

Initiative Measure No. 1600, filed January 23, 2018

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: I-3474.1/18

ATTY/TYPIST: KB:amh

BRIEF DESCRIPTION:

AN ACT Relating to health care financing and development of the whole Washington health trust to ensure all Washington residents can enroll in nonprofit health insurance coverage providing an essential set of health benefits; adding new sections to chapter 82.02 RCW; adding a new section to chapter 82.32 RCW; adding a new chapter to Title 43 RCW; adding a new chapter to Title 82 RCW; prescribing penalties; providing effective dates; providing a contingent effective date; and providing contingent expiration dates.

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

Part I

Universal Essential Health Benefits Trust

NEW SECTION. **Sec. 101.** UNIVERSAL COVERAGE PROTECTING HEALTH CARE CHOICES. During this time of uncertainty affecting the future options for thousands of Washingtonians to retain their health care coverage and thousands who face high out-of-pocket costs, the people of the state of Washington declare their intention to create a single nonprofit health financing entity called the whole Washington

health trust. The trust will simplify health care financing, eliminate administrative waste for providers, focus savings by promoting a health care delivery system that is responsive to the essential health needs of each county, and guarantee all residents may enroll for coverage of a single comprehensive set of essential health benefits as a basic human need, essential for a productive society.

(1) All residents of the state of Washington are eligible for coverage through this chapter.

(2) Individuals enrolled for essential health benefits under this chapter may obtain health services from any participating institution, agency, or individual qualified to provide the service including participating providers outside the state.

(3) Nothing in this chapter limits a resident's right to obtain coverage for health care benefits in excess of those available under the trust, including additional benefits that an employer may provide to employees or their dependents or to former employees or their dependents.

(4) No person shall, on the basis of race, color, national origin, age, disability, or sex, including sex stereotyping, gender identity, sexual orientation, and pregnancy and related medical conditions, be excluded from participation in, be denied the benefits of, or be subjected to discrimination by any participating provider or any entity conducting, administering, or funding a health program or activity, including contracts of insurance, under this chapter.

(5) Nothing in this chapter requires a health care provider to furnish any health care service that is outside the scope of his or her practice or, in the health care provider's reasonable clinical judgment, when not consistent with the accepted standard of care as described in RCW 7.70.040.

(6) Nothing in this chapter limits a provider's right to receive payments from sources other than the trust. However, any provider

who does accept payment from the trust for a service must accept that payment, along with applicable copayments, as payment in full.

(7) Any provider, institutions, agency, or individual that is qualified to provide a health care service covered under this chapter, is entitled to participate and receive reimbursement as described in section 109 of this act.

NEW SECTION. **Sec. 102.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the board of trustees of the whole Washington health trust, created in section 103 of this act.

(2) "Capitation" means a mechanism of payment in which a provider is paid a negotiated monthly sum and is obliged to provide all covered services for specific patients who enroll with that provider.

(3) "Case rate" means a method of payment based on diagnosis. Case rate assumes that a given set of services shall be provided and the rate is based on the total compensation for those services.

(4) "Chair" means the presiding officer of the board.

(5) "Department" means the Washington state department of health.

(6) "Eligible nonresident" shall be defined by the board of trustees created in section 104 of this act, and includes nonresident students attending college within the state, nonresidents employed within the state, and the dependents of eligible nonresidents.

(7) "Employer" means any person, partnership, corporation, association, joint venture, or public or private entity operating in Washington state and employing for wages, salary, or other compensation one or more residents of Washington state.

(8) "Essential benefits package" means a single comprehensive health insurance covering essential health benefits.

(9) "Essential health benefits" means any of the following items and services provided on an inpatient or outpatient basis when medically necessary or appropriate for the maintenance of health or for the diagnosis, treatment, or rehabilitation of a health condition:

(a) Hospital services, including hospital-based outpatient care and twenty-four hour emergency services;

(b) Ambulatory primary and preventive care services, including chronic disease management;

(c) Prescription drugs, medical devices, and biological products;

(d) Mental health and substance abuse treatment services;

(e) Laboratory and other diagnostic services, including diagnostic imaging services;

(f) Reproductive, maternity, and newborn care;

(g) Pediatric primary and specialty care;

(h) Palliative care and end-of-life care services;

(i) Oral health, audiology, and vision services;

(j) Short-term rehabilitative and habilitative services and devices.

(10) "Essential health benefits-benchmark plan" means the set of benefits that an issuer must include in nongrandfathered plans offered in the individual or small group market in Washington state, as defined in section 1302 of the affordable care act and 45 C.F.R. 156.100.

(11) "Federal poverty level" means the federal poverty guidelines determined annually by the United States department of health and human services or its successor agency.

(12) "Health care facility" or "facility" includes any of the following appropriately accredited entities: Hospices and home health agencies licensed pursuant to chapter 70.127 RCW; hospitals licensed pursuant to chapter 70.41 RCW; rural health care facilities as defined in RCW 70.175.020; psychiatric hospitals licensed pursuant to chapter 71.12 RCW; nursing homes licensed pursuant to

chapter 18.51 RCW; community mental health centers licensed pursuant to chapter 71.05 or 71.24 RCW; kidney disease treatment centers; ambulatory surgical facilities licensed under chapter 70.230 RCW; approved drug and alcohol treatment facilities certified by the department of social and health services; such other facilities owned and operated by a political subdivision or instrumentality of the state; and such other facilities as required by federal law and implementing regulations.

(13) "Income" means the adjusted gross household income for federal income tax purposes.

(14) "Long-term care" means institutional, residential, outpatient, or community-based services that meet the individual needs of persons of all ages who are limited in their functional capacities or have disabilities and require assistance with performing two or more activities of daily living for an extended or indefinite period of time. These services include case management, protective supervision, in-home care, nursing services, convalescent, custodial, chronic, and terminally ill care.

(15) "Native American" means an American Indian or Alaska native as defined under 25 U.S.C. Sec. 1603.

(16) "Participating provider" means a person, health care provider, practitioner, health care facility, or entity acting within their scope of practice that has negotiated a written contract to participate and receive reimbursement as described in section 109 of this act.

(17) "Qualified provider" means a person, health care provider, practitioner, health care facility, or entity acting within their scope of practice who is licensed or certified and meets: (a) All the requirements of state law to provide such services in the state where the services are provided; and (b) applicable requirements of federal law to provide such services. "Qualified provider" includes a licensed or certified hospital, clinic, health maintenance organization, or nursing home or an officer, director, employee, or

agent thereof acting in the course and scope of his or her employment.

(18) "Resident" means an individual who presents evidence of established permanent residency in the state of Washington, who did not enter the state for the primary purpose of obtaining health services, and who meets residency requirements consistent with RCW 46.16A.140. "Resident" also includes people and their accompanying family members who are residing in the state for the purpose of engaging in employment for at least one month. The confinement of a person in a nursing home, hospital, or other medical institution in the state may not by itself be sufficient to qualify such person as a resident.

(19) "Trust" means the whole Washington health trust created in section 103 of this act.

NEW SECTION. **Sec. 103.** WHOLE WASHINGTON HEALTH TRUST. The whole Washington health trust is created within the department. The purpose of the trust is to provide coverage for a set of essential health benefits to all Washington residents.

NEW SECTION. **Sec. 104.** THE BOARD OF TRUSTEES. (1) The trust must be governed by a board of trustees consisting of nine members with expertise in health care financing and delivery and representing Washington citizens, business, labor, and health professions. Trustees must include individuals with knowledge of the health care needs of diverse populations, including low-income, Native American, undocumented, non-English speaking, disabled, rural, and other minority populations. Members of the board must have no pecuniary interest in any business subject to regulation by the board.

(2)(a) By March 1, 2019, the insurance commissioner and each of the two largest caucuses in both the house of representatives and the senate shall submit to the governor a list of five nominees who are not legislators or employees of the state or its political

subdivisions, with no caucus or the insurance commissioner submitting the same nominee.

