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NO. 97557-4

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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PEACEHEALTH ST. JOSEPH MEDICAL CENTER AND  
PEACEHEALTH ST. JOHN MEDICAL CENTER,

Appellants,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

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APPELLANTS' SUPPLEMENTAL BRIEF

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## I. INTRODUCTION

This case arises from the Department of Revenue (“Department”) interpreting a tax deduction for non-profit and public hospitals in a way that discriminates against hospitals that serve the indigent from other states. The Department says RCW 82.04.4311 is intended to grant a deduction for compensation for providing hospital care to Washington Medicaid patients and deny the deduction if the care is provided to Medicaid patients from other states. The Department’s improper interpretation of RCW 82.04.4311 runs afoul of the Commerce Clause of the federal constitution, U.S. Const. art. I, § 8, cl. 3, which prohibits laws that discriminate against interstate commerce. The Department has attempted to evade this constitutional problem with a mix of misinformation about how the tax deduction works and a persistent misconstruction of the controlling Commerce Clause jurisprudence.

The Supreme Court has recognized a narrow exemption to the Commerce Clause that allows a state to participate in a market without scrutiny of how its participation affects interstate commerce. This market participant exemption *does not* preclude Commerce Clause scrutiny of any and all laws that affect a state’s own interests. Nor does it preclude scrutiny of laws that discriminate against interstate commerce among *other participants* in a market in which the state also happens to have a

role. The market participant exemption gives a State the freedom to enact laws that favor itself as a buyer or seller in a market. RCW 82.04.4311 does no such thing.

Attempting to avail itself of the market participant exemption and evade Commerce Clause scrutiny, the Department has throughout this litigation described RCW 82.04.4311's tax deduction to hospitals for Medicaid receipts as a way for the State to save money on its Medicaid program. That is *flat wrong*. RCW 82.04.4311 has no impact whatsoever on Medicaid spending. Unfortunately, the Court of Appeals fell into the Department's trap. It held that RCW 82.04.4311 is "a law that ultimately benefits the state finances because it is the state that procures and ultimately pays for [Medicaid] services." *PeaceHealth St. Joseph Med. Ctr. v. State*, 9 Wash. App. 2d 775, 784, 449 P.3d 676 (2019). This misunderstanding of RCW 82.04.4311 led the Court of Appeals to gloss over the constitutional violation that flows from the Department's interpretation of the law. Based on a proper understanding of RCW 82.04.4311 as the state exercising its taxing authority for a regulatory purpose, the market participant exemption does not apply. The law must undergo full Commerce Clause review, and it cannot survive that scrutiny.

The Department's interpretation of RCW 82.04.4311 is contrary to the core principles underlying the Commerce Clause: promoting economic

unity among the states, and preventing economic protectionism. If the tax deduction for Medicaid receipts were not available for treating out-of-state Medicaid patients, the law would facially discriminate against hospitals that serve these indigent patients from other states. By enhancing hospitals' out-of-pocket losses from rendering services to Medicaid patients from other states, the Department's position puts pressure on hospitals and health systems to reduce availability of regional programs serving high-needs populations from surrounding states. That is exactly the kind of burden on the flow of interstate commerce the Commerce Clause prohibits. Given this Commerce Clause problem, the doctrine of constitutional avoidance requires reversal of the Court of Appeals' decision adopting the Department's interpretation of RCW 82.04.4311.

The Court need not find RCW 82.04.4311 unconstitutional, however, because interpreting the law to allow a tax deduction for treating Medicaid patients from *all* states is fully consistent with the plain language and history of the statute. In fact, the Court of Appeals and the Department improperly ignored the last antecedent rule and the statutory context, which both undermine the Department's interpretation of the law. This Court should reverse the Court of Appeals and restore the law's proper meaning.

