

Part I Universal Essential Health Benefits Trust

SECTION 101-103

The first three sections of this bill focuses on its key objectives, and defines the terminology found throughout Part I.

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 non-profit health financing entity called the Whole Washington Health trust. The trust will simplify health care financing, eliminate administrative waste for providers, focus savings on promoting a healthcare delivery system which is responsive to the essential health needs in each County, and guarantee all residents can enroll in coverage for a single comprehensive set of essential health benefits as a basic human need, essential for a productive society.”

This section also contains key protections.

All residents are eligible for coverage and enrollees have:

- The right to seek care from any participating provider.
- The right to seek additional coverage.
- The right to non-discrimination from any participating providers, the trust, or third-party administrators.

All providers qualified to provide a covered health care service are eligible to participate and continue to have:

- The right to receive payments from other sources. Providers who do negotiate and accept payment from the trust for a service must accept that payment as payment in full.
- The right to deny services not in the scope of practice or the provider’s reasonable clinical judgment.

102 DEFINITIONS - defines the terminology found throughout Part I

103 THE Whole Washington Health trust.

Creates the Whole Washington Health trust.

SECTION 104-107

These sections are the legal framework and qualifications for the board of trustees that will govern the Whole Washington Health Trust.

104 THE BOARD OF TRUSTEES

The board of trustees will consist of 9 members appointed by the Governor. The governor must choose one from each of the following 5 lists, but has authority to choose 4 members independently:

- The 2 largest caucuses in the house
- The 2 largest caucuses in the senate
- The Insurance Commissioner

105 ADVISORY COMMITTEES

The board will consult with the following 3 advisory committees and any additional committees the board approves:

- A citizen committee to “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”
- A provider committee to “make recommendations to the board on issues related to scope of covered benefits, quality improvement, continuity of care, resource utilization, and other issues”
- A finance committee to “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”

106 AUTHORITIES OF THE CHAIR

Legal language giving the chair authority to govern the board effectively.

107 RESPONSIBILITIES OF THE BOARD

Legal language giving the board the authority to perform all needed functions to operate the trust.

SECTION 108-110

These sections define the universal benefits package and the terms for the board to negotiate for prescription drugs, for durable medical equipment, and with participating providers.

108 COMPREHENSIVE ESSENTIAL HEALTH BENEFITS

- A single comprehensive essential benefits package will cover all essential health benefits.
- Essential Health Benefits are defined in section 102, which requires the following services be provided whenever medically necessary in an inpatient or outpatient setting:
 - Hospital services, hospital-based outpatient care, and 24-hour-a-day emergency services.

- Primary and preventive care services, including chronic disease management.
- Prescription drugs, medical devices, and biological products.
- Mental health and substance abuse treatment services.
- Laboratory, diagnostic imaging, and other diagnostic services.
- Reproductive, maternity, and newborn care.
- Pediatric primary and specialty care.
- Palliative care and end-of-life care services.
- Oral health, audiology, and vision services.
- Short-term rehabilitative and habilitative services and devices.
- A long-term care benefits package will ensure eligibility and benefits at least as generous as the Medicaid standards for Washington.
- Subject to ongoing and consistent funding a long-term benefits package beyond that will be included as an essential benefit after January 1st, 2025.

109 PARTICIPATING PROVIDERS

Providers are not required to participate, but any qualified provider may elect to participate in negotiations for reimbursements in one of the following ways:

1. Fee-for-service: Any provider can participate in annual collective negotiations for fee-for-services reimbursement rates.
2. Community Health Providers: Any provider that has five or more coordinating practitioners and operates as a non-profit may choose to negotiate in a variety of unique ways including: global budgets, capitation, fee-for-service, or a combination of those.

These negotiations will focus on considering:

- regional health needs of residents
- scope of services offered
- quality and effectiveness of care standards and safety policies utilized
- quality of employment
- coordination with the department of social and health services to delivery needs-based assistance

110 PHARMACEUTICALS, MEDICAL EQUIPMENT, AND BIOLOGICALS

In all ways possible, the board of the trust will negotiate prescription drugs, durable medical equipment, and biological products for all residents in the state.

The board can utilize a cost-sharing schedule for prescription drugs that encourages use of generics, does not apply to preventative drugs, and may not exceed \$250 annually.

SECTION 111-113

These sections define in more detail the terms of enrollment eligibility, as well as for coverage availability and use.

111 ENROLLMENT ELIGIBILITY

This section defines enrollment eligibility requirements generally and for those eligible for Medicare, Medicaid, Federal Employees Health Benefits, and Native American benefits.