(b) By May 15, 2019, the governor shall appoint the initial trustees. The governor shall appoint one trustee from each of the lists submitted by the house of representatives and the senate and the insurance commissioner. If a caucus or the insurance commissioner fails to submit a list as required in (a) of this subsection or if the nominees on the list do not meet the qualifications specified in subsection (1) of this section, the governor shall appoint a substitute trustee meeting the qualifications specified in subsection (1) of this section at the governor's discretion. The governor shall appoint the remaining trustees meeting the qualifications specified in subsection (1) of this section at his or her discretion.

(c) Of the initial trustees, three shall be appointed to terms of two years, three shall be appointed to terms of four years, and three shall be appointed to terms of six years. Thereafter, trustees shall be appointed to six-year terms. Trustees may be appointed to multiple terms.

(d) The governor shall appoint one of the initial trustees as the chair of the board. The board shall elect its own chair from its members upon the expiration of the term of the initial chair or his or her departure from the board. The term of a chair elected by the board expires upon the expiration of his or her term on the board.

(3) If convinced by a preponderance of the evidence in a due process hearing that a trustee has failed to perform required duties or has a conflict with the public interest, the governor may remove that trustee and appoint another to serve the unexpired term.

(4) A trustee whose term has expired or who otherwise leaves the board must be replaced by gubernatorial appointment. When the person leaving was nominated by one of the caucuses of the house of representatives or the senate, his or her replacement must be appointed from a list of five nominees submitted by that caucus within thirty days after the vacancy occurs. If the caucus or the

insurance commissioner fails to submit the list of nominees or if the nominees do not meet the qualifications specified in subsection (1) of this section, the governor shall appoint a trustee meeting the qualifications specified in subsection (1) of this section at the governor's discretion. A person appointed to replace a trustee who leaves the board before the expiration of his or her term shall serve only the duration of the unexpired term.

(5) The initial board shall convene no later than three months following the initial appointment.

(6) Members of the board are subject to chapter 42.52 RCW.

(7) The trustees occupy their positions according to the bylaws, rules, and relevant governing documents of the board and are exempt from chapter 41.06 RCW. The board and its professional staff are subject to the public disclosure provisions of chapter 42.17A RCW. Trustees shall be paid a salary to be fixed by the governor in accordance with RCW 43.03.040. Six trustees constitute a quorum for the conduct of business.

NEW SECTION. **Sec. 105.** ADVISORY COMMITTEES. (1) Subject to the approval of the board, the chair shall appoint three standing advisory committees:

(a) A finance committee consisting of financial experts from the office of financial management, the office of the state treasurer, and the office of the insurance commissioner. The finance committee shall recommend specific details for major budget decisions and for appropriations, taxes, and other funding legislation necessary to conduct the operations of the whole Washington health trust;

(b) A citizen committee consisting of balanced representation from health experts, business, labor, and consumers. The citizen committee shall hold public hearings on priorities for inclusion in the set of health services, survey public satisfaction, investigate complaints, and identify and report on health care access and other priority issues for residents; and

(c) A provider committee consisting of members with broad experience in and knowledge of health care delivery, research, and policy, as well as public and private funding of health care services. The provider committee shall make recommendations to the board on issues related to scope of covered benefits, quality improvement, continuity of care, resource utilization, and other issues as requested by the board.

(2) The board shall consult with the citizen committee at least quarterly, receive its reports and recommendations, and then report to the governor and legislature at least annually on board actions in response to citizen committee recommendations. The board shall regularly seek financial recommendations from the finance committee to establish and maintain the solvency of the trust. The board shall consult with the provider committee to promote development of policy and procedures for administration of reimbursements, negotiations for reimbursements, and related documentation.

(3) Subject to approval of the board, the chair may appoint other committees and task forces as needed.

(4) Members of committees shall serve without compensation for their services but shall be reimbursed for their expenses while attending meetings on behalf of the board in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. **Sec. 106.** AUTHORITIES OF THE BOARD CHAIR. The chair is the presiding officer of the board and has the following powers and duties:

(1) Appoint an executive director with the approval of the board;

(2) Enter into contracts on behalf of the board. All contracts are subject to review and binding legal opinions by the attorney general's office if disputed in a due process hearing by a party to such a contract;

(3) Subject to explicit approval of a majority of the board, accept and expend gifts, donations, grants, and other funds received by the board; and

(4) Delegate administrative functions of the board to the executive director and staff of the trust as necessary to ensure efficient administration.

NEW SECTION. **Sec. 107.** RESPONSIBILITIES OF THE BOARD. (1)
With advice from the citizen committee and the provider committee, the board shall:

(a) Establish a single comprehensive essential benefits package covering essential health benefits to be financed by the trust, as provided in section 108 of this act;

(b) Subject to the funding mechanisms established under this chapter, seek all necessary waivers so that current federal and state payments for health services to residents will be paid directly to the trust;

(c) Establish premiums necessary to operate the trust and make rules, policies, guidelines, and timetables needed for the trust to finance the essential benefits package for all residents starting November 1, 2019;

(d) Develop or contract for development of a statewide, anonymous health care data system;

(e) Develop health care practice guidelines and quality standards for the trust;

(f) Develop policies to protect confidentiality of patient's records throughout the health care delivery system and the claims payment system;

(g) Make rules for eligible nonresidents;

(h) Develop or contract for development of an efficient enrollment mechanism for all who are eligible;

(i) Develop or contract for development of a streamlined uniform claims processing system that must pay providers in a timely manner for covered health services;

- (j) Develop appeals procedures for residents and providers;
 - (k) Integrate functions with other state agencies;
 - (l) Work to balance benefits and provider payments with revenues, and develop effective measures to control excessive and unnecessary health care costs;
 - (m) Address nonfinancial barriers to health care access;
 - (n) Monitor population migration into Washington state to detect any trends related to availability of universal health care coverage; and
 - (o) Develop an annual budget for the trust.
- (2) To the extent that the exercise of any of the powers and duties specified in this section may be inconsistent with the powers and duties of other state agencies, offices, or commissions, the authority of the board supersedes that of such other state agency, office, or commission.

NEW SECTION. **Sec. 108.** COMPREHENSIVE ESSENTIAL HEALTH BENEFITS PACKAGE. (1) The board shall establish a single comprehensive essential benefits package covering essential health benefits that are effective and necessary for the good health of residents and that emphasize preventive, primary, and integrated health care. The board shall ensure that the essential benefits package constitutes minimum essential coverage for purposes of the federal patient protection and affordable care act.

(2) The department shall, on an ongoing and regular basis, evaluate whether the essential health benefits should be improved or adjusted to promote the health of beneficiaries, account for changes in medical practice or new information from medical research, or respond to other relevant developments in health science, and shall make recommendations to the legislature regarding any such improvements or adjustments.

(3) Subject to a financial analysis demonstrating ongoing sufficient funds in the trust, long-term care shall be a covered benefit on January 1, 2022. Long-term care coverage shall include a

uniform initial assessment and coordination between home health, adult day care, and nursing home services, and other treatment alternatives. The board may establish a copayment for long-term nursing home care, to cover some costs of room and board, for residents with incomes above one hundred fifty percent of the federal poverty level.

(4) The board must establish:

(a) A long-term care benefits package; and

(b) Eligibility requirements at least as generous as the medicaid standards for Washington on the effective date of this section.

(5) When the board establishes a long-term care benefits package beyond what is described in subsection (4) of this section, the board, in coordination with the office of the insurance commissioner, shall examine possible remedies for residents who have made previous payments for long-term care insurance.

(6) The board shall submit to the governor and legislature by December 1, 2019, and by December 1st of the following years:

(a) The essential benefits package; and

(b) An actuarial analysis of the cost of the package.

NEW SECTION. **Sec. 109.** PARTICIPATING PROVIDERS. (1) The board, in coordination with the health care authority, shall adopt rules and mechanisms permitting qualified providers to collectively negotiate budgets, payment schedules, and other terms and conditions of trust participation.

