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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

PEACEHEALTH ST. JOSEPH MEDICAL CENTER, et al.,

Appellants,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

RESPONSE BRIEF OF APPELLANT PEACEHEALTH

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ISSUES PRESENTED.....	4
III. STATEMENT OF THE CASE.....	5
A. Procedural History	5
IV. ARGUMENT	7
A. Standard of Review	7
B. The Plain Language of RCW 82.04.4311 Makes <i>All</i> Medicaid and Children’s Health Payments Deductible	8
C. Even if RCW 82.04.4311 Is Ambiguous, the Legislative History Makes It Clear That Receipts From Other State’s Medicaid Programs Are Deductible	15
D. The Department’s Interpretation of RCW 82.04.4311 Is Contrary to the Purpose of the Provision and Based on a Mischaracterization of How Medicaid Reimbursement Works.....	18
E. The Department’s Interpretation of RCW 82.04.4311 Would Violate the Commerce Clause By Discriminating Against Interstate Commerce	25
V. CONCLUSION.....	36

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Asante v. Calif. Dep’t of Health Care Servs.</i> , 886 F.3d 795 (9th Cir. 2018)	33, 34
<i>Camps Newfound/Owatonna, Inc. v. Town of Harrison, Me.</i> , 520 U.S. 564 (1997).....	<i>passim</i>
<i>Chemical Waste Management, Inc. v. Hunt</i> , 504 U.S. 334 (1992).....	27
<i>City of Philadelphia v. New Jersey</i> , 437 U.S. 617 (1978).....	27
<i>Comptroller of the Treasury of Maryland v. Wynne</i> , ___ U.S. ___, 135 S.Ct. 1787 (2015).....	28
<i>Davis v. Cox</i> , 183 Wn. 2d 269 (2015)	25, 33
<i>Dep’t of Revenue v. Davis</i> , 553 U.S. 328 (2008).....	27, 33
<i>Dep’t of Revenue v. Nord Nw. Corp.</i> , 164 Wn. App. 215 (2011)	8
<i>Kilian v. Atkinson</i> , 147 Wn.2d 16 (2002)	14
<i>Lockhart v. United States</i> , 577 U.S. ___, 136 S. Ct. 958 (2016).....	10, 11, 12
<i>Maryland v. Louisiana</i> , 451 U.S. 725 (1981).....	28
<i>Nat’l Fed’n of Indep. Bus. v. Sebelius</i> , 567 U.S. 519 (2012).....	21

<i>New Energy Co. of Ind. v. Limbach</i> , 486 U.S. 269 (1988).....	26, 30
<i>Oregon Waste Sys. Inc. v. Dep’t of Env’tl. Quality of Oregon</i> , 511 U.S. 93 (1994).....	28
<i>Overlake Hosp. Ass’n v. Dep’t of Health</i> , 170 Wn.2d 43 (2010)	4, 8
<i>Pennsylvania v. West Virginia</i> , 262 U.S. 553 (1923).....	28
<i>Pharm. Research & Mfrs. of Am. v. Cnty. of Alameda</i> , 768 F.3d 1037 (9th Cir. 2014)	27
<i>Pike v. Bruce Church, Inc.</i> , 397 U.S. 137 (1970).....	27
<i>Sam Francis Found. v. Christies, Inc.</i> , 784 F.3d 1320 (9th Cir. 2015)	26
<i>In re Sehome Park Care Center, Inc. v. Dep’t of Revenue</i> , 127 Wn.2d 774 (1995)	10
<i>State Dep’t of Ecology v. Campbell and Gwinn</i> , 146 Wn.2d 1 (2002)	13, 14, 15
<i>State v. Reis</i> , 183 Wn.2d 197 (2015)	14
<i>Stuewe v. State Dep’t of Revenue</i> , 98 Wn. App. 947 (2000)	7, 8
<i>Verizon Nw., Inc. v. Washington Employment Sec. Dep’t</i> , 164 Wn. 2d 909 (2008)	8
<i>W. Va. Univ. Hosps. v. Casey</i> , 885 F.2d 11 (3d Cir. 1989).....	32
<i>Wash. State Republican Party v. Wash. State Pub. Disclosure Comm’n</i> , 141 Wn. 2d 245 (2000)	25

<i>Washington State Hosp. Ass'n v. State</i> , 175 Wn. App. 642 (2013)	24
<i>Wyoming v. Oklahoma</i> , 502 U.S. 437 (1992)	28
Statutes	
42 CFR § 431.52	20
42 U.S.C. §1395dd.....	20
42 U.S.C. § 1396, <i>et seq.</i>	1
42 U.S.C. § 1396a(a)(10)(A)	19
42 U.S.C. § 1396a, <i>et seq.</i>	25
42 U.S.C. § 1396d(a)(1).....	19
42 U.S.C. § 1396d(a)(2).....	19
RCW 34.05.570(1)(a)	7
RCW ch. 74.09.....	<i>passim</i>
RCW 74.09.010(13).....	9
RCW 74.09.500	9, 12
RCW 82.04.341	30
RCW 82.04.4297	16, 18
RCW 82.04.4311	<i>passim</i>
Other Authorities	
A. Scalia and B. Garner, <i>READING LAW: THE INTERPRETATION OF LEGAL TEXTS</i> 144 (2012).....	10

R. Randall Kelso & C. Kevin Kelso, *Appeals in Federal Courts by Prosecuting Entities Other than the United States: The Plain Meaning Rule Revisited*,
33 HASTINGS L.J. 187 (1981).....15

I. INTRODUCTION

This case arises from the Department of Revenue’s (the “Department”) attempt to deny St. Joseph Medical Center and St. John Medical Center (collectively, “PeaceHealth”) the intended and appropriate benefit of a B&O tax deduction for public and nonprofit hospitals that provide healthcare services to children and the indigent. Healthcare providers lose money caring for patients covered by government payment programs like Medicaid and Children’s Health. The Legislature tried to help close the gap by allowing public and nonprofit providers a tax deduction for receipts from Medicaid, Children’s Health and other government payment programs. The language of this deduction, codified at RCW 82.04.4311, uses the original term for Medicaid, “medical assistance.” The Department tries to exploit this artifact of the original Medicaid statute¹ to argue the Legislature was not referring to Medicaid generically and only intended the deduction to apply to Washington’s medical assistance programs.

The Board of Tax Appeals (“BTA”) correctly rejected the Department’s position and held that RCW 82.04.4311, by its plain terms, allows nonprofit health care providers like PeaceHealth to deduct

¹ Medicaid was enacted in 1965 through the addition of Title XIX to the Social Security Act, which is still titled “Grants to States for *Medical Assistance* Programs.” 42 U.S.C. § 1396, *et seq.* (emphasis added).

Medicaid and Children's Health receipts from all states' programs, not just Washington's. The Department refuses to accept the BTA's sound conclusion, advocating for an interpretation of RCW 82.04.4311 that is contrary to the canons of statutory construction and the Constitution. The Department tries to support its misinterpretation with (1) a plain language argument contradicted by recognized canons of construction, (2) a distorted view of the legislative history, (3) a persistent mischaracterization of the purpose and practical effect of RCW 82.04.4311, and (4) a refusal to acknowledge the clear command of Commerce Clause jurisprudence.