Exempts certain individuals from premium (107), the employment contribution and sole proprietors contribution. The employment contribution is equal to the required health care expenditures and health security assessment (202):

- Children under the age of nineteen
- Elderly and disabled residents who are also low income, aka “dual eligible” for Medicare & Medicaid

Exempts certain individuals from premium:

- Adults with incomes below 200% of the federal poverty level

Premiums cannot exceed \$200 monthly

Rules for enrolling individuals eligible for a federally funded program prior to waivers granting integration of the program:

- Residents eligible for a federally funded program will continue to use that program for coverage. The trust will only provide for coverage for these individuals if:
 1. They enroll in the Whole Washington health trust,
 2. Their wages or partnership income is considered for the employment contribution,
 3. Any applicable premium is paid by either an employer or the individual.
- Medicare eligible- Prior to a federal waiver being granted, Medicare eligible residents are subject to a premium (see above exemptions) for enrollment in the trust. However, they are not subject to the health security assessment or the employment contribution. Residents with income under 200% of the federal poverty level will be reimbursed for Medicare premiums. All Medicare eligible residents who enroll in the whole Washington health trust will be reimbursed for Medicare premiums.
- Native American residents- Unless a federal waiver is sought and granted integrating IHS, Native American residents are exempt from participating in the trust for coverage, but are subject to health security assessment, the employee health assessment, and a premium (subject to above exemptions) if they elect enrollment in the trust.

112 COVERAGE USE & AVAILABILITY

This section explains how the trust coordinates with other health insurance coverage and exempts certain enrollees from out-of-pocket costs.

Exempts certain individuals from out-of-pocket costs (prescription drug schedule):

- Children under the age of nineteen
- Elderly and disabled residents who are also low income, aka “dual eligible” for Medicare & Medicaid
- Adults with incomes below 200% of the federal poverty level

Coverage Availability:

- By October 2022, the board will take steps to contract with the following agencies to enroll eligible residents for coverage through the trust when they are receiving existing federally funded programs: the health care authority, the public employees health benefits board, indian health services, center for medicare and medicaid services, the department of social and health services.
- By October 2022, the board will make the plan available for enrollment through the health benefits exchange (aka WAhealthplanfinder.com or marketplace).
- By November 1, 2023 the board will also make it available to all other residents outside of the health benefits exchange. Residents who elect enrollment in the trust will need to pay the employment contribution, and the premium directly to the trust until the employment security department is authorized to collect these directly from employers.

The board is also restricted from contracting out benefits to for-profit insurance administrators unless the individual is also enrolled for supplemental coverage and elects to have essential benefits administered by the supplemental insurer.

113 FEDERAL WAIVERS AND PROGRAMS

This section provides the legal instruction to all state authorities and entities needed to seek all the waivers available to fully integrate federally funded programs into the trust. The Health Care Authority of Washington is tasked with submitting annual progress reports on waivers negotiations.

SECTION 114-115

These sections define transitional elements of the initiative which are contingent on enrollment of residents into the trust or another state-managed health coverage (pending federal waivers).

114 TRANSITIONAL EMPLOYER PROVISIONS

This section:

- 1) Protects union health benefits negotiated prior to March 2022, including retired employee health benefits. Employees with minimal essential coverage are exempt from the health security assessment until the union negotiates a supplemental benefits package.
- 2) Ensures that employees with union negotiated benefits may participate in the Essential Health Options Program or the Whole Washington trust voluntarily.
- 3) Allows sole proprietors to seek a waiver to exempt themselves from the health security assessment if they are enrolled in ACA compliant coverage.
- 4) Expires January 1st following the effective date of 115.

115 ENROLLMENT CONDITIONAL PROVISIONS

The transition period ends when 51% of residents are enrolled in a health insurance program administered by a state authority regardless of the status of federal waivers integrating programs.

- Most employers and sole proprietors can no longer seek waivers from the health security assessment for offering ACA compliant coverage.
- State authorities are instructed to seek a waiver to integrate the health benefits exchange.
- The board is instructed to reduce premiums & OOP costs to the fullest extent possible for all residents subject to premiums (adults earning 2x the federal poverty level).

SECTION 116-125

These sections define administrative cost controls, budgeting, and reporting, and allocate new and existing funding to 3 new accounts created in the state Treasury: a reserve account, a temporary displaced workers account, and a benefits account. These accounts are not subject to the legislature for use by the trust.