## II. ARGUMENT

### A. The Department's Interpretation of RCW 82.04.3411 Violates the Commerce Clause.

The Court of Appeals upheld the Department's interpretation of RCW 82.04.4311 without properly recognizing that doing so results in an unlawful discrimination against interstate commerce. In addition to empowering the federal government to regulate interstate commerce, the Commerce Clause also embodies a "dormant" prohibition against state laws that burden interstate commerce. *H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 537-38, 69 S. Ct. 67, 93 L. Ed. 865 (1949). In this manner, the Commerce Clause protects "a national market for competition undisturbed by preferential advantages conferred by a State upon its residents or resident competitors." *General Motors Corp. v. Tracy*, 519 U.S. 278, 299, 117 S. Ct. 811, 136 L. Ed. 2d 761 (1997).

The Commerce Clause does not only prohibit laws that favor local merchants; it also proscribes state laws that "attempt[] to give local consumers an advantage over consumers in other States." *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Me.*, 520 U.S. 564, 578, 117 S. Ct. 1590, 137 L. Ed. 2d 852 (1997). More basically, "a State 'may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State.'" *Comptroller of the*

*Treasury of Md. v. Wynne*, 575 U.S. 542, 135 S. Ct. 1787, 1794, 191 L. Ed. 2d 813 (2015) (quoting *Armco Inc. v. Hardesty*, 467 U.S. 638, 642, 104 S. Ct. 2620, 81 L. Ed. 2d 540 (1984)). In *Wynne*, the Supreme Court expressly held that States cannot discriminate against citizens who engage in commerce with persons from other states. *Id.*, 135 S. Ct. at 1792.

In *Camps Newfound/Owatonna*, the Supreme Court found a Maine law violated the Commerce Clause because it provided a tax deduction to charitable camps that served predominantly in-state residents but not those serving predominantly out-of-state residents. *Camps Newfound/Owatonna* and *Wynne* are on all fours here. They plainly dictate that granting a deduction for service to in-state Medicaid patients but not out-of-state Medicaid patients cannot survive Commerce Clause scrutiny.

**1. The Narrow Market Participant Exemption Does Not Apply.**

The Department has never denied that its interpretation creates a facial discrimination against interstate commerce. Instead, the Department has tried to escape the clear command of the Commerce Clause by mischaracterizing RCW 82.04.4311 as a law that benefits the State as a market participant. *See, e.g.*, Respondent’s Reply Br. at 19.

The Supreme Court has recognized a “narrow exception to the dormant Commerce Clause for States in their role as ‘market

participants.” *Camps Newfound*, 520 U.S. at 589. The market participant exception “is rooted in the principle that a government, just like any other party participating in an economic market, is free to engage in the efficient procurement and sale of goods and services.” *Associated Builders & Contractors Inc. New Jersey Chapter v. City of Jersey City, New Jersey*, 836 F.3d 412, 418 (3d Cir. 2016). The doctrine “differentiates between a State’s acting in its distinctive governmental capacity, and a State’s acting in the more general capacity of a market participant; only the former is subject to the limitations of the [dormant] Commerce Clause.” *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 277, 108 S. Ct. 1803, 100 L. Ed. 2d 302 (1988). “Thus, for example, when a State chooses to manufacture and sell cement, its business methods, including those that favor its residents, are of no greater constitutional concern than those of a private business.” *Id.*

The market participant exemption is *not* a broad free pass for states to enact laws without Commerce Clause scrutiny simply because the state has some interest in the regulated market. The exemption applies only when a government “acts as a market participant ***with no interest in setting policy.***” *Chamber of Commerce of U.S. v. Brown*, 554 U.S. 60, 70, 128 S. Ct. 2408, 171 L. Ed. 2d 264 (2008) (emphasis added). To apply this principle, courts have used a two-part test that asks (1) whether a law

serves “to advance or preserve the state’s” interest as a buyer, seller, or owner in a market; and (2) whether the law’s effect is “specifically tailored” to the state’s interest, “or, put another way, whether the [it] is so broad as to be considered, in effect, regulatory.” *Associated Builders*, 836 F.3d at 418. “Only if both conditions are met is a government acting as a market participant.” *Id.*

