
HOUSE BILL 2817

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By Representatives Zellinsky, Bowman, Dellwo, Broback, R. Johnson, Paris, Dorn, Schmidt, R. Meyers, Winsley, Ballard, Beck, Ludwig, Brough, Vance, Wynne, Carlson, Miller, Forner, Tate, Hochstatter, Van Luven, Wood, May, Fuhrman, Mitchell, Brumsickle and Ferguson

Read first time 01/28/92. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to small employer health insurance, data
2 collection, and administrative reform; adding a new chapter to Title 48
3 RCW; prescribing penalties; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** SHORT TITLE. This chapter shall be known
6 and may be cited as the small employer health insurance availability
7 act.

8 NEW SECTION. **Sec. 2.** PURPOSE. The purpose and intent of this
9 chapter is to promote the availability of health insurance coverage to
10 small employers regardless of the health status or claims experience,
11 to prevent abusive rating practices, to require disclosure of rating
12 practices to purchasers, to establish rules regarding renewability of
13 coverage, to establish limitation on the use of preexisting condition

1 exclusions, to provide for development of a basic health benefit plan
2 to be offered to all small employers, to provide for establishment of
3 an allocation program, and to improve the overall fairness and
4 efficiency of the small group health insurance market.

5 This chapter is not intended to provide a solution to the problem
6 of affordability of health care or health insurance.

7 NEW SECTION. **Sec. 3.** DEFINITIONS. As used in this chapter:

8 (1) "Actuarial certification" means a written statement by a member
9 of the American academy of actuaries, or other individual acceptable to
10 the commissioner, that a small employer carrier is in compliance with
11 the provisions of section 5 of this act, based upon the person's
12 examination, including a review of the appropriate records and of the
13 actuarial assumptions and methods used by the small employer carrier in
14 establishing premium rates for applicable health benefit plans.

15 (2) "Allocating carrier" means a small employer carrier
16 participating in the allocation program under section 8 of this act.

17 (3) "Base premium rate" means, as to a rating period, the lowest
18 premium rate charged or that could have been charged under the rating
19 system by the small employer carrier to small employers with similar
20 case characteristics for health benefit plans with the same or similar
21 coverage.

22 (4) "Basic health benefit plan" means a lower cost health benefit
23 plan developed under section 9 of this act.

24 (5) "Board" means the board of directors of the Washington state
25 health insurance pool, as established by chapter 48.41 RCW.

26 (6) "Carrier" means any entity that provides health insurance in
27 Washington state. For the purposes of this chapter, carrier includes
28 an insurance company, health care service contractor, fraternal benefit
29 society, health maintenance organization, multiple employer welfare

1 arrangements, or any person or entity that writes, issues, or
2 administers health benefit plans in Washington state.

3 (7) "Case characteristics" means demographic or other objective
4 characteristics of a small employer that are considered by the small
5 employer carrier in the determination of premium rates for the small
6 employer, provided that claim experience, health status, and duration
7 of coverage shall not be case characteristics for the purposes of this
8 chapter.

9 (8) "Commissioner" means the insurance commissioner as defined in
10 RCW 48.02.010.

11 (9) "Committee" means the health benefit plan committee created
12 under section 9 of this act.

13 (10) "Dependent" means the spouse or an unmarried child under the
14 age of nineteen years or an unmarried child who is a full-time student
15 under the age of twenty-three years who is financially dependent upon
16 an eligible employee or a child of any age who is medically certified
17 as disabled and dependent of an eligible employee.

18 (11) "Eligible employee" means an employee who works on a full-time
19 basis and has a normal work week of thirty or more hours, who has met
20 any applicable requirement of the employer as to the period of
21 employment before an employee is eligible for health benefits coverage.
22 The term includes a sole proprietor, a partner of a partnership, and an
23 independent contractor, if the sole proprietary, partner, or
24 independent contractor is included as an employee under a health
25 benefit plan of a small employer, but does not include an employee who
26 works on a part-time, temporary, or substitute basis.

27 (12) "Established geographic service area" means a geographical
28 area, as approved by the commissioner and based on the carrier's
29 certificate of authority to transact business in Washington state,
30 within which the carrier is authorized to provide coverage.

1 (13) "Health benefit plan" means any hospital or medical policy or
2 certificate, health care service contract, health maintenance
3 organization subscriber contract, plan provided by a multiple employer
4 welfare arrangement, or plan provided by any other benefit arrangement
5 subject to this chapter. The term does not include accident only,
6 credit, dental, vision, medicare supplement, long-term care, or
7 disability income insurance, coverage issued as a supplement to
8 liability insurance, workers' compensation or similar insurance, or
9 automobile medical payment insurance.

10 (14) "Index rate" means, as to a rating period for small employers
11 with similar case characteristics, the arithmetic average of the
12 applicable base premium rate and corresponding highest premium rate.

