

Eastern Washington Association of Health Underwriters (EWAHU) Legislative Update for Week of February 10, 2020

Senate Committee Considers Revised Bill Regulating Benefit Managers—House Committee Considers House Version of the Bill

On Monday, January 27 the Senate Health & Long Term Care Committee held a hearing to consider a revised version of SB 5601—UPDATE:

Health plans, PBM's, and benefit managers have cautioned that the bill could impair care management activities, which could result in cost increases for health plans and the insurance-buying public. 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.

Senate committee leaders have convened a series of stakeholder meetings to discuss the issues involved, and the revised draft considered on Jan. 27 reflects some important adjustments, but agreement between the provider groups, the Association of Washington Health Care Plans, the Pharmaceutical Care Management Association, and individual health plans, PBM's, and benefit managers remains elusive. SB 5601 is scheduled to be brought to a vote of the Senate Health and Long Term Care Committee on Monday, February 3. Proposed amendments to the bill are still being posted.

On Tuesday, January 21 the House Health Care & Wellness Committee held a hearing to consider the House version of the bill—HB 1562. The Association of Washington Health Care Plans and the Pharmaceutical Care Management Association testified in opposition to the measure and referenced the stakeholder meetings on the issue that have been conducted by Senate leaders. The provider groups testified in strong support of the measure. HB 1562 has not yet been scheduled for a vote of the House Health Care & Wellness Committee.

Senate Committee Considers Controversial Prior Authorization Bill

On Friday, January 31 the Senate Health and Long Term Care Committee held a hearing to consider SB 6404—a measure that has been introduced by Senator David Frockt (D, 46th District) that would require 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.

At the hearing for the 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.

The bill is likely to be heavily amended if it is brought to a vote of the committee, but it is scheduled for a possible vote of the committee on Wednesday, February 5.

Senate Committee Considers Bill Capping Out-of-Pocket Costs for Insulin

On Wednesday, January 29 the Senate Ways and Means Committee held a hearing to consider SSB 6087—a measure that would cap patient out-of-pocket costs for insulin at \$100 per month. The bill was supported by patient advocacy groups at the hearing.

When the bill was previously considered at a hearing before the Senate Health and Long Term Care Committee on January 17, 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.

The amended bill is scheduled for a vote of the Senate Ways and Means Committee on Wednesday, February 5.

Senate Committee Approves Bill Allowing Group Prescription Drug Benefits for Medicare-Eligible Retirees

The Senate Health and Long Term Care Committee has passed SSB 6051—a measure that has been introduced by Senator Annette Cleveland (D, 49th District) which would authorize insurers to provide group policyholders with optional prescription drug benefits that are designed for Medicare-eligible retirees. The plans are intended to provide coverage to assist policyholders with the “donut hole” in Medicare part D coverage.

Cigna and the OIC testified in support of the measure at a hearing for the measure on January 24. Following negotiations that led to an agreement between the OIC and proponents on an amendment to the bill, the amendments were adopted, and the bill was approved by the committee on Wednesday, January 29. The bill has been referred to the Senate Rules Committee.

House Considers Bill Creating State-Run Retirement Program for Private Employers and Employees—Senate Approves Similar Measure

On Tuesday, January 28 the House Consumer Protection and Business Committee held a hearing to consider HB 2516—a measure that has been introduced by Rep. Davina Duerr (D, 1st District) that would create a new state-run program to provide retirement programs directly to private employers and their employees. 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 by Russell Investments and AARP.

On Friday evening, January 17, the Senate approved an amended version of E2SSB 5740—The 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 a divided vote of 26-20, with three members excused. Only one Democrat voted against the bill, and only one Republican voted for it. The bill has been referred to the House Consumer Protection and Business Committee for consideration.

HB 2516 and 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.

Senate Committee Considers OIC Request Bill Adding New Health Plan Members to the Washington Life & Disability Insurance Guaranty Association

On Friday, January 24 the Senate Health and Long Term Care Committee held a hearing to consider SB 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 House version of the bill—HB 2209—has been introduced and referred to the House Health Care & Wellness Committee, but it has not yet been scheduled for hearing.

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, 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. The bill has been tentatively scheduled for a hearing on Wednesday, February 5.

Senate 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

On Friday, January 31 the Senate passed SSB 6052 without a dissenting vote. 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 and the companion bill introduced in the House (HB 2211) were previously considered and approved by the House Consumer Protection & Business Committee and the Senate Financial Institutions, Economic Development & Trade Committee. John Hancock, the ACLI, and NAIFA testified in support of the bills at both hearings. The OIC expressed support for the bills but requested an amendment to provide rulemaking authority. Proponents and the OIC came to agreement on a rulemaking amendment in time for it to be adopted by the Senate Committee before SB 6052 was approved.