RCW 82.04.4311 meets *neither* part of the test for application of the narrow exemption. First, the law has no effect on the State’s interest as a buyer or seller in the market for Medicaid services. The only evidence in the record on this point shows that “the deduction has no effect on the State’s outlay” for the services it covers for Washington Medicaid enrollees. AR 40 (Busz Decl., ¶ 6). Despite the failure of the Department to introduce of any evidence in support of its argument in the record, the Court of Appeals held that RCW 82.04.4311 is “a law that ultimately benefits the state finances because it is the state that procures and ultimately pays for these services” for Medicaid enrollees.

*PeaceHealth*, 9 Wash. App. 2d at 784. The Court of Appeals is wrong. Its holding is a rote recitation of the Department’s erroneous explanation of how the tax deduction works, without any citation to authority or the record. *See, e.g.*, Answer to Pet. for Review at 16 (falsely claiming that “[t]he B&O tax deduction is a statutory quid pro quo offered to nonprofit

hospitals for providing services covered under Washington’s Apple Health program”). RCW 82.04.4311 has no impact whatsoever on the amount of money the State pays hospitals for services provided to Medicaid enrollees. The tax deduction could be repealed tomorrow; it would have no impact on how much the State pays hospitals for Medicaid services.

The Court of Appeals’ decision implicitly rests on the claim that the deduction could be construed as an indirect way of advancing Washington’s Medicaid program. But that theory was “extinguished by *Camps Newfound*, ... which squarely addressed whether a tax exemption is functionally equivalent to direct funding for purposes of the market participant exception and held that it was not.” *Associated Builders*, 836 F.3d at 418. There is simply no credible way to understand RCW 82.04.4311 as a law intended to advance or preserve the State of Washington’s interest as a buyer or seller in any market. One of the cases the Department relies on heavily, *Asante v. Calif. Dep’t of Health Care Servs.*, 886 F.3d 795 (9th Cir. 2018), crystalizes this point. In *Asante* the court found the state of California was a market participant when it set rates *the state itself* would pay under its Medicaid program. *Id.* at 800-01. By contrast, nothing about the B&O tax deduction affects Medicaid rates paid by the State or any other state.

RCW 82.04.4311 also fails the second part of the two-part test for the exemption: the law is not “specifically tailored” to benefit the State’s interest, and instead is broadly regulatory. *Associated Builders*, 836 F.3d at 418. The deduction applies, *first of all*, to compensation for providing services to federal Medicare patients. The deduction in this respect provides no specific benefit to the State’s programs at all, directly or indirectly. Moreover, the enactment of RCW 82.04.4311 in 2002 provided a *refund* of tax paid by qualified hospitals on Medicare as well as Medicaid reimbursements for the prior four years. *See* 2002 Laws, ch. 314, sec. 4(1). These provisions show that the Legislature’s purpose was to regulate (by reducing) the cost structure of qualified hospitals, consistent with the enactment’s statement of purpose:

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, sec. 1. The Legislature’s recognition that qualified hospitals are performing a “vital government function” of both “federal [and] state government” undermines completely the Department’s position

that RCW 82.04.4311 is narrowly tailored to benefit the State’s financing of Medicaid. RCW 82.04.4311 is a broad regulatory measure that provides a partial offset for the losses that qualifying hospitals incur caring for indigent. There is no justification for applying the market participant exemption to RCW 82.04.4311 under *Camps Newfound* and its progeny.

**2. The Department’s Interpretation Would Promote the Kind of Balkanization the Commerce Clause Proscribes.**

The Commerce Clause prohibits states from enacting laws that promote “tendencies toward economic Balkanization” by causing market participants to favor conducting intrastate as opposed to interstate commerce. *Granholm v. Heald*, 544 U.S. 460, 472, 116 S. Ct. 848, 133 L. Ed. 2d 796 (2005). The Supreme Court has traced this construction of the Commerce Clause to the Framers’ concern with economic protectionism:

The few simple words of the Commerce Clause . . . reflected a central concern of the Framers that was an immediate reason for calling the Constitutional Convention: the conviction that in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued the relations among the Colonies and later among the States under the Articles of Confederation.

