

Chapter 70.290 RCW
WASHINGTON VACCINE ASSOCIATION

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RCW 70.290.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

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

(b) Enrolled in a group health benefit plan administered by a third-party administrator. Persons under the age of nineteen for whom federal funding is used to purchase vaccines or who are enrolled in state purchased health care programs covering low-income children including, but not limited to, apple health for kids under RCW 74.09.470 and the basic health plan under chapter 70.47 RCW are not considered "covered lives" under this chapter.

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

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

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

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

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

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

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

(10) "Vaccine" means a preparation of killed or attenuated living microorganisms, or fraction thereof, that upon administration stimulates immunity that protects against disease and is approved by the federal food and drug administration as safe and effective and recommended by the advisory committee on immunization practices of the centers for disease control and prevention for administration to children under the age of nineteen years. [2010 c 174 § 1.]

RCW 70.290.020 Washington vaccine association—Creation. There is created a nonprofit corporation to be known as the Washington vaccine association. The association is formed for the purpose of collecting and remitting adequate funds from health carriers and third-party administrators for the cost of vaccines provided to certain children in Washington state. [2010 c 174 § 2.]

RCW 70.290.030 Composition of association—Board of directors—Duties. (1) The association is comprised of all health carriers issuing or renewing health benefit plans in Washington state and all third-party administrators conducting business on behalf of residents of Washington state or Washington health care providers and facilities. Third-party administrators are subject to registration under RCW 70.290.075.

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

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

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

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

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

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

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

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

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

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

(5) The board of directors of the association must:

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

(b) Prepare and adopt a plan of operation. The plan of operation must include a dispute mechanism through which a carrier or third-party administrator can challenge an assessment determination by the board under RCW 70.290.040. The board must include a means to bring unresolved disputes to an impartial decision maker as a component of the dispute mechanism;

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

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

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

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

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

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

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

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

(k) Notify, in writing, each health carrier and third-party administrator of the health carrier's or third-party administrator's estimated total assessment by November 15th of each year;

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

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

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

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

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

(6) The secretary must convene the initial meeting of the association board of directors. [2021 c 176 § 5238; 2013 c 144 § 48; 2010 c 174 § 3.]

Effective date—2021 c 176: See note following RCW 24.03A.005.

RCW 70.290.040 Estimate of program cost for upcoming year—Assessment collection—Surplus assessments—Start-up funding. (1) The secretary shall estimate the total nonfederal program cost for the upcoming calendar year by October 1, 2010, and October 1st of each year thereafter. Additionally, the secretary shall subtract any amounts needed to serve children enrolled in state purchased health care programs covering low-income children for whom federal vaccine funding is not available, and report the final amount to the association. In addition, the secretary shall perform such calculation for the period of May 1st through December 31st, 2010, as soon as feasible but in no event later than April 1, 2010. The estimates shall be timely communicated to the association.

(2) The board of directors of the association shall determine the method and timing of assessment collection in consultation with the department of health. The board shall use a formula designed by the board to ensure the total anticipated nonfederal program cost, minus costs for other children served through state purchased health care programs covering low-income children, calculated under subsection (1) of this section, is collected and transmitted to the universal vaccine purchase account created in RCW 43.70.720 in order to ensure adequacy of state funds to order state-supplied vaccine from federal centers for disease control and prevention.

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

(4) The board of the association shall develop a mechanism through which the number and cost of doses of vaccine purchased under this chapter that have been administered to children covered by each health carrier, and each third-party administrator's clients health benefit plans, are attributed to each such health carrier and third-party administrator. Except as otherwise permitted by the board, this mechanism must include at least the following: Date of service; patient name; vaccine received; and health benefit plan eligibility. The data must be collected and maintained in a manner consistent with

applicable state and federal health information privacy laws. Beginning November 1, 2011, and each November 1st thereafter, the board shall factor the results of this mechanism for the previous year into the determination of the appropriate assessment amount for each health carrier and third-party administrator for the upcoming year.

(5) For any year in which the total calculated cost to be received from association members through assessments is less than the total nonfederal program cost, the association must pay the difference to the state for deposit into the universal vaccine purchase account established in RCW 43.70.720. The board may assess, and the health carrier and third-party administrators are obligated to pay, their proportionate share of such costs and appropriate reserves as determined by the board.

