

ESSB 5187 - H AMD TO H AMD (H-1823.1/23) **527**

By Representative Caldier

1 On page 611, after line 30, insert the following:

2 "Sec. 938. RCW 41.05.011 and 2019 c 411 s 4 are each amended to
3 read as follows:

4 The definitions in this section apply throughout this chapter
5 unless the context clearly requires otherwise.

6 (1) "Authority" means the Washington state health care authority.

7 (2) "Board" means the public employees' benefits board
8 established under RCW 41.05.055 and the school employees' benefits
9 board established under RCW 41.05.740.

10 (3) "Dependent care assistance program" means a benefit plan
11 whereby employees and school employees may pay for certain
12 employment related dependent care with pretax dollars as provided in
13 the salary reduction plan under this chapter pursuant to 26 U.S.C.
14 Sec. 129 or other sections of the internal revenue code.

15 (4) "Director" means the director of the authority.

16 (5) "Emergency service personnel killed in the line of duty"
17 means law enforcement officers and firefighters as defined in RCW
18 41.26.030, members of the Washington state patrol retirement fund as
19 defined in RCW 43.43.120, and reserve officers and firefighters as
20 defined in RCW 41.24.010 who die as a result of injuries sustained
21 in the course of employment as determined consistent with Title 51
22 RCW by the department of labor and industries.

23 (6)(a) "Employee" for the public employees' benefits board
24 program includes all employees of the state, whether or not covered
25 by civil service; elected and appointed officials of the executive
26 branch of government, including full-time members of boards,
27 commissions, or committees; justices of the supreme court and judges

1 of the court of appeals and the superior courts; and members of the
2 state legislature. Pursuant to contractual agreement with the
3 authority, "employee" may also include: (i) Employees of a county,
4 municipality, or other political subdivision of the state and
5 members of the legislative authority of any county, city, or town
6 who are elected to office after February 20, 1970, if the
7 legislative authority of the county, municipality, or other
8 political subdivision of the state submits application materials to
9 the authority to provide any of its insurance programs by contract
10 with the authority, as provided in RCW 41.04.205 and 41.05.021(1)
11 (g); (ii) employees of employee organizations representing state
12 civil service employees, at the option of each such employee
13 organization; (iii) through December 31, 2019, employees of a school
14 district if the authority agrees to provide any of the school
15 districts' insurance programs by contract with the authority as
16 provided in RCW 28A.400.350; (iv) employees of a tribal government,
17 if the governing body of the tribal government seeks and receives
18 the approval of the authority to provide any of its insurance
19 programs by contract with the authority, as provided in RCW
20 41.05.021(1) (f) and (g); (v) employees of the Washington health
21 benefit exchange if the governing board of the exchange established
22 in RCW 43.71.020 seeks and receives approval of the authority to
23 provide any of its insurance programs by contract with the
24 authority, as provided in RCW 41.05.021(1) (g) and (n); and (vi)
25 through December 31, 2019, employees of a charter school established
26 under chapter 28A.710 RCW. "Employee" does not include: Adult family
27 home providers; unpaid volunteers; patients of state hospitals;
28 inmates; employees of the Washington state convention and trade
29 center as provided in RCW 41.05.110; students of institutions of
30 higher education as determined by their institution; and any others
31 not expressly defined as employees under this chapter or by the
32 authority under this chapter.

33 (b) Effective January 1, 2020, "school employee" for the school
34 employees' benefits board program includes:

1 (i) All employees of school districts and charter schools
2 established under chapter 28A.710 RCW;

3 (ii) Represented employees of educational service districts; and

4 (iii) Effective January 1, 2024, all employees of educational
5 service districts.

6 (7) "Employee group" means employees of a similar employment
7 type, such as administrative, represented classified, nonrepresented
8 classified excluding such employees in educational service districts
9 until December 31, 2023, confidential, represented certificated, or
10 nonrepresented certificated excluding such employees in educational
11 service districts until December 31, 2023, within a school
12 employees' benefits board organization.

13 (8)(a) "Employer" for the public employees' benefits board
14 program means the state of Washington.