Since the outset of these proceedings, the Department has misrepresented RCW 82.04.4311 as a statutory provision intended to control the State of Washington's health care spending. The tax deduction is *not* a health care budget control measure. It has *no impact* on how much Washington spends on health care. Before the superior court, the Department went so far as to argue that the tax deduction in RCW 82.04.4311 directly affects the reimbursement rates the State of Washington pays for Medicaid services. That's simply not true. Medicaid reimbursement rates are not pegged to the cost of a service at a given hospital. When nonprofit or public hospitals receive a tax deduction for providing services to Medicaid enrollees it lowers the hospitals' costs, but

it does not, as the Department wrongly argued, lower the corresponding reimbursement rates paid by the State through its Medicaid program.

On appeal, the Department seems to have retreated somewhat from its mistaken position that Medicaid reimbursement is directly cost-based. Yet the Department persists in arguing that RCW 82.04.4311 is about controlling health care spending. This litigation tactic is part of the Department's effort to disguise what it's up to in this case: attempting to take away a tax break the Legislature gave to nonprofit hospitals for the services they provide at a loss to needy populations like children, the elderly, and the indigent. The Department seems to think that by painting RCW 82.04.4311 as health care cost control measure and appealing to fiscal prudence, it might get some traction for its erroneous interpretation of the provision. Health care costs and our State's budget are important issues, but those concerns should not affect the statutory interpretation at issue in this case. The Court should reject the Department's invitation to adopt a misreading of the statute based on a misrepresentation of its purpose and effect. The Legislature stated outright why it created this deduction: *for the benefit of public and nonprofit hospitals* serving needy populations covered by government health care programs. See 2002 H.B. 2732 § 1, 2002 Wash. Laws, ch. 314, § 1 (attached hereto as Appendix A). The Court should construe RCW 82.04.4311 against the backdrop of this

stated purpose “to ensure that [the law] is interpreted in a manner that is consistent with the underlying policy of the statute.” *Overlake Hosp. Ass’n v. Dep’t of Health*, 170 Wn.2d 43, 52 (2010). In doing so, it is clear that RCW 82.04.4311’s tax deduction applies to Medicaid and Children’s Health receipts from all states.

If there were any doubt about the proper interpretation of RCW 82.04.4311, the U.S. Constitution mandates the BTA’s conclusion. If the deduction were only available for receipts from Washington Medicaid, the statute would discriminate against interstate commerce in violation of the Commerce Clause.

II. ISSUES PRESENTED

Did the BTA correctly find that the tax deduction in RCW 82.04.4311 for amounts a public or nonprofit hospital receives for providing medical services covered under “medical assistance, children’s health, or other program under chapter 74.09 RCW” includes payments from all states’ Medicaid and Children’s Health programs, not just Washington’s?

III. STATEMENT OF THE CASE

A. Procedural History

St. Joseph Medical Center and St. John Medical Center are nonprofit hospitals owned by PeaceHealth, a not-for-profit health care system with facilities in Washington, Oregon, and Alaska. St. Joseph Medical Center is located in Bellingham, Washington, and St. John Medical Center is located in Longview, Washington. AR 255 (Declaration of Spencer Urban Dec., ¶ 2). Longview is across the river from Rainier, Oregon. PeaceHealth also has Southwest Medical Center, in Vancouver, Washington, which is directly across the river from Portland, Oregon, and the two cities constitute a fluid metropolitan area. PeaceHealth's hospitals serve Medicaid patients from Washington and other states. AR 256.

Medicaid receipts constituted 15 percent of PeaceHealth's net patient service revenue in 2015. *Id.* These receipts do not cover the cost of care. *Id.* The unreimbursed costs of caring for Medicaid patients totaled over \$22 million for St. John Medical Center and \$36 million for St. Joseph Medical Center in fiscal year 2015. *Id.* PeaceHealth, on behalf of these two medical centers, applied for a refund from the Department for the period December 1, 2007 through December 31, 2008 for tax paid on out-of-state Medicaid and Children's Health receipts. The Department

denied the request. PeaceHealth initiated a case before the BTA and subsequently moved for summary judgment. AR 206-22. The BTA granted PeaceHealth's motion, finding that the plain language of RCW 82.04.4311 allows nonprofit hospitals like PeaceHealth to deduct Medicaid receipts from all states Medicaid programs, not just Washington's program. AR 19.

The Department appealed the BTA's ruling to superior court. There, the Department argued that RCW 82.04.4311 is "one component of a highly complex and multi-faceted financing strategy" for Medicaid services. CP 57. The Department based its argument on the erroneous assertion that the tax deduction in RCW 82.04.4311 directly impacts the reimbursement rates Washington pays for Medicaid services. It essentially argued that Washington will have to raise its Medicaid reimbursement rates if RCW 82.04.4311 applies to out-of-state Medicaid receipts. The superior court ruled in the Department's favor without addressing this misrepresentation by the Department and without addressing the constitutional issue raised by PeaceHealth.

PeaceHealth timely appealed the superior court's order reversing the BTA. As the party challenging the BTA's ruling, the Department filed the opening brief in this Court. *See* General Order 2010-1.

IV. ARGUMENT

The Department makes four arguments in its Opening Brief, none of which is sound. First, it argues that statutory interpretation canons support its reading of the statute, when in fact the canons and commonsense reading support the opposite result. Second, the Department claims that the legislative history is on its side but omits the most telling parts of that history. Third, the Department claims that its reading of the statute is reasonable because it has an effect on state spending beyond the tax deduction itself, but this is simply untrue. Finally, the Department claims that the statute does not violate the Commerce Clause of the federal Constitution despite the fact that *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Me.*, 520 U.S. 564 (1997) is exactly on point.

A. Standard of Review

“Proceedings before the Board of Tax Appeals are governed by the Administrative Procedure Act, RCW 34.05.” *Stuewe v. State Dep’t of Revenue*, 98 Wn. App. 947, 949 (2000). Under RCW 34.05, “[t]he burden of demonstrating the invalidity of agency action is on the party asserting invalidity.” RCW 34.05.570(1)(a). Therefore, the burden is on the Department to demonstrate that the BTA’s ruling is invalid.

This Court reviews conclusions of law by the BTA de novo under an error of law standard.” *Stuewe*, 98 Wn. App. at 949. However, the Court should “accord substantial weight” to the BTA’s “interpretation of a statute within its expertise.” *Verizon Nw., Inc. v. Washington Employment Sec. Dep’t*, 164 Wn. 2d 909, 915 (2008). The Department is also an agency with expertise whose interpretations are entitled to deference, but the Court’s “paramount concern is to ensure that [a law] is interpreted in a manner that is consistent with the underlying policy of the statute.” *Overlake Hosp.*, 170 Wn.2d at 52. Because this Court sits in the same position as the superior court, the superior court’s ruling receives no deference. *Dep’t of Revenue v. Nord Nw. Corp.*, 164 Wn. App. 215, 223 (2011).