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

(7) In order to generate sufficient start-up funding, the association may accept prepayment from member health carriers and third-party administrators, subject to offset of future amounts otherwise owing or other repayment method as determined by the board. The initial deposit of start-up funding must be deposited into the universal vaccine purchase account on or before April 30, 2010. [2010 c 174 § 4.]

RCW 70.290.050 Selection of vaccines to be purchased—Committee.

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

(2) In selecting vaccines to purchase, the following factors should be strongly considered by the committee: Patient safety and clinical efficacy, public health and purchaser value, compliance with RCW 70A.230.120, patient and provider choice, and stability of vaccine supply. [2021 c 65 § 68; 2010 c 174 § 5.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

RCW 70.290.060 Additional duties and powers of the association and secretary—Penalty—Rules. In addition to the duties and powers enumerated elsewhere in this chapter:

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

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

(2) The association may establish an interest charge for late payment of any assessment under this chapter. The secretary shall assess a civil penalty against any health carrier or third-party administrator that fails to pay an assessment within three months of notification under RCW 70.290.030. The civil penalty under this subsection is one hundred fifty percent of such assessment.

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

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

(5) Upon request of the health care authority, the secretary and the association must provide the health care authority with any available information maintained by the association needed to calculate the proportional share of program costs under RCW 71.24.064. [2020 c 291 § 8; 2010 c 174 § 6.]

RCW 70.290.070 Board shall submit financial report to the secretary. The board of directors of the association shall submit to the secretary, no later than one hundred twenty days after the close of the association's fiscal year, a financial report in a form approved by the secretary. [2010 c 174 § 7.]

RCW 70.290.075 Third-party administrators—Registration and reporting. (1) A third-party administrator must register with the association. Registrants must report a change of legal name, business name, business address, or business telephone number to the association within ten days after the change.

(2) The association must establish data elements and procedures for the registration of third-party administrators necessary to implement this section in its plan of operation. [2013 c 144 § 47.]

RCW 70.290.080 Limitation of liability. No liability on the part of, and no cause of action of any nature, shall arise against any member of the board of the association, against an employee or agent of the association, or against any health care provider for any lawful action taken by them in the performance of their duties or required activities under this chapter. [2010 c 174 § 8.]

RCW 70.290.090 Vote to recommend termination of the association—Disposition of funds. (1) The association board may, on or after June 30, 2015, vote to recommend termination of the association if it finds that the original intent of its formation and operation, which is to ensure more cost-effective purchase and distribution of vaccine than if provided through uncoordinated purchase by health care providers, has not been achieved. The association board shall provide notice of the recommendation to the relevant policy and fiscal

committees of the legislature within thirty days of the vote being taken by the association board. If the legislature has not acted by the last day of the next regular legislative session to reject the board's recommendation, the board may vote to permanently dissolve the association.

(2) In the event of a voluntary or involuntary dissolution of the association, funds remaining in the universal purchase vaccine account created in RCW 43.70.720 that were collected under this chapter must be returned to the member health carrier and third-party administrators in proportion to their previous year's contribution, from any balance remaining following the repayment of any prepayments for start-up funding not previously recouped by such member. [2010 c 174 § 12.]

RCW 70.290.100 Physicians and clinics ordering state supplied vaccine—Tracking of vaccine delivered—Documentation. Physicians and clinics ordering state supplied vaccine must ensure they have billing mechanisms and practices in place that enable the association to accurately track vaccine delivered to association members' covered lives and must submit documentation in such a form as may be prescribed by the board in consultation with state physician organizations. Physicians and other persons providing childhood immunization are strongly encouraged to use state supplied vaccine whenever possible. Nothing in this chapter prohibits health carriers and third-party administrators from denying claims for vaccine serum costs when the serum or serums providing similar protection are provided or available via state supplied vaccine. [2010 c 174 § 13.]

RCW 70.290.110 Judicial invalidation of program's funding—Termination of program. If the requirement that any segment of health carriers, third-party administrators, or state or local governmental entities provide funding for the program established in this chapter is invalidated by a court of competent jurisdiction, the board of the association may terminate the program one hundred twenty days following a final judicial determination on the matter. [2010 c 174 § 14.]

RCW 70.290.900 Effective date—2010 c 174. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 23, 2010]. [2010 c 174 § 17.]