

SSB 5777 - H AMD 877

By Representative Cody

ADOPTED 04/23/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 48.66 RCW  
4 to read as follows:

5 Any medicare eligible person who is rejected for medical reasons,  
6 is required to accept restrictive riders, an up-rated premium, or  
7 preexisting conditions limitations, the effect of which is to  
8 substantially reduce coverage from that received by a person considered  
9 a standard risk by at least one member as defined in RCW 48.41.030(14)  
10 shall be provided written notice from the issuer of medicare supplement  
11 coverage to whom application was made of the decision not to accept the  
12 person's application for enrollment, or to require such restrictions.  
13 The notice shall further state that the person is eligible for medicare  
14 part C coverage offered in the person's geographic area or coverage  
15 provided by the Washington state health insurance pool for Washington  
16 residents, and shall include information about medicare part C plans  
17 offered in the person's geographic area, about the Washington state  
18 health insurance pool, and about available resources to assist the  
19 person in choosing appropriate coverage.

20 **Sec. 2.** RCW 48.41.060 and 2008 c 217 s 47 are each amended to read  
21 as follows:

22 (1) The board shall have the general powers and authority granted  
23 under the laws of this state to insurance companies, health care  
24 service contractors, and health maintenance organizations, licensed or  
25 registered to offer or provide the kinds of health coverage defined  
26 under this title. In addition thereto, the board shall:

27 (a) Designate or establish the standard health questionnaire to be  
28 used under RCW 48.41.100 and 48.43.018, including the form and content  
29 of the standard health questionnaire and the method of its application.

1 The questionnaire must provide for an objective evaluation of an  
2 individual's health status by assigning a discreet measure, such as a  
3 system of point scoring to each individual. The questionnaire must not  
4 contain any questions related to pregnancy, and pregnancy shall not be  
5 a basis for coverage by the pool. The questionnaire shall be designed  
6 such that it is reasonably expected to identify the eight percent of  
7 persons who are the most costly to treat who are under individual  
8 coverage in health benefit plans, as defined in RCW 48.43.005, in  
9 Washington state or are covered by the pool, if applied to all such  
10 persons;

11 (b) Obtain from a member of the American academy of actuaries, who  
12 is independent of the board, a certification that the standard health  
13 questionnaire meets the requirements of (a) of this subsection;

14 (c) Approve the standard health questionnaire and any modifications  
15 needed to comply with this chapter. The standard health questionnaire  
16 shall be submitted to an actuary for certification, modified as  
17 necessary, and approved at least every (~~eighteen~~) thirty-six months.  
18 The designation and approval of the standard health questionnaire by  
19 the board shall not be subject to review and approval by the  
20 commissioner. The standard health questionnaire or any modification  
21 thereto shall not be used until ninety days after public notice of the  
22 approval of the questionnaire or any modification thereto, except that  
23 the initial standard health questionnaire approved for use by the board  
24 after March 23, 2000, may be used immediately following public notice  
25 of such approval;

26 (d) Establish appropriate rates, rate schedules, rate adjustments,  
27 expense allowances, claim reserve formulas and any other actuarial  
28 functions appropriate to the operation of the pool. Rates shall not be  
29 unreasonable in relation to the coverage provided, the risk experience,  
30 and expenses of providing the coverage. Rates and rate schedules may  
31 be adjusted for appropriate risk factors such as age and area variation  
32 in claim costs and shall take into consideration appropriate risk  
33 factors in accordance with established actuarial underwriting practices  
34 consistent with Washington state individual plan rating requirements  
35 under RCW 48.44.022 and 48.46.064;

36 (e)(i) Assess members of the pool in accordance with the provisions  
37 of this chapter, and make advance interim assessments as may be

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

4 (ii) Self-funded multiple employer welfare arrangements are subject  
5 to assessment under this subsection only in the event that assessments  
6 are not preempted by the employee retirement income security act of  
7 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the  
8 commissioner shall initially request an advisory opinion from the  
9 United States department of labor or obtain a declaratory ruling from  
10 a federal court on the legality of imposing assessments on these  
11 arrangements before imposing the assessment. Once the legality of the  
12 assessments has been determined, the multiple employer welfare  
13 arrangement certified by the insurance commissioner must begin payment  
14 of these assessments.