B. The Plain Language of RCW 82.04.4311 Makes All Medicaid and Children’s Health Payments Deductible

RCW 82.04.4311 allows public and nonprofit healthcare providers a deduction for payments received under the major state and federal government healthcare payment programs including Medicare, Medicaid, and Children’s Health. The provision states:

A public hospital that is owned by a municipal corporation or political subdivision, or a nonprofit hospital, or a nonprofit community health center, or a network of nonprofit community health centers, that qualifies as a health and social

welfare organization as defined in RCW 82.04.431, may deduct from the measure of tax amounts received as compensation for health care services covered under the federal medicare program authorized under Title XVIII of the federal social security act; ***medical assistance, children’s health***, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. The deduction authorized by this section does not apply to amounts received from patient copayments or patient deductibles.

RCW 82.04.431(1). “Medical assistance” is the original name given by Congress to Medicaid, and Washington law recognizes that the term denotes the federal program. *See* RCW 74.09.010(13) (defining medical assistance as “federal aid medical care program provided to categorically needy persons as defined under Title XIX of the federal Social Security Act.”); RCW 74.09.500 (“There is hereby established a new program of federal-aid assistance to be known as medical assistance “).

Nonetheless, the Department argues that the plain meaning of medical assistance here is ***not*** the federal program, just Washington’s enactment pursuant to it. The Department argues that the inclusion of a catchall for any “other program under chapter 74.09 RCW”—an addition plainly intended to ***broaden*** the application of the deduction—actually ***narrows*** the deduction such that “medical assistance” and “children’s health” are modified to mean only Washington’s programs “under chapter 74.09

RCW.” The Department’s analysis is at odds with the long-established last antecedent rule of statutory construction and a natural reading of the text.

The last antecedent rule provides that “a limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows.” *Lockhart v. United States*, 577 U.S. ____, 136 S. Ct. 958, 962 (2016) (citing *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003); see also *In re Sehome Park Care Center, Inc. v. Dep’t of Revenue*, 127 Wn.2d 774, 781 (1995). “Qualifying words or phrases modify the words or phrases immediately preceding them and not words or phrases more remote, unless the extension is necessary from the context or the spirit of the entire writing.” A. Scalia and B. Garner, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 144 (2012).

The BTA recognized that under the last antecedent rule, the absence of a comma before the qualifier “under chapter 74.09 RCW” means that phrase modifies only its immediately preceding antecedent, “other program.” AR 16-17. “[T]he presence of a comma before [a] qualifying phrase is evidence the qualifier is intended to apply to all antecedents instead of only the immediately preceding one.” *In re Sehome Park Care Ctr., Inc.*, 127 Wn. 2d 774, 781–82 (1995). Indeed, elsewhere in RCW 82.04.4311 the Legislature used a comma before a modifier,

indicating the modifier was intended to apply to more than just the last antecedent:

A public hospital that is owned by a municipal corporation or political subdivision, or a nonprofit hospital, or a nonprofit community health center, or a network of nonprofit community health centers, *that* qualifies as a health and social welfare organization as defined in RCW 82.04.431, may deduct . . .

RCW 82.04.431(1) (emphasis added). The comma indicates that the modifying phrase that follows applies to more than just the last antecedent. In other words, in drafting this very provision, indeed this very sentence, the Legislature correctly used the last antecedent rule to differentiate between the above case where the final prepositional phrase refers back to all of the antecedents and the case at issue where the final phrase refers only to the last antecedent.

The Department attempts to defeat the logic of the last antecedent rule by citing the series qualifier principle. But *Lockhart*, a 2016 U.S. Supreme Court decision featuring these two canons, makes it clear that the series qualifier principle does not come into play unless the “contextual indicia” rebut the application of the last antecedent rule. 136 S. Ct. at 965-66. The Department cites Justice Kagan’s *dissent* in *Lockhart* to support a more mechanistic application of the series qualifier principle. Br. at 18-19. But the *Lockhart* majority openly disagreed with Justice Kagan’s

approach. According to the majority, the prior cases do not even “describe, much less apply, a countervailing grammatical mandate that could bear the weight that... the dissent places on the series qualifier principle.” 136 S. Ct. at 965. The last antecedent rule controls unless “context weighs against the application of the rule.” *Id.*

Here the context creates no such necessity. Both “medical assistance” and “children’s health” are standalone references to federal programs. Contrary to the Department’s assertion, these terms do not need the word “program” or the prepositional phrase locating them in state statute to be understood. In fact, chapter 74.09 RCW consistently refers to “medical assistance” not “medical assistance program.” *See, e.g.,* RCW 74.09.500, .510, .515, .520, .521, .522, .5222 (index to chapter 74.09 RCW is attached as Appendix B). Similarly, “children’s health” became “Apple Health for Kids”, not “Apple Health Program.” Like “assistance,” “health” is a noun and does not require “program” to be understood.

In drafting RCW 82.04.4311, the Department itself removed the article “a” preceding the words “medical assistance” which would have required reading in the prepositional phrase. The earlier version of this statute had used the article, and removing it so that medical assistance became a generic word for the federal program was consistent with the Department’s stated purpose in offering the bill to “link[] the deduction

with an activity (treating eligible persons) rather than with the source of the funds or the identity of the purchaser.” AR 241-50 (Declaration of Michele Radosevich, Exs. 4, 5). The removal of the indefinite article also distinguishes the phrase in question from the other two parallel phrases, both of which use the definite article “the” to identify (1) Medicare and (2) the Washington Basic Health Plan. The first and third phrases thus refer to specific programs with specific government sponsors; the second refers to a number of programs that could be sponsored by various states.

If this were not clear enough, the Legislature included an intent section, in the bill, which is part of its plain meaning. *See State Dep’t of Ecology v. Campbell and Gwinn*, 146 Wn.2d 1, 10 (2002) (“examination of the statute in which the provision at issue is found, as well as related statutes or other provisions of the same act in which the provision is found, is appropriate as part of the determination whether a plain meaning can be ascertained.) The intent section stated: “[I]t would be inconsistent with that governmental function to tax amounts received by a public hospital or nonprofit hospital . . . when such amounts are paid under a health service program subsidized by federal or state government.” 2002 Laws, ch. 314, § 1. The Legislature specifically used the generic “state government” rather than “Washington.” It clearly intended to make all Medicaid receipts deductible for nonprofit hospitals.

The Department focuses its context argument on the semicolons separating relevant subsections from the rest of the sentence. But the semicolons don't support the Department's misreading of the deduction. The semicolons separate parallel phrases, the first referring to a federal program, the second referring to several federal-state partnership programs, and the last referring to a state-only program. Separating the varying types of programs, particularly in light of the length of the sentence, just adds clarity. It does not require the reader attribute the prepositional phrase to all antecedents.

The Department then tries to explain away the context that the Legislature itself provided in the intent section by citing cases for the proposition that a statement of intent does not trump the operative statutory provisions. But the Department's cases deal with crimes (*State v. Reis*, 183 Wn.2d 197 (2015)) and causes of action (*Kilian v. Atkinson*, 147 Wn.2d 16 (2002)) that were not provided for in the operative part of the statute. These instances are a far cry from the task here—deciding what noun or nouns are modified by a prepositional phrase. A more useful formulation of the plain meaning rule is found in *Campbell and Gwinn*:

[T]he plain meaning rule requires courts to consider legislative purposes or policies appearing on the face of the statute as part of the statute's context. In addition, background facts of which judicial notice can be taken are properly considered as part of the statute's context

because presumably the legislature also was familiar with them when it passed the statute. Reference to a statute's context to determine its plain meaning also includes examining closely related statutes, because legislators enact legislation in light of existing statutes.