13 (15) "Late enrollee" means an eligible employee or dependent who
14 requests enrollment in a health benefit plan of a small employer
15 following the initial enrollment period provided under the terms of the
16 health benefit plan, provided that such initial enrollment period is a
17 period of at least thirty days. However, an eligible employee or
18 dependent shall not be considered a late enrollee if:

19 (a) The individual meets each of the following:

20 (i) The individual was covered under qualifying previous coverage
21 at the time the individual was eligible to enroll;

22 (ii) The individual lost coverage under qualifying previous
23 coverage as a result of termination of employment or eligibility, the
24 involuntary termination of the qualifying previous coverage, death of
25 a spouse, or divorce;

26 (iii) The individual requests enrollment within thirty days after
27 termination of the qualifying previous coverage;

28 (b) The individual is employed by an employer that offers multiple
29 health benefit plans and the individual elects a different plan during
30 an open enrollment period; or

1 (c) A court has ordered coverage be provided for a spouse or minor
2 or dependent child under a covered employee's health benefit plan and
3 request for enrollment is made within thirty days after issuance of the
4 court order.

5 (16) "New business premium rate" means, as to a rating period, the
6 lowest premium rate charged or offered, or which could have been
7 charged or offered, by the small employer carrier to small employers
8 with similar case characteristics for newly issued health benefit plans
9 with the same or similar coverage.

10 (17) "Plan of operation" means the plan of operation of the
11 allocation program established under section 8 of this act.

12 (18) "Premium" means all moneys paid by a small employer and
13 eligible employees as a condition of receiving coverage from a small
14 employer carrier, including any fees or other contributions associated
15 with the health benefit plan.

16 (19) "Program" means the Washington small employer allocation
17 program established under section 8 of this act.

18 (20) "Rating period" means the calendar year period for which
19 premium rates established by a small employer carrier are presumed to
20 be in effect.

21 (21) "Restricted network provision" means any provision of a health
22 benefit plan that conditions the payment of benefits, in whole or in
23 part, on the use of health care providers that have entered into a
24 contractual arrangement with the carrier pursuant to chapter 48.44 or
25 48.46 RCW to provide health care services to covered individuals.

26 (22) "Small employer" means any person, firm, corporation,
27 partnership, or association that is actively engaged in business that,
28 on at least fifty percent of its working days during the preceding
29 calendar quarter, employed at least three unrelated eligible employees
30 but no more than twenty-five eligible employees, the majority of whom

1 were employed within Washington state. In determining the number of
2 eligible employees, companies that are affiliated companies, or that
3 are eligible to file a combined tax return for purposes of state
4 taxation, shall be considered one employer.

5 (23) "Small employer carrier" means any carrier that offers health
6 benefit plans covering eligible employees of one or more small
7 employers in Washington state.

8 (24) "Affiliate" or "affiliated" means any entity or person who
9 directly or indirectly through one or more intermediaries, controls or
10 is controlled by, or is under common control with, a specified entity
11 or person.

12 (25) "Qualifying previous coverage" and "qualifying existing
13 coverage" mean benefits or coverage provided under:

14 (a) Medicare or medicaid;

15 (b) An employer-based health insurance or health benefit
16 arrangement that provides benefits similar to or exceeding benefits
17 provided under the basic health benefit plan that is subject to the
18 insurance regulations of Washington state; or

19 (c) An individual health insurance policy, including coverage
20 issued by an insurance company, health care service contractor,
21 fraternal benefit society, health maintenance organization, multiple
22 employer welfare arrangement, or any person or entity that writes,
23 issues, or administers health benefit plans in Washington state, that
24 provides benefits similar to or exceeding benefits provided under the
25 basic health benefit plan, provided that such policy has been in effect
26 for a period of at least six months.

27 NEW SECTION. **Sec. 4.** APPLICABILITY AND SCOPE. This chapter shall
28 apply to any health benefit plan that provides coverage to the

1 employees of a small employer in Washington state if any of the
2 following conditions are met:

3 (1) Any portion of the premium or benefits is paid by or on behalf
4 of the small employer;

5 (2) An eligible employee or dependent is reimbursed, whether
6 through wage adjustments or otherwise, by or on behalf of the small
7 employer for any portion of the premium; or

8 (3) The health benefit plan is treated by the employer or any of
9 the eligible employees or dependents as part of a plan or program for
10 the purposes of section 162, section 125, or section 106 of the United
11 States Internal Revenue Code.

12 (4)(a) Except as provided in (b) of this subsection, for the
13 purposes of this chapter, carriers that are affiliated companies or
14 that are eligible to file a consolidated tax return shall be treated as
15 one carrier and any restrictions or limitations imposed by this chapter
16 shall apply as if all health benefit plans issued to small employers in
17 Washington state by such affiliated carriers were issued by one
18 carrier.

19 (b) An affiliated carrier that is a health maintenance organization
20 having a certificate of authority under chapter 48.44 RCW may be
21 considered a separate carrier for the purposes of this chapter.

22 (c) Unless otherwise authorized by the commissioner, a small
23 employer carrier shall not enter into one or more ceding arrangements
24 with respect to health benefit plans issued to small employers in
25 Washington state if such arrangements would result in less than fifty
26 percent of the insurance obligation or risk for such health benefit
27 plans being retained by the ceding carrier.

1 NEW SECTION. **Sec. 5.** RESTRICTIONS RELATING TO PREMIUM RATES. (1)

2 Premium rates for health benefit plans subject to this chapter shall be
3 subject to the following provisions:

4 (a) The premium rates charged during a rating period to small
5 employers with similar case characteristics for the same or similar
6 coverage, or the rates that could be charged to such employers under
7 the rating system, shall not vary from the index rate by more than
8 twenty-five percent of the index rate.

