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

p. 2  SSB 6144
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 the parameters of 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. Insurers must include this
description in the group insurance policy and the insurer must file
the policy with the commissioner. The documentation of specific
expenses that are actually incurred is a separate, additional
requirement that is described in subsection (2) of this section. 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 documentation of specific expenses required in this
section applies only to expenses that are actually incurred. Expenses
may not exceed the parameters included in the policy and filed with
the commissioner, as required in subsection (1) of this section. 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.

(3) 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 covering more than fifty
thousand covered lives may be offered implementation credits of up to
five million dollars.

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

(c) 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.

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

(4) 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.

(5) 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 (5) must not be considered
unfair discrimination under RCW 48.18.480.

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

(7) 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 that are documented in
compliance with the requirements in subsection (2) of this section.

(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.