(2) The board, in coordination with the health care authority and on an annual basis, shall collectively negotiate reimbursement rates with qualified providers not participating as community health providers on a fee-for-service or on a case-rate basis or on a combination of bases.

(3) Any qualified provider operating as a public hospital or health care facility or public or private nonprofit 501(c) organization with five or more individual practitioners coordinating

to deliver essential health benefits may elect to participate as a community health provider.

(4) The board, in coordination with the health care authority, shall annually negotiate with each community health provider a prospective global budget for operational and other costs to be covered by the trust. Hospitals and other health care facilities shall be paid on a fee-for-service or case-rate basis, within the limits of their prospective annual budget. Individual practitioners who are employed by a community health provider may be paid by salary.

(5) The board shall make appropriate considerations and recommendations during annual negotiations with community health providers including:

- (a) Regional health needs of residents in each county;
 - (b) The scope of services offered by provider;
 - (c) Quality and effectiveness of care standards and safety policies utilized by the provider;
 - (d) Quality of employment for those employed by the provider;
- and

(e) provider coordination with the department of social and health services on delivery of needs-based assistance for which residents in the county are eligible.

(6) The board shall study the feasibility of paying by capitation to providers, and how enrollment would take place under capitation.

(7) The board shall adopt rules ensuring that payment schedules and procedures for mental health services are comparable to other health care services included in the essential benefits package.

(8) The board shall study and develop provider payment methods that:

- (a) Encourage an integrated multispecialty approach to disease management;
- (b) Reward education time spent with patients;

(c) Include a medical risk adjustment formula for providers whose practices serve patients with higher than average health risks; and

(d) Include all categories of providers pursuant to rule and RCW 48.43.715 .

NEW SECTION. **Sec. 110.** PHARMACEUTICALS, MEDICAL EQUIPMENT, AND BIOLOGICALS. (1) When consistent with federal law, the prices to be paid for covered pharmaceuticals, medical supplies including biological products, and medically necessary assistive equipment shall be negotiated annually by the board for all residents and eligible nonresidents enrolled in the trust.

(2)(a) The board shall establish a prescription drug formulary system, which:

(i) Encourages best practices in prescribing;

(ii) Discourages the use of ineffective, dangerous, or excessively costly medications when better alternatives are available;

(iii) Promotes the use of generic medications to the greatest extent possible; and

(iv) Does not interfere with treatments necessary for appropriate standards of care.

(b) The formulary shall be updated frequently, with advice from clinicians and patients, to add new pharmaceuticals or remove ineffective or dangerous medications from the formulary.

(3) The board shall develop rules for off-formulary medications which allow for patient access but do not compromise the formulary.

(4) The board may seek other means of financing drugs and durable medical equipment at the lowest possible cost, including bulk purchasing agreements with Washington state tribes.

(5) The board may set a cost-sharing schedule for prescription drugs and biological products for enrolled individuals that: (a) Is evidence-based and encourages the use of generic drugs; (b) does not

apply to preventive drugs; and (c) does not exceed two hundred fifty dollars annually, adjusted annually for inflation.

NEW SECTION. **Sec. 111.** ENROLLMENT ELIGIBILITY. (1) Residents:

(a) Under the age of nineteen or

(b) With dual eligibility for medicare and medicaid;

are exempt from the premium established under section 107 of this act and the health security assessment established under section 202 of this act for enrollment in the whole Washington health trust.

(2) Residents with incomes below two hundred percent of the federal poverty level are not subject to the premium established under section 107 of this act for enrollment in the whole Washington health trust.

(3) Premiums established under section 107 of this act must not exceed two hundred dollars monthly.

(4) Until federal waivers are accomplished, residents covered under federal health programs shall continue to use that coverage, and additional benefits provided by the trust shall extend only to costs not covered by the federal health programs when, subject to subsections (1) through (3) of this section:

(a) The resident voluntarily elects enrollment in the trust;

(b) The resident's wage or partnership income is considered in calculating the health security assessment established under section 202 of this act; and

(c) Either the employer or the employee pays the premium established under section 107 of this act.

(5) Pending integration of federally qualified trusts into the whole Washington health trust, employees covered under the trusts are eligible for coverage through the whole Washington health trust when, subject to subsections (1) through (3) of this section:

(a) The employee's wage is considered in calculating the health security assessment established under section 202 of this act; and

(b) Either the employer or the employee pays the premium established under section 107 of this act.

(6) Pending integration of federally qualified trusts into the whole Washington health trust, residents who are retirees covered under the trusts are eligible for coverage through the whole Washington health trust when they pay the premium established under section 107 of this act. The board shall make rules and adopt mechanisms to reimburse residents with incomes below two hundred percent of the federal poverty level for medicare premiums paid until a federal waiver is granted integrating the program into the trust.

(7) Unless integration of federally qualified trusts into the whole Washington health trust, Native American residents are eligible for coverage through the whole Washington health trust when, subject to subsections (1) through (3) of this section:

(a) The resident's wage or partnership income is considered in calculating the health security assessment established under section 202 of this act; and

(b) Either the employer or the resident pays any premium established in section 107 of this act.

NEW SECTION. **Sec. 112.** COVERAGE USE AND AVAILABILITY. (1) If an enrolled individual has other health insurance coverage for any essential health benefits provided in the state, the benefits provided in this chapter are secondary to that insurance coverage. Nonresidents are covered for emergency services and emergency transportation only, except when enrolled for coverage.

(2) The board shall make provisions for determining reimbursements for covered medical expenses for residents while they are out of the state.

(3) No cost sharing, including deductibles, coinsurance, copayments, or similar charges, may be imposed on an enrolled individual for any benefits provided under this chapter, except:

(a) Cost sharing may be contingent on the inclusion of long-term care coverage beyond what is provided under medicaid; and

(b) As provided in section 110 of this act.

(4) No cost sharing, including deductibles, coinsurance, copayments, or similar charges, may be imposed on enrolled:

(a) Persons under the age of nineteen;

(b) Residents who are dual eligible medicare and medicaid beneficiaries; or

(c) Adults earning under two hundred percent of the federal poverty level.

(5) By October 1, 2019, the board must take all steps necessary to ensure the essential benefits package qualifies as an essential health benefits-benchmark plan for the purposes of contracting to administrate all essential health benefits with the following entities as a managed health care system:

(a) The health care authority;

(b) The public employees' benefits board;

(c) Indian health services;

(d) Center for medicare and medicaid services;

(e) The department of social and health services; and

(f) Any other director, entity, or agency with authority to contract administration of essential health benefits to a managed health care system operating in Washington state.

(6) By October 1, 2019, the board shall establish premiums and cost-sharing requirements for eligible individuals enrolled in the program through the Washington health benefits exchange, collect premium payments from all enrolled eligible individuals, and deposit premium payments in the benefits account created in section 124 of this act. If the eligible individual qualifies for premium subsidies or cost-sharing reductions under the patient protection and affordable care act, the premium or cost-sharing amounts established under this subsection may not exceed the amounts the eligible individual would have paid if he or she had enrolled in a silver level qualified health plan through the Washington health benefit exchange. The portion of premiums, copays, and out-of-pocket costs enrollees are responsible for after eligible premium subsidies or

cost-sharing reductions are applied must be consistent with this section.

(7) By November 1, 2019, the board shall:

(a) Begin offering coverage to all residents and eligible nonresidents;

(b) Contract with all entities in subsection (5) of this section for enrollment of residents who are eligible for essential health benefits coverage through a federal or state health program, except when federal waivers are accomplished by integrating a federal health program into the whole Washington health trust;

(c) Ensure the operation of the whole Washington health trust consistent with this chapter; and

(d) Enable the state to provide equitable coverage for all enrolled, including those covered through medicaid and medicare, and maximize the use of appropriate federal funding in the whole Washington health trust.

(8) The board shall not contract the administration of covered benefits for an individual enrolled in the trust to a managed health care system operating for-profit except when the enrolled individual:

(a) Is enrolled in supplemental health insurance coverage through the managed health care system; and

(b) Has elected the benefits administration through the managed health care system.