9 (b) The percentage increase in the premium rate charged to a small
10 employer for a new rating period may not exceed the sum of the
11 following:

12 (i) The percentage change in the new business premium rate measured
13 from the first day of the prior rating period to the first day of the
14 new rating period. In the case of a health benefit plan into which the
15 small employer carrier is no longer enrolling new small employers, the
16 small employer carrier shall use the percentage change in the base
17 premium rate, provided that such change does not exceed, on a
18 percentage basis, the change in the new business premium rate for the
19 most similar health benefit plan into which the small employer carrier
20 is actively enrolling new small employers;

21 (ii) Any adjustment, not to exceed fifteen percent annually and
22 adjusted pro rata for rating periods of less than one year, due to the
23 claim experience, health status, and duration of coverage of the
24 employees or dependents of the small employer as determined from the
25 small employer carrier's rate manual; and

26 (iii) Any adjustment due to change in coverage or change in the
27 case characteristics of the small employer, as determined from the
28 small employer carrier's rate manual.

29 (c) Adjustments in rates for claim experience, health status, and
30 duration of coverage shall not be charged to individual employees or

1 dependents. Any such adjustment shall be applied uniformly to the
2 rates charged for all employees and dependents of the small employer.

3 (d) A small employer carrier may utilize industry as a case
4 characteristic in establishing premium rates, provided that the highest
5 rate factor associated with any industry classification shall not
6 exceed the lowest rate factor associated with any industry
7 classification by more than fifteen percent.

8 (e) In the case of health benefit plans issued prior to the
9 effective date of this act, a premium rate for a rating period may
10 exceed the ranges set forth in (a) of this subsection for a period of
11 three years following the effective date of this act. In such cases,
12 the percentage increase in the premium rate charged to a small employer
13 for a new rating period shall not exceed the sum of the following:

14 (i) The percentage change in the new business premium rate measured
15 from the first day of the prior rating period to the first day of the
16 new rating period. In the case of a health benefit plan into which the
17 small employer carrier is no longer enrolling new small employers, the
18 small employer carrier shall use the percentage change in the base
19 premium rate, provided that such change does not exceed, on a
20 percentage basis, the change in the new business premium rate for the
21 most similar health benefit plan into which the small employer carrier
22 is actively enrolling new small employers;

23 (ii) Any adjustment due to change in coverage or change in the case
24 characteristics of the small employer, as determined from the small
25 employer carrier's rate manual.

26 (f)(i) Small employer carriers shall apply rating factors,
27 including case characteristics, consistently with respect to all small
28 employers. Rating factors shall produce premiums for identical groups
29 that differ only by amounts attributable to plan design and do not

1 reflect differences due to the nature of the groups assumed to select
2 particular health benefit plans.

3 (ii) A small employer carrier shall treat all health benefit plans
4 issued or renewed in the same calendar month as having the same rating
5 period.

6 (g) For the purposes of this subsection, a health benefit plan that
7 utilizes a restricted provider network shall not be considered similar
8 coverage to a health benefit plan that does not utilize such a network,
9 provided that utilization of the restricted provider network results in
10 substantial differences in claims costs.

11 (h) A small employer carrier shall not use case characteristics
12 other than age, gender, industry, geographic area, family composition,
13 and group size without prior approval of the commissioner.

14 (i) The commissioner may establish regulations to implement the
15 provisions of this section and to assure that rating practices used by
16 small employer carriers are consistent with the purposes of this
17 chapter, including:

18 (i) Assuring that differences in rates charged for health benefit
19 plans by small employer carriers are reasonable and reflect objective
20 differences in plan design, not including differences due to the nature
21 of the groups assumed to select particular health benefit plans; and

22 (ii) Prescribing the manner in which case characteristics may be
23 used by small employer carriers.

24 (2) A small employer carrier shall not transfer a small employer
25 involuntarily into or out of a health benefit plan. A small employer
26 carrier shall not offer to transfer a small employer into or out of a
27 health benefit plan unless such offer is made to transfer all small
28 employers with the same health benefit plan without regard to case
29 characteristics, claim experience, health status, or duration of
30 coverage.

1 (3) The commissioner may suspend for a specified period the
2 application of subsection (1)(a) of this section as to the premium
3 rates applicable to one or more small employers of a small employer
4 carrier for one or more rating periods upon a finding by the small
5 employer carrier and a finding by the commissioner either that the
6 suspension is reasonable in light of the financial condition of the
7 small employer carrier or that the suspension would enhance the
8 efficiency and fairness of the marketplace for small employer health
9 insurance.

10 (4) In connection with the offering for sale of any health benefit
11 plan to a small employer, a small employer carrier shall make a
12 reasonable disclosure, as part of its solicitation and sales materials,
13 of all of the following:

14 (a) The extent to which premium rates for a specified small
15 employer are established or adjusted based upon the actual or expected
16 variation in claims costs or actual or expected variation in health
17 status of the employees of the small employer and their dependents;

18 (b) The provisions of the health benefit plan concerning the small
19 employer carrier's right to change premium rates and factors, other
20 than claim experience, that affect changes in premium rates;

21 (c) The provision relating to renewability of policies and
22 contracts; and

23 (d) The provisions relating to any preexisting condition.