15 (b) "Employer" for the school employees' benefits board program
16 means school districts and educational service districts and charter
17 schools established under chapter 28A.710 RCW.

18 (9) "Employer group" means those counties, municipalities,
19 political subdivisions, the Washington health benefit exchange,
20 tribal governments, employee organizations representing state civil
21 service employees, and through December 31, 2019, school districts,
22 charter schools, and through December 31, 2023, educational service
23 districts obtaining employee benefits through a contractual
24 agreement with the authority to participate in benefit plans
25 developed by the public employees' benefits board.

26 (10)(a) "Employing agency" for the public employees' benefits
27 board program means a division, department, or separate agency of
28 state government, including an institution of higher education; a
29 county, municipality, or other political subdivision; and a tribal
30 government covered by this chapter.

31 (b) "Employing agency" for the school employees' benefits board
32 program means school districts, educational service districts, and
33 charter schools.

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1 (11) "Faculty" means an academic employee of an institution of
2 higher education whose workload is not defined by work hours but
3 whose appointment, workload, and duties directly serve the
4 institution's academic mission, as determined under the authority of
5 its enabling statutes, its governing body, and any applicable
6 collective bargaining agreement.

7 (12) "Flexible benefit plan" means a benefit plan that allows
8 employees and school employees to choose the level of health care
9 coverage provided and the amount of employee or school employee
10 contributions from among a range of choices offered by the authority.

11 (13) "Insuring entity" means an insurer as defined in chapter
12 48.01 RCW, a health care service contractor as defined in chapter
13 48.44 RCW, or a health maintenance organization as defined in
14 chapter 48.46 RCW.

15 (14) "Medical flexible spending arrangement" means a benefit
16 plan whereby state and school employees may reduce their salary
17 before taxes to pay for medical expenses not reimbursed by insurance
18 as provided in the salary reduction plan under this chapter pursuant
19 to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

20 (15) "Participant" means an individual who fulfills the
21 eligibility and enrollment requirements under the salary reduction
22 plan.

23 (16) "Plan year" means the time period established by the
24 authority.

25 (17) "Premium payment plan" means a benefit plan whereby public
26 employees may pay their share of group health plan premiums with
27 pretax dollars as provided in the salary reduction plan under this
28 chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the
29 internal revenue code.

30 (18) "Public employee" has the same meaning as employee and
31 school employee.

32 (19) "Retired or disabled school employee" means:
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1 (a) Persons who separated from employment with a school district
2 or educational service district and are receiving a retirement
3 allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

4 (b) Persons who separate from employment with a school district,
5 educational service district, or charter school on or after October
6 1, 1993, and immediately upon separation receive a retirement
7 allowance under chapter 41.32, 41.35, or 41.40 RCW;

8 (c) Persons who separate from employment with a school district,
9 educational service district, or charter school due to a total and
10 permanent disability, and are eligible to receive a deferred
11 retirement allowance under chapter 41.32, 41.35, or 41.40 RCW.

12 (20) "Salary" means a state or school employee's monthly salary
13 or wages.

14 (21) "Salary reduction plan" means a benefit plan whereby public
15 employees may agree to a reduction of salary on a pretax basis to
16 participate in the dependent care assistance program, medical
17 flexible spending arrangement, or premium payment plan offered
18 pursuant to 26 U.S.C. Sec. 125 or other sections of the internal
19 revenue code.

20 (22) "School employees' benefits board organization" means a
21 public school district or educational service district or charter
22 school established under chapter 28A.710 RCW that is required to
23 participate in benefit plans provided by the school employees'
24 benefits board.

25 (23) "School year" means school year as defined in RCW 28A.
26 150.203(11).

27 (24) "Seasonal employee" means a state employee hired to work
28 during a recurring, annual season with a duration of three months or
29 more, and during the 2023-25 fiscal biennium employees of the
30 legislature the duration of the regular legislative session for that
31 year, and anticipated to return each season to perform similar work.

