

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 2551

Chapter 174, Laws of 2010

61st Legislature
2010 Regular Session

WASHINGTON VACCINE ASSOCIATION--CREATION

EFFECTIVE DATE: 03/23/10

Passed by the House March 6, 2010
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 2, 2010
Yeas 44 Nays 2

BRAD OWEN

President of the Senate

Approved March 23, 2010, 2:14 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 2551** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 23, 2010

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 2551

AS AMENDED BY THE SENATE

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By House Ways & Means (originally sponsored by Representatives Cody, Green, Sullivan, Pedersen, Darneille, and Moeller)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to the establishment of the Washington vaccine
2 association; amending RCW 43.70.720; adding a new section to chapter
3 43.24 RCW; adding a new section to chapter 48.43 RCW; adding a new
4 section to chapter 82.04 RCW; adding a new chapter to Title 70 RCW;
5 prescribing penalties; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Association" means the Washington vaccine association.

10 (2) "Covered lives" means all persons under the age of nineteen in
11 Washington state who are:

12 (a) Covered under an individual or group health benefit plan issued
13 or delivered in Washington state or an individual or group health
14 benefit plan that otherwise provides benefits to Washington residents;
15 or

16 (b) Enrolled in a group health benefit plan administered by a
17 third-party administrator. Persons under the age of nineteen for whom
18 federal funding is used to purchase vaccines or who are enrolled in
19 state purchased health care programs covering low-income children

1 including, but not limited to, apple health for kids under RCW
2 74.09.470 and the basic health plan under chapter 70.47 RCW are not
3 considered "covered lives" under this chapter.

4 (3) "Estimated vaccine cost" means the estimated cost to the state
5 over the course of a state fiscal year for the purchase and
6 distribution of vaccines purchased at the federal discount rate by the
7 department of health.

8 (4) "Health benefit plan" has the same meaning as defined in RCW
9 48.43.005 and also includes health benefit plans administered by a
10 third-party administrator.

11 (5) "Health carrier" has the same meaning as defined in RCW
12 48.43.005.

13 (6) "Secretary" means the secretary of the department of health.

14 (7) "State supplied vaccine" means vaccine purchased by the state
15 department of health for covered lives for whom the state is purchasing
16 vaccine using state funds raised via assessments on health carriers and
17 third-party administrators as provided in this chapter.

18 (8) "Third-party administrator" means any person or entity who, on
19 behalf of a health insurer or health care purchaser, receives or
20 collects charges, contributions, or premiums for, or adjusts or settles
21 claims on or for, residents of Washington state or Washington health
22 care providers and facilities.

23 (9) "Total nonfederal program cost" means the estimated vaccine
24 cost less the amount of federal revenue available to the state for the
25 purchase and distribution of vaccines.

26 (10) "Vaccine" means a preparation of killed or attenuated living
27 microorganisms, or fraction thereof, that upon administration
28 stimulates immunity that protects against disease and is approved by
29 the federal food and drug administration as safe and effective and
30 recommended by the advisory committee on immunization practices of the
31 centers for disease control and prevention for administration to
32 children under the age of nineteen years.

33 NEW SECTION. **Sec. 2.** There is created a nonprofit corporation to
34 be known as the Washington vaccine association. The association is
35 formed for the purpose of collecting and remitting adequate funds from
36 health carriers and third-party administrators for the cost of vaccines
37 provided to certain children in Washington state.

1 NEW SECTION. **Sec. 3.**

2 (1) The association is comprised of all
3 health carriers issuing or renewing health benefit plans in Washington
4 state and all third-party administrators conducting business on behalf
5 of residents of Washington state or Washington health care providers
6 and facilities. Third-party administrators are subject to registration
7 under section 9 of this act.

8 (2) The association is a nonprofit corporation under chapter 24.03
9 RCW and has the powers granted under that chapter.

10 (3) The board of directors includes the following voting members:

11 (a) Four members, selected from health carriers or third-party
12 administrators, excluding health maintenance organizations, that have
13 the most fully insured and self-funded covered lives in Washington
14 state. The count of total covered lives includes enrollment in all
15 companies included in their holding company system. Each health
16 carrier or third-party administrator is entitled to no more than a
17 single position on the board to represent all entities under common
18 ownership or control.

19 (b) One member selected from the health maintenance organization
20 having the most fully insured and self-insured covered lives in
21 Washington state. The count of total lives includes enrollment in all
22 companies included in its holding company system. Each health
23 maintenance organization is entitled to no more than a single position
24 on the board to represent all entities under common ownership or
25 control.

26 (c) One member, representing health carriers not otherwise
27 represented on the board under (a) or (b) of this subsection, who is
28 elected from among the health carrier members not designated under (a)
29 or (b) of this subsection.