24 (5)(a) Each small employer carrier shall maintain at its principal
25 place of business a complete and detailed description of its rating
26 practices and renewal underwriting practices, including information and
27 documentation that demonstrate that its rating methods and practices
28 are based upon commonly accepted actuarial assumptions and are in
29 accordance with sound actuarial principles.

1 (b) Each small employer carrier shall file with the commissioner
2 annually on or before March 15 an actuarial certification certifying
3 that the carrier is in compliance with this chapter and that the rating
4 methods of the small employer carrier are actuarially sound. Such
5 certification shall be in a form and manner, and shall contain such
6 information, as specified by the commissioner. A copy of the
7 certification shall be retained by the small employer carrier at its
8 principal place of business.

9 (c) A small employer carrier shall make the information and
10 documentation described in (a) of this subsection available to the
11 commissioner upon request. Except in cases of violations of this
12 chapter, the information shall be considered proprietary and trade
13 secret information and shall not be subject to disclosure by the
14 commissioner to persons outside of the office except as agreed to by
15 the small employer carrier or as ordered by a court of competent
16 jurisdiction.

17 NEW SECTION. **Sec. 6.** RENEWABILITY OF COVERAGE. (1) A health
18 benefit plan subject to this chapter shall be renewable with respect to
19 all eligible employees and dependents, at the option of the small
20 employer, except in any of the following cases:

21 (a) Nonpayment of required premiums;

22 (b) Fraud or misrepresentation by the small employer or, with
23 respect to coverage of individual insureds, the insureds or their
24 representatives;

25 (c) Noncompliance with the carrier's minimum participation
26 requirements;

27 (d) Noncompliance with the carrier's employer contribution
28 requirements;

29 (e) Repeated misuse of a provider network provision; or

1 (f) The small employer carrier elects to not renew all of its
2 health benefit plans issued to small employers in Washington state. In
3 such a case the carrier shall:

4 (i) Provide advance notice of its decision under this subsection
5 (1)(f)(i) to the commissioner; and

6 (ii) Provide notice of the decision not to renew coverage to all
7 affected small employers and to the commissioner in each state in which
8 an affected covered individual is known to reside at least one hundred
9 eighty days prior to the nonrenewal of any health benefit plan by the
10 carrier. Notice to the commissioner under this subsection (1)(f)(ii)
11 shall be provided at least three working days prior to the notice to
12 the affected small employers.

13 (g) The commissioner finds that the continuation of the coverage
14 would:

15 (i) Not be in the best interests of the policyholders or
16 certificate holders; or

17 (ii) Impair the carrier's ability to meet its contractual
18 obligations.

19 In such instance the commissioner shall assist affected small
20 employers in finding replacement coverage.

21 (2) A small employer carrier that elects not to renew a health
22 benefit plan under subsection (1)(f) of this section shall be
23 prohibited from writing new business in the small employer market in
24 Washington state for a period of five years from the date of notice to
25 the commissioner.

26 (3) In the case of a small employer carrier doing business in one
27 established geographic service area of the state, the rules set forth
28 in this section shall apply only to the carrier's operations in such
29 service area.

1 NEW SECTION. **Sec. 7.** GENERAL SMALL EMPLOYER CARRIER REQUIREMENTS.

2 (1) A health benefit plan covering small employers shall comply with
3 the following provisions:

4 (a) A small employer carrier shall file with the commissioner, in
5 a form and manner prescribed by the commissioner, the basic health
6 benefit plans to be used by the carrier. A health benefit plan filed
7 pursuant to this subsection (1)(a) may be used by a small employer
8 carrier beginning thirty days after it is filed unless the commissioner
9 disapproves its use.

10 (b) A health benefit plan shall not deny, exclude, or limit
11 benefits for a covered individual for losses incurred more than six
12 months following the effective date of the individual's coverage due to
13 a preexisting condition. A health benefit plan shall not define a
14 preexisting condition more restrictively than:

15 (i) A condition that would have caused an ordinarily prudent person
16 to seek medical advice, diagnosis, care, or treatment during the six
17 months immediately preceding the effective date of coverage;

18 (ii) A condition for which medical advice, diagnosis, care, or
19 treatment was recommended or received during the six months immediately
20 preceding the effective date of coverage; or

21 (iii) A pregnancy existing on the effective date of coverage.

22 (c) A health benefit plan shall waive any time period applicable to
23 a preexisting condition exclusion or limitation period with respect to
24 particular services for the period of time an individual was previously
25 covered by qualifying previous coverage that provided benefits with
26 respect to such services, provided that the qualifying previous
27 coverage was continuous to a date not less than thirty days prior to
28 the effective date of the new coverage. This subsection (1)(c) does
29 not preclude application of any waiting period applicable to all new
30 enrollees under the health benefit plan.

1 (d) A health benefit plan may exclude coverage for late enrollees
2 for the greater of twelve months or for a twelve-month preexisting
3 condition exclusion, provided that if both a period of exclusion from
4 coverage and a preexisting condition exclusion are applicable to a late
5 enrollee, the combined period shall not exceed twelve months from the
6 date the individual enrolls for coverage under the health benefit plan.