116 ADMIN COST CONTROLS

117 ACTUARIAL ANALYSIS AND REPORTING

118 ALLOCATES EXISTING FUNDING

119 ALLOCATES NEW FUNDING

120 START-UP APPROPRIATIONS

121 RESERVE ACCOUNT

122 DISPLACED WORKERS TRAINING ACCOUNT

123 BENEFITS ACCOUNT

124 ANNUAL BUDGET

125 COST REPORTING

SECTION 126-129

This language is needed to confirm some employers' benefits, federally qualified trusts, and L&I with the benefits provided through the Whole Washington Health trust.

126 CONFORMS EMPLOYER BENEFITS

Employers maintain the right to provide employee benefit plans under the federal employees retirement income security act of 1974 (ERISA). This section phases out revocable health benefits between 2022 and 2024. After 2024 no revocable health benefits will count towards the required healthcare expenditures. PAYments made to the trust or the employment security department are not revocable.

127 ESSENTIAL HEALTH OPTIONS PROGRAM

The HCA shall administer the essential health options program which is made up of Medical Reimbursement Accounts and Essential Community Access.

- 1) Essential Community Access is not health insurance, but will reimburse Community Health Providers for essential health benefits for eligible uninsured residents using the rates negotiated by the trust.
- 2) Medical Reimbursement Accounts will be maintained by ESD and those with minimal essential coverage (not through the trust) can receive reimbursement for essential health benefits, but reimbursements may not exceed the rates negotiated under the trust for Community Health Providers.
- 3) The HCA will develop a plan to more directly incorporate employer health benefits into the trust and make annual reports to the legislature.

128 CONFORMS FEDERALLY QUALIFIED TRUSTS

129 CONFORMS L&I

Part II Assessments and Revenues

Most sections in part II mirror the sections of the Family and Medical Leave Act for Washington. The entire bill has been reviewed and amended based on feedback from the employment security department for accuracy and completeness.

SECTION 201 DEFINITIONS

This section defines terms used throughout Part II.

SECTION 202

This section establishes the health security assessment paid by employers for employees who reside in Washington.

202 EMPLOYER REQUIRED HEALTH CARE EXPENDITURES & HEALTH SECURITY ASSESSMENT

Beginning 2026, employers must make required health expenditures for each employee. The employment security department will collect the Health Security Assessment from

employers (subject to 203) or provide credit for health expenditures made for (or to) each employee. Employees may opt into the trust directly by paying the employment contribution and may apply any funds from their Medical Reimbursement Account towards the premium or employment contribution OR they may seek reimbursement for health care expenses, including copays, out-of-pocket costs, and deductibles.

The assessment for employees is 10.5% of an employee's gross pay for a quarter, and exempts 25 cents for each \$1 an employee earns over \$3,000 a quarter (\$12,000 annually). The exemption phases out completely for employees with pay over \$15,000 a quarter (\$60,000 annually):

- Employers may deduct up to 2% of the required health expenditure from an employee's pay or may pay all or a portion of the employee's share of the assessment (see 203 employee health assessment).
- Native American employee pay is entirely exempt unless the employee elects to participate in the trust.
- Employers with 50 employees or less that face financial hardship can apply for a waiver from this assessment from 2023 until 2028.

Example: Exemption equals \$3,750 minus 25% of employee's total gross quarterly pay.

- Employers would owe zero for employees earning under \$3,000 a quarter (\$12,000 annually)
- Employers would be responsible for \$212.50 quarterly (8.5% assessment) for an employee earning \$5,000 in quarterly gross pay:
 - $\$3,750 - (.25 \times \$5,000) =$
 - $\$3,750 - \$1,250 = \$2,500$ Exemption for the employee
 - $\$5,000 - \$2,500 = \$2,500$ is not exempt
 - $\$2,500 \times .085 = \212.50 per quarter
- Employers would be responsible for 8.5% of the tax on the gross pay for employees earning over \$15,000 a quarter (\$60,000 annually)

SECTION 203

This section establishes an employee health assessment, which is the employee's contribution of up to 2% of gross payroll, and exempts 25 cents for each \$1 an employee earns over \$3,000 a quarter (\$12,000 annually). The exemption phases out completely for employees with pay over \$15,000 a quarter (\$60,000 annually). This section also establishes an annual equivalent employee health assessment on adjusted net earnings for sole proprietors (with an annually equivalent exemption).

203 EMPLOYEE HEALTH ASSESSMENT

The employee's share of the health security assessment is 2% of gross pay, collected by employers and paid to the employment security department after 2026 (prior to 2026 employees may opt in and pay the trust directly). Employers may pay all or a portion of the employee health assessment as an employment benefit:

- 2% of an employee's gross pay is exempt an amount equal to \$3,750 minus 25% of employee's total gross quarterly pay (see example above)
- The employee in example above earns \$5,000 each quarter (\$20,000 annually) would have \$50 deducted each quarter unless the employer opts to pay this amount on the employees behalf.