146 Wn.2d at 12 (quoting 2A Norman J. Singer, *Statutes and Statutory Construction* § 48A:16, at 809–10 (6th ed. 2000) (extracts from R. Randall Kelso & C. Kevin Kelso, *Appeals in Federal Courts by Prosecuting Entities Other than the United States: The Plain Meaning Rule Revisited*, 33 HASTINGS L.J. 187 (1981))). In other words, courts must look at context in determining the plain meaning of a statute; courts are not required to find ambiguity before examining context.

C. Even if RCW 82.04.4311 Is Ambiguous, the Legislative History Makes It Clear That Receipts From Other State's Medicaid Programs Are Deductible

The intent section quoted above was the product of the legislature, but it was consistent with the Department's own description of the bill it had drafted. The Department stated, in its descriptions of the bill, that its draft "*links the deduction with an activity (treating eligible persons) rather than with the source of the funds or the identity of the purchaser.*" AR 241 (emphasis added). If the Department had intended to levy additional tax based on the identity of the purchaser as an out-of-state entity, it would not have made the statement it did.

The Department was acting at the behest of the governor to “clean up” a statute it had opposed in the Legislature. The original version of the language in question was enacted in 2001 in HB 1624. *See* Laws of 2001, 2nd sp. sess., ch. 23. AR 226-27. Prior to 2001, nonprofit hospitals were able to deduct “amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for... health or social welfare services.” RCW 82.04.4297. The 2001 legislature, recognizing that Medicaid services were increasingly delivered through managed care organizations and that payments for these services therefore did not come directly from governmental entities, amended RCW 82.04.4297 by adding language specific to hospitals receiving such payments:

For purposes of this section, “amounts received from” includes amounts received by a... nonprofit hospital or public hospital from a managed care organization or other entity that is under contract to manage health care benefits... for a medical assistance, children’s health, or other program authorized under chapter 74.09 RCW... to the extent that these amounts are received as compensation for health care service within the scope of benefits covered by the pertinent government health care program.

2001 Laws, 2nd sp. sess., ch. 23, § 2. The purpose of this change, according to the Legislature, was “to extend the purchasing power of scarce government health care resources.” *Id.*, § 1.

The Department of Revenue opposed the change. Director Fred Kiga sent a memorandum to the House Finance Committee objecting to the bill based on the Department’s understanding that it would now be “forced to look beyond the immediate payer to the underlying source of the funds.” AR 230-31. The Governor signed the bill however, while vetoing one unrelated section relating to retroactive effects.

After the passage of HB 1624, then-governor Gary Locke wrote to the hospitals in the state, indicating that he had directed the Department to draft legislation to fix what the Department saw as problems with the bill, “while preserving the underlying policy of exempting monies received by hospitals for providing health and welfare services.” AR 240; *see also* AR 242-43.

The Department looked at various options, settling on a stand-alone deduction for hospitals for “all amounts received... for treatment of eligible patients for covered benefits, *not dependent on the identity of the payor.*” *Id.* (emphasis added). The Department explained that this was consistent with the policy of linking the deduction to providing services to

eligible persons “rather than with the source of the funds or the identity of the purchaser.” *Id.*, see also AR 245.

The resulting bill, HB 2732, removed the language quoted above from RCW 82.04.4297, leaving in place the generic deduction for receipts from the federal and Washington state governments, and enacted the provision at issue here. The Legislature’s clear intent was to give *hospitals* special treatment and help them stretch the monies received.

D. The Department’s Interpretation of RCW 82.04.4311 Is Contrary to the Purpose of the Provision and Based on a Mischaracterization of How Medicaid Reimbursement Works

After bouncing between positions in search of a justification for its interpretation of RCW 82.04.4311 before the BTA and the superior court, the Department felt compelled to include a lengthy section in its appeal arguing that its interpretation is reasonable. Br. at 29-37. It isn’t. Nothing in the Department’s 8-page section can reconcile its view that RCW 82.04.4311 is a health care cost control measure with the *actual stated purpose of the statute*:

The legislature finds that the provision of health services to those people who receive federal or state subsidized health care benefits by reason of age, disability, or lack of income is a recognized, necessary, and vital governmental function. As a result, the legislature finds that it would be inconsistent with that governmental function to tax amounts received by a public hospital or nonprofit hospital qualifying as a health and social welfare organization,

when the amounts are paid under a health service program subsidized by federal or state government.

2002 Laws, ch. 314, § 1. RCW 82.04.4311 is a tax break for public and nonprofit hospitals serving needy populations—like the elderly, children, and the indigent—whose health care coverage is subsidized by federal or state government. The Legislature’s clear articulation of its intent plainly supports the BTA’s finding that receipts from all states’ Medicaid programs are deductible.

The Department’s argument is premised on the mistaken notion that Medicaid is a very state-specific program. However, Medicaid is a federal program, not a state program. Medicaid is created and structured by federal law. There is little flexibility in how Medicaid is run. For example, there are some benefits that are considered optional for states, but these are not the major benefits of the program. What most of us would think of as core health services are required by federal law. AR 249 (Declaration of Cassie Sauer ¶ 3).

Relevant to this case, federal Medicaid law mandates coverage of inpatient and outpatient hospital services, as well as laboratory and x-ray services. *See* 42 U.S.C. 1396a(a)(10)(A), referencing 42 U.S.C. 1396d(a)(1) and (2). All states participate in Medicaid, and all states must offer these services. They are a national guarantee. The Medicaid

program receives a majority of its funding from the federal, not state government, and matching percentages of state and federal funds are set by the federal government. AR 251.

Another federal law requires that hospitals must treat patients across state lines. The federal Emergency Management and Active Labor Treatment Act or EMTALA (42 U.S.C. §1395dd) requires that hospitals serve all patients—not only patients from other states but patients from other countries. AR 251.

Washington hospitals may not discriminate against Medicaid or Medicare enrollees from other states. 42 CFR 431.52, a Medicaid regulation, provides that all states participating in Medicaid must “facilitate furnishing of medical services to individuals who are present in the state and are eligible for Medicaid under another state’s plan.” Medicaid and Medicare enrollees may cross state lines and receive care at any hospital in our state. A hospital could not choose to turn away a Medicaid patient from another state. Medicaid and Medicare enrollees who are traveling and not in their home state can expect to have their health insurance provided through Medicaid or Medicare fully accepted by a hospital in Washington. AR 251-2.

The Department nonetheless asserts that Medicaid gives states “a great deal of flexibility and discretion,” relying on Justice Ginsburg’s

dissent in *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 630 (2012). Br. at 30. In reality, the states have a very little wiggle room in terms of who they cover and for what services. As the majority in *National Federation* stated, to get federal funding “[s]tates must comply with federal criteria governing matters such as who receives care and what services are provided at what cost.” 567 U.S. at 541–42. The fact that the dissent emphasizes flexibility does not change the fact that federal statute mandates hospital coverage.