7 (e)(i) Except as provided in (iv) of this subsection (1)(e),
8 requirements used by a small employer carrier in determining whether to
9 provide coverage to a small employer, including requirements for
10 minimum participation of eligible employees and minimum employer
11 contributions, shall be applied uniformly among all small employers
12 with the same number of eligible employees applying for coverage or
13 receiving coverage from the small employer carrier.

14 (ii) A small employer carrier may vary application of minimum
15 participation requirements and minimum employer contribution
16 requirements only by the size of the small employer group.

17 (iii)(A) Except as provided in (iii)(B) of this subsection (1)(e),
18 in applying minimum participation requirements with respect to a small
19 employer, a small employer carrier shall not consider employees or
20 dependents who have qualifying existing coverage in determining whether
21 the applicable percentage of participation is met.

22 (B) With respect to a small employer with ten or fewer eligible
23 employees, a small employer carrier may consider employees or
24 dependents who have coverage under another health benefit plan
25 sponsored by such small employer in applying minimum participation
26 requirements.

27 (iv) A small employer carrier shall not increase any requirement
28 for minimum employee participation or any requirement for minimum
29 employer contribution applicable to a small employer at any time after
30 the small employer has been accepted for coverage.

1 (f)(i) If a small employer carrier offers coverage to a small
2 employer, the small employer carrier shall offer coverage to all of the
3 eligible employees of the small employer and their dependents. A small
4 employer carrier shall not offer coverage to only certain individuals
5 in a small employer group or to only part of the group, except in the
6 case of late enrollees as provided in (c) of this subsection.

7 (ii) A small employer carrier shall not modify a basic health
8 benefit plan with respect to a small employer or any eligible employee
9 or dependent through riders, endorsements, or otherwise, to restrict or
10 exclude coverage for certain diseases or medical conditions otherwise
11 covered by the basic health benefit plan.

12 (2)(a) Every small employer carrier shall, as a condition of
13 transacting business in Washington state with small employers, actively
14 offer to small employers at least a basic health benefit plan.

15 (b) A small employer carrier shall issue at least a basic health
16 benefit plan to any eligible small employer that applies to such a plan
17 and agrees to make the required premium payments and to satisfy the
18 other reasonable provisions of the health benefit plan not inconsistent
19 with this chapter.

20 (ii) An allocating small employer carrier shall issue at least the
21 basic health benefit plan or an approved minimum benefit plan to any
22 eligible small employer that applies to such a plan and agrees to make
23 the required premium payments and to satisfy the other reasonable
24 provisions of the health benefit plan not inconsistent with this
25 chapter, until the carrier's allotment of high-risk individuals has
26 been met under section 8 of this act.

27 (c) A small employer is eligible under subsection (2)(b) of this
28 section if it employed at least three unrelated eligible employees
29 within Washington state on at least fifty percent of its working days
30 during the preceding calendar quarter.

1 (d) For purposes of establishing continued small employer
2 eligibility under this chapter, a small employer carrier may reassess
3 the size of the covered employer on the anniversary date of the
4 employer's policy. Coverage under this chapter may be discontinued if
5 the small employer no longer meets the size requirements provided for
6 in this chapter. However, if a small employer falls below the minimum
7 size, coverage must be continued for a period of at least one year
8 before the small employer carrier can discontinue coverage under this
9 chapter, provided that the small employer continues to fall below the
10 minimum group size requirements of this chapter.

11 (e) The provisions of this subsection shall be effective one
12 hundred eighty days after the commissioner's approval of the basic
13 health benefit plan developed under section 9 of this act, provided
14 that if the small employer allocation program created under section 8
15 of this act is not yet in operation on such date, the provisions of
16 this subsection shall be effective on the date that such program begins
17 operation.

18 NEW SECTION. **Sec. 8.** SMALL EMPLOYER ALLOCATION PROGRAM. (1) All
19 small employer carriers issuing health benefit plans in this state on
20 and after the effective date of this act shall be required to meet the
21 requirements of this section as a condition of authority to transact
22 business in Washington state.

23 (2) There is created a nonprofit entity to be known as the
24 Washington small employer allocation program. All small employer
25 carriers issuing health benefit plans in Washington state on and after
26 the effective date of this act shall be allocating carriers in the
27 program.

1 (3) The program shall operate subject to the supervision and
2 control of the board of the Washington health insurance pool, as
3 established by chapter 48.41 RCW.

4 (4) Within sixty days of the effective date of this act, each small
5 employer carrier shall make a filing with the commissioner containing
6 the carrier's net health insurance premium derived from health benefit
7 plans issued to small employers in this state in the previous calendar
8 year.

9 (5) Within one hundred eighty days after the appointment of the
10 initial board, the board shall submit to the commissioner a plan of
11 operation and thereafter any amendments thereto necessary or suitable,
12 to assure the fair, reasonable, and equitable administration of the
13 program. The commissioner may, after notice and hearing, approve the
14 plan of operation if the commissioner determines that it is required to
15 assure the fair, reasonable, and equitable administration of the
16 program and provides for the sharing of program gains or losses on an
17 equitable and proportionate basis in accordance with the provisions of
18 this section. The plan of operation shall become effective upon
19 approval in writing by the commissioner.