15 (iii) If there has not been a final determination of the legality  
16 of these assessments, then beginning on the earlier of (A) the date the  
17 fourth multiple employer welfare arrangement has been certified by the  
18 insurance commissioner, or (B) April 1, 2006, the arrangement shall  
19 deposit the assessments imposed by this subsection into an interest  
20 bearing escrow account maintained by the arrangement. Upon a final  
21 determination that the assessments are not preempted by the employee  
22 retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001  
23 et seq., all funds in the interest bearing escrow account shall be  
24 transferred to the board;

25 (f) Issue policies of health coverage in accordance with the  
26 requirements of this chapter;

27 (g) Establish procedures for the administration of the premium  
28 discount provided under RCW 48.41.200(3)(a)(iii);

29 (h) Contract with the Washington state health care authority for  
30 the administration of the premium discounts provided under RCW  
31 48.41.200(3)(a) (i) and (ii);

32 (i) Set a reasonable fee to be paid to an insurance producer  
33 licensed in Washington state for submitting an acceptable application  
34 for enrollment in the pool; and

35 (j) Provide certification to the commissioner when assessments will  
36 exceed the threshold level established in RCW 48.41.037.

37 (2) In addition thereto, the board may:

1 (a) Enter into contracts as are necessary or proper to carry out  
2 the provisions and purposes of this chapter including the authority,  
3 with the approval of the commissioner, to enter into contracts with  
4 similar pools of other states for the joint performance of common  
5 administrative functions, or with persons or other organizations for  
6 the performance of administrative functions;

7 (b) Sue or be sued, including taking any legal action as necessary  
8 to avoid the payment of improper claims against the pool or the  
9 coverage provided by or through the pool;

10 (c) Appoint appropriate legal, actuarial, and other committees as  
11 necessary to provide technical assistance in the operation of the pool,  
12 policy, and other contract design, and any other function within the  
13 authority of the pool; and

14 (d) Conduct periodic audits to assure the general accuracy of the  
15 financial data submitted to the pool, and the board shall cause the  
16 pool to have an annual audit of its operations by an independent  
17 certified public accountant.

18 (3) Nothing in this section shall be construed to require or  
19 authorize the adoption of rules under chapter 34.05 RCW.

20 **Sec. 3.** RCW 48.41.100 and 2007 c 259 s 30 are each amended to read  
21 as follows:

22 (1)(a) The following persons who are residents of this state are  
23 eligible for pool coverage:

24 (~~(a)~~) (i) Any person who provides evidence of a carrier's  
25 decision not to accept him or her for enrollment in an individual  
26 health benefit plan as defined in RCW 48.43.005 based upon, and within  
27 ninety days of the receipt of, the results of the standard health  
28 questionnaire designated by the board and administered by health  
29 carriers under RCW 48.43.018;

30 (~~(b)~~) (ii) Any person who continues to be eligible for pool  
31 coverage based upon the results of the standard health questionnaire  
32 designated by the board and administered by the pool administrator  
33 pursuant to subsection (3) of this section;

34 (~~(c)~~) (iii) Any person who resides in a county of the state where  
35 no carrier or insurer eligible under chapter 48.15 RCW offers to the  
36 public an individual health benefit plan other than a catastrophic