The “great deal of flexibility” the Department touts simply means that different states may have different caps on eligibility. The ACA allows states to *at most* offer Medicaid to adults with incomes up to 133 percent of the federal poverty level, which as of 2018 is still only \$1,372 per month. See Dep’t Health, 2018 Poverty Level Standards, <https://www.medicaid.gov/federal-policy-guidance/downloads/cib030618.pdf>. It is implausible that the Washington Legislature was looking to capture tax revenue from the health care services provided *at a loss* to this indigent population. The purpose of the tax deduction in RCW 82.04.4311 was just the opposite: to subsidize hospitals that serve these needy populations.

Nonetheless the Department argues that limiting the deduction to Washington’s Medicaid and Children’s Health makes sense because

“Washington has no authority or control over any other state’s Medicaid or CHIP program.” Br. at 30-32. The Department seems to be suggesting that the BTA’s interpretation of RCW 82.04.4311 puts Washington at the financial mercy of other states. Not so. The way other states set reimbursement rates for and administer their Medicaid and Children’s Health programs does not change the financial impact of RCW 82.04.4311 on the State of Washington. Under the BTA’s correct reading of the deduction, when an Oregon Medicaid enrollee receives an appendectomy at a PeaceHealth hospital in Washington, the reimbursement by Oregon to Peacehealth is deductible. It doesn’t matter whether the reimbursement rate set by Oregon’s Medicaid program covers 50% or 70% of PeaceHealth’s costs for the appendectomy. In either event the reimbursement is tax deductible under RCW 82.04.4311; in either event the State of Washington receives no tax. The change in rate by Oregon has no financial impact on Washington.

Perhaps the Department is suggesting that other states’ Medicaid and Children’s Health plans might cover more services than Washington’s. Maybe so. But why would the Legislature care? Hospital services are covered in every state. Whether poor families are entitled to dental care or not is irrelevant to the taxation of hospitals.

The Department raises a long list of concerns about how neighboring states might run their Medicaid or Children's Health programs poorly:

Washington has no control over the amount paid or the services covered by another state; no means to detect or deter fraud, waste or abuse; no ability to control, supervise, or even monitor the contracting practices or auditing procedures of other states; and, perhaps most importantly, no right to recoup the State's expenditures from legally liable third parties or the beneficiary's estate.

Br. at 31. It's unclear how this lack of control over other states' programs has any bearing on the appropriate interpretation of RCW 82.04.4311.

The exact same could be said of the federal Medicare program:

Washington has no control over Medicare reimbursement rates or the services covered by Medicare; no means to detect or deter Medicare fraud, waste or abuse; no ability to control, supervise, or even monitor federal contracting practices or auditing procedures, and no right to recoup Medicare expenditures from third parties or the estate of beneficiaries.

Yet the Department readily acknowledges that RCW 82.04.4311 allows deduction of Medicare receipts. *See, e.g.*, Br. at 29.

The Department argues that allowing nonprofit and public hospitals to deduct out-of-state Medicaid and CHIP receipts would lower the cost of care for other states:

There is no reason to believe the Legislature intended to subsidize any other state's costs for a healthcare program designed to benefit its own residents and over which the State has no regulatory or administrative authority, let alone financial responsibility.

Again, wrong. RCW 82.04.4311 does not subsidize other states' health care spending. If Oregon's Medicaid program sets a reimbursement rate of \$500 for appendectomies, that's what it costs Oregon when an Oregon Medicaid enrollee gets an appendectomy at PeaceHealth. RCW 82.04.4311 doesn't change the cost to Oregon one red cent.

The Department worries that "Washington has no right to reciprocal tax relief for amounts paid for health care services Washington residents receive while traveling out of state." Br. at 32. This misplaced concern again captures the Department's fundamental misunderstanding of Medicaid and the operation of the B&O tax deduction provided by RCW 82.04.4311. RCW 82.04.4311 benefits public and nonprofit hospitals, *not Washington's or any other state's Medicaid or CHIP program*. Medicaid is a federal reimbursement system under which "[e]ach state has authority to administer the program and devise its own reimbursement systems." *Washington State Hosp. Ass'n v. State*, 175 Wn. App. 642, 644 (2013). Provided it complies with certain requirements to receive the federal funding dollars, Washington can set its own

reimbursement rates for services provided to Medicaid enrollees. 42 U.S.C. 1396a, *et seq.* The same goes for Oregon. The amount Oregon reimburses PeaceHealth for a service performed on an Oregon Medicaid enrollee is not affected by the tax deduction in RCW 82.04.4311. If Oregon were to enact its own version of RCW 82.04.4311, the deduction would benefit *Oregon nonprofit hospitals* that served Washington Medicaid recipients. It would *not reduce the amount Washington reimburses under Medicaid.*

The Department's entire section on why its interpretation of RCW 82.04.4311 is reasonable is based on based on erroneous representations about the purpose and effect of the deduction.

E. The Department's Interpretation of RCW 82.04.4311 Would Violate the Commerce Clause By Discriminating Against Interstate Commerce

The Department continues to give short shrift to the constitutional concern raised by its interpretation of RCW 82.04.4311. "Where possible, statutes should be construed so as to avoid unconstitutionality." *Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n*, 141 Wn. 2d 245, 280 (2000). The "doctrine of constitutional avoidance requires [courts] to choose a constitutional interpretation of a statute over an unconstitutional interpretation when the statute is 'genuinely susceptible to two constructions.'" *Davis v. Cox*, 183 Wn. 2d 269, 280 (2015) (quoting

Gonzales v. Carhart, 550 U.S. 124, 154 (2007)) (emphasis added). If the tax deduction in RCW 82.04.4311 only applies to receipts from Washington’s Medicaid and CHIP plans, it would be harmful to the interests of out-of-state patients. The deduction would become a disincentive to operating a health care facility that could attract out-of-state patients. This facial discrimination against hospitals that engage in cross-border interstate commerce is per se invalid under the controlling precedent of *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Me.*, 520 U.S. 564, 575–76 (1997) (“the discriminatory burden is imposed on the out-of-state customer indirectly by means of a tax on the entity transacting business with the non-Maine customer,” but “[t]his distinction makes no analytic difference.”).

“It has long been accepted that the Commerce Clause not only grants Congress the authority to regulate commerce among the States, but also directly limits the power of the States to discriminate against interstate commerce.” *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273 (1988). The dormant Commerce Clause “ensures that state autonomy over local needs does not inhibit the overriding requirement of freedom for the national commerce.” *Sam Francis Found. v. Christies, Inc.*, 784 F.3d 1320, 1323 (9th Cir. 2015) (quotations omitted). Stated alternatively, “[t]he point [of the dormant Commerce Clause] is to effectuate the

Framers’ purpose to prevent a State from retreating into the economic isolation that had plagued relations among the Colonies and later among the States under the Articles of Confederation.” *Dep’t of Revenue v. Davis*, 553 U.S. 328, 338 (2008) (citations and punctuation omitted).