NEW SECTION. **Sec. 113.** FEDERAL WAIVERS AND PROGRAMS. (1) The health care authority shall determine the state and federal laws that need to be repealed, amended, or waived to implement this chapter, and report its recommendations, with proposed revisions to the Revised Code of Washington, to the governor and the appropriate committees of the legislature by the first date following the effective date of this section.

(2) The governor, in consultation with the board and the health care authority, shall take the following steps in an effort to

receive waivers or exemptions from federal statutes necessary to fully implement this chapter:

(a) Negotiate with the federal department of health and human services, health care financing administration, to obtain a statutory or regulatory waiver of provisions of the medical assistance statute, Title XIX of the federal social security act and the children's health insurance program;

(b) Negotiate with the federal department of health and human services to obtain a statutory or regulatory waiver of provisions of the medicare statute, Title XVIII of the federal social security act, that currently constitute barriers to full implementation of this chapter;

(c) Negotiate with the federal department of health and human services to obtain any statutory or regulatory waivers of provisions of the United States public health services act necessary to ensure integration of federally funded community and migrant health clinics and other health services funded through the public health services act into the trust system under this chapter;

(d) Negotiate with the federal office of personnel management for the inclusion of federal employee health benefits in the trust under this chapter;

(e) Negotiate with the federal department of defense and other federal agencies for the inclusion of the civilian health and medical program of the uniformed services in the trust under this chapter; and

(f) Request that the United States congress amend the internal revenue code to treat the assessments and the premiums established under this chapter as fully deductible from adjusted gross income.

(3) Beginning November 15, 2019, the health care authority shall submit annual progress reports to the appropriate legislative committees regarding the development of the waiver applications and on enrollment of residents into health coverage managed by the health care authority, an entity within the health care authority, or the whole Washington health trust. The report submitted on

November 15, 2020, must include a list of any statutory changes necessary to implement waivers.

(4) Upon receipt of the waivers, the health care authority shall promptly notify in writing the office of the code reviser, the governor, and the appropriate committees of the legislature.

(5) Beginning no later than four years after the effective date of this section, the health care authority, including entities or agencies within the health care authority, shall not contract administration of covered benefits for an individual enrolled in the trust to a managed health care system operating for-profit except when the enrolled individual:

(a) Is enrolled in supplemental health insurance coverage through the managed health care system; and

(b) Has elected the benefits administration through the managed health care system.

(6) The health care authority, in coordination with the board and all other agencies within the state, shall take all steps necessary to align reimbursement rates for essential health benefits provided through a program managed by the health care authority or an agency within the state.

NEW SECTION. **Sec. 114.** A new section is added to chapter 82.02 RCW to read as follows:

TRANSITIONAL HEALTH SECURITY ASSESSMENT EXEMPTION.

(1) All employers operating in the state may apply for an exemption from the health security assessment established in section 202 of this act for each employee and partner offered other affordable minimum essential coverage, defined by the patient protection and affordable care act, as a benefit of employment.

(2) Residents employed in the state may:

(a) Enroll in the essential benefits package as a secondary health insurance by paying the premiums established in section 107 of this act and subject to exclusions defined in section 111 of this act; or

(b) Elect to pay the health security assessment and the premium, subject to exclusions defined in section 111 of this act, to enroll in the essential benefits package as a primary health insurance when their employer has been granted an exemption from the health security assessment.

(3) This section expires on the first January 1st following the effective date of section 116 of this act.

NEW SECTION. **Sec. 115.** NOTICE. The health care authority must provide notice of the effective date of section 116 of this act and the expiration dates of sections 114 and 123 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department.

NEW SECTION. **Sec. 116.** ENROLLMENT CONDITIONAL PROVISIONS. (1) This section takes effect when fifty-one percent of residents are enrolled in health insurance coverage managed by:

- (a) The health care authority;
- (b) An entity within the health care authority; or
- (c) The board created in section 104 of this act.

(2) Within one year of the effective date of this section:

(a) Subject to ongoing sufficient funding, the board shall work to reduce deductibles, out-of-pocket costs, and premiums for enrolled adults with incomes exceeding one hundred ninety-nine percent of the federal poverty level to the fullest extent possible; and

(b) The Washington state health care authority shall apply for a waiver from the provisions of the federal patient protection and affordable care act, P.L. 111-148, as amended by the federal health care and education reconciliation act, P.L. 111-152, to:

(i) Suspend the operation of the Washington health benefit exchange established in chapter 43.71 RCW; and

(ii) Enable the state to receive appropriate federal funding in lieu of the federal premium tax credits, federal cost-sharing subsidies, and other federal payments and tax credits that will no longer be necessary due to the suspension of the operations of the Washington health benefit exchange. The health care authority may use existing health benefit exchange resources to facilitate residents' ability to compare and purchase supplemental health insurance.

NEW SECTION. **Sec. 117.** ADMINISTRATIVE COST CONTROLS. (1) Administrative expenses to operate and maintain the trust shall not exceed seven percent of the trust's annual budget. The board shall not shift administrative costs or duties of the trust to providers or to resident beneficiaries.

(2) The board shall work with providers to develop and apply scientifically based utilization standards, to use encounter and prescribing data to detect excessive utilization.

(3) The department shall develop due processes for enforcing appropriate utilization standards, and to identify and prosecute fraud that includes:

(a) Anonymous reporting of any suspected waste, fraud, and abuse; and

(b) An appeals process.

(4) The board may institute other cost-containment measures in order to maintain a balanced budget. The board shall pursue due diligence to ensure that cost-containment measures neither limit access to clinically necessary care or infringe upon legitimate clinical decision making by practitioners or the legitimate decisions of an enrolled individual to receive prescribed essential health benefits.

NEW SECTION. **Sec. 118.** ACTUARIAL ANALYSIS AND REPORTING. Beginning December 15, 2019, the board shall contract annually for an actuarial analysis of the funding needs of the whole Washington

health trust created in section 103 of this act. The board shall report annually on the funding mechanisms to the appropriate standing committees of the house of representatives, the senate, and the governor, starting May 15, 2020. The funding mechanisms must contain the following elements:

(1) The health security assessment to be paid by all employers in Washington state, established in section 202 of this act and under the exemption provided in section 114 of this act;

(2) The long-term capital gains assessment established in section 204 of this act;

(3) The personal health assessment established in section 207 of this act;

(4) A premium, established in section 107 of this act and pursuant to sections 111 and 112 of this act, paid by enrolled adults with incomes exceeding one hundred ninety-nine percent of the federal poverty level, their spouse, or an employer;

(5) A cost-sharing schedule, established in section 110 of this act and pursuant to section 112 of this act, paid by enrolled adults with incomes exceeding one hundred ninety-nine percent of the federal poverty level, their spouse, or an employer; and

(6) Available federal health program funding either pursuant to the waivers established under sections 113 and 116 of this act or by contracting for administration of those benefits as described in section 112 of this act.

NEW SECTION. **Sec. 119.** ALLOCATION OF EXISTING FUNDING.

Following the repeal, amendment, or waiver of existing state and federal laws delineated in sections 113 and 116 of this act, all other revenues currently deposited in the health services account for personal health care services shall be deposited to the reserve account created in section 122 of this act and the benefits account created in section 124 of this act.

NEW SECTION. **Sec. 120.** ALLOCATION OF NEW REVENUES. Revenue derived from the assessments established in sections 202, 204, and 207 of this act and the premiums established under section 107 of this act shall be deposited to the reserve account created in section 122 of this act and the benefits account created in section 124 of this act, and may not be used to pay for medical assistance currently provided under chapter 74.09 RCW or other existing federal and state health care programs. If existing federal and state sources of payment for health services are reduced or terminated after the effective date of this section, the legislature shall replace these appropriations from the general fund.

NEW SECTION. **Sec. 121.** START-UP APPROPRIATIONS. An appropriation by separate act of the legislature may be necessary for the fiscal year ending June 30, 2019, from the general fund to the benefits account of the whole Washington health trust for start-up moneys for purposes of this chapter during the period of July 1, 2019, through the second June 30th following the effective date of section 116 of this act.