20 (6) If the board fails to submit a suitable plan of operation
21 within one hundred eighty days after its appointment, the commissioner
22 shall, after notice and hearing, adopt a temporary plan of operation.
23 The commissioner shall amend or rescind any plan adopted under this
24 section at the time a plan of operation is submitted by the board and
25 approved by the commissioner.

26 (7) The plan of operation shall:

27 (a) Establish procedures for handling and accounting of program
28 assets and moneys and for an annual fiscal reporting to the
29 commissioner;

1 (b) Establish procedures for selecting an administering carrier and
2 setting forth the powers and duties of the administering carrier;

3 (c) Establish procedures for assigning allotments of high-risk
4 individuals and small employers among small employer carriers in
5 accordance with the provisions of this chapter;

6 (d) Establish procedures for collecting assessments from all
7 members subject to assessment to provide for administrative expenses
8 incurred or estimated to be incurred for the period for which the
9 assessment is made; and

10 (e) Provide for any additional matters necessary for the
11 implementation and administration of the program.

12 (8) The program shall have the general powers and authority granted
13 under the laws of Washington state to insurance companies, health care
14 service contractors, and health maintenance organizations licensed to
15 transact business, except the power to issue health benefit plans
16 directly to either groups or individuals. In addition thereto, the
17 program shall have the specific authority to:

18 (a) Enter into contracts as are necessary or proper to carry out
19 the provisions and purposes of this section, including the authority,
20 with the approval of the commissioner, to enter into contracts with
21 similar programs of other states for the point performance of common
22 functions or with persons or other organizations for the performance of
23 administrative functions;

24 (b) Sue or be sued, including taking any legal actions necessary or
25 proper for recovering any assessments and penalties for, on behalf of,
26 or against the program or any allocating carriers;

27 (c) Establish rules, conditions, and procedures pertaining to its
28 functions under this chapter;

29 (d) Assess allocating carriers in accordance with the provisions of
30 subsection (12) of this section, and to make interim assessment as may

1 be reasonable and necessary for organizational and interim operating
2 expenses. Any interim assessments shall be credited as offsets against
3 any regular assessments due following the close of the fiscal year;

4 (e) Appoint appropriate legal, actuarial, and other committees as
5 necessary to provide technical assistance in the operation of the
6 program, policy and other contract design, and any other function
7 within the authority of the program;

8 (f) Borrow money to effect the purposes of the program. Any notes
9 or other evidence of indebtedness of the program not in default shall
10 be legal investments for carriers and may be carried as admitted
11 assets;

12 (g) Perform other functions necessary and proper to carry out its
13 responsibilities under this chapter.

14 (9) The board shall establish procedures, as part of the plan of
15 operation, for determining allotments of high-risk individuals and
16 small employers among all allocating carriers. Such procedures shall
17 be designed to assure a fair allocation of risks among allocating small
18 employer carriers. The procedures shall include the following:

19 (a) A method by which the board shall estimate each year the total
20 number of high-risk individuals in small employer groups that will be
21 identified and used for determining carrier allotments under this
22 subsection during the year. The board shall develop a uniform
23 definition of a high-risk individual based on standardized medical
24 underwriting criteria for purposes of this section.

25 (b) A method by which the program shall assign to each small
26 employer carrier a target number of high-risk individuals. The target
27 number for a small employer carrier shall bear the same proportional
28 relationship to the total number of high-risk individuals estimated
29 under (a) of this subsection as the small employer carrier's annual net
30 premiums for coverage of small employers bears to the annual net

1 premiums of all small employer carriers for coverage of small
2 employers. In the case of a small employer carrier with an established
3 geographic services area, the board may adjust the target number of
4 high-risk individuals to account for the carrier's increased or
5 decreased exposure resulting from the allocation.

6 (c) A procedure by which the program shall determine the number of
7 high-risk eligible employees and dependents of each small employer that
8 constitutes the carrier's allotment of high-risk individuals and small
9 employers.

10 (d) A procedure by which small employers that are identified as
11 high risk may select an allocating carrier from a list in the program.
12 The procedure shall provide for the small employer to be allocated to
13 choose among allocating carriers unless, as a result of the addition of
14 the small employer, the carrier's target number determined under (b) of
15 this subsection would be exceeded. A small employer that is rejected
16 by the carrier that it initially selects shall make selections from a
17 list of allocating carriers that have not yet met their allotments of
18 high-risk individuals and small employers.

19 (e) A procedure by which the board shall determine, as for each
20 calendar year, the extent to which the average claims costs incurred by
21 a small employer carrier for providing coverage to high-risk
22 individuals, whether allocated or identified in that year or any
23 preceding year, is greater or less than the average claims cost
24 incurred by small employer carriers for providing coverage to all high-
25 risk individuals, whether allocated in that calendar year or any
26 preceding year, that have been allocated or identified under the
27 program.

28 (i) The procedure shall provide for the board to adjust the target
29 number for a small employer carrier for the subsequent year if the
30 average claims cost incurred by such carrier from providing coverage to

1 high-risk individuals is either more or less, by at least the
2 applicable percentage determined in (e)(ii) of this subsection, than
3 the average claims cost for all high-risk individuals allocated under
4 the program.