30 (d) One member, representing Taft Hartley plans, appointed by the
31 secretary from a list of nominees submitted by the Northwest
32 administrators association.

33 (e) One member representing Washington state employers offering
34 self-funded health coverage, appointed by the secretary from a list of
35 nominees submitted by the Puget Sound health alliance.

36 (f) Two physician members appointed by the secretary, including at
37 least one board certified pediatrician.

38 (g) The secretary, or a designee of the secretary with expertise in
childhood immunization purchasing and distribution.

1 (4) The directors' terms and appointments must be specified in the
2 plan of operation adopted by the association.

3 (5) The board of directors of the association shall:

4 (a) Prepare and adopt articles of association and bylaws;

5 (b) Prepare and adopt a plan of operation. The plan of operation
6 shall include a dispute mechanism through which a carrier or third-
7 party administrator can challenge an assessment determination by the
8 board under section 4 of this act. The board shall include a means to
9 bring unresolved disputes to an impartial decision maker as a component
10 of the dispute mechanism;

11 (c) Submit the plan of operation to the secretary for approval;

12 (d) Conduct all activities in accordance with the approved plan of
13 operation;

14 (e) Enter into contracts as necessary or proper to collect and
15 disburse the assessment;

16 (f) Enter into contracts as necessary or proper to administer the
17 plan of operation;

18 (g) Sue or be sued, including taking any legal action necessary or
19 proper for the recovery of any assessment for, on behalf of, or against
20 members of the association or other participating person;

21 (h) Appoint, from among its directors, committees as necessary to
22 provide technical assistance in the operation of the association,
23 including the hiring of independent consultants as necessary;

24 (i) Obtain such liability and other insurance coverage for the
25 benefit of the association, its directors, officers, employees, and
26 agents as may in the judgment of the board of directors be helpful or
27 necessary for the operation of the association;

28 (j) By May 1, 2010, establish the estimated amount of the
29 assessment needed for the period of May 1, 2010, through December 31,
30 2010, based upon the estimate provided to the association under section
31 4(1) of this act; and notify, in writing, each health carrier and
32 third-party administrator of the health carrier's or third-party
33 administrator's total assessment for this period by May 15, 2010;

34 (k) On an annual basis, beginning no later than November 1, 2010,
35 and by November 1st of each year thereafter, establish the estimated
36 amount of the assessment;

37 (l) Notify, in writing, each health carrier and third-party

1 administrator of the health carrier's or third-party administrator's
2 estimated total assessment by November 15th of each year;

3 (m) Submit a periodic report to the secretary listing those health
4 carriers or third-party administrators that failed to remit their
5 assessments and audit health carrier and third-party administrator
6 books and records for accuracy of assessment payment submission;

7 (n) Allow each health carrier or third-party administrator no more
8 than ninety days after the notification required by (l) of this
9 subsection to remit any amounts in arrears or submit a payment plan,
10 subject to approval by the association and initial payment under an
11 approved payment plan;

12 (o) Deposit annual assessments collected by the association, less
13 the association's administrative costs, with the state treasurer to the
14 credit of the universal vaccine purchase account established in RCW
15 43.70.720;

16 (p) Borrow and repay such working capital, reserve, or other funds
17 as, in the judgment of the board of directors, may be helpful or
18 necessary for the operation of the association; and

19 (q) Perform any other functions as may be necessary or proper to
20 carry out the plan of operation and to affect any or all of the
21 purposes for which the association is organized.

22 (6) The secretary shall convene the initial meeting of the
23 association board of directors.

24 NEW SECTION. **Sec. 4.** (1) The secretary shall estimate the total
25 nonfederal program cost for the upcoming calendar year by October 1,
26 2010, and October 1st of each year thereafter. Additionally, the
27 secretary shall subtract any amounts needed to serve children enrolled
28 in state purchased health care programs covering low-income children
29 for whom federal vaccine funding is not available, and report the final
30 amount to the association. In addition, the secretary shall perform
31 such calculation for the period of May 1st through December 31st, 2010,
32 as soon as feasible but in no event later than April 1, 2010. The
33 estimates shall be timely communicated to the association.

34 (2) The board of directors of the association shall determine the
35 method and timing of assessment collection in consultation with the
36 department of health. The board shall use a formula designed by the
37 board to ensure the total anticipated nonfederal program cost, minus

1 costs for other children served through state-purchased health care
2 programs covering low-income children, calculated under subsection (1)
3 of this section, is collected and transmitted to the universal vaccine
4 purchase account created in RCW 43.70.720 in order to ensure adequacy
5 of state funds to order state-supplied vaccine from federal centers for
6 disease control and prevention.