SSB 6052 has been referred to the House Consumer Protection & Business Committee for consideration. Now that SSB 6052 has been passed by the Senate, it is likely that the House will focus on that bill and not work further on HB 2211.

House and Senate Committees Consider Companion Bills Allowing School Districts to Offer Employee-Paid Voluntary Benefits

On Monday, January 20 the House Education Committee held a hearing to consider HB 2458—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 Senate version of the bill—SB 6479—was introduced by Senator Lisa Wellman (D, 42nd District), and has been referred to the Senate Ways and Means Committee where a hearing for the measure was held on Thursday, January 23, with the same supportive testimony that was provided for the House version of the bill. Both bills enjoy broad bipartisan sponsorship and apparent support.

The House Education Committee has scheduled HB 2458 for a vote of the committee on Tuesday, February 4. The Senate Ways and Means Committee has included SB 6479 on a list of bills to be brought to a vote of the committee on Wednesday, February 5.

Senate Committee Considers Bill Imposing New Requirements on Declarations Pages

On Thursday, January 23 the Senate Financial Institutions, Economic Development & Trade Committee held a hearing to consider SB 6244—a measure that was introduced by Senator Lisa Wellman (D, 41st District) that would require the declarations page of an insurance policy to clearly and unambiguously reflect any endorsement, rider or application that is attached to or made a part of the policy, including any rider or endorsement that creates or enforces a sublimit within its coverage.

Prior to the hearing a letter of opposition jointly written by APCA, NAMIC, and NWIC was submitted to members of the committee, with a copy also provided to the Prime Sponsor. At the hearing the ACLI and other insurance industry stakeholders testified in opposition to the measure, expressing concern that the bill could result in greater confusion for insurance consumers, and greatly increase the size and complexity of declarations pages. The bill has not yet been scheduled for a vote of the committee.

Senate Committee Approves OIC Proposal to Create a Dedicated Account to Fund the OIC's Criminal Investigation Unit

On Thursday, January 23 the Senate Ways and Means Committee approved 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 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. Despite support indicated from insurance stakeholders, the bill was approved on a divided vote, with five Republican members of the committee voting against the measure. The bill has been referred to the Senate Rules Committee.

Senate Committee Considers Revised Consumer Data Bill

On Thursday, January 30 the Senate Ways and Means Committee held a hearing to consider SSB 6281—a measure on consumer data privacy that was previously considered and approved by the Senate Environment, Energy & Technology Committee on January 23. 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.

At the hearing for the bill, Microsoft and other business stakeholders testified in support of the measure. They have consistently supported legislation on the issue, so long as it does not restrict facial recognition technology. At the hearing, insurance industry stakeholders indicated opposition to the bill, and previously submitted a letter to Senator Carlyle and key members who have been working on the issue, expressing concern about imposing new requirements on insurers when they are already subject to direct regulatory supervision, and are subject to existing federal and state privacy laws. Other business groups also expressed concern or opposition to the measure. The Eastern Washington Association of Health Underwriters (EWAHU)

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ACLU and immigration rights groups testified in opposition to the measure. Plaintiff lawyers also expressed concern that the bill does not provide a private right of action for consumers that believe that the privacy of their personal information has been compromised.

On Wednesday, January 22 the House Innovation, Technology & Economic Development Committee held a hearing to consider the House version of the bill—HB 2742. It appears, however, that key House members are not in agreement with the Senate with respect to key sticking points, including facial recognition technology. Plaintiff lawyers are also pushing House leaders to include a private right of action in the bill. The House Innovation, Technology & Economic Development Committee has tentatively scheduled HB 2742 for a vote of the committee on Wednesday, February 5.

House and Senate Committees Approve OIC Request Bills to Adopt NAIC Revisions to the Model Holding Company Act

House and Senate committees have given approval to a pair of companion bills that have been introduced at the request of the OIC to enact the NAIC revisions to the Model Holding Company Act. The bills 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.

SB 6048 was considered at a hearing before the Senate Financial Institutions, Economic Development & Trade Committee on Tuesday, January 14. HB 2207 was considered by the House Consumer Protection and Business Committee on the same day. The OIC and insurance industry stakeholders testified in support of the bills at both hearings. The Senate committee took action and approved the bill on Thursday, January 16. The House committee approved HB 2207 on Tuesday, January 21. SSB 6048 has been pulled from the Senate Rules Committee and has been placed on the Senate Floor Consent Calendar. SHB 2207 has been referred to the House Rules Committee.

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:

February 7—the last day for committees in the House of origin to take action on bills;

February 11—the last day for Fiscal committees in the House of origin to take action on bills;

February 19—the last day for the House of origin to take action on bills;

February 28—the last day for committees in the opposite House to take action on bills;

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