

---

SENATE BILL 6384

---

State of Washington                      52nd Legislature                      1992 Regular Session

By Senators Sellar, Snyder, West and McMullen

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 (e) 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.