7 (3) Each licensed health carrier and each third-party administrator
8 on behalf of its clients' health benefit plans must be assessed and is
9 required to timely remit payment for its share of the total amount
10 needed to fund nonfederal program costs calculated by the department of
11 health. Such an assessment includes additional funds as determined
12 necessary by the board to cover the reasonable costs for the
13 association's administration. The board shall determine the assessment
14 methodology, with the intent of ensuring that the nonfederal costs are
15 based on actual usage of vaccine for a health carrier or third-party
16 administrator's covered lives. State and local governments and school
17 districts must pay their portion of vaccine expense for covered lives
18 under this chapter.

19 (4) The board of the association shall develop a mechanism through
20 which the number and cost of doses of vaccine purchased under this
21 chapter that have been administered to children covered by each health
22 carrier, and each third-party administrator's clients health benefit
23 plans, are attributed to each such health carrier and third-party
24 administrator. Except as otherwise permitted by the board, this
25 mechanism must include at least the following: Date of service;
26 patient name; vaccine received; and health benefit plan eligibility.
27 The data must be collected and maintained in a manner consistent with
28 applicable state and federal health information privacy laws.
29 Beginning November 1, 2011, and each November 1st thereafter, the board
30 shall factor the results of this mechanism for the previous year into
31 the determination of the appropriate assessment amount for each health
32 carrier and third-party administrator for the upcoming year.

33 (5) For any year in which the total calculated cost to be received
34 from association members through assessments is less than the total
35 nonfederal program cost, the association must pay the difference to the
36 state for deposit into the universal vaccine purchase account
37 established in RCW 43.70.720. The board may assess, and the health

1 carrier and third-party administrators are obligated to pay, their
2 proportionate share of such costs and appropriate reserves as
3 determined by the board.

4 (6) The aggregate amount to be raised by the association in any
5 year may be reduced by any surpluses remaining from prior years.

6 (7) In order to generate sufficient start-up funding, the
7 association may accept prepayment from member health carriers and
8 third-party administrators, subject to offset of future amounts
9 otherwise owing or other repayment method as determined by the board.
10 The initial deposit of start-up funding must be deposited into the
11 universal vaccine purchase account on or before April 30, 2010.

12 NEW SECTION. **Sec. 5.** (1) The board of the association shall

13 establish a committee for the purposes of developing recommendations to
14 the board regarding selection of vaccines to be purchased in each
15 upcoming year by the department. The committee must be composed of at
16 least five voting board members, including at least three health
17 carrier or third-party administrator members, one physician, and the
18 secretary or the secretary's designee. The committee must also include
19 a representative of vaccine manufacturers, who is a nonvoting member of
20 the committee. The representative of vaccine manufacturers must be
21 chosen by the secretary from a list of three nominees submitted
22 collectively by vaccine manufacturers on an annual basis.

23 (2) In selecting vaccines to purchase, the following factors should
24 be strongly considered by the committee: Patient safety and clinical
25 efficacy, public health and purchaser value, compliance with RCW
26 70.95M.115, patient and provider choice, and stability of vaccine
27 supply.

28 NEW SECTION. **Sec. 6.** In addition to the duties and powers
29 enumerated elsewhere in this chapter:

30 (1) The association may, pursuant to either vote of its board of
31 directors or request of the secretary, audit compliance with reporting
32 obligations established under the association's plan of operation.
33 Upon failure of any entity that has been audited to reimburse the costs
34 of such audit as certified by vote of the association's board of
35 directors within forty-five days of notice of such vote, the secretary

1 shall assess a civil penalty of one hundred fifty percent of the amount
2 of such costs.

3 (2) The association may establish an interest charge for late
4 payment of any assessment under this chapter. The secretary shall
5 assess a civil penalty against any health carrier or third-party
6 administrator that fails to pay an assessment within three months of
7 notification under section 3 of this act. The civil penalty under this
8 subsection is one hundred fifty percent of such assessment.

9 (3) The secretary and the association are authorized to file liens
10 and seek judgment to recover amounts in arrears and civil penalties,
11 and recover reasonable collection costs, including reasonable
12 attorneys' fees and costs. Civil penalties so levied must be deposited
13 in the universal vaccine purchase account created in RCW 43.70.720.

14 (4) The secretary may adopt rules under chapter 34.05 RCW as
15 necessary to carry out the purposes of this section.

16 NEW SECTION. **Sec. 7.** The board of directors of the association
17 shall submit to the secretary, no later than one hundred twenty days
18 after the close of the association's fiscal year, a financial report in
19 a form approved by the secretary.

20 NEW SECTION. **Sec. 8.** No liability on the part of, and no cause of
21 action of any nature, shall arise against any member of the board of
22 the association, against an employee or agent of the association, or
23 against any health care provider for any lawful action taken by them in
24 the performance of their duties or required activities under this
25 chapter.