1 health plan as defined in RCW 48.43.005 at the time of application to  
2 the pool, and who makes direct application to the pool; (~~and~~  
3 ~~(d)~~) (iv) Any (~~medicare-eligible~~) person (~~upon providing~~)  
4 becoming eligible for medicare before August 1, 2009, who provides  
5 evidence of (A) a rejection for medical reasons, (B) a requirement of  
6 restrictive riders, (C) an up-rated premium, (~~or~~) (D) a preexisting  
7 conditions limitation (~~on a~~), or (E) lack of access to or for a  
8 comprehensive medicare supplemental insurance policy under chapter  
9 48.66 RCW, the effect of any of which is to substantially reduce  
10 coverage from that received by a person considered a standard risk by  
11 at least one member within six months of the date of application; and  
12 (v) Any person becoming eligible for medicare on or after August 1,  
13 2009, who does not have access to a reasonable choice of comprehensive  
14 medicare part C plans, as defined in (b) of this subsection, and who  
15 provides evidence of (A) a rejection for medical reasons, (B) a  
16 requirement of restrictive riders, (C) an up-rated premium, (D) a  
17 preexisting conditions limitation, or (E) lack of access to or for a  
18 comprehensive medicare supplemental insurance policy under chapter  
19 48.66 RCW, the effect of any of which is to substantially reduce  
20 coverage from that received by a person considered a standard risk by  
21 at least one member within six months of the date of application.  
22 (b) For purposes of (a)(v) of this subsection (1), a person does  
23 not have access to a reasonable choice of plans unless the person has  
24 a choice of health maintenance organization or preferred provider  
25 organization medicare part C plans offered by at least three different  
26 carriers that have had provider networks in the person's county of  
27 residence for at least five years. The plan options must include  
28 coverage at least as comprehensive as a plan F medicare supplement plan  
29 combined with medicare parts A and B. The plan options must also  
30 provide access to adequate and stable provider networks that make up-  
31 to-date provider directories easily accessible on the carrier web site,  
32 and will provide them in hard copy, if requested. In addition, if no  
33 health maintenance organization or preferred provider organization plan  
34 includes the health care provider with whom the person has an  
35 established care relationship and from whom he or she has received  
36 treatment within the past twelve months, the person does not have  
37 reasonable access.

1 (2) The following persons are not eligible for coverage by the  
2 pool:

3 (a) Any person having terminated coverage in the pool unless (i)  
4 twelve months have lapsed since termination, or (ii) that person can  
5 show continuous other coverage which has been involuntarily terminated  
6 for any reason other than nonpayment of premiums. However, these  
7 exclusions do not apply to eligible individuals as defined in section  
8 2741(b) of the federal health insurance portability and accountability  
9 act of 1996 (42 U.S.C. Sec. 300gg-41(b));

10 (b) Any person on whose behalf the pool has paid out two million  
11 dollars in benefits;

12 (c) Inmates of public institutions and those persons (~~whose~~  
13 ~~benefits are duplicated under public programs~~) who become eligible for  
14 medical assistance after June 30, 2008, as defined in RCW 74.09.010.  
15 However, these exclusions do not apply to eligible individuals as  
16 defined in section 2741(b) of the federal health insurance portability  
17 and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

18 (d) Any person who resides in a county of the state where any  
19 carrier or insurer regulated under chapter 48.15 RCW offers to the  
20 public an individual health benefit plan other than a catastrophic  
21 health plan as defined in RCW 48.43.005 at the time of application to  
22 the pool and who does not qualify for pool coverage based upon the  
23 results of the standard health questionnaire, or pursuant to subsection  
24 (1)((~~d~~)) (a)(iv) of this section.

25 (3) When a carrier or insurer regulated under chapter 48.15 RCW  
26 begins to offer an individual health benefit plan in a county where no  
27 carrier had been offering an individual health benefit plan:

28 (a) If the health benefit plan offered is other than a catastrophic  
29 health plan as defined in RCW 48.43.005, any person enrolled in a pool  
30 plan pursuant to subsection (1)((~~e~~)) (a)(iii) of this section in that  
31 county shall no longer be eligible for coverage under that plan  
32 pursuant to subsection (1)((~~e~~)) (a)(iii) of this section, but may  
33 continue to be eligible for pool coverage based upon the results of the  
34 standard health questionnaire designated by the board and administered  
35 by the pool administrator. The pool administrator shall offer to  
36 administer the questionnaire to each person no longer eligible for  
37 coverage under subsection (1)((~~e~~)) (a)(iii) of this section within  
38 thirty days of determining that he or she is no longer eligible;

1 (b) Losing eligibility for pool coverage under this subsection (3)  
2 does not affect a person's eligibility for pool coverage under  
3 subsection (1)(a)(i), (~~((b))~~) (ii), or (~~((d))~~) (iv) of this section;  
4 and

5 (c) The pool administrator shall provide written notice to any  
6 person who is no longer eligible for coverage under a pool plan under  
7 this subsection (3) within thirty days of the administrator's  
8 determination that the person is no longer eligible. The notice shall:

9 (i) Indicate that coverage under the plan will cease ninety days from  
10 the date that the notice is dated; (ii) describe any other coverage  
11 options, either in or outside of the pool, available to the person;  
12 (iii) describe the procedures for the administration of the standard  
13 health questionnaire to determine the person's continued eligibility  
14 for coverage under subsection (1)(~~((b))~~) (a)(ii) of this section; and  
15 (iv) describe the enrollment process for the available options outside  
16 of the pool.