5 (ii) The procedure shall provide for the board to determine a
6 percentage amount for the purpose of (e)(i) of this subsection. In
7 determining such percentage, the board shall balance the following
8 objectives:

9 (A) Achieving an equitable distribution among small employer
10 carriers of the claims costs of high-risk individuals;

11 (B) Efficient administration of the program; and

12 (C) Providing incentive for small employer carriers to manage the
13 care of high-risk individuals allotted under the program.

14 (10) The board shall periodically evaluate the program to assure
15 equity in the distribution of allotted small employers. The board,
16 subject to the approval of the commissioner, shall have the authority
17 to make adjustments to the procedures established pursuant to this
18 subsection to further the goal of equitable distribution of allocated
19 small employers.

20 (11) A small employer carrier shall not be required to accept small
21 employers that are not located within their established geographic
22 service area or areas.

23 (12)(a) Following the close of each fiscal year, the administering
24 carrier shall determine the program expenses of the administration.
25 The net expense for the year shall be recouped by assessment on the
26 allocating carriers. The administering carrier also shall determine
27 the claims expense for allocated small employers for each small
28 employer carrier for the basic health benefit plan, on an annual basis,
29 using information collected from carriers under subsection (15) of this
30 section.

1 (b) Assessments to cover the administrative expenses of the program
2 shall be apportioned by the board among allocating carriers in
3 proportion to their respective shares of the total premiums earned from
4 health benefit plans issued to small employers in Washington state by
5 all allocating carriers during the calendar year coinciding with or
6 ending during the fiscal year of the program. Premiums earned by
7 allocating carriers that are less than an amount determined by the
8 board to justify the cost of assessment collection shall not be
9 considered for purposes of determining assessments.

10 (c) Each allocating carrier's assessment shall be determined
11 annually by the board based on annual statements and other reports
12 deemed necessary by the board and filed by the allocating carrier with
13 board.

14 (d) The plan of operation shall provide for the imposition of an
15 interest penalty for late payment of assessments.

16 (e) An allocating carrier may seek from the commissioner a
17 deferment from all or part of its assessment if payment of the
18 assessment would place the allocating carrier in a financially impaired
19 condition. The commissioner shall make such a determination and allow
20 all or part of the assessment deferral. If all or part of an
21 assessment against an allocating carrier is deferred, the amount
22 deferred shall be assessed against the other allocating carriers in a
23 manner set forth in this subsection. The allocating carrier receiving
24 the deferment shall remain liable to the program for the amount
25 deferred.

26 (13) Except as provided in subsection (11) of this section,
27 allocating carriers shall accept application from all small employers
28 until their allotments for high-risk individuals are met, as determined
29 by the board pursuant to subsection (9) of this section. The
30 allocating carrier shall offer all small employers a benefit plan that

1 at least offers the benefits contained in the basic health benefit
2 plan. An allocating carrier may also offer to small employers coverage
3 that is more comprehensive than that required by this chapter.

4 (14) An allocating carrier shall not be required to provide
5 coverage to small employers under this section for any period of time
6 for which the commissioner determines that the participation in the
7 program could place the small employer carrier in a financially
8 impaired condition. In such instances, such small employer carriers
9 will be prohibited from accepting application from any small employer
10 until the commissioner determines that the carrier can accept small
11 employers allocated from the program.

12 (15) Each allocating carrier shall file with the commissioner, in
13 a form and manner to be prescribed by the commissioner, an annual
14 report. The report shall state the small employer carrier's net
15 premium for new small employer coverage written in the previous twelve-
16 month period. The report also shall state the number of small
17 employers with high-risk individuals that meet the standard
18 underwriting criteria for high-risk individuals, the claims expenses
19 for these high-risk individuals, the names and number of the small
20 employers that canceled or terminated coverage with it during the
21 preceding calendar year, and the reasons for such cancellations or
22 terminations, if known. The report shall be filed on or before March
23 1 for the preceding calendar year. A copy of the report shall be
24 provided to the board.

25 (16) Neither the participation in the program, the establishment of
26 procedures, nor any other joint or collective action required by this
27 chapter shall be the basis of any legal action, criminal or civil
28 liability, or penalty against the program or any allocating carrier
29 either jointly or separately.

30 (17) The program shall be exempt from any and all taxes.

1 (18) The board, as part of the plan of operation, shall develop
2 standards setting forth the manner and levels of compensation to be
3 paid to producers for the sale of basic health benefit plans. In
4 establishing such standards, the board shall take into consideration:
5 The need to assure the broad availability of coverages, the objectives
6 of the program, the time and effort expended in placing the coverage,
7 the need to provide ongoing service to the small employer, the levels
8 of compensations currently used in the industry, and the overall costs
9 of coverage to small employers selecting these plans.

10 NEW SECTION. **Sec. 9.** HEALTH BENEFIT PLAN COMMITTEE. (1) The
11 commissioner shall appoint a health benefit plan committee. The
12 committee shall be composed of representatives from small employer
13 carriers, including insurance companies, health care service
14 contractors, health maintenance organizations, other carriers, small
15 employers, employees, health care providers, and producers.