NEW SECTION. **Sec. 122.** RESERVE ACCOUNT. (1) The reserve account is created in the custody of the state treasurer. The reserve account will accumulate moneys until its value equals ten percent of the total annual budgeted expenditures of the trust and then will be considered fully funded, unless the legislature determines that a different level of reserve is necessary and prudent. Whenever the reserve account is fully funded, additional moneys shall be transferred to the benefits account created in section 124 of this act.

(2) Expenditures from the reserve account may be used only for the purposes of health care services and maintenance of the trust. Only the board or the board's designee may authorize expenditures from the account. The account is subject to allotment procedures

under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec. 123.** DISPLACED WORKER TRAINING ACCOUNT. (1) The displaced worker training account is created in the custody of the state treasurer. Expenditures from the account may be used only for retraining and job placement of workers displaced by the transition to the trust. Only the board or the board's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Any funds remaining in the account on the second December 31st following the effective date of section 116 of this act must be deposited into the benefits account created in section 124 of this act.

(3) This section expires the third January 1st following the effective date of section 116 of this act.

NEW SECTION. **Sec. 124.** BENEFITS ACCOUNT. The benefits account is created in the custody of the state treasurer. Expenditures from the account may be used only for health care services and maintenance of the trust. Only the board or the board's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec. 125.** ANNUAL BUDGET. (1) Beginning May 15, 2020, the board shall adopt, in consultation with the office of financial management, an annual whole Washington health trust budget. If operation expenses exceed revenues generated in two consecutive years, the board shall recommend adjustments in revenues to the legislature.

(2) The recommended adjustments must also include recommended additional funding sources including, but not limited to, revenues

collected under RCW 41.05.120, 41.05.130, 66.24.290, 82.24.020, 82.26.020, 82.08.150, 43.79.480, and 41.05.220.

(3) The recommendations shall specify the amounts that must be deposited in the reserve account created in section 122 of this act, the displaced worker training account created in section 123 of this act, and the benefits account created in section 124 of this act.

(4) Prior to making its recommendations, the board shall conduct at least six public hearings in different geographic regions of the state seeking public input or comment on the recommended funding mechanism.

(5) The legislature shall enact legislation implementing the recommendations of the board during the regular legislative session following the recommendations.

NEW SECTION. **Sec. 126.** COST REPORTING. The board shall:

(1) Report annual changes in total Washington health care costs, along with the financial position and the status of the trust, to the governor and legislature at least once a year;

(2) Seek audits annually from the state auditor;

(3) Contract with the state auditor for a performance audit every two years;

(4) Adopt bylaws, rules, and other appropriate governance documents to assure accountability, open, fair, effective operations of the trust, including criteria under which reserve funds may be prudently invested subject to advice of the state treasurer and the director of the department of financial management; and

(5) Submit any internal rules or policies it adopts to the secretary of state. The internal rules or policies must be made available by the secretary of state for public inspection.

NEW SECTION. **Sec. 127.** CONFORMING EMPLOYER BENEFITS PLANS. Nothing in this chapter limits an employer's right to maintain employee benefit plans under the federal employee retirement income security act of 1974.

NEW SECTION. **Sec. 128.** CONFORMING FEDERALLY QUALIFIED TRUSTS. By January 1, 2022, the board shall submit to the legislature a proposal to integrate those current and future federally qualified trusts that choose to participate in the trust.

NEW SECTION. **Sec. 129.** CONFORMING LABOR AND INDUSTRIES. By January 1, 2022, the board, in coordination with the department of labor and industries, shall study and make a report to the governor and appropriate committees of the legislature on the coordination of essential health benefits for injured workers under the trust.

Part II

Assessments and Revenues

NEW SECTION. **Sec. 201.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accessory dwelling unit" means a separate habitable living area that is subordinate to the principal single-family dwelling unit, which is either internal to, attached to, or located on the same property tax parcel as, the principal single-family dwelling unit.

(2) "Adjusted capital gain" means federal net long-term capital gain:

(a) Plus any loss from a sale or exchange that is exempt from the tax imposed in this chapter, to the extent such loss was included in calculating federal net long-term capital gain; and

(b) Less any gain from a sale or exchange that is exempt from the tax imposed in this chapter, to the extent such gain was included in calculating federal net long-term capital gain.

(3) "Adjusted distributive shares" means aggregate gross distributive share of income, gain, or credit, except as otherwise provided in Title 26 U.S.C. Sec. 704 of the internal revenue code, paid to a Washington state resident less the Washington partnership exemption.

(4) "Adjusted gross income" means adjusted gross income as determined under the federal internal revenue code.

(5) "Adjusted quarterly payroll" means aggregate gross payroll paid to a Washington state resident less the Washington payroll exemption.

(6) "Capital asset" has the same meaning as provided by Title 26 U.S.C. Sec. 1221 of the internal revenue code and also includes any other property if the sale or exchange of the property results in a gain that is treated as a long-term capital gain under Title 26 U.S.C. Sec. 1231 or any other provision of the internal revenue code.

(7) "Department" means the department of revenue of the state of Washington.

(8) "Federal net long-term capital gain" means the net long-term capital gain reportable for federal income tax purposes.

(9) "Individual" means a natural person.

(10) "Internal revenue code" means the United States internal revenue code of 1986, as amended, as of the effective date of this section, or such subsequent date as the department may provide by rule consistent with the purpose of this chapter.

(11) "Long-term capital asset" means a capital asset that is held for more than one year.

(12) "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under RCW 25.05.055, predecessor law, or comparable law of another jurisdiction.

(13) "Payroll" means any amount paid to Washington state residents and defined as "wages" under section 3121 of the internal revenue code.

(14) "Resident" includes an individual who:

(a) Has resided in this state for the entire tax year;

(b) Is domiciled in this state unless the individual:

(i) Maintains no permanent place of abode in this state;

(ii) Does not maintain a permanent place of abode elsewhere; and

(iii) Spends in the aggregate not more than thirty days in the tax year in this state;

(c) Is not domiciled in this state, but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the tax year in this state unless the individual establishes to the satisfaction of the department that the individual is in the state only for temporary or transitory purposes; or

(d) Claims this state as the individual's tax home for federal income tax purposes.

(15) "Taxable year" means the taxpayer's taxable year as determined under the internal revenue code.

(16) "Taxpayer" means an individual subject to tax under this chapter.

(17) "Washington capital gains" means an individual's adjusted capital gains allocated to this state as provided in section 206 of this act, less the Washington capital gains exemption.

(18) "Washington capital gains exemption" means a number equal to fifteen thousand reduced by twenty-five percent of an individual's total adjusted capital gains allocated to the state as provided in section 206 of this act. All numbers less than zero equal zero.

(19) "Washington payroll exemption" and "Washington partnership exemption" means a number equal to three thousand seven hundred fifty reduced by twenty-five percent of the total quarterly aggregate gross payroll paid to the employee or aggregate gross distributive shares paid to a partner and allocated to the state as provided in section 202 of this act. However, a number less than zero equals zero.

(20) "Washington taxable income" means adjusted gross income less fifteen thousand. However, an amount less than zero equals zero.

NEW SECTION. **Sec. 202.** A new section is added to chapter 82.02 RCW to read as follows:

HEALTH SECURITY ASSESSMENT.

In addition to and not in lieu of taxes imposed at the rates established under chapter 82.04 RCW, all Washington state employers shall pay a health security assessment to the department of revenue to fund the whole Washington health trust created in section 103 of this act.

(1) Effective January 1, 2020, all employers in Washington state shall pay in quarterly installments a health security assessment on:

(a) Aggregate gross payroll paid to Washington state residents; and

(b) Aggregate gross distributive shares paid to Washington state residents. Except as provided in section 114 of this act, the health security assessment shall be eight and one-half percent of aggregate adjusted quarterly payroll and adjusted distributive shares income.