Beginning 2024, Sole Proprietor's owe a sole proprietor health assessment to the department of revenue annually:

- A sole proprietor's health assessment is 2% of adjusted net earnings from self employment, exempting an amount equal to \$15,000 minus 25% of total net earnings from self-employment (Schedule C Federal Tax Return). Only those with net earnings from self employment over \$15,000 annually are required to file annually with DOR.

SECTION 204-211 Employer Obligations & Withholdings for Employee Health Assessment
These sections are the legal language which makes employers responsible for the health assessments and provides guidelines for employers to collect the employee health assessment and premiums from employees.

204 EMPLOYER WITHHOLDING ESTIMATED EMPLOYEE HEALTH ASSESSMENT

205 EMPLOYER IS LIABLE FOR TAX WITHHELD

206 CREDITS FOR TAX WITHHELD

207 EMPLOYER RESPONSIBILITIES

208 PENALTIES FOR FAILURE TO PAY OR COLLECT WITHHOLDINGS

209 COLLECTION OF EMPLOYEE PREMIUMS - By 2026, employers may elect to withhold the premium an employee is subject to (see section 107) and pay it to the employment security department. Employers with less than fifty employees who elect to pay all or a portion of the assessments and premiums on behalf of an employee are considered eligible for the business assistance program (see section 202).

210 OUT-OF-STATE EMPLOYERS OF WASHINGTON RESIDENTS

211 EMPLOYER REQUIREMENTS

SECTION 212-213

These sections create protections for employees participating in the trust.

212 UNLAWFUL ACTS - EMPLOYERS

213 EMPLOYER PENALTIES

SECTION 214-252

These sections provide administrative authorities and guidelines for the employment security department to collect and enforce the health security assessment (which includes collecting or paying employees health assessments).

214 OUT-OF-STATE EMPLOYERS - ASSESSMENT WAIVER

215 TERMINATION OR DISPOSAL OF BUSINESS - ASSESSMENT PAYMENT -
SUCCESSOR LIABILITY

216 DELINQUENCY - ORDER AND NOTICE OF ASSESSMENT

217 JEOPARDIZED COLLECTION - IMMEDIATE ASSESSMENT

218 DELINQUENCY - ACCRUAL OF INTEREST

219 COLLECTION BY DISTRAINT, SEIZURE, AND SALE

220 COLLECTION BY DISTRAINT, SEIZURE, AND SALE - PROCEDURE

221 NOTICE AND ORDER TO WITHHOLD AND DELIVER

222 WARRANT FOR ASSESSMENT

223 LIENS

224 LIENS - INSOLVENCY, DISSOLUTION, OR DISTRIBUTION OF ASSETS

225 CIVIL ACTIONS - SERVICE OF PROCESS

226 INJUNCTION FROM CONTINUING IN BUSINESS

227 COMPROMISE OF CLAIMS

228 UNCOLLECTIBLE ACCOUNTS

229 INSPECTION AND AUDIT

230 ENFORCEMENT ACCOUNT

231 APPEALS - GENERALLY

232 APPEALS - ASSESSMENTS

233 APPEALS - ASSESSMENT REDETERMINATIONS

234 APPEALS - WHEN DEEMED FILED AND RECEIVED

235 APPEALS - ASSESSMENTS PROCEDURE

236 APPEALS - PROCEDURE

237 APPEALS - HEARING PROCEDURES

238 APPEALS - COMMISSIONER REVIEW - INITIATION

239 APPEALS - COMMISSIONER REVIEW - PROCEDURE

240 APPEALS - COMMISSIONER REVIEW - WHEN

241 APPEALS - APPLICABILITY OF FINDINGS, DETERMINATIONS, ETC. TO OTHER ACTIONS
242 APPEALS - WAIVER OF TIME LIMITATIONS
243 APPEALS - JUDICIAL REVIEW
244 APPEALS - JUDICIAL REVIEW - PROCEDURE
245 APPEALS - JUDICIAL REVIEW - BOND - STAY
246 APPEALS - JUDICIAL REVIEW - INTERSTATE PETITIONS
247 APPEALS - COMMISSIONER'S EXPENSES
248 APPEALS - REMEDIES EXCLUSIVE
249 AGREEMENT TO WAIVE
250 ALLOCATION OF REVENUES TO BENEFITS ACCOUNT
251 ADOPTION OF RULES
252 CONFORMING RCW

Part III Capital Gains Assessment

Many sections in part III mirror or are identical to the sections found within 2018 SUBSTITUTE HOUSE BILL 2967, Part I. The entire bill has been reviewed and amended based on feedback from the department of revenue for accuracy and completeness.