17 (4) The board shall ensure that an independent analysis of the  
18 eligibility standards for the pool coverage is conducted, including  
19 examining the eight percent eligibility threshold, eligibility for  
20 medicaid enrollees and other publicly sponsored enrollees, and the  
21 impacts on the pool and the state budget. The board shall report the  
22 findings to the legislature by December 1, 2007.

23 **Sec. 4.** RCW 48.41.100 and 2008 c 317 s 4 are each amended to read  
24 as follows:

25 (1)(a) The following persons who are residents of this state are  
26 eligible for pool coverage:

27 (~~((a))~~) (i) Any person who provides evidence of a carrier's  
28 decision not to accept him or her for enrollment in an individual  
29 health benefit plan as defined in RCW 48.43.005 based upon, and within  
30 ninety days of the receipt of, the results of the standard health  
31 questionnaire designated by the board and administered by health  
32 carriers under RCW 48.43.018;

33 (~~((b))~~) (ii) Any person who continues to be eligible for pool  
34 coverage based upon the results of the standard health questionnaire  
35 designated by the board and administered by the pool administrator  
36 pursuant to subsection (3) of this section;

1        ~~((e))~~ (iii) Any person who resides in a county of the state where  
2 no carrier or insurer eligible under chapter 48.15 RCW offers to the  
3 public an individual health benefit plan other than a catastrophic  
4 health plan as defined in RCW 48.43.005 at the time of application to  
5 the pool, and who makes direct application to the pool; ~~(and~~  
6        ~~(d) Any medicare eligible person upon providing)~~ (iv) Any person  
7 becoming eligible for medicare before August 1, 2009, who provides  
8 evidence of (A) a rejection for medical reasons, (B) a requirement of  
9 restrictive riders, (C) an up-rated premium, ~~((e))~~ (D) a preexisting  
10 conditions limitation ~~((e-a))~~, or (E) lack of access to or for a  
11 comprehensive medicare supplemental insurance policy under chapter  
12 48.66 RCW, the effect of any of which is to substantially reduce  
13 coverage from that received by a person considered a standard risk by  
14 at least one member within six months of the date of application; and  
15        (v) Any person becoming eligible for medicare on or after August 1,  
16 2009, who does not have access to a reasonable choice of comprehensive  
17 medicare part C plans, as defined in (b) of this subsection, and who  
18 provides evidence of (A) a rejection for medical reasons, (B) a  
19 requirement of restrictive riders, (C) an up-rated premium, (D) a  
20 preexisting conditions limitation, or (E) lack of access to or for a  
21 comprehensive medicare supplemental insurance policy under chapter  
22 48.66 RCW, the effect of any of which is to substantially reduce  
23 coverage from that received by a person considered a standard risk by  
24 at least one member within six months of the date of application.  
25        (b) For purposes of (a)(v) of this subsection (1), a person does  
26 not have access to a reasonable choice of plans unless the person has  
27 a choice of health maintenance organization or preferred provider  
28 organization medicare part C plans offered by at least three different  
29 carriers that have had provider networks in the person's county of  
30 residence for at least five years. The plan options must include  
31 coverage at least as comprehensive as a plan F medicare supplement plan  
32 combined with medicare parts A and B. The plan options must also  
33 provide access to adequate and stable provider networks that make up-  
34 to-date provider directories easily accessible on the carrier web site,  
35 and will provide them in hard copy, if requested. In addition, if no  
36 health maintenance organization or preferred provider organization plan  
37 includes the health care provider with whom the person has an



1 established care relationship and from whom he or she has received  
2 treatment within the past twelve months, the person does not have  
3 reasonable access.

