

Eastern Washington Association of Health Underwriters (EWAHU) Legislative Update for Week of February 17, 2020

Revised Bill Regulating Benefit Managers Pulled to Senate Floor Calendar— House Version Dies in Committee

On Thursday, February 13, the Senate Rules Committee took action and placed 2SSB 5601 on the Senate Floor Calendar. **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. **The Senate Health and Long Term Care Committee approved a revised version of the bill on Monday, February 3.** The bill has been referred to the Senate Ways and Means Committee for consideration, and the measure was approved by the committee on February 10.

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 was not brought to a vote of the House Health Care & Wellness Committee before the February 7 deadline for approval, and the measure will not be considered further during the 2020 Legislative session. **It is clear that House leaders have decided to wait for the Senate to take action on the issue.**

Senate Committee Approves Revised Prior Authorization Bill

On Tuesday, February 11, the Senate Ways and Means Committee approved a revised version of SSB 6404.

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.

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

On Tuesday, February 4, the House Education Committee approved a “do pass” recommendation for 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 committee without a dissenting vote, and it has been referred to the House Rules Committee.** The Senate version of the bill—SB 6479—was introduced by Senator Lisa Wellman (D, 42nd District). On Wednesday, February 5, the Senate Ways and Means Committee approved the measure, following a hearing on Thursday, January 23. SB 6049 has been referred to the Senate Rules Committee.

House Committee Considers Controversial Local Option Excise Tax Plan— Insurers and Agents/Brokers Included

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 industry 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.

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

Senate Ways and Means Committee approved 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. **A similar House bill—2SHB 2662—has been considered and approved by the House Health Care & Wellness Committee and the House Appropriations Committee.** Both bills were referred to the respective Senate and House Rules Committees, and on February 14 2SHB 2662 was pulled from the House Rules Committee and placed on the House Floor Calendar. **The measure could come to a vote at any time.**

When SB 6087 bill was 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.

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.

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

The Senate 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 measure was approved by the Senate on Thursday, February 13 on a final vote of 47-0, with two members excused. The bill will be referred to the House for consideration. The plans are intended to provide coverage to assist policyholders with the “donut hold” in Medicare part D coverage.** House leaders have decided to wait for Senate action on SSB 6051.

House Committee Prepares Action on Health Insurance Tax

The House Finance Committee appears prepared to take action on 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.

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

The bill would impose a new tax on non-profit health plans with over 600% of the carrier's risk-based capital requirements. The bill would impose a 3% tax on risk-based capital that exceeds 600% of the carrier's requirements. The measure was pulled to the House Floor Calendar on Friday, February 14.

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

Senate Ways and Means Committee approved 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. House leaders apparently made a decision to wait for the measure to come from the Senate.

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.

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. 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. **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.**

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

On February 11, the House Appropriations Committee killed SHB 2516—a measure that would create a new state-run program to provide retirement programs directly to private employers and their employees.

On Friday evening, January 17, the Senate approved an 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.

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.

Respectfully Submitted,
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As reported by Mel Sorensen, WAHU Lobbyist