16 (2) The committee shall recommend the form and level of coverage to
17 be made available by small employer carriers under sections 7 and 8 of
18 this act.

19 (3)(a) The committee shall recommend benefit levels, cost sharing
20 levels, exclusions, and limitations for the basic health benefit plan.
21 The committee shall also design a basic health benefit plan that
22 contains benefit and cost sharing levels that are consistent with the
23 basic method of operation and benefits of health maintenance
24 organizations, including any restrictions imposed by federal law.

25 (b) The committee shall submit the health benefit plan described in
26 (a) of this subsection to the commissioner for approval within one
27 hundred eighty days after the appointment of the committee.

28 (c)(i) A small employer carrier shall file with the commissioner,
29 in a format and manner prescribed by the commissioner, the basic health

1 benefit plan to be used by the carrier. A health benefit plan filed
2 pursuant to this subsection (3)(c)(i) may be used by a small employer
3 carrier beginning thirty days after it is filed unless the commissioner
4 disapproves its use.

5 (ii) The commissioner at any time may, after providing written
6 notice and an opportunity for a hearing to the small employer carrier,
7 disapprove the continued use by a small employer carrier of a basic
8 health benefit plan on the grounds that the plan does not meet the
9 requirements of this subsection.

10 NEW SECTION. **Sec. 10.** PERIODIC MARKET EVALUATION. (1) The board,
11 in consultation with members of the committee, shall study and report
12 at least every three years to the commissioner on the effectiveness of
13 this chapter. The report shall analyze the effectiveness of the
14 chapter in promoting rate stability, product availability, and coverage
15 affordability. The report may contain recommendations for actions to
16 improve the overall effectiveness, efficiency, and fairness of the
17 small group health insurance market place. The report shall address
18 whether carriers and producers are fairly and actively marketing and
19 issuing health benefit plans to small employers in fulfillment of the
20 purposes of this chapter. The report may contain recommendations for
21 market conduct or other regulatory standards or actions.

22 (2) The board shall commission an actuarial study, by an
23 independent actuary approved by the commissioner, within the first
24 three years of the operation of the program to evaluate and measure the
25 relative risks being assumed by differing types of small employer
26 carriers as a result of this chapter.

27 NEW SECTION. **Sec. 11.** WAIVER OF CERTAIN STATE LAWS. No law
28 requiring the coverage of a health care service or benefit, or

1 requiring the reimbursement, utilization, or inclusion of a specific
2 category of licensed health care practitioner, shall apply to a basic
3 health benefit plan issued pursuant to this chapter.

4 NEW SECTION. **Sec. 12.** ADMINISTRATIVE PROCEDURES. The
5 commissioner may issue rules in accordance with the small employer
6 health coverage reform act.

7 NEW SECTION. **Sec. 13.** STANDARDS TO ASSURE FAIR MARKETING. (1) An
8 allocating small employer carrier that denies coverage to a small
9 employer on the basis of standard medical underwriting criteria
10 established by the board of the program as applied to the small
11 employer's employees or dependents shall provide notice to the small
12 employer, in a form and manner prescribed by the commissioner, of the
13 potential availability of coverage through the allocation program.

14 (2) A small employer carrier shall provide reasonable compensation,
15 as provided under the plan of operation of the program, to a producer,
16 if any, for placing small employers with the small employer carrier
17 through the program.

18 (3) No small employer carrier shall terminate, fail to renew, or
19 limit its contract or agreement of representation with a producer
20 because the producer has placed small employers with the small employer
21 carrier.

22 (4) No small employer carrier or producer shall induce or otherwise
23 encourage a small employer to separate or otherwise exclude an employee
24 from health coverage or benefits provided in connection with the
25 employee's employment.

26 (5) Denial by an allocating small employer carrier of an
27 application for coverage from a small employer shall be consistent with

1 the provisions of section 8 of this act, shall be in writing, and shall
2 state the reason or reasons for the denial.

3 (6) The commissioner may adopt by rule additional standards to
4 provide for the availability of health benefit plans to small employers
5 through the program.

6 (7)(a) A violation of this section by a small employer carrier or
7 producer shall be an unfair trade practice under chapter 48.30 RCW.

8 (b) If a small employer carrier enters into a contract, agreement,
9 or other arrangement with a third-party administrator to provide
10 administrative, marketing, or the other services related to the
11 offering of health benefit plans to small employers in Washington
12 state, the third-party administrator shall be subject to this section
13 as if it were a small employer carrier.

14 NEW SECTION. **Sec. 14.** APPLICATION OF CHAPTER TO CHAPTERS 48.20,
15 48.21, AND 48.44 RCW. This chapter applies to carriers regulated under
16 chapters 48.21, 48.44, and 48.46 RCW.

17 NEW SECTION. **Sec. 15.** CAPTIONS. Captions as used in this act
18 constitute no part of the law.

19 NEW SECTION. **Sec. 16.** SEVERABILITY. If any provision of this act
20 or its application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 17.** EFFECTIVE DATE. This act shall take effect
24 January 1, 1993.

1 NEW SECTION. **Sec. 18.** Sections 1 through 17 of this act shall
2 constitute a new chapter in Title 48 RCW.