Z-0695.2

HOUSE BILL 2208

State of Washington 66th Legislature 2020 Regular Session

By Representative Kirby; by request of Insurance Commissioner

Prefiled 12/06/19.

AN ACT Relating to implementation credits and performance standards; amending RCW 48.30.140 and 48.30.150; adding new sections to chapter 48.30 RCW; and providing an effective date.

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

Sec. 1. RCW 48.30.140 and 2019 c 253 s 1 are each amended to read as follows:

(1) Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, insurance producer, or title insurance agent shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

(2) Subsection (1) of this section shall not apply as to commissions paid to a licensed insurance producer, or title insurance agent for insurance placed on that person's own property or risks.

(3) This section shall not apply to the allowance by any marine insurer, or marine insurance producer, to any insured, in connection

with marine insurance, of such discount as is sanctioned by custom among marine insurers as being additional to the insurance producer's commission.

(4) This section shall not apply to advertising or promotional programs conducted by insurers or insurance producers whereby prizes, goods, wares, gift cards, gift certificates, or merchandise, not exceeding one hundred dollars in value per person in the aggregate in any twelve-month period, are given to all insureds or prospective insureds under similar qualifying circumstances. This subsection does not apply to title insurers or title insurance agents.

(5) This section does not apply to an offset or reimbursement of all or part of a fee paid to an insurance producer as provided in RCW 48.17.270.

(6)(a) Subsection (1) of this section shall not be construed to prohibit a health carrier or disability insurer from including as part of a group or individual health benefit plan or contract containing health benefits, a wellness program which meets the requirements for an exception from the prohibition against discrimination based on a health factor under the health insurance portability and accountability act (P.L. 104-191; 110 Stat. 1936) and regulations adopted pursuant to that act.

(b) For purposes of this subsection: (i) "Health carrier" and "health benefit plan" have the same meaning as provided in RCW 48.43.005; and (ii) "wellness program" has the same meaning as provided in 45 C.F.R. 146.121(f).

(7) ((~~Subsection (1) of this section does not apply to a payment by an insurer to offset documented expenses incurred by a group policyholder in changing coverages from one insurer to another. Insurers shall describe any such payment in the group insurance policy or in an applicable filing with the commissioner. If an implementation credit is given to a group, the implementation credit is part of the premium for the purposes of RCW 48.14.020 and 48.14.0201.~~)) This section does not apply to an implementation credit offered or provided in compliance with section 3 of this act. This exception ((~~to subsection (1) of this section~~)) does not apply to "medicare supplemental insurance" or "medicare supplemental insurance policies" as defined in chapter 48.66 RCW, nor does this exception apply to small groups as defined in RCW 48.43.005.

(8) ((~~Subsection (7) of this section does not apply to small groups as defined in RCW 48.43.005.~~)) This section does not apply to

a performance standard offered or provided in compliance with section 4 of this act.

Sec. 2. RCW 48.30.150 and 2019 c 253 s 2 are each amended to read as follows:

(1) No insurer, insurance producer, title insurance agent, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever:

(a) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

(b) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(c) Any prizes, goods, wares, gift cards, gift certificates, or merchandise of an aggregate value in excess of one hundred dollars per person in the aggregate in any consecutive twelve-month period. This subsection (1)(c) does not apply to title insurers or title insurance agents.

(2) Subsection (1) of this section shall not be deemed to prohibit the sale or purchase of securities as a condition to or in connection with surety insurance insuring the performance of an obligation as part of a plan of financing found by the commissioner to be designed and operated in good faith primarily for the purpose of such financing, nor shall it be deemed to prohibit the sale of redeemable securities of a registered investment company in the same transaction in which life insurance is sold.

(3)(a) Subsection (1) of this section shall not be deemed to prohibit a health carrier or disability insurer from including as part of a group or individual health benefit plan or contract providing health benefits, a wellness program which meets the requirements for an exception from the prohibition against discrimination based on a health factor under the health insurance portability and accountability act (P.L. 104-191; 110 Stat. 1936) and regulations adopted pursuant to that act.

(b) For purposes of this subsection: (i) "Health carrier" and "health benefit plan" have the same meaning as provided in RCW

48.43.005; and (ii) "wellness program" has the same meaning as provided in 45 C.F.R. 146.121(f).