(2) The department of revenue shall assess a penalty at the rate of two percent per month, or a fraction thereof, on any employer whose applicable payroll and distributive share assessment is not postmarked by the last day of the month following the quarter in which it is due.

(3) The federal government, when an employer of Washington state residents, is exempt from the assessment prior to the repeal, amendment, or waiver of existing state and federal laws delineated in sections 111, 113, and 114 of this act.

(4) Beginning January 1, 2020, until May 15, 2025, employers with less than fifty employees that face financial hardship in paying the health security assessment may, upon application to the department, be eligible for waivers or reductions in the assessment. The department shall establish rules and procedures governing all aspects of the business assistance program, including application procedures, wages, profits, age of firm, and duration of assistance.

(5) Pending integration of any federally qualified trusts, the payroll of employees covered under these trusts is exempt from the

health security assessment, although the employer may pay it voluntarily.

(6) Unless repeal, amendment, or waiver of applicable state and federal laws described in section 111 of this act, payroll of Native American residents who do not elect to enroll in the whole Washington health trust is exempt from the health security assessment.

(7) The revenue collected under this section must be deposited in the benefits account created in section 124 of this act.

(8) For the purposes of this section, the terms "employer," and "resident" have the same meaning as defined in section 102 of this act.

NEW SECTION. **Sec. 203.** ABSOLUTE TAX THRESHOLD. It is the intent of this chapter that in no event may excise tax be imposed upon joint or individual taxpayers with adjusted gross income or net long-term capital gains below fifteen thousand dollars in accordance with Article VII, section 1 of the state Constitution.

NEW SECTION. **Sec. 204.** LONG-TERM CAPITAL GAINS ASSESSMENT.
(1) Beginning January 1, 2019, a tax is imposed on all individuals for the privilege of selling or exchanging long-term capital assets, or receiving Washington capital gains. The tax equals eight and one-half percent multiplied by the individual's Washington capital gains.

(2) If an individual's Washington capital gains are less than zero for a taxable year, no tax is due under this section. No such losses may be carried back or carried forward to another taxable year.

(3)(a) The tax imposed in this section applies to:

(i) The sale or exchange of long-term capital assets owned by the taxpayer, whether the taxpayer was the legal or a beneficial owner of such assets at the time of the sale or exchange; or

(ii) Washington capital gains otherwise realized by the taxpayer.

(b) For purposes of this chapter, an individual is a beneficial owner of long-term capital assets held by an entity that is a pass-through or disregarded entity for federal tax purposes, such as a partnership, limited liability company, S corporation, or trust, to the extent of the individual's ownership interest in the entity as reported for federal income tax purposes.

NEW SECTION. **Sec. 205.** EXEMPTS CERTAIN GAINS AND LOSSES. This chapter does not apply to the sale or exchange of:

(1) Any residential dwelling, which means property consisting solely of:

(a) A single-family residence, a residential condominium unit, or a residential cooperative unit, including any accessory dwelling unit associated with such residence or residential unit;

(b) A multifamily residential building consisting of one or more common walls and fewer than four units; or

(c) A floating home as defined in RCW 82.45.032;

(2) Assets held under a retirement savings account under Title 26 U.S.C. Sec. 401(k) of the internal revenue code, a tax-sheltered annuity or a custodial account described in Title 26 U.S.C. Sec. 403(b) of the internal revenue code, a deferred compensation plan under Title 26 U.S.C. Sec. 457(b) of the internal revenue code, an individual retirement account or an individual retirement annuity described in Title 26 U.S.C. Sec. 408 of the internal revenue code, a roth individual retirement account described in Title 26 U.S.C. Sec. 408A of the internal revenue code, an employee defined contribution program, an employee defined benefit plan, or a similar retirement savings vehicle;

(3) Assets pursuant to or under imminent threat of condemnation proceedings by the United States, the state or any of its political subdivisions, or a municipal corporation;

(4) Cattle, horses, or breeding livestock held for more than twelve months if, for the taxable year of the sale or exchange, more than fifty percent of the taxpayer's gross income for the taxable year, including from the sale or exchange of capital assets, is from farming or ranching;

(5) Agricultural land or timberland by an individual who has regular, continuous, and substantial involvement in the operation of the agricultural land or timberland that meets the criteria for material participation in an activity under Title 26 U.S.C. Sec. 469(h) of the internal revenue code for the ten years prior to the date of the sale or exchange of the agricultural land or timberland;

(6) Property used in a trade or business if the property qualifies for an income tax deduction under Title 26 U.S.C. Sec. 167 or 179 of the internal revenue code; and

(7) Timber, or the receipt of Washington capital gains as dividends and distributions from real estate investment trusts derived from gains from the sale or exchange of timber. "Timber" means forest trees, standing or down, on privately or publicly owned land, and includes Christmas trees and short-rotation hardwoods. The sale or exchange of timber includes the cutting or disposal of timber qualifying for capital gains treatment under Title 26 U.S.C. Sec. 631(a) or (b) of the internal revenue code.

NEW SECTION. **Sec. 206.** ADJUSTED CAPITAL GAINS. (1) For purposes of the tax imposed under this chapter, adjusted capital gains are allocated as follows:

(a) Adjusted capital gains from the sale or exchange of real property are allocated to this state if the real property is located in this state or a majority of the fair market value of the real property is located in this state;

(b) Adjusted capital gains from the sale or exchange of tangible personal property are allocated to this state if the property was located in this state at the time of the sale or exchange. Adjusted capital gains from the sale or exchange of tangible personal

property are also allocated to this state even though the property was not located in this state at the time of the sale or exchange if:

(i) The property was located in the state at any time during the taxable year in which the sale or exchange occurred or the immediately preceding taxable year;

(ii) The taxpayer was a resident at the time the sale or exchange occurred; and

(iii) The taxpayer is not subject to the payment of an income or excise tax legally imposed on the adjusted capital gain by another taxing jurisdiction; and

(c) Adjusted capital gains derived from intangible personal property are allocated to this state if the taxpayer was domiciled in this state at the time the sale or exchange occurred.

(2)(a) A credit is allowed against the tax imposed in section 204 of this act equal to the amount of any legally imposed income or excise tax paid by the taxpayer to another taxing jurisdiction on capital gains derived from capital assets within the other taxing jurisdiction to the extent such capital gains are included in the taxpayer's Washington capital gains. The amount of credit under this subsection may not exceed the total amount of tax due under this chapter, and there is no carryback or carryforward of any unused credits.

(b) As used in this section, "taxing jurisdiction" means a state of the United States other than the state of Washington, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

NEW SECTION. **Sec. 207.** PERSONAL HEALTH ASSESSMENT. (1) A personal health assessment is imposed on the receipt of all taxable income by resident individuals for each taxable year based on the type of return filed and the amount of income in accordance with this section. An excise tax is not imposed on the assets held by a

person resulting from income after its receipt, but only upon the receipt itself.

(2) For every joint and single filer the personal health assessment is one percent of the filer or filers' Washington taxable income.

NEW SECTION. **Sec. 208.** CREDIT FOR INCOME TAXES DUE ANOTHER JURISDICTION. (1) A resident taxpayer is allowed a credit against taxes imposed under this chapter for the amount of any income tax imposed by another state or foreign country, or political subdivision of the state or foreign country, on income also taxed under this chapter, subject to the following conditions, which must be imposed separately with respect to each taxing jurisdiction:

(a) The credit is allowed only for taxes imposed by the other jurisdiction on net income from sources within that jurisdiction; and

(b) The amount of the credit shall not exceed the smaller of:

(i) The amount of tax paid to the other jurisdiction on net income from sources within the other jurisdiction; or

(ii) The amount of tax due under this chapter before application of credits allowable by this chapter, multiplied by a fraction. The numerator of the fraction is the amount of the taxpayer's adjusted gross income subject to tax in the other jurisdiction. The denominator of the fraction is the taxpayer's total adjusted gross income as modified by this chapter. The fraction may never be greater than one.

