Act. The bill would amend the Holding Company Act to include group-wide supervision of internationally active insurance groups. The revisions are a standard for maintaining NAIC accreditation. As a result, passage of the proposal is a top priority for the OIC and for the insurance industry. Because the House passed the bill in the same form as it was passed by the Senate on February 12, the measure now goes to Governor Inslee for consideration.

House Kills New Local Option Payroll Excise Tax Plan—Insurers are Exempted; Appears to Replace Prior Controversial Local Option Excise Tax Plan that Included Insurers

The House has killed HB 2948—a measure that would have authorized new local option payroll excise taxes to be imposed on businesses in King County. On Wednesday, February 27, the House Finance Committee held a hearing to consider the measure. The bill appears to be a replacement for HB 2907. Unlike HB 2907, however, HB 2948 exempts insurers from the tax. Despite testimony from some large business stakeholders, together with labor groups, and homeless advocates, large segments of the business community testified in opposition to the measure. The bill also remains controversial with many regional city leaders. The bill died when the House Finance Committee failed to take action on the bill. HB 2907 also died when it was not brought to the House floor for consideration.

On Tuesday, February 4, the House Finance Committee held a hearing to consider HB 2907—a controversial local option excise tax proposal that is intended to provide funding for low-income housing. The bill would authorize a county with at least 2 million residents to impose an excise payroll tax on businesses, including insurers.

Insurance trade associations testified in opposition to provisions in the bill that would impose the tax on insurers, arguing that insurers pay a 2% premium tax in lieu of all other taxes, and that insurers domiciled in Washington could face retaliatory tax issues in other states in which they do business. Other business and local government stakeholders also expressed concern about various aspects of the bill. The measure is supported by labor and social service groups, and by some large business stakeholders.

On Friday, February 7, the House Finance Committee approved an amendment adding city representatives to the advisory committee contained in the bill. The amended measure was approved and referred the measure to the House Rules Committee, but the measure was not pulled to the House floor for a vote before the legislature adjourned on March 12.

Legislature Approves OIC Proposal to Create a Dedicated Account to Fund the OIC’s Criminal Investigation Unit—Measure Goes to Governor Inslee for Consideration

On Saturday, March 7, the House approved SB 6049, and sent the bill to the Governor. The measure was introduced at the request of the OIC to establish a new dedicated account to provide funding for the OIC’s Criminal Investigation Unit. The bill was approved by the Senate on February 19 without a dissenting vote.

The new dedicated account would be funded with new assessments imposed on insurers. The assessments would be limited to no more than .01% of premium on each insurer, with the minimum assessment set at \$100.

OIC Legislative Proposals

Insurance Commissioner Mike Kreidler has prepared a package of legislative proposals that he intends to submit to the 2020 Legislature. A link to the OIC’s legislative priorities can be found at <https://www.insurance.wa.gov/legislative-priorities> .

The OIC’s request bills include:

-A proposal to establish a dedicated account with new regulatory assessments to fund the OIC's Criminal Investigations Unit (CIU). The separate account would have its own surcharge cap of 1/100th of a percent of premium. See SB 6049;

-A measure to adopt amendments to the NAIC Holding Company Model Act. These standards would be applied for risk retention groups (RRG's) in a holding company that meets the definition of "Internationally Active Insurance Groups (IAIG's). These amendments are necessary to maintain NAIC accreditation. See SB 6048 and HB 2207;

-A measure to reform Washington's Life & Disability Insurance Guaranty Association by adding HMO's and Health Care Service Contractors to the membership of the WLDGA to provide for larger assessment capacity. See SB 6050 and HB 2209;

-A measure to amend legislation that was enacted last year relating to implementation credits. The measure would provide more explicit criteria for the use of implementation credits, and provide the legal framework for the use of performance standards in insurance contracts. Implementation credits are a payment by an insurer to offset document expenses incurred by a group policyholder in changing coverage from one insurer to another. See SB 6144 and HB 2208; and

-A measure to regulate "captive insurers". The measure would create a statutory framework for how captive insurance companies can be formed by Washington state companies, who can form them, and what taxes will be paid by them to Washington state. A "captive insurer" is defined as an insurance company that is wholly owned and controlled by its insureds. See SB 6241 and HB 2291.

Respectfully Submitted,
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Tara MacKay, EWAHU Federal Legislative Chair
As reported by Mel Sorensen, WAHU Lobbyist