(4) ((~~Subsection (1) of this section does not prohibit an insurer from issuing any payment to offset documented expenses incurred by a group policyholder in changing coverages from one insurer to another as provided in RCW 48.30.140. If an implementation credit is given to a group, the implementation credit is part of the premium for the purposes of RCW 48.14.020 and 48.14.0201.~~)) This section does not apply to an implementation credit offered or provided in compliance with section 3 of this act. This exception ((~~to subsection (1) of this section~~)) does not apply to "medicare supplemental insurance" or "medicare supplemental insurance policies" as defined in chapter 48.66 RCW, nor does this exception apply to small groups as defined in RCW 48.43.005.

(5) ((~~Subsection (4) of this section does not apply to small groups as defined in RCW 48.43.005.~~)) This section does not apply to a performance standard offered or provided in compliance with section 4 of this act.

NEW SECTION. **Sec. 3.** A new section is added to chapter 48.30 RCW to read as follows:

(1) An insurer must describe any implementation credits provided to a policyholder, along with the process that the policyholder must follow to document an expense in order for it to be paid, in the group insurance policy. The insurer must file the policy with the commissioner. An implementation credit is part of the premium for the purposes of RCW 48.14.020 and 48.14.0201, and must be included in the rate schedule for the policy.

(2) The dollar amount of implementation credits offered to a policyholder must be based on the size of the group plan being implemented, as described in this subsection:

(a) The policyholder for a group with more than one thousand covered lives may be offered implementation credits of up to one million dollars.

(b) The policyholder for a group covering fifty-one to one thousand covered lives may be offered implementation credits of up to five hundred thousand dollars.

(c) The policyholder for a group covering fifty or fewer covered lives may be offered implementation credits of up to fifty thousand dollars.

(3) An implementation credit does not need to be actuarially justified. However, the premium rate filing must include a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the implementation credit is considered in the premium development and the benefits provided are reasonable in relation to the premium charged for the contract.

(4) An insurer that offers implementation credits must offer them to all group policyholders that are similarly situated with regard to risk, exposure factors, and expense elements. Implementation credits offered in compliance with this subsection (4) must not be considered unfair discrimination under RCW 48.18.480.

(5) The commissioner may adopt rules to implement this section.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Documented expenses" means expenses actually incurred by the group policyholder and invoiced to the insurer. The expenses must be reasonable given current industry practice and prevailing market rates for such expenses. RCW 48.05.280 applies to all documentation required under this section. The commissioner must develop a form that insurers must use in order to comply with this documentation requirement.

(b) "Implementation credit" means a payment by an insurer after an executed contract is in place to offset documented expenses incurred by a group policyholder in changing coverages from one insurer to another. Some examples of expenses that may be documented and reimbursed include but are not limited to:

(i) Transfer of historical experience data provided by the previous insurer to the new insurer;

(ii) Implementation project expenses, including project management and staffing expenses for complex implementations involving coordination with multiple systems, insurers, and entities;

(iii) Costs required for existing insurers and entities involved in plan management to program and establish secure data sharing systems and compliance processes with a new insurer;

(iv) Design, creation, printing, and mailing of member communications related to implementation or new insurer plans, services, or goods; and

(v) Providing new identification cards to group members.

NEW SECTION. **Sec. 4.** A new section is added to chapter 48.30 RCW to read as follows:

(1) For purposes of this section, "performance standard" or "performance guarantee" means a contractual provision in an insurance contract that establishes a specific standard for the insurer's performance of an obligation in the contract, and under which the insurer is required to remit a penalty payment, based on a percentage of the premium or a set dollar amount, to the policyholder for the next policy term if the insurer fails to comply with the standard. Policyholders and insurers may calculate the amount of penalty based on a percentage of the overall premium owed to the insurer by the policyholder.

(2) Remittance of payment to the policyholder in compliance with this section does not constitute a premium under RCW 48.18.170 and 48.43.005. Nothing in this section prevents the health care authority from including performance standards in contracts.

(3) If an insurance contract includes any performance standards, the insurer must describe the performance standards in the insurance contract and file the contract with the commissioner.

(4) Remittance of a premium or a credit to the policyholder in compliance with this section must not be considered a return premium for purposes of RCW 48.14.020 and 48.14.0201.

(5) The commissioner may adopt rules to implement this section.

NEW SECTION. **Sec. 5.** This act takes effect July 1, 2020.

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