(2) If, in lieu of a credit similar to the credit allowed under subsection (1) of this section, the laws of the other taxing jurisdiction contain a provision exempting a resident of this state from liability for the payment of income taxes on income earned for personal services performed in such jurisdiction, then the director of the department may enter into a reciprocal agreement with such jurisdiction providing a similar tax exemption on income earned for personal services performed in this state.

(3) The amount of the tax credit received by any taxpayer under this section may not exceed the total amount of tax due, and there may be no carryback or carryforward of any unused excess credits.

NEW SECTION. **Sec. 209.** DUAL RESIDENCE. If an individual is regarded as a resident both of this state and another jurisdiction for state personal income tax purposes, the department must reduce the tax on that portion of the taxpayer's income which is subjected to tax in both jurisdictions solely by virtue of dual residence, if the other taxing jurisdiction allows a similar reduction.

NEW SECTION. **Sec. 210.** TREATMENT OF PARTNERSHIPS AND S CORPORATION INCOME. (1) Partnerships are not subject to the personal health assessment or the long-term capital gains assessment under this chapter. Partners are subject to the personal health assessment and long-term capital gains assessment under this chapter in their separate or individual capacities. Partnerships are subject to the health security assessment established in section 202 of this act.

(2) S corporations are not subject to the personal health assessment or the long-term capital gains assessment under this chapter. Shareholders of S corporations are subject to the personal health assessment and long-term capital gains assessment under this chapter in their separate or individual capacities.

NEW SECTION. **Sec. 211.** DEDUCT INCOME FROM FEDERAL OBLIGATIONS. From adjusted gross income, a person may deduct, to the extent included in adjusted gross income, income derived from obligations of the United States which this state is prohibited by federal law from subjecting to a net income tax.

NEW SECTION. **Sec. 212.** EMPLOYER WITHHOLDING ESTIMATED PERSONAL HEALTH ASSESSMENT. (1) Every employer making a payment of wages or salaries earned in this state, regardless of the place where the

payment is made, and who is required by the internal revenue code to withhold taxes, must deduct and withhold a personal health assessment as prescribed by the department by rule. The rules prescribed must reasonably reflect the annual tax liability of the employee under this chapter. Every employer making such a deduction and withholding must furnish to the employee a record of the amount of tax deducted and withheld from the employee on forms provided by the department.

(2) If the employee is a resident of this state and earns income from personal services entirely performed in another state which imposes an income tax on the income, and the employer withholds income taxes under the laws of the state in which the income is earned, the employer is not required to withhold any tax imposed by this chapter on the income if the laws of the state in which the income is earned allow a similar exemption for its residents who earn income in this state.

NEW SECTION. **Sec. 213.** EMPLOYER IS LIABLE FOR INCOME TAX WITHHELD. Any person required to deduct and withhold the personal health assessment imposed by this chapter is liable under section 212 of this act to the department for the payment of the amount deducted and withheld, and is not liable to any other person for the amount of tax deducted and withheld under this chapter or for the act of withholding.

NEW SECTION. **Sec. 214.** CREDITS FOR INCOME TAX WITHHELD. The amount deducted and withheld as tax under sections 212 through 216 of this act during any taxable year is allowed as a credit against the personal health assessment imposed for the taxable year by this chapter. If the liability of any individual for taxes, interest, penalties, or other amounts due the state of Washington is less than the total amount of the credit which the individual is entitled to claim under this section, the individual is entitled to a refund from the department in the amount of the excess of the credit over

the tax otherwise due. If any individual entitled to claim a credit under this section is not otherwise required by this chapter to file a return, a refund may be obtained in the amount of the credit by filing a return, with applicable sections completed, to claim the refund. No credit or refund is allowed under this section unless the credit or refund is claimed on a return filed for the taxable year for which the amount was deducted and withheld.

NEW SECTION. **Sec. 215.** PENALTIES FOR FAILURE TO PAY OR COLLECT WITHHOLDINGS. (1) The personal health assessment required by this chapter to be collected by the employer is deemed to be held in trust by the employer until paid to the department.

(2) In case any employer, or a responsible person within the meaning of internal revenue code section 6672, collected the tax and fails to pay it to the department, the employer or responsible person is personally liable to the state for the amount collected. The interest and penalty provisions of chapter 82.32 RCW apply to this section. An employer or other responsible person who appropriates or converts the personal health assessment is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

(3) In case any employer or responsible person within the meaning of internal revenue code section 6672 fails to collect the personal health assessment herein imposed, the resident individual or joint filer is still liable to the state for the amount owed.

NEW SECTION. **Sec. 216.** ESTIMATED PERSONAL HEALTH ASSESSMENT AND DUE DATES. (1) Each individual subject to taxation by this chapter, who is required by the internal revenue code to make payment of estimated taxes, must pay to the department on forms prescribed by the department the estimated taxes due under this chapter.

(2) The provisions of the internal revenue code relating to the determination of reporting periods and due dates of payments of

estimated tax applies to the estimated tax payments due under this section.

(3) The amount of the estimated personal health assessment is the annualized tax divided by the number of months in the reporting period. No estimated tax is due if the annualized tax is less than five hundred dollars. The provisions of RCW 82.32.050 and 82.32.090 apply to underpayments of estimated tax but do not apply to underpayments if the tax remitted to the department is either ninety percent of the tax due as shown on the current year's tax return or one hundred percent of the tax shown on the previous year's tax return.

(4) For purposes of this section, the annualized tax is the taxpayer's projected tax liability for the tax year as computed pursuant to internal revenue code section 6654 and the regulations thereunder.

NEW SECTION. **Sec. 217.** ESTIMATING PERSONAL HEALTH ASSESSMENT.

(1) A taxpayer's method of accounting for purposes of the personal health assessment imposed under this chapter is the same as the taxpayer's method of accounting for federal income tax purposes. If no method of accounting has been regularly used by a taxpayer for federal income tax purposes or if the method used does not clearly reflect income, tax due under this chapter is computed by a method of accounting defined by the department.

(2) If a person's method of accounting is changed for federal income tax purposes, it must be similarly changed for purposes of this chapter.

NEW SECTION. **Sec. 218.** PERSONS REQUIRED TO FILE A STATE RETURN. (1) Only individual and joint taxpayers with adjusted gross income or federal net long-term capital gains in excess of fifteen thousand dollars are required to file a tax return with the department. The department must utilize the taxpayer's federal tax returns as a primary tool for obtaining taxpayers' information. The

department must prescribe a simple supplement of no more than two pages for computing the excise tax owed under this chapter. Each person required to file a return under this chapter must, without assessment, notice, or demand, pay any tax due thereon to the department on or before the date fixed for the filing of the return.

(2) Except as otherwise provided in this chapter or RCW 82.32.080, taxpayers owing income tax under this chapter must file, on forms prescribed by the department, a return with the department on or before the date the taxpayer's federal income tax return for the taxable year is required to be filed along with all schedules and supporting documentation.

(3) If an adjustment to a taxpayer's federal return is made by the taxpayer or the internal revenue service, the taxpayer must, within ninety days of the final determination of the adjustment by the internal revenue service or within thirty days of the filing of a federal return adjusted by the taxpayer, file with the department on forms prescribed by the department a corrected return reflecting the adjustments as finally determined. The taxpayer must pay any additional tax due resulting from the finally determined internal revenue service adjustment or a taxpayer adjustment without notice and assessment. Notwithstanding any provision of this chapter or any other title to the contrary, the period of limitation for the collection of the additional tax, interest, and penalty due as a result of an adjustment by the taxpayer or a finally determined internal revenue service adjustment must begin at the later of thirty days following the final determination of the adjustment or the date of the filing of the corrected return.

(4) If a taxpayer required to file a return under this section has obtained an extension of time for filing the federal income tax return for the taxable year, the taxpayer is entitled to the same extension of time for filing the return required under this section if the taxpayer provides the department, before the due date provided in subsection (1) of this section, the extension confirmation number or other evidence satisfactory to the department

confirming the federal extension. An extension under this subsection for the filing of a return under this chapter is not an extension of time to pay the tax due under this chapter.