*Wynne*, 135 S. Ct. at 1794 (citation and internal quotation marks omitted).

Almost two hundred years ago, Justice Johnson observed that “[i]f there was any one object riding over every other in the adoption of the constitution, it was to keep the commercial intercourse among the States free from all invidious and partial restraints.” *Gibbons v. Ogden*, 22 U.S. 1, 231-32, 6 L. Ed. 23 (1824). “The great object of the Constitution was to erect a government for commercial purposes, for mutual intercourse, and mutual dealing. The prosperity of every state could alone be promoted and secured by establishing these on principles of reciprocity.” *Bank of Augusta v. Earle*, 38 U.S. 519, 526, 10 L. Ed. 274 (1839).

The Supreme Court’s Commerce Clause jurisprudence seeks to enshrine the Framers’ intent to prevent individual states from “jeopardizing the welfare of the Nation as a whole, as it would do if it were free to place burdens on the flow of commerce across its borders that commerce wholly within those borders would not bear.” *Fulton Corp. v. Faulkner*, 516 U.S. 325, 330, 116 S. Ct. 848, 133 L. Ed. 2d 796 (1996) (citation and internal quotation marks omitted).

The Department’s refusal to allow hospitals the tax deduction in RCW 82.04.4311 for serving out-of-state Medicaid patients flies in the face of this core constitutional commitment to economic equality for intrastate and interstate commerce. The Department’s interpretation of RCW 82.04.4311 would favor hospitals providing services for

Washington residents over those providing services for the indigent from other states. It would also create a disincentive for Washington hospitals to provide the indigent from other states access to regional centers of excellence. In a climate where more and more small and rural hospitals are closing because they are unable to survive as more care shifts to an outpatient setting,<sup>1</sup> the Department's interpretation encourages health systems to shutter service lines or even close facilities by the borders.

Importantly, it does not matter whether the Department's interpretation would create a strong enough incentive to drive hospitals to make changes, which are inimical to many non-profit hospitals' missions of providing greater access to care. Citing *Fulton, supra*, the Supreme Court reiterated that "there is no 'de minimis' defense to a charge of discriminatory taxation under the Commerce Clause." *Camps Newfound/Owatonna*, 520 U.S. at 581, n. 15 (internal quotation marks omitted). "[A]ctual discrimination, wherever it is found, is impermissible, and the magnitude and scope of the discrimination have no bearing on the determinative question whether discrimination has occurred." *Id.* (quoting in full *Associated Industries of Mo. v. Lohman*, 511 U.S. 641, 650, 114 S.

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<sup>1</sup> See, e.g., Medicare Payment Advisory Commission: Medicare Payment Policy: Report to the Congress, March 2019, at p. 71, available at [http://www.medpac.gov/docs/default-source/reports/mar19\\_medpac\\_entirereport\\_sec.pdf](http://www.medpac.gov/docs/default-source/reports/mar19_medpac_entirereport_sec.pdf) (showing trend of more hospital closures than openings from 2013-2017).

Ct. 1815, 128 L. Ed. 2d 639 (1994)). A law that discriminates against interstate commerce is subject to strict scrutiny and a “virtually *per se* rule of invalidity.” *City of Philadelphia v. New Jersey*, 437 U.S. 617, 624, 98 S. Ct. 2531, 57 L. Ed. 2d 475 (1978).

Here, the Department’s interpretation discriminates against hospitals serving out-of-state Medicaid patients and it discriminates against the flow of health care commerce across state lines. The Department’s interpretation is unconstitutional.