The Supreme Court has applied a two-tiered inquiry to determine whether a state or local law violates the dormant Commerce Clause. “The first tier asks whether the [law] ‘either discriminates against or directly regulates interstate commerce.’” *Pharm. Research & Mfrs. of Am. v. Cnty. of Alameda*, 768 F.3d 1037, 1041 (9th Cir. 2014) (quotation omitted). If so, the law is subject to strict scrutiny and a “virtually *per se* rule of invalidity.” *City of Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978); *Chemical Waste Management, Inc. v. Hunt*, 504 U.S. 334, 342 (1992) (“Once a state tax is found to discriminate against out-of-state commerce, it is typically struck down without further inquiry”). A discriminatory law “will survive only if it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives.” *Davis*, 553 U.S. 328, 338. The second tier—known as the *Pike* balancing test—asks whether the burden a non-discriminatory law imposes on interstate commerce is “clearly excessive in relation to the putative local benefits.” *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

Under the dormant Commerce Clause, discrimination means “differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.” *Oregon Waste Sys. Inc. v. Dep’t of Env’tl. Quality of Oregon*, 511 U.S. 93, 99 (1994). A statute can discriminate against out-of-state interests in three different ways: (a) facially, (b) purposefully, or (c) in practical effect. *Wyoming v. Oklahoma*, 502 U.S. 437, 454–55 (1992). Although dormant Commerce Clause doctrine has developed largely in the context of laws that discriminate against out-of-state *businesses*, the Supreme Court has explicitly stated that “[e]conomic protectionism is not limited to attempts to convey advantages on local merchants; it may include attempts to give local consumers an advantage over consumers in other States.” *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Me.*, 520 U.S. 564, 577–78 (1997) (quoting *Brown–Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573, 580 (1986); see also *Maryland v. Louisiana*, 451 U.S. 725, 756–760 (1981) (striking down under dormant Commerce Clause state statute favoring in-state gas consumers and discriminating against purchasers of gas moving in interstate commerce); *Pennsylvania v. West Virginia*, 262 U.S. 553, 598 (1923) (dormant commerce clause prohibits state from regulating “interstate business to the advantage of the local consumers”); *Comptroller of the Treasury of Maryland v. Wynne*, ___

U.S. ___, 135 S.Ct. 1787, 1802 (2015) (lack of tax credit for income tax paid to other states “is inherently discriminatory and operates as a tariff.”).

The relevant precedent here is *Camps Newfound*, in which state law allowed property tax exemptions for property used by charitable institutions, but restricted the exemption to institutions operated principally for the benefit of Maine residents. 520 U.S. at 575-76. Because the Maine statute expressly distinguished between institutions based on the residence of the consumers they served and thereby discouraged charities from benefitting non-residents, the Supreme Court found that the tax exemption was facially discriminatory and violated the Commerce Clause. *Id.* The court recognized that “the discriminatory burden is imposed on the out-of-state customer indirectly by means of a tax on the entity transacting business with the non-Maine customer,” but “[t]his distinction makes no analytic difference.” *Id.* at 580. “Imposition of a differential burden on any part of the stream of commerce—from wholesaler to retailer to consumer—is invalid.” *Id.*

In *Camps Newfound* the Town contended that the discrimination against out-of-state consumers was justified because the disputed tax treatment subsidized charities that “focus their activities on local concerns.” *Id.* at 589. The Supreme Court rejected the Town’s argument, holding that a discriminatory tax provision may not be justified under the

Commerce Clause by its purported role in funding public programs. *Id.* The Town also argued that the discriminatory law should be exempt from review under a narrow exception to the dormant Commerce Clause for instances where the state is participating in the market like a private buyer or seller, as opposed to regulating the market “in its distinctive governmental capacity.” *New Energy Co. of Indiana v. Limbach*, 486 U.S. 269, 277 (1988); *see Camps Newfound*, 520 U.S. at 592-95. The court rejected this argument, reiterating its prior holding that “assessment and computation of taxes [is] a primeval government activity” that is “not the sort of direct state involvement in the market that falls within the market-participation doctrine.” *Camps Newfound*, 520 U.S. at 593 (citing *Limbach*, 486 U.S. at 277).

Refusing to allow a deduction for out-of-state Medicaid and Children’s Health payments would discriminate against out-of-state residents. Although providers are required to provide service to out-of-state Medicaid enrollees, the Department’s construction of RCW 82.04.4311 would incentivize providers to locate and market their services in a way that favors in-state residents. *See Camps Newfound*, 520 U.S. at 578 (finding state law discriminatory because “the statute provides a strong incentive for affected entities not to do business with nonresidents if they are able to so avoid the discriminatory tax”). It does not matter that

RCW 82.04.4311 directly impacts nonprofit hospitals instead of the out-of-state residents. *See Camps Newfound*, 520 U.S. at 581 (“[I]t matters little that it is the camp that is taxed rather than the campers”). The Department’s interpretation of RCW 82.04.4311 would encourage Washington health care providers to develop a cloistered health care market that is more accessible to instate patients. It is “one of the central purposes of [the Supreme Court’s] negative Commerce Clause jurisprudence” to prevent “this sort of ‘economic Balkanization,’ and the retaliatory acts of other States that may follow.” *Camps Newfound*, 520 U.S. at 577 (citations omitted).

For instance, PeaceHealth has sites of care in Washington, Oregon, and Alaska. Some of the facilities are located close to the Washington border, including St. John Medical Center in Longview, Washington, and Southwest Medical Center, in Vancouver, Washington. In fiscal year 2015, St. John’s out-of –state Medicaid receipts constituted approximately 8.5 percent of its Medicaid receipts, while Southwest Medical Center’s out-of-state Medicaid receipts constituted approximately 13 percent of its Medicaid receipts. AR 256. If PeaceHealth is denied the same deduction for Medicaid and Children’s Health Program payments for Oregonians, it would incentive PeaceHealth to artificially constrict the marketing and referral network for Southwest Medical Center to the Washington side.

The Department’s interpretation would incentivize all Washington non-profit providers to locate their outpatient centers—which are increasingly becoming points of entry to hospitals—and collaborate with referral sources in Washington. This discriminatory impact would affect not only out-of-state residents, but also out-of-state businesses that earn business by collaborating with Washington providers. *See W. Va. Univ. Hosps. v. Casey*, 885 F.2d 11, 28 (3d Cir. 1989) (“Nothing in [the Medicaid Act] remotely suggests that a state may use federal funds to give its own hospitals preferential treatment and, at the same time, disadvantage out-of-state hospitals”).

The Department’s construction of RCW 82.04.4311 would be especially problematic for highly specialized destination hospitals like Seattle Children’s or the Seattle Cancer Care Alliance, which provide tertiary and quaternary care to patients from around the Pacific Northwest. If RCW 82.04.4311 were to discriminate against out-of-state residents in need of complex, high acuity care, even a minimal incentive created by the discriminatory law could cost the lives or livelihoods of out-of-state residents.