4 (2) The following persons are not eligible for coverage by the  
5 pool:

6 (a) Any person having terminated coverage in the pool unless (i)  
7 twelve months have lapsed since termination, or (ii) that person can  
8 show continuous other coverage which has been involuntarily terminated  
9 for any reason other than nonpayment of premiums. However, these  
10 exclusions do not apply to eligible individuals as defined in section  
11 2741(b) of the federal health insurance portability and accountability  
12 act of 1996 (42 U.S.C. Sec. 300gg-41(b));

13 (b) Any person on whose behalf the pool has paid out two million  
14 dollars in benefits;

15 (c) Inmates of public institutions, and those persons who become  
16 eligible for medical assistance after June 30, 2008, as defined in RCW  
17 74.09.010. However, these exclusions do not apply to eligible  
18 individuals as defined in section 2741(b) of the federal health  
19 insurance portability and accountability act of 1996 (42 U.S.C. Sec.  
20 300gg-41(b));

21 (d) Any person who resides in a county of the state where any  
22 carrier or insurer regulated under chapter 48.15 RCW offers to the  
23 public an individual health benefit plan other than a catastrophic  
24 health plan as defined in RCW 48.43.005 at the time of application to  
25 the pool and who does not qualify for pool coverage based upon the  
26 results of the standard health questionnaire, or pursuant to subsection  
27 (1)((~~d~~)) (a)(iv) of this section.

28 (3) When a carrier or insurer regulated under chapter 48.15 RCW  
29 begins to offer an individual health benefit plan in a county where no  
30 carrier had been offering an individual health benefit plan:

31 (a) If the health benefit plan offered is other than a catastrophic  
32 health plan as defined in RCW 48.43.005, any person enrolled in a pool  
33 plan pursuant to subsection (1)((~~e~~)) (a)(iii) of this section in that  
34 county shall no longer be eligible for coverage under that plan  
35 pursuant to subsection (1)((~~e~~)) (a)(iii) of this section, but may  
36 continue to be eligible for pool coverage based upon the results of the  
37 standard health questionnaire designated by the board and administered  
38 by the pool administrator. The pool administrator shall offer to

1 administer the questionnaire to each person no longer eligible for  
2 coverage under subsection (1)~~((e))~~ (a)(iii) of this section within  
3 thirty days of determining that he or she is no longer eligible;

4 (b) Losing eligibility for pool coverage under this subsection (3)  
5 does not affect a person's eligibility for pool coverage under  
6 subsection (1)(a)(i), ~~((b))~~ (ii), or ~~((d))~~ (iv) of this section;  
7 and

8 (c) The pool administrator shall provide written notice to any  
9 person who is no longer eligible for coverage under a pool plan under  
10 this subsection (3) within thirty days of the administrator's  
11 determination that the person is no longer eligible. The notice shall:  
12 (i) Indicate that coverage under the plan will cease ninety days from  
13 the date that the notice is dated; (ii) describe any other coverage  
14 options, either in or outside of the pool, available to the person;  
15 (iii) describe the procedures for the administration of the standard  
16 health questionnaire to determine the person's continued eligibility  
17 for coverage under subsection (1)~~((b))~~ (a)(ii) of this section; and  
18 (iv) describe the enrollment process for the available options outside  
19 of the pool.

20 (4) The board shall ensure that an independent analysis of the  
21 eligibility standards for the pool coverage is conducted, including  
22 examining the eight percent eligibility threshold, eligibility for  
23 medicaid enrollees and other publicly sponsored enrollees, and the  
24 impacts on the pool and the state budget. The board shall report the  
25 findings to the legislature by December 1, 2007.

26 NEW SECTION. **Sec. 5.** The board of the Washington state health  
27 insurance pool shall conduct a study of options for equitable, stable,  
28 and broad-based funding sources for the operation of the pool. The  
29 board is authorized to solicit funds to conduct the study. The board  
30 shall report its findings and recommendations to the appropriate  
31 committees of the senate and house of representatives by December 15,  
32 2009.

33 NEW SECTION. **Sec. 6.** Section 3 of this act takes effect if  
34 section 4, chapter 317, Laws of 2008 is null and void on the effective  
35 date of this act; otherwise section 3 of this act is null and void.

1        NEW SECTION.    **Sec. 7.**    Section 4 of this act takes effect if  
2 section 4, chapter 317, Laws of 2008 is in effect on the effective date  
3 of this act; otherwise section 4 of this act is null and void."

4        Correct the title.

--- END ---