**3. The Doctrine of Constitutional Avoidance Requires Resolving Doubt Against the Department.**

The Court of Appeals failed to address, let alone follow, the doctrine of constitutional avoidance, which “*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, 351 P.3d 862 (2015) (quoting *Gonzales v. Carhart*, 550 U.S. 124, 154, 127 S. Ct. 1610, 1671. Ed. 2d 480 (2007)) (emphasis added). As evidenced by the Board of Tax Appeals’ rejection of the Department’s interpretation without even weighing its constitutional infirmity under the Commerce Clause, the law is genuinely susceptible to multiple constructions. Moreover, as noted in the Brief of *Amicus Curiae* The Washington State Hospital in support of

PeaceHealth’s Petition for Review (“WSHA Petition Amicus Br.”), the Washington Medicaid State Plan must and does provide for furnishing medical services to Medicaid patients from other states. *See id.* at 3-4, 7-8. On this basis, the services at issue in this case did qualify as services covered under programs “under ch. 74.09 RCW.”

Given multiple reasonable interpretations of the statute and the invalidity of the law under the Department’s interpretation, the Court should reverse the Court of Appeals and hold that RCW 82.04.4311 should be read in a way that does not impose a differential tax burden depending on which state the patient comes from.

**B. The Court of Appeals and the Department Improperly Ignored the Last Antecedent Rule.**

In addition to giving short shrift to the constitutional problems with the Department’s interpretation of RCW 82.04.4311, the Court of Appeals misapplied ordinary rules of statutory construction and completely failed to examine the context of the statute.

Under the last antecedent rule, 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, 194 L. Ed. 2d 48 (2016), except where “the extension is necessary from the context or the spirit of the entire writing.” A. Scalia &

B. Garner, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 144 (2012). The Court of Appeals, at the urging of the Department, improperly substituted a different canon—the series qualifier rule—without trying to apply the last antecedent rule and showing that it did not work in the context of this particular statute.

The *Lockhart* case shows that this approach is wrong. There the Court considered both rules and held that the last antecedent rule applies “unless context weighs against application of the rule.” *Lockhart*, 136 S. Ct. at 965. In other words, the last antecedent rule is primary. Only if it produces a nonsensical result should a court go on to apply the series qualifier principle. If the sentence in question makes sense using either approach, the last antecedent rule governs.

Here the Court of Appeals did exactly as the *Lockhart* dissent did. It jumped right into the using the series qualifier principle, justifying it because the sentence makes sense that way. However, the sentence makes at least equal sense read to apply the restrictive clause, “under chapter 74.09 RCW,” only to the “other programs,” the last antecedent.

**C. The Court of Appeals and the Department Improperly Ignored the Statutory Context.**

**1. The Intent Section of the Statute Clearly Applies to State Government Generically and Not to Washington Specifically.**

The Legislature included an intent section in enacting RCW 82.04.4311, which stated that “it 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, sec. 1. The Legislature made no reference to Washington or even to Medicare or Medicaid, using the broadest possible formulation—“a health service program subsidized by federal or state government.”

**2. The Legislative History Clearly Indicates an Intent to Broaden the Tax Deduction.**

As set forth in PeaceHealth’s response brief at pages 15-18, the language of RCW 82.04.4311 was drafted by the Department of Revenue at the request of then-Governor Locke. As the Department itself said, this language “links the deduction with an activity (treating eligible persons) rather than with the source of funds or the identity of the purchaser.” AR 241. Here again, there is no specific reference to Washington as the purchaser or Washington-specific programs but instead a very broad reference to treating eligible persons. Oregon and Idaho Medicaid patients

are eligible persons, and thus the reimbursement from providing them with services is deductible because the source of the funds or identity of the purchaser (Oregon or Idaho Medicaid) is no longer the focus.

The Department argues that the Legislature simply intended to continue the prior deduction for Medicaid receipts except to include receipts from managed care organizations. That may or may not be true of the 2001 legislation, which was repealed and replaced by the provision at issue here, which the Department proposed to the 2002 Legislature as a new approach.