Furthermore, the market participant exception does not exclude RCW 82.04.4311 from scrutiny under the dormant Commerce Clause. The state’s imposition of tax laws is a traditional government regulatory

function, not the “sort of direct state involvement in the market that falls within the market-participation doctrine.” *Camps Newfound*, 520 U.S. at 593. The Department’s ongoing effort to analogize this case to *Dep’t of Revenue v. Davis*, 553 U.S. 328, 338 (2008), is inapt. In *Davis*, the Supreme Court recognized that under certain circumstances states can serve as both market regulators and market participants. For instance, “when Kentucky exempts its [own] bond interest, it is competing in the market for limited investment dollars, alongside private bond issuers and its sister States, and its tax structure is one of the tools of competition.” *Id.* at 345. In contrast, RCW 82.04.4311 does not benefit the state’s participation in the market. The tax deduction provided by RCW 82.04.4311 helps offset the costs incurred *by health care providers* serving children and the indigent. It does *not* affect the reimbursement rates paid by the state of Washington, the state of Oregon or any other health care *payer*. Again, the Department’s fundamental misunderstanding of the financial impact of this tax deduction undermines its position.

The Department also relies on a recent decision finding that a state is a market participant when it’s acting like a private healthcare insurance company. *See Asante v. Calif. Dep’t of Health Care Servs.*, 886 F.3d 795, 800-01 (9th Cir. 2018). In *Asante*, the court held that the state of

California was acting as a market participant when it set different reimbursement rates for out-of-state hospitals under its Medicaid program. *Id.* at 801. By contrast, what the state of Washington is doing under RCW 82.04.4311 is assessing and collecting taxes, which the Supreme Court has expressly held is *not* participation in a market. *Camps Newfound*, 520 U.S. at 593.

The Department tries to analogize *Asante* by asserting that “Washington is subject to the tax burdens other state governments impose on the medical services out-of-state hospitals provide to individuals covered under Washington’s Apple Health Program.”² Br. at 36. Again, the Department’s position is based on its fundamental misunderstanding of how taxes on hospitals affect Medicaid reimbursement rates. It has no effect on Washington’s health care spending if other state governments tax Washington Medicaid receipts. If Washington Medicaid reimburses \$500 for an appendectomy, that’s what it costs when an Washington enrollee gets an appendectomy in Oregon, regardless of whether the Oregon hospital that gets the \$500 for doing the procedure is taxed on that receipt.

The Department concludes its constitutional analysis with an assertion that, while incorrect, crystallizes why the market participant

² The Department stresses that all of the programs in chapter 74.09 RCW are integrated parts of “Apple Health.” However, that was not the case in 2002 when the legislature enacted the tax deduction at issue here. “Apple Health for Kids” was created by 2007 Laws ch. 5, § 2. Over time the name has come to represent all of Medicaid.

exception does not apply to RCW 82.04.4311: “[t]he Legislature was no more required to authorize a tax deduction for services covered under Oregon’s Medicaid or CHIP programs than to grant Oregon residents benefits under Washington’s Apple Health Program.” Br. at 40. There is a critical difference between (a) the State of Washington discriminating against out-of-state residents by refusing to provide Medicaid benefits to out-of-state residents, and (b) the State of Washington discriminating against out-of-state residents when it provides a tax break to nonprofits serving children and the indigent. In the former, the State is *participating in the market as a health care insurer*. By contrast, as the Supreme Court has made eminently clear, the “*assessment and computation of taxes* [is] a primeval government activity” that is “*not the sort of direct state involvement in the market*” that falls within the market-participation doctrine.” *Camps Newfound*, 520 U.S. at 593 (emphasis added).

The Department’s proposed interpretation of RCW 82.04.4311 fits “the paradigm of unconstitutional discrimination” whereby “the law chills interstate activity by creating a commercial advantage for goods or services marketed by local private actors, not by governments.” *Id.* at 347. To avoid an unconstitutional result, the Court should reject the Departments interpretation of RCW 82.04.4311.

V. CONCLUSION

RCW 82.04.4311 provides a tax deduction for nonprofit and public hospitals serving needy populations to help close the gap between the cost of care and the reimbursement received under government healthcare payment programs like Medicaid and CHIP. The plain language of the deduction supports its application to *all* Medicaid and CHIP programs, not just Washington's. There is nothing in the text, history, or context of the provision that should overpower this common sense interpretation. If there were any doubt, the doctrine of constitutional avoidance supports the BTA's conclusion: the Department's proposed reading of RCW 82.04.4311 would violate the dormant commerce clause by discriminating against hospitals that serve out-of-state patients. The Court should reject the Department's attempt to rewrite the deduction to the detriment of children and the indigent from other states, and the healthcare providers who serve them. The Court should affirm the BTA.

RESPECTFULLY SUBMITTED this 3rd day of July, 2018.

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APPENDIX A

RCW 82.04.4311**Deductions—Compensation received under the federal medicare program by certain hospitals or health centers.**

(1) A public hospital that is owned by a municipal corporation or political subdivision, or a nonprofit hospital, or a nonprofit community health center, or a network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW **82.04.431**, may deduct from the measure of tax amounts received as compensation for health care services covered under the federal medicare program authorized under Title XVIII of the federal social security act; medical assistance, children's health, or other program under chapter **74.09** RCW; or for the state of Washington basic health plan under chapter **70.47** RCW. The deduction authorized by this section does not apply to amounts received from patient copayments or patient deductibles.

(2) As used in this section, "community health center" means a federally qualified health center as defined in 42 U.S.C. 1396d as existing on August 1, 2005.

[2005 c 86 § 1; 2002 c 314 § 2.]

NOTES:

Effective date—2005 c 86: "This act takes effect August 1, 2005." [2005 c 86 § 2.]

Findings—2002 c 314: "The legislature finds that the provision of health services to those people who receive federal or state subsidized health care benefits by reason of age, disability, or lack of income is a recognized, necessary, and vital governmental function. As a result, the legislature finds that it would be inconsistent with that governmental function to tax amounts received by a public hospital or nonprofit hospital qualifying as a health and social welfare organization, when the amounts are paid under a health service program subsidized by federal or state government. Further, the tax status of these amounts should not depend on whether the amounts are received directly from the qualifying program or through a managed health care organization under contract to manage benefits for a qualifying program. Therefore, the legislature adopts this act to provide a clear and understandable deduction for these amounts, and to provide refunds for taxes paid as specified in section 4 of this act." [2002 c 314 § 1.]

Refund of taxes—2002 c 314: "A public hospital owned by a municipal corporation or political subdivision, or a nonprofit hospital that qualifies as a health and social welfare organization under RCW **82.04.431**, is entitled to:

(1) A refund of business and occupation tax paid between January 1, 1998, and April 2, 2002, on amounts that would be deductible under section 2 of this act; and

(2) A waiver of tax liability for accrued, but unpaid taxes that would be deductible under section 2 of this act." [2002 c 314 § 4.]

Effective date—2002 c 314: "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 [April 2, 2002]." [2002 c 314 § 5.]