(5)(a) If any return due on long-term capital gains under subsection (1) of this section, along with a copy of the federal income tax return, is not filed with the department by the due date or any extension granted by the department, the department must assess a penalty in the amount of five percent of the tax due for the taxable year covered by the return for each month or portion of a month that the return remains unfiled. The total penalty assessed under this subsection may not exceed twenty-five percent of the tax due for the taxable year covered by the delinquent return. The penalty under this subsection is in addition to any penalties assessed for the late payment of any tax due on the return.

(b) The department must waive or cancel the penalty imposed under this subsection if:

(i) The department is persuaded that the taxpayer's failure to file the return by the due date was due to circumstances beyond the taxpayer's control; or

(ii) The taxpayer has not been delinquent in filing any return due under this section during the preceding five calendar years.

NEW SECTION. **Sec. 219.** PENALTIES. (1) Any taxpayer who knowingly attempts to evade payment of the tax imposed under this chapter is guilty of a class C felony as provided in chapter 9A.20 RCW.

(2) Any taxpayer who knowingly fails to pay tax, make returns, keep records, or supply information, as required under this title, is guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

NEW SECTION. **Sec. 220.** INSTRUCTIONS FOR JOINT FILING. (1) If the federal income tax liabilities of both spouses are determined on a joint federal return for the taxable year, they must file a joint return under this chapter.

(2) Except as otherwise provided in this subsection, if the federal income tax liability of either spouse is determined on a separate federal return for the taxable year, they must file separate returns under this chapter. State registered domestic partners may file a joint return under this chapter even if they filed separate federal returns for the taxable year.

(3) In any case in which a joint return is filed under this section, the liability of each spouse or state registered domestic partner is joint and several, unless:

(a) The spouse is relieved of liability for federal tax purposes as provided under Title 26 U.S.C. Sec. 6015 of the internal revenue code; or

(b) The department determines that the domestic partner qualifies for relief as provided by rule of the department. Such rule, to the extent possible without being inconsistent with this chapter, must follow Title 26 U.S.C. Sec. 6015.

(4) The department must take actions and adopt rules, forms, and procedures to implement this chapter consistently with RCW 26.60.015, notwithstanding any term or provision of this chapter.

NEW SECTION. **Sec. 221.** DUE DATES FOR RETURNS, PENALTIES. The due date of a return required to be filed with the department is the due date of the federal income tax return or informational return for federal income tax purposes. The department may grant extensions of time by which returns required to be filed by this chapter may be submitted. The department may grant extensions of time to pay tax with regard to taxes imposed by this chapter. Interest at the rate as specified in RCW 82.32.050 accrues during any extension period and the interest and penalty provisions of chapter 82.32 RCW apply to late payments and deficiencies. Notwithstanding the limitation of RCW 82.32.090, in the case of the late filing of an informational return, there is imposed a penalty the amount of which is established by the department by rule. The penalty may not exceed

fifty dollars per month for a maximum of ten months. RCW 82.32.105 applies to this section.

NEW SECTION. **Sec. 222.** RECORDS AND RETURNS. (1) Every resident taxpayer with adjusted gross income or federal net long-term capital gains in excess of fifteen thousand dollars annually and all others required to deduct and withhold the tax imposed under this chapter must keep records, render statements, make returns, file reports, and perform other acts as the department requires by rule. Each return must be made under penalty of perjury and on forms prescribed by the department. The department may require other statements and reports be made under penalty of perjury and on forms prescribed by the department. The department may require any taxpayer and any person required to deduct and withhold the tax imposed under this chapter to furnish to the department a correct copy of any return or document which the taxpayer has filed with the internal revenue service or received from the internal revenue service.

(2) All books and records and other papers and documents required to be kept under this chapter are subject to inspection by the department at all times during business hours of the day.

NEW SECTION. **Sec. 223.** INTERNAL REVENUE CODE CONTROL. (1) To the extent possible without being inconsistent with this chapter, all of the provisions of the internal revenue code relating to the following subjects apply to the taxes imposed under this chapter:

(a) Time of payment of tax deducted and withheld under sections 212 through 216 of this act and this section;

(b) Liability of transferees;

(c) Time and manner of making returns, extensions of time for filing returns, verification of returns, and the time when a return is deemed filed.

(2) The department by rule may provide modifications and exceptions to the provisions listed in subsection (1) of this

section, if reasonably necessary to facilitate the prompt, efficient, and equitable collection of tax under this chapter.

NEW SECTION. **Sec. 224.** ALLOCATION OF REVENUES TO BENEFITS ACCOUNT. All revenue from taxes collected under this chapter, including penalties and interest on such taxes, must be deposited in the benefits account created in section 124 of this act.

NEW SECTION. **Sec. 225.** ASSESSMENTS UNDER THIS CHAPTER IN ADDITION TO OTHER TAXES. The tax imposed under this chapter is in addition to any other taxes imposed by the state or any of its political subdivisions, or a municipal corporation, with respect to the same sale or exchange, including the taxes imposed in or under the authority of chapter 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46 RCW.

NEW SECTION. **Sec. 226.** REFUNDS FOR OVERPAYMENT. The department must refund all taxes improperly paid or collected.

NEW SECTION. **Sec. 227.** A new section is added to chapter 82.32 RCW to read as follows:

ALLOWS STATES TO COORDINATE.

(1) The department may enter into reciprocal tax collection agreements with the taxing officials of any other state imposing a specific tax. Agreements authorized under this section must require each state to offset delinquent specified taxes owed by a taxpayer to one party to the agreement, including any associated penalties, interest, or other additions, against refunds of overpaid specified taxes owed to the taxpayer by the other party to the agreement. Such agreements may also include provisions governing the sharing of information relevant to the administration of specified taxes. However, the department may not share return or tax information with other states except as allowed under RCW 82.32.330. Likewise, the

department may not share federal tax information with other states without the express written consent of the internal revenue service.

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

(a) "Specific taxes" means generally applicable state and local sales tax and use taxes, broad-based state gross receipts taxes, state income taxes, and stand-alone state taxes on capital gains or interest and dividends. "Specified taxes" include, but are not limited to, the taxes imposed in or under the authority of chapters 82.04, 82.08, 82.12, 82.14, 82.16, and 82.--- RCW (the new chapter created in section 301 of this act), and similar taxes imposed by another state. For purposes of this subsection (2)(a), "gross receipts tax," "income tax," "sales tax," and "use tax" have the same meanings as provided in RCW 82.56.010.

(b) "State" has the same meaning as provided in RCW 82.56.010.

NEW SECTION. **Sec. 228.** CONFORMING RCW. To the extent not inconsistent with the provisions of this chapter, the following statutes apply to the administration of taxes imposed under this chapter: RCW 82.32.050, 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090, 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130, 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190, 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235, 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310, 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.410, 82.32.805, 82.32.808, and section 227 of this act.

NEW SECTION. **Sec. 229.** RULES. The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of this chapter. The rules must follow the internal revenue code and the regulations and rulings of the United States treasury department with respect to the federal income tax. The department may adopt as

a part of these rules any portions of the internal revenue code and treasury department regulations and rulings, in whole or in part.

NEW SECTION. **Sec. 230.** APPEALS. The board of tax appeals has jurisdiction over appeals relating to tax deficiencies and refunds, including penalties and interest, under this chapter. The taxpayer may elect a formal or informal hearing pursuant to RCW 82.03.140.

Part III
Miscellaneous

NEW SECTION. **Sec. 301.** CODIFICATION. (1) Sections 101 through 113 and 115 through 129 of this act constitute a new chapter in Title 43 RCW.

(2) Sections 201, 203 through 226, and 228 through 230 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec. 302.** EFFECTIVE DATES. (1) Sections 101 through 107 and 121 of this act take effect February 1, 2019.

(2) Sections 108 through 115, 117 through 120, and 122 through 126 of this act take effect March 1, 2019.

(3) Sections 127 through 129 of this act take effect May 15, 2020.

NEW SECTION. **Sec. 303.** SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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