

## Eastern Washington Association of Health Underwriters (EWAHU) Legislative Update for Week of March 2, 2020

### **Policy Committees Hit February 28 Deadline for Approval of Bills— Fiscal Committees to Complete Work on Monday, March 2**

With just 12 days remaining in the 60-day 2020 Legislative Session, policy committees in the House and Senate reached the February 28 deadline for the approval of bills on Friday and have completed their work for this year. Fiscal committees are holding extended hearings on Saturday, February 29, and face a cutoff deadline on Monday, March 2 to take action on bills that have been referred for the consideration of fiscal notes. The result of these quick deadlines is that dozens of bills will receive no further consideration this year.

After Monday's fiscal committee deadline, legislators will have until 5:00 p.m. on Friday, March 6 to pass measures off of the floors of the House and Senate that originated in the opposite House. Budget bills, and measures necessary to implement the budget, are exempt from the cut-off timelines. The 2020 Legislative Session is scheduled to adjourn on Thursday, March 12.

### **House Committee Approves Revised Bill Regulating Benefit Managers**

On Saturday, February 29, the House Appropriations Committee approved an amended version of 2SSB 5601 and passed the bill. The bill will be referred to the House Rules Committee and will likely be pulled to the House Floor Calendar in the next few days. 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.

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 PCMA and health plans.

### **House Committee Approves Revised Prior Authorization Bill**

On Thursday, February 27, the House Health Care & Wellness Committee approved a revised version of SSB 6404—a measure that has been introduced by Senator David Frockt (D, 46<sup>th</sup> District). The measure has been referred to the House Rules Committee. 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.

### **House Committee Considers Bill Imposing New Tax on Health Insurance Claims**

On Thursday, February 27, the House Finance Committee held a hearing to consider HB 2901—a measure that has been introduced by Representative Marcus Riccelli (D, 3<sup>rd</sup> District) that would impose a new 1% tax on the amount of health claims paid. The tax would be imposed on health carriers, third party administrators, and self-insured employers. The Association of Washington Health Plans 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.

### **House Committee Considers Health Insurance Tax**

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 House Finance Committee has not yet brought the bill to a vote.

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.

### **Senate and House Committees Approve Bills Capping Out-of-Pocket Costs for Insulin**

On Thursday, February 27, the House Health Care and Wellness Committee 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.

### **Bill Allowing Group Prescription Drug Benefits for Medicare-Eligible Retirees Pulled to the House Floor Calendar**

SSB 6051 has been pulled from the House Rules Committee and placed on the House Floor Calendar. The measure could come to a vote of the full House at any time. The measure was introduced by Senator Annette Cleveland (D, 49<sup>th</sup> District). SSB 6051 would authorize insurers to provide group policyholders with optional prescription drug benefits that are designed for

Medicare-eligible retirees. The measure was previously approved by the Senate on Thursday, February 13 on a final vote of 47-0, with two members excused.

### **House Committee Approves OIC Request Bill Adding New Health Plan Members to the Washington Life & Disability Insurance Guaranty Association**

On Thursday, February 27, the House Health Care and Wellness Committee 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 amendments approved by the committee return 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 committee, the bill is now consistent with the NAIC model, which has been enacted by a majority of the states.

Prior to approving the bill on February 5, Senate Health & Long Term Committee Chair Annette Cleveland (D, 49<sup>th</sup> 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.

### **House Committee Approves Key Amendment, Revising Bill that Would Create a State-Run Retirement Program for Private Employers and Employees**

On Wednesday, February 26, the House Consumer Protection & Business Committee a key amendment, and unanimously approved 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 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 has been referred to the House Appropriations Committee for consideration.

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.

**Bill Authorizing Life Insurers to Provide Incentives for Policyholders to Engage in Activities Designed to Improve Health Status and Reduce the Risk of Death Pulled from House Rules Committee and Place on the House Floor Calendar**

On Wednesday, February 26, SSB 6052 was pulled from the House Rules Committee and placed on the House Floor Calendar. The bill could be brought to a vote at any time.

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.

**Senate Committee Approves House-Passed Bill Allowing School Districts to Offer Employee-Paid Voluntary Benefits**

On Saturday, February 29, the Senate Ways and Means Committee approved an amended version of HB 2458—a measure that was introduced by Rep. Monica Stonier (D, 49<sup>th</sup> District) to provide authority for school districts to be able 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 bill has

been referred to the Senate Rules Committee. The measure has already been approved by the House. On February 17, HB 2458 was passed by the House without a dissenting vote.

### **House Committee Approves Controversial Consumer Data Bill**

On Friday, February 28, the House Innovation, Technology & Economic Development Committee approved an amended version of 2SSB 6281—a measure on consumer data privacy that was passed by the Senate on Friday, February 14. The bill has been referred to the House Appropriations Committee, but it was not included on the committee’s lengthy hearing agenda on Saturday, February 29. The bill is subject to the deadline for passage from the Appropriations Committee on Monday, March 2, so if the measure is not added to the committee’s agenda later on Saturday, it will need to be added to the hearing list and approved on Monday.

The bill is 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 is 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.

### **House Committee Approves Senate-Passed OIC Request Bill to Adopt NAIC Revisions to the Model Holding Company Act**

On Wednesday, February 26, the House Consumer Protection and Business Committee approved a “do pass” motion for 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 measure has been referred to the House Rules Committee.

On February 12, the measure passed the Senate on a final vote of 46-0 with three members excused. 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.

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

On Wednesday, February 27, the House Finance Committee held a hearing to consider HB 2948—a measure that would authorize new local option payroll excise taxes to be imposed on businesses. 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 measure has been placed on a list of bills that might be brought to a vote of the House Finance Committee on Monday, March 2.

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.

### **House Committee to Consider Senate-Approved OIC Proposal to Create a Dedicated Account to Fund the OIC's Criminal Investigation Unit**

On Monday, March 2, the House Finance Committee will hold a hearing to consider SB 6049—a bill that was introduced at the request of the OIC that would establish a new dedicated account to provide funding for the OIC's Criminal Investigation Unit. The measure will need to be heard and approved by the committee before the close of business on March 2—the deadline for passage. 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 Prepares 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.

### **Legislature Approves Cut-Off Resolution for the Consideration of Bills**

The Senate and House have approved SCR 8411—a cut-off resolution establishing dates for the consideration of bills. The cut-off dates that are established in the resolution are as follows:

**March 2**—the last day for Fiscal committees in the opposite House to take action on bills;

**March 6**—the last day for the opposite House to take action on bills (except exempt bills and bills passed by both Houses in different forms);

**March 12**—the last day of the 2020 Regular Legislative Session

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