APPENDIX B

Chapter 74.09 RCW**MEDICAL CARE****Complete Chapter | RCW Dispositions****Sections**

- 74.09.010 Definitions.
- 74.09.015 Nurse hotline, when funded.
- 74.09.035 Medical care services—Eligibility, standards—Limits.
- 74.09.037 Identification card—Social security number restriction.
- 74.09.050 Director's powers and duties—Personnel—Medical screeners—Medical director.
- 74.09.053 Annual reporting requirement (*as amended by 2009 c 479*).
- 74.09.053 Annual reporting requirement (*as amended by 2009 c 568*).
- 74.09.055 Copayment, deductible, coinsurance, other cost-sharing requirements authorized.
- 74.09.075 Employability and disability evaluation—Medical condition—Medical reports—Medical consultations and assistance.
- 74.09.080 Methods of performing administrative responsibilities.
- 74.09.120 Purchases of services, care, supplies—Nursing homes—Veterans' homes—Institutions for persons with intellectual disabilities—Institutions for mental diseases.
- 74.09.150 Personnel to be under existing merit system.
- 74.09.160 Presentment of charges by contractors.
- 74.09.171 Contracts for medicaid services—Border communities.
- 74.09.180 Chapter does not apply if another party is liable—Exception—Subrogation—Lien—Reimbursement—Delegation of lien and subrogation rights.
- 74.09.185 Third party has legal liability to make payments—State acquires rights—Lien—Equitable subrogation does not apply.
- 74.09.190 Religious beliefs—Construction of chapter.
- 74.09.195 Audits of health care providers by the authority—Requirements—Procedure.
- 74.09.200 Audits and investigations—Legislative declaration—State authority.
- 74.09.210 Fraudulent practices—Penalties.
- 74.09.215 Medicaid fraud penalty account.
- 74.09.220 Liability for receipt of excess payments.
- 74.09.230 False statements, fraud—Penalties.
- 74.09.240 Bribes, kickbacks, rebates—Self-referrals—Penalties.
- 74.09.250 False statements regarding institutions, facilities—Penalties.
- 74.09.260 Excessive charges, payments—Penalties.
- 74.09.270 Failure to maintain trust funds in separate account—Penalties.
- 74.09.280 False verification of written statements—Penalties.
- 74.09.290 Audits and investigations of providers—Patient records—Penalties.
- 74.09.295 Disclosure of involuntary commitment information.
- 74.09.300 Department to report penalties to appropriate licensing agency or disciplinary board.
- 74.09.315 Whistleblowers—Workplace reprisal or retaliatory action.
- 74.09.325 Reimbursement of a health care service provided through telemedicine or store and forward technology—Report to the legislature.
- 74.09.330 Reimbursement methodology for ambulance services—Transport of a medical assistance enrollee to a mental health facility or chemical dependency program.
- 74.09.335 Reimbursement of health care services provided by fire departments—Adoption of standards.
- 74.09.337 Children's mental health—Authority's duties.
- 74.09.340 Personal needs allowance, adjusted.

- 74.09.402** Children's health care—Findings—Intent.
- 74.09.460** Children's affordable health coverage—Findings—Intent.
- 74.09.470** Children's affordable health coverage—Authority duties.
- 74.09.4701** Apple health for kids—Unemployment compensation.
- 74.09.475** Newborn delivery services to medical assistance clients—Policies and procedures—Reporting.
- 74.09.480** Performance measures—Provider rate increases—Report.
- 74.09.490** Children's mental health—Improving medication management and care coordination.
- 74.09.492** Children's mental health—Treatment and services—Authority's duties.
- 74.09.495** Behavioral health services—Access by children—Report.
- 74.09.497** Authority review of payment codes available to health plans and providers related to primary care and behavioral health—Requirements—Principles considered—Matrices—Reporting.
- 74.09.500** Medical assistance—Established.
- 74.09.510** Medical assistance—Eligibility.
- 74.09.515** Medical assistance—Coverage for youth released from confinement.
- 74.09.520** Medical assistance—Care and services included—Funding limitations.
- 74.09.521** Medical assistance—Program standards for mental health services for children.
- 74.09.522** Medical assistance—Agreements with managed health care systems required for services to recipients of temporary assistance for needy families—Principles to be applied in purchasing managed health care—Expiration of subsections.
- 74.09.5222** Medical assistance—Section 1115 demonstration waiver request.
- 74.09.5223** Findings—Chronic care management.
- 74.09.5225** Medical assistance—Payments for services provided by rural hospitals—Participation in Washington rural health access preservation pilot.
- 74.09.5229** Primary care health homes—Chronic care management—Findings—Intent.
- 74.09.523** PACE program—Definitions—Requirements.
- 74.09.530** Medical assistance—Powers and duties of authority.
- 74.09.540** Medical assistance—Working individuals with disabilities—Intent.
- 74.09.545** Medical assistance or limited casualty program—Eligibility—Agreements between spouses to transfer future income—Community income.
- 74.09.555** Medical assistance—Reinstatement upon release from confinement—Expedited eligibility determinations.
- 74.09.557** Medical assistance—Complex rehabilitation technology products.
- 74.09.565** Medical assistance for institutionalized persons—Treatment of income between spouses.
- 74.09.575** Medical assistance for institutionalized persons—Treatment of resources.
- 74.09.585** Medical assistance for institutionalized persons—Period of ineligibility for transfer of resources.
- 74.09.595** Medical assistance for institutionalized persons—Due process procedures.
- 74.09.597** Medical assistance—Durable medical equipment and medical supplies—Providers.
- 74.09.600** Post audit examinations by state auditor.
- 74.09.605** Incorporation of outcomes/criteria into contracts with managed care organizations.
- 74.09.611** Hospital quality incentive payments—Noncritical access hospitals.
- 74.09.650** Prescription drug assistance program.
- 74.09.653** Drug reimbursement policy recommendations.
- 74.09.655** Smoking cessation assistance.
- 74.09.657** Findings—Family planning services expansion.
- 74.09.658** Home health—Reimbursement—Telemedicine.
- 74.09.659** Family planning waiver program request.
- 74.09.660** Prescription drug education for seniors—Grant qualifications.

- 74.09.670** Medical assistance benefits—Incarcerated or committed persons—Suspension.
- 74.09.671** Incarcerated persons—Local jails—Behavioral health services—Federal funding.
- 74.09.672** Inmates of a public institution—Exclusion from medicaid coverage—Work release and partial confinement programs.
- 74.09.700** Medical care—Limited casualty program.
- 74.09.710** Chronic care management programs—Medical homes—Definitions.
- 74.09.715** Access to dental care.
- 74.09.717** Dental health aide therapist services—Federal funding.
- 74.09.720** Prevention of blindness program.
- 74.09.725** Prostate cancer screening.
- 74.09.730** Disproportionate share hospital adjustment.
- 74.09.741** Adjudicative proceedings.
- 74.09.756** Medicaid and state children's health insurance program demonstration project.
- 74.09.758** Medicaid procurement of services—Value-based contracting for medicaid and public employee purchasing.

MATERNITY CARE ACCESS PROGRAM

- 74.09.760** Short title—1989 1st ex.s. c 10.
- 74.09.770** Maternity care access system established.
- 74.09.780** Reservation of legislative power.
- 74.09.790** Definitions.
- 74.09.800** Maternity care access program established.
- 74.09.810** Alternative maternity care service delivery system established—Remedial action report.
- 74.09.820** Maternity care provider's loan repayment program.
- 74.09.850** Conflict with federal requirements.
- 74.09.860** Request for proposals—Foster children—Integrated managed health and behavioral health care.
- 74.09.900** Other laws applicable.
- 74.09.920** Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

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