26 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.24 RCW
27 to read as follows:

28 (1) (a) Beginning September 1, 2010, a third-party administrator
29 must register with the department of licensing and renew its
30 registration on an annual basis thereafter prior to December 31st of
31 each year, or within ten days after the registrant changes its name,
32 business name, business address, or business telephone number,
33 whichever occurs sooner.

34 (b) The registrant shall pay the registration or renewal fee

1 established by the department of licensing as provided in RCW
2 43.24.086.

3 (c) Any person or entity that is acting as or holding itself out to
4 be a third-party administrator while failing to have registered under
5 this section is subject to a civil penalty of not less than one
6 thousand dollars nor more than ten thousand dollars for each violation.
7 The civil penalty is in addition to any other penalties that may be
8 imposed for violations of other laws of this state.

9 (2) For the purposes of this section, "third-party administrator"
10 has the same meaning as defined in section 1 of this act.

11 (3) The department of licensing may adopt rules under chapter 34.05
12 RCW as necessary to implement this section.

13 **Sec. 10.** RCW 43.70.720 and 2009 c 564 s 934 are each amended to
14 read as follows:

15 The universal vaccine purchase account is created in the custody of
16 the state treasurer. Receipts from public and private sources for the
17 purpose of increasing access to vaccines for children may be deposited
18 into the account. Expenditures from the account must be used
19 exclusively for the purchase of vaccines, at no cost to health care
20 providers in Washington, to administer to children under nineteen years
21 old who are not eligible to receive vaccines at no cost through federal
22 programs. Only the secretary or the secretary's designee may authorize
23 expenditures from the account. The account is subject to allotment
24 procedures under chapter 43.88 RCW, but an appropriation is not
25 required for expenditures.

26 NEW SECTION. **Sec. 11.** Sections 1 through 8 and 12 through 14 of
27 this act constitute a new chapter in Title 70 RCW.

28 NEW SECTION. **Sec. 12.** (1) The association board may, on or after
29 June 30, 2015, vote to recommend termination of the association if it
30 finds that the original intent of its formation and operation, which is
31 to ensure more cost-effective purchase and distribution of vaccine than
32 if provided through uncoordinated purchase by health care providers,
33 has not been achieved. The association board shall provide notice of
34 the recommendation to the relevant policy and fiscal committees of the
35 legislature within thirty days of the vote being taken by the

1 association board. If the legislature has not acted by the last day of
2 the next regular legislative session to reject the board's
3 recommendation, the board may vote to permanently dissolve the
4 association.

5 (2) In the event of a voluntary or involuntary dissolution of the
6 association, funds remaining in the universal purchase vaccine account
7 created in RCW 43.70.720 that were collected under this chapter must be
8 returned to the member health carrier and third-party administrators in
9 proportion to their previous year's contribution, from any balance
10 remaining following the repayment of any prepayments for start-up
11 funding not previously recouped by such member.

12 NEW SECTION. **Sec. 13.** Physicians and clinics ordering state
13 supplied vaccine must ensure they have billing mechanisms and practices
14 in place that enable the association to accurately track vaccine
15 delivered to association members' covered lives and must submit
16 documentation in such a form as may be prescribed by the board in
17 consultation with state physician organizations. Physicians and other
18 persons providing childhood immunization are strongly encouraged to use
19 state supplied vaccine whenever possible. Nothing in this chapter
20 prohibits health carriers and third-party administrators from denying
21 claims for vaccine serum costs when the serum or serums providing
22 similar protection are provided or available via state supplied
23 vaccine.

24 NEW SECTION. **Sec. 14.** If the requirement that any segment of
25 health carriers, third-party administrators, or state or local
26 governmental entities provide funding for the program established in
27 this chapter is invalidated by a court of competent jurisdiction, the
28 board of the association may terminate the program one hundred twenty
29 days following a final judicial determination on the matter.

30 NEW SECTION. **Sec. 15.** A new section is added to chapter 48.43 RCW
31 to read as follows:

32 Assessments paid by carriers under section 4 of this act may be
33 considered medical expenses for purposes of rate setting and regulatory
34 filings.

1 NEW SECTION. **Sec. 16.** A new section is added to chapter 82.04 RCW
2 to read as follows:

3 This chapter does not apply to assessments described in sections 3
4 and 4 of this act received by a nonprofit corporation established under
5 section 2 of this act.

6 NEW SECTION. **Sec. 17.** This act is necessary for the immediate
7 preservation of the public peace, health, or safety, or support of the
8 state government and its existing public institutions, and takes effect
9 immediately.

 Passed by the House March 6, 2010.

 Passed by the Senate March 2, 2010.

 Approved by the Governor March 23, 2010.

 Filed in Office of Secretary of State March 23, 2010.