SECTION 301 DEFINITIONS

This section defines terms used throughout Part III.

SECTION 302-307

These sections create a long-term capital gains assessment for Washington and defines exempt gains and losses.

302 LONG-TERM CAPITAL GAINS ASSESSMENT (SHB 2967 Section 103)

Beginning January 1, 2022 a long-term capital gains assessment of 8.5% will apply to adjusted federal long-term capital gains earned by Washington residents or in Washington State. The exemption is defined in section 201 and exempts up to \$12,000 of annual long-term capital gains (filing threshold is \$15,000). This exemption phases out at a rate of 25 cents for every \$1 over \$12,000 in annual earnings and phases out completely for those earning over \$60,000 in annual earnings.

303 EXEMPTS CERTAIN GAINS AND LOSSES (SHB 2967 Section 104)

This section exempts gains and losses from certain property, including residential property, timber, agriculture, retirement savings, and livestock.

304 COMPUTATION OF TAX - DEDUCTION AMOUNT PROHIBITED AMOUNTS (SHB 2967 Section 106)

305 QUALIFIED FAMILY-OWNED SMALL BUSINESS(SHB 2967 Section 107)

Exempts family owned small businesses from the assessment.

306 ADJUSTED CAPITAL GAINS (SHB 2967 Section 108)

This section adjusts capital gains to include only long-term capital gains earned by Washington residents or by non-residents for capital gains related to the sale of non-exempt property in Washington state.

307 DUAL RESIDENCE - Reduces the tax on taxpayer's income when it is also subject to tax in another state because of dual residence in another state.

SECTION 308 Defines Treatment of Partnerships/S Corps

These sections are the legal language applying to both the employee health assessment and the long-term capital gains assessment.

308 TREATMENT OF PARTNERSHIPS AND S CORPORATION INCOME

- Partnerships and S Corporations are subject to the Health Security Assessment for employees, but are not subject to the long-term capital gains assessment.
- Partners are subject to the long-term capital gains assessment and to the employee health assessment as individuals. Shareholders are subject to the capital gains assessment as individuals.

SECTION 309-319 Filing and ESD Authorities

These sections are the legal language necessary to create an annual tax filing process for the sole proprietor's health assessment and long-term capital gains assessment. It gives needed authority to the Washington Department of Revenue to perform the necessary tasks and defers to federal tax due dates and processes whenever possible.

309 PERSONS REQUIRED TO FILE A STATE RETURN - Those with net earnings from self-employment (sole proprietors) and those with net long term capital gains in excess of fifteen thousand dollars on their federal tax return must file annually with the DOR. (SHB 2967 Section 109, but amended to include sole proprietors).

310 PENALTIES (SHB 2967 Section 112)

311 INSTRUCTIONS FOR JOINT FILING (SHB 2967 Section 110)

312 DUE DATES FOR RETURNS, PENALTIES

313 RECORDS AND RETURNS

314 INTERNAL REVENUE CODE CONTROL

315 ALLOCATION OF REVENUES TO BENEFITS ACCOUNT

316 ASSESSMENTS UNDER THIS CHAPTER IN ADDITION TO OTHER TAXES

(SHB 2967 Section 105)

317 REFUNDS FOR OVERPAYMENT

318 ALLOWS STATES TO COORDINATE (SHB 2967 Section 115)

SECTION 319-323

These sections are the conforming amendments, rule making authorities, appeals authorities, and codification language.

319 CONFORMING RCW (SHB 2967 Section 111)

320 DEDUCTIONS TO BUSINESS TAXES FOR TAXES IMPOSED (SHB 2967
Section 114)

321 RULES

322 APPEALS

323 SUPPORT OF TAXES (SHB 2967 Section 113)

Part IV Miscellaneous

401 CODIFICATION

- New RCW Title 43 - Sections 101 -113, 115-129
- New RCW Title 50B - Sections 201, 203-252.
- New RCW Title 82 - Sections 301-317, 319, 321-323.

402 EFFECTIVE DATES

- February 1, 2022 - Sections 101-107
- March 1, 2022 - Sections 108-114, 116-119, 121-125.
- May 15, 2023 - Sections 126-128

403 TRANSITION CONTINGENT EFFECTIVE AND EXPIRATION DATE

Section 115 takes effect when 51% of residents are enrolled in health coverage managed by the trust, the HCA, or an entity within the HCA. The HCA is given responsibility to notify entities of the effective date of section 116 and the expiration date of 114.

404 SEVERABILITY - If any provision is found invalid, the remainder of the provisions in this act remain intact.