

Eastern Washington Association of Health Underwriters (EWAHU) Legislative Update for Week of February 24, 2020

February 19 Deadline Arrives—Many Bills Don't Survive

Now more than half over, and with less than three weeks remaining before adjournment, the 2020 Legislative Session passed a key deadline this week, and the result is that dozens of bills will receive no further consideration this year. Pursuant to the cut-off resolution approved by the House and Senate at the beginning of the 2020 Legislative Session, bills not passed in the house of origin by 5:00 p.m. on Wednesday, February 19 will receive no further consideration this year. Dozens of bills failed to meet Wednesday's deadline, but many survived the cutoff.

With the passing of the cross-over cutoff, legislative committees have begun hearings once again. House committees are considering measures passed by the Senate and Senate committees are considering measures passed by the House. Under the cut-off resolution, committees have until Friday, February 28 to approve measures. Budget bills, and measures necessary to implement the budget, are exempt from the cut-off timelines.

Legislators Receive Strong Revenue Forecast

In addition to committee work, members of the House and Senate will start focusing on budget issues this week, and this effort is always preceded by the receipt of new revenue forecast. The updated state revenue forecast was released on Wednesday, February 19.

The Economic and Revenue Forecast Council delivered good news for legislative budget writers, but the strong revenue forecast may take some of wind out of various tax proposals that have been introduced. Due to revenue collections coming in stronger than projected and an improved economic growth outlook, the revenue forecast raised expected revenue collections over the remainder of the current biennium together with the 2021-'23 biennium by \$1.14 billion (\$606 million for the remainder of the 2019-'21 biennium and \$536 million for the 2021-'23 biennium).

The additional revenue has already caused some legislators to say that they will not support new or increased taxes this year.

Senate Approves Revised Bill Regulating Benefit Managers— House Committee to Consider Measure

On Monday, February 17, the Senate approved 2SSB 5601 and passed the bill to the House. 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 have cautioned that 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.

Senate committee leaders 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.

On Tuesday, February 25, the House Health Care & Wellness Committee will hold a hearing to consider the Senate-passed bill. Additional stakeholder meetings have been scheduled, but it is not expected that substantive amendments will be added in the House.

Senate Approves Revised Prior Authorization Bill

On Tuesday, February 18, the Senate approved a revised version of SSB 6404—a measure that has been introduced by Senator David Frockt (D, 46th District). The bill passed the Senate without a dissenting vote and has been referred to the House Health Care & Wellness Committee, where a hearing for the measure has been scheduled for Thursday, February 27.

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.

New Local Option Payroll Excise Tax Plan Introduced Exempting Insurers—Appears to Replace Prior Controversial Local Option Excise Tax Plan that Included Insurers

On Thursday, February 20, Representative Larry Springer introduced 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. Insurance stakeholders worked closely with Rep. Springer and other key legislators to discourage them from including insurers in the bill. These efforts were successful.

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 February 19 deadline for passage. HB 2907 is not referenced in the House budget proposal, so it is not “necessary to implement the budget” and will not likely be considered further this session. The new proposal—HB 2948, which exempts insurers from the tax—is referenced in the House budget, so it will not be subject to the cutoff deadlines that would otherwise apply.

House Committee to Consider Bill Imposing New Tax on Health Insurance Claims

On Thursday, February 27, the House Finance Committee will hold a hearing to consider 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 be imposed on health carriers, third party administrators, and self-insured employers.

House Committee Considers Health Insurance Tax

On Friday, February 7, the House Finance Committee held a hearing to consider HB 2821—a proposal that would impose 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 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 to Consider Bills Capping Out-of-Pocket Costs for Insulin

On Tuesday, February 25, the House Health Care and Wellness Committee will hold a hearing to consider 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 at the hearing.

A similar House bill—2SHB 2662—was approved by the House on February 19, and has been scheduled for a hearing before the Senate Health and Long Term Care Committee on Wednesday, February 26.

House Committee Considers and Approves Senate-Passed Bill Allowing Group Prescription Drug Benefits for Medicare-Eligible Retirees

The House Health Care & Wellness Committee held a hearing on Thursday, February 20 to consider 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. At the next hearing of the committee on Friday, February 21, the measure was passed and referred to the House Rules Committee. The measure was previously approved by the Senate on Thursday, February 13 on a final vote of 47-0, with two members excused.

The plans 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 Committee to Consider Senate-Passed OIC Request Bill Adding New Health Plan Members to the Washington Life & Disability Insurance Guaranty Association

On Tuesday, February 25, the House Health Care and Wellness Committee will consider an amended version of 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 was amended and passed by the Senate on Monday, February 17.

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.

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. On Monday, February 17, the Senate approved the amended bill on a final vote of 31-17, with one member excused. The OIC and insurance industry proponents are working to obtain support in the House to return the bill to be consistent with the NAIC model, and remove the amendment that was adopted in the Senate.

House Committee to Consider Senate-Passed Bill Creating State-Run Retirement Program for Private Employers and Employees

On Tuesday, February 25, the House Consumer Protection & Business Committee will hold a hearing to consider a Senate-passed and amended version of 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 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 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.

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.

House Committee Approves Senate-Passed 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 Thursday, February 20, the House Consumer Protection & Business Committee held a hearing to consider SSB 6052—a measure that 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.

Following the hearing for the measure, the committee immediately brought the bill to a vote and approved a “do pass” recommendation for the measure. The bill has been referred to the House Rules Committee. SSB 6052 passed the Senate without a dissenting vote on January 31.

At the hearing 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.

Senate Committee to Consider House-Approved Bill Allowing School Districts to Offer Employee-Paid Voluntary Benefits

On Wednesday, February 26, the Senate Ways and Means Committee will hold a hearing to consider HB 2458—a measure that was introduced by Rep. Monica Stonier (D, 49th 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 measure was approved by the House on February 17 without a dissenting vote.

The WEA, together with American Fidelity and AFLAC, have been negotiating potential amendments with the HCA in an effort to put the bill into the strongest possible position for passage in the Senate. It appears that agreement on these amendments is close, and it is expected that an agreed amendment can be considered by the Senate Ways and Means Committee when the bill is brought to vote in the committee.

House Committee Considers Senate-Approve Consumer Data Bill

On Friday, February 21, the House Innovation, Technology & Economic Development Committee held a hearing to consider 2SSB 6281—a measure on consumer data privacy that was passed by the Senate on Friday, February 14. The Senate approved the bill a final vote of 46-1 with two members excused.

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 Friday’s hearing for the bill, Microsoft and other high-tech 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. Business groups have expressed opposition to plaintiff lawyer suggestions that a private right of action should be added to the measure. The ACLU, Black Lives Matter, One America and immigration rights groups testified in opposition to the bill.

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

On Tuesday, February 25, the House Consumer Protection and Business Committee will hold a hearing to consider SSB 6048—a measure that was introduced at the request of the OIC to enact the NAIC revisions to the Model Holding Company Act. 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.

The House version of the bill—HB 2207—was considered and approved by the House Consumer Protection and Business Committee on January 15. The bill was referred to the House Rules Committee, but the bill was not brought to the House floor for consideration before the February 19 cutoff. As a result, further action on the issue will be focused on SSB 6048. The OIC and insurance industry stakeholders testified in support of the bill at hearings in the Senate.

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

On Wednesday, February 19, the Senate 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 bill was approved 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. The bill will be referred to the House for consideration.

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 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,

Annette Hunter, EWAHU State Legislative Chair

Tara MacKay, EWAHU Federal Legislative Chair

As reported by Mel Sorensen, WAHU Lobbyist