32 (25) "Separated employees" means persons who separate from
33 employment with an employer as defined in:

34 (a) RCW 41.32.010(17) on or after July 1, 1996; or

1 (b) RCW 41.35.010 on or after September 1, 2000; or
2 (c) RCW 41.40.010 on or after March 1, 2002;
3 and who are at least age fifty-five and have at least ten years of
4 service under the teachers' retirement system plan 3 as defined in
5 RCW 41.32.010(33), the Washington school employees' retirement
6 system plan 3 as defined in RCW 41.35.010, or the public employees'
7 retirement system plan 3 as defined in RCW 41.40.010.

8 (26) "State purchased health care" or "health care" means
9 medical and health care, pharmaceuticals, and medical equipment
10 purchased with state and federal funds by the department of social
11 and health services, the department of health, the basic health
12 plan, the state health care authority, the department of labor and
13 industries, the department of corrections, the department of
14 veterans affairs, and local school districts.

15 (27) "Tribal government" means an Indian tribal government as
16 defined in section 3(32) of the employee retirement income security
17 act of 1974, as amended, or an agency or instrumentality of the
18 tribal government, that has government offices principally located
19 in this state.

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21 **Sec. 1.** RCW 41.05.065 and 2018 c 260 s 12 are each amended to
22 read as follows:

23 (1) The public employees' benefits board shall study all matters
24 connected with the provision of health care coverage, life
25 insurance, liability insurance, accidental death and dismemberment
26 insurance, and disability income insurance or any of, or a
27 combination of, the enumerated types of insurance for employees and
28 their dependents on the best basis possible with relation both to
29 the welfare of the employees and to the state. However, liability
30 insurance shall not be made available to dependents.

31 (2) The public employees' benefits board shall develop employee
32 benefit plans that include comprehensive health care benefits for
33 employees. In developing these plans, the public employees' benefits
34 board shall consider the following elements:

1 (a) Methods of maximizing cost containment while ensuring access
2 to quality health care;

3 (b) Development of provider arrangements that encourage cost
4 containment and ensure access to quality care, including but not
5 limited to prepaid delivery systems and prospective payment methods;

6 (c) Wellness incentives that focus on proven strategies, such as
7 smoking cessation, injury and accident prevention, reduction of
8 alcohol misuse, appropriate weight reduction, exercise, automobile
9 and motorcycle safety, blood cholesterol reduction, and nutrition
10 education;

11 (d) Utilization review procedures including, but not limited to
12 a cost-efficient method for prior authorization of services,
13 hospital inpatient length of stay review, requirements for use of
14 outpatient surgeries and second opinions for surgeries, review of
15 invoices or claims submitted by service providers, and performance
16 audit of providers;

17 (e) Effective coordination of benefits; and

18 (f) Minimum standards for insuring entities.

19 (3) To maintain the comprehensive nature of employee health care
20 benefits, benefits provided to employees shall be substantially
21 equivalent to the state employees' health benefit plan in effect on
22 January 1, 1993. Nothing in this subsection shall prohibit changes
23 or increases in employee point-of-service payments or employee
24 premium payments for benefits or the administration of a high
25 deductible health plan in conjunction with a health savings account.
26 The public employees' benefits board may establish employee
27 eligibility criteria which are not substantially equivalent to
28 employee eligibility criteria in effect on January 1, 1993.

29 (4) Except if bargained for under chapter 41.80 RCW, the public
30 employees' benefits board shall design benefits and determine the
31 terms and conditions of employee and retired or disabled school
32 employee participation and coverage, including establishment of
33 eligibility criteria subject to the requirements of this chapter.
34 Employer groups obtaining benefits through contractual agreement

1 with the authority for employees defined in RCW 41.05.011(6)(a) (i)
2 through (vi) may contractually agree with the authority to benefits
3 eligibility criteria which differs from that determined by the
4 public employees' benefits board. The eligibility criteria
5 established by the public employees' benefits board shall be no more
6 restrictive than the following:

7 (a) Except as provided in (b) through (e) of this subsection, an
8 employee is eligible for benefits from the date of employment if the
9 employing agency anticipates he or she will work an average of at
10 least eighty hours per month and for at least eight hours in each
11 month for more than six consecutive months. An employee determined
12 ineligible for benefits at the beginning of his or her employment
13 shall become eligible in the following circumstances:

14 (i) An employee who works an average of at least eighty hours
15 per month and for at least eight hours in each month and whose
16 anticipated duration of employment is revised from less than or
17 equal to six consecutive months to more than six consecutive months
18 becomes eligible when the revision is made.