The 2002 legislation changed the structure, language, and purpose of the statutory deduction. It represented discontinuity, rather than a simple continuation of past policy. The statutory history makes this plain.

The original health or social welfare deduction of RCW 82.04.4297 was enacted in 1980. 1980 Laws, ch. 37, sec. 17. At that time, nonprofit hospitals were exempt from B&O tax. *See* 1993 Laws, ch. 492, sec. 305 (deleting former B&O tax exemption for nonprofit hospitals). When B&O tax was imposed on nonprofit hospitals in the same 1993 act, *id.* sec. 304 (amending RCW 82.04.260), the hospitals became eligible for the old health or social welfare deduction if they met the organizational criteria in RCW 82.04.431. But RCW 82.04.4297 was not designed with hospitals in mind and it was not a good fit, given

evolving managed care arrangements in the 1990s. The 2001 amendment of RCW 82.04.4297 attempted to graft an expanded deduction on the existing statute to cover indirect payment of Medicare and Medicaid reimbursements to hospitals. As noted in the briefing cited above, this solution, too, had problems, provoking a partial veto by the Governor and the Department's desire to shift the criteria for deduction from the source of payment to the range of services covered by the deduction. The 2002 legislation therefore removed the makeshift deduction for indirect Medicare and Medicaid reimbursements from RCW 82.04.4297. 2002 Laws, ch. 314, sec. 3. The new statute, RCW 82.04.4311, was created to deal specifically with amounts received receipts by nonprofit and public hospitals for services provided under health programs "subsidized by federal or state government." 2002 Laws, ch. 314, sec. 1.

The Department has gone astray here because it made wrong assumptions about who is benefited by the deduction. The Legislature was not trying to benefit Medicaid recipients from neighboring states nor does the statute benefit them. The Legislature was not trying to help the Medicaid programs run by other states nor does the statute benefit them. The Legislature was trying to benefit Washington hospitals by filling a small portion of the gap between the cost of providing service and the

reimbursement for it. That purpose is better achieved when all Medicaid receipts are tax deductible, not just Washington receipts.

**3. RCW 82.04.4311 Must Be Read in the Context of Medicaid Hospital Services Generally.**

In this case, the statutory scheme includes the delivery of government-funded health care in general and Medicaid in particular. Medicaid is created and structured by federal law. While states have some flexibility, relevant to this case, federal Medicaid law mandates coverage of inpatient and outpatient hospital services, as well as laboratory and x-ray services. 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. *See* AR 241, at ¶ 4.

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. *Id.*, ¶ 5.

Washington hospitals may not discriminate against Medicaid or Medicare enrollees from other states. 42 C.F.R. § 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 Washington State hospital, *id.*, ¶¶ 6, 12, which is indeed part of Washington’s Medicaid State Plan. *See* WSHA Petition Amicus Br. at 7.

The context of RCW 82.04.4311 – overcoming the limitations of prior law and providing an expanded and retroactive deduction for hospital services to beneficiaries of government-subsidized health service programs – therefore both allows and requires reading the statute to cover receipts for providing service to patients from other states.

### **III. CONCLUSION**

The Court should reverse the Court of Appeals and hold that the tax deduction in RCW 82.04.4311 is available for receipts from all states’ Medicaid programs, not just Washington’s.

RESPECTFULLY SUBMITTED this 9th day of March, 2020.

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A handwritten signature in blue ink, appearing to be 'D. Giseburt', written over a horizontal line.

By \_\_\_\_\_  
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## CERTIFICATE OF SERVICE

I, Gina Chan, hereby certify that on the date below I electronically filed *Appellant's Supplemental Brief* with the Clerk of the Court using the Washington State Appellate Courts' e-file portal, which will send notification of such filing to all counsel of record at the following e-mail addresses:

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DATED at Seattle, Washington, this 9th day of March, 2020.



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Gina Chan, Legal Assistant

**DAVIS WRIGHT TREMAINE LLP**

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