19 (ii) An employee who works an average of at least eighty hours
20 per month over a period of six consecutive months and for at least
21 eight hours in each of those six consecutive months becomes eligible
22 at the first of the month following the six-month averaging period.

23 (b) A seasonal employee is eligible for benefits from the date
24 of employment if the employing agency anticipates that he or she
25 will work an average of at least eighty hours per month and for at
26 least eight hours in each month of the season. A seasonal employee
27 determined ineligible at the beginning of his or her employment who
28 works an average of at least eighty hours per month over a period of
29 six consecutive months and at least eight hours in each of those six
30 consecutive months becomes eligible at the first of the month
31 following the six-month averaging period. A benefits-eligible
32 seasonal employee who works a season of less than nine months shall
33 not be eligible for the employer contribution during the off season
34 unless the seasonal employee is an employee of the legislature whose

1 seasonal qualification is through working during the regular
2 legislative session, but may continue enrollment in benefits during
3 the off season by self-paying for the benefits. A benefits-eligible
4 seasonal employee who works a season of nine months or more, or
5 during the 2023-25 fiscal biennium who works for the legislature
6 during regular legislative sessions, is eligible for the employer
7 contribution through the off season following each season worked.

8 (c) Faculty are eligible as follows:

9 (i) Faculty who the employing agency anticipates will work half-
10 time or more for the entire instructional year or equivalent nine-
11 month period are eligible for benefits from the date of employment.
12 Eligibility shall continue until the beginning of the first full
13 month of the next instructional year, unless the employment
14 relationship is terminated, in which case eligibility shall cease
15 the first month following the notice of termination or the effective
16 date of the termination, whichever is later.

17 (ii) Faculty who the employing agency anticipates will not work
18 for the entire instructional year or equivalent nine-month period
19 are eligible for benefits at the beginning of the second consecutive
20 quarter or semester of employment in which he or she is anticipated
21 to work, or has actually worked, half-time or more. Such an employee
22 shall continue to receive uninterrupted employer contributions for
23 benefits if the employee works at least half-time in a quarter or
24 semester. Faculty who the employing agency anticipates will not work
25 for the entire instructional year or equivalent nine-month period,
26 but who actually work half-time or more throughout the entire
27 instructional year, are eligible for summer or off-quarter or off-
28 semester coverage. Faculty who have met the criteria of this
29 subsection (4)(c)(ii), who work at least two quarters or two
30 semesters of the academic year with an average academic year
31 workload of half-time or more for three quarters or two semesters of
32 the academic year, and who have worked an average of half-time or
33 more in each of the two preceding academic years shall continue to
34 receive uninterrupted employer contributions for benefits if he or

1 she works at least half-time in a quarter or semester or works two
2 quarters or two semesters of the academic year with an average
3 academic workload each academic year of half-time or more for three
4 quarters or two semesters. Eligibility under this section ceases
5 immediately if this criteria is not met.

6 (iii) Faculty may establish or maintain eligibility for benefits
7 by working for more than one institution of higher education. When
8 faculty work for more than one institution of higher education,
9 those institutions shall prorate the employer contribution costs, or
10 if eligibility is reached through one institution, that institution
11 will pay the full employer contribution. Faculty working for more
12 than one institution must alert his or her employers to his or her
13 potential eligibility in order to establish eligibility.

14 (iv) The employing agency must provide written notice to faculty
15 who are potentially eligible for benefits under this subsection (4)
16 (c) of their potential eligibility.

17 (v) To be eligible for maintenance of benefits through averaging
18 under (c)(ii) of this subsection, faculty must provide written
19 notification to his or her employing agency or agencies of his or
20 her potential eligibility.

21 (vi) For the purposes of this subsection (4)(c):

22 (A) "Academic year" means summer, fall, winter, and spring
23 quarters or summer, fall, and spring semesters;

24 (B) "Half-time" means one-half of the full-time academic
25 workload as determined by each institution; except that for
26 community and technical college faculty, half-time academic workload
27 is calculated according to RCW 28B.50.489.

28 (d) A legislator is eligible for benefits on the date his or her
29 term begins. All other elected and full-time appointed officials of
30 the legislative and executive branches of state government are
31 eligible for benefits on the date his or her term begins or they
32 take the oath of office, whichever occurs first.

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1 (e) A justice of the supreme court and judges of the court of
2 appeals and the superior courts become eligible for benefits on the
3 date he or she takes the oath of office.

4 (f) Except as provided in (c)(i) and (ii) of this subsection,
5 eligibility ceases for any employee the first of the month following
6 termination of the employment relationship.

7 (g) In determining eligibility under this section, the employing
8 agency may disregard training hours, standby hours, or temporary
9 changes in work hours as determined by the authority under this
10 section.

11 (h) Insurance coverage for all eligible employees begins on the
12 first day of the month following the date when eligibility for
13 benefits is established. If the date eligibility is established is
14 the first working day of a month, insurance coverage begins on that
15 date.

16 (i) Eligibility for an employee whose work circumstances are
17 described by more than one of the eligibility categories in (a)
18 through (e) of this subsection shall be determined solely by the
19 criteria of the category that most closely describes the employee's
20 work circumstances.

21 (j) Except for an employee eligible for benefits under (b) or (c)
22 (ii) of this subsection, an employee who has established eligibility
23 for benefits under this section shall remain eligible for benefits
24 each month in which he or she is in pay status for eight or more
25 hours, if (i) he or she remains in a benefits-eligible position and
26 (ii) leave from the benefits-eligible position is approved by the
27 employing agency. A benefits-eligible seasonal employee is eligible
28 for the employer contribution in any month of his or her season in
29 which he or she is in pay status eight or more hours during that
30 month. Eligibility ends if these conditions are not met, the
31 employment relationship is terminated, or the employee voluntarily
32 transfers to a noneligible position.

33 (k) For the purposes of this subsection, the public employees'
34 benefits board shall define "benefits-eligible position."

1 (5) The public employees' benefits board may authorize premium
2 contributions for an employee and the employee's dependents in a
3 manner that encourages the use of cost-efficient managed health care
4 systems.

5 (6)(a) For any open enrollment period following August 24, 2011,
6 the public employees' benefits board shall offer a health savings
7 account option for employees that conforms to section 223, Part VII
8 of subchapter B of chapter 1 of the internal revenue code of 1986.
9 The public employees' benefits board shall comply with all
10 applicable federal standards related to the establishment of health
11 savings accounts.

12 (b) By November 30, 2015, and each year thereafter, the
13 authority shall submit a report to the relevant legislative policy
14 and fiscal committees that includes the following:

15 (i) Public employees' benefits board health plan cost and
16 service utilization trends for the previous three years, in total
17 and for each health plan offered to employees;

18 (ii) For each health plan offered to employees, the number and
19 percentage of employees and dependents enrolled in the plan, and the
20 age and gender demographics of enrollees in each plan;

21 (iii) Any impact of enrollment in alternatives to the most
22 comprehensive plan, including the high deductible health plan with a
23 health savings account, upon the cost of health benefits for those
24 employees who have chosen to remain enrolled in the most
25 comprehensive plan.

26 (7) Notwithstanding any other provision of this chapter, for any
27 open enrollment period following August 24, 2011, the public
28 employees' benefits board shall offer a high deductible health plan
29 in conjunction with a health savings account developed under
30 subsection (6) of this section.

31 (8) Employees shall choose participation in one of the health
32 care benefit plans developed by the public employees' benefits board
33 and may be permitted to waive coverage under terms and conditions
34 established by the public employees' benefits board.

1 (9) The public employees' benefits board shall review plans
2 proposed by insuring entities that desire to offer property
3 insurance and/or accident and casualty insurance to state employees
4 through payroll deduction. The public employees' benefits board may
5 approve any such plan for payroll deduction by insuring entities
6 holding a valid certificate of authority in the state of Washington
7 and which the public employees' benefits board determines to be in
8 the best interests of employees and the state. The public employees'
9 benefits board shall adopt rules setting forth criteria by which it
10 shall evaluate the plans.

11 (10) Before January 1, 1998, the public employees' benefits
12 board shall make available one or more fully insured long-term care
13 insurance plans that comply with the requirements of chapter 48.84
14 RCW. Such programs shall be made available to eligible employees,
15 retired employees, and retired school employees as well as eligible
16 dependents which, for the purpose of this section, includes the
17 parents of the employee or retiree and the parents of the spouse of
18 the employee or retiree. Employees of local governments, political
19 subdivisions, and tribal governments not otherwise enrolled in the
20 public employees' benefits board sponsored medical programs may
21 enroll under terms and conditions established by the director, if it
22 does not jeopardize the financial viability of the public employees'
23 benefits board's long-term care offering.

24 (a) Participation of eligible employees or retired employees and
25 retired school employees in any long-term care insurance plan made
26 available by the public employees' benefits board is voluntary and
27 shall not be subject to binding arbitration under chapter 41.56 RCW.
28 Participation is subject to reasonable underwriting guidelines and
29 eligibility rules established by the public employees' benefits
30 board and the health care authority.

31 (b) The employee, retired employee, and retired school employee
32 are solely responsible for the payment of the premium rates
33 developed by the health care authority. The health care authority is
34 authorized to charge a reasonable administrative fee in addition to

1 the premium charged by the long-term care insurer, which shall
2 include the health care authority's cost of administration,
3 marketing, and consumer education materials prepared by the health
4 care authority and the office of the insurance commissioner.

5 (c) To the extent administratively possible, the state shall
6 establish an automatic payroll or pension deduction system for the
7 payment of the long-term care insurance premiums.

8 (d) The public employees' benefits board and the health care
9 authority shall establish a technical advisory committee to provide
10 advice in the development of the benefit design and establishment of
11 underwriting guidelines and eligibility rules. The committee shall
12 also advise the public employees' benefits board and authority on
13 effective and cost-effective ways to market and distribute the long-
14 term care product. The technical advisory committee shall be
15 comprised, at a minimum, of representatives of the office of the
16 insurance commissioner, providers of long-term care services,
17 licensed insurance agents with expertise in long-term care
18 insurance, employees, retired employees, retired school employees,
19 and other interested parties determined to be appropriate by the
20 public employees' benefits board.

21 (e) The health care authority shall offer employees, retired
22 employees, and retired school employees the option of purchasing
23 long-term care insurance through licensed agents or brokers
24 appointed by the long-term care insurer. The authority, in
25 consultation with the public employees' benefits board, shall
26 establish marketing procedures and may consider all premium
27 components as a part of the contract negotiations with the long-term
28 care insurer.

29 (f) In developing the long-term care insurance benefit designs,
30 the public employees' benefits board shall include an alternative
31 plan of care benefit, including adult day services, as approved by
32 the office of the insurance commissioner.

33 (g) The health care authority, with the cooperation of the
34 office of the insurance commissioner, shall develop a consumer

1 education program for the eligible employees, retired employees, and
2 retired school employees designed to provide education on the
3 potential need for long-term care, methods of financing long-term
4 care, and the availability of long-term care insurance products
5 including the products offered by the public employees' benefits
6 board.

7 (11) The public employees' benefits board may establish
8 penalties to be imposed by the authority when the eligibility
9 determinations of an employing agency fail to comply with the
10 criteria under this chapter."

11

12 Correct the title.

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EFFECT: Adds for the duration of the 2023-25 fiscal biennium employees of the Legislature anticipated to work during regular legislative sessions to the definition of "seasonal employee" that qualifies for year-round coverage and employer contributions under the health and insurance benefits of the Public Employees' Benefits Board program.

FISCAL IMPACT: No net change to appropriated levels.

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