
SUBSTITUTE SENATE BILL 5777

State of Washington

61st Legislature

2009 Regular Session

By Senate Health & Long-Term Care (originally sponsored by Senators Murray and Parlette)

READ FIRST TIME 02/24/09.

1 AN ACT Relating to the Washington state health insurance pool;
2 amending RCW 48.41.060, 48.41.100, and 48.41.100; creating a new
3 section; and providing contingent effective dates.

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

5 **Sec. 1.** RCW 48.41.060 and 2008 c 217 s 47 are each amended to read
6 as follows:

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

12 (a) Designate or establish the standard health questionnaire to be
13 used under RCW 48.41.100 and 48.43.018, including the form and content
14 of the standard health questionnaire and the method of its application.
15 The questionnaire must provide for an objective evaluation of an
16 individual's health status by assigning a discreet measure, such as a
17 system of point scoring to each individual. The questionnaire must not
18 contain any questions related to pregnancy, and pregnancy shall not be
19 a basis for coverage by the pool. The questionnaire shall be designed

1 such that it is reasonably expected to identify the eight percent of
2 persons who are the most costly to treat who are under individual
3 coverage in health benefit plans, as defined in RCW 48.43.005, in
4 Washington state or are covered by the pool, if applied to all such
5 persons;

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

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

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

31 (e)(i) Assess members of the pool in accordance with the provisions
32 of this chapter, and make advance interim assessments as may be
33 reasonable and necessary for the organizational or interim operating
34 expenses. Any interim assessments will be credited as offsets against
35 any regular assessments due following the close of the year.

36 (ii) Self-funded multiple employer welfare arrangements are subject
37 to assessment under this subsection only in the event that assessments
38 are not preempted by the employee retirement income security act of

1 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the
2 commissioner shall initially request an advisory opinion from the
3 United States department of labor or obtain a declaratory ruling from
4 a federal court on the legality of imposing assessments on these
5 arrangements before imposing the assessment. Once the legality of the
6 assessments has been determined, the multiple employer welfare
7 arrangement certified by the insurance commissioner must begin payment
8 of these assessments.

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

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

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

23 (h) Contract with the Washington state health care authority for
24 the administration of the premium discounts provided under RCW
25 48.41.200(3)(a) (i) and (ii);

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

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

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

32 (a) Enter into contracts as are necessary or proper to carry out
33 the provisions and purposes of this chapter including the authority,
34 with the approval of the commissioner, to enter into contracts with
35 similar pools of other states for the joint performance of common
36 administrative functions, or with persons or other organizations for
37 the performance of administrative functions;

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

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

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

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

14 **Sec. 2.** RCW 48.41.100 and 2007 c 259 s 30 are each amended to read
15 as follows:

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

18 ((+a)) (i) Any person who provides evidence of a carrier's
19 decision not to accept him or her for enrollment in an individual
20 health benefit plan as defined in RCW 48.43.005 based upon, and within
21 ninety days of the receipt of, the results of the standard health
22 questionnaire designated by the board and administered by health
23 carriers under RCW 48.43.018;

24 ((+b)) (ii) Any person who continues to be eligible for pool
25 coverage based upon the results of the standard health questionnaire
26 designated by the board and administered by the pool administrator
27 pursuant to subsection (3) of this section;

28 ((+c)) (iii) Any person who resides in a county of the state where
29 no carrier or insurer eligible under chapter 48.15 RCW offers to the
30 public an individual health benefit plan other than a catastrophic
31 health plan as defined in RCW 48.43.005 at the time of application to
32 the pool, and who makes direct application to the pool; ((and

33 (+d)) (iv) Any ((medicare-eligible)) person ((upon-providing))
34 becoming eligible for medicare before August 1, 2009, who provides
35 evidence of (A) a rejection for medical reasons, (B) a requirement of
36 restrictive riders, (C) an up-rated premium, ((or)) (D) a preexisting
37 conditions limitation ((on-a)), or (E) lack of access to or for a

1 comprehensive medicare supplemental insurance policy under chapter
2 48.66 RCW, the effect of any of which is to substantially reduce
3 coverage from that received by a person considered a standard risk by
4 at least one member within six months of the date of application; and

5 (v) Any person becoming eligible for medicare on or after August 1,
6 2009, who does not have access to a reasonable choice of comprehensive
7 medicare part C plans, as defined in (b) of this subsection, and who
8 provides evidence of (A) a rejection for medical reasons, (B) a
9 requirement of restrictive riders, (C) an up-rated premium, (D) a
10 preexisting conditions limitation, 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.

15 (b) For purposes of (a)(v) of this subsection (1), a person does
16 not have access to a reasonable choice of plans unless the person has
17 a choice of health maintenance organization or preferred provider
18 organization medicare part C plans offered by at least three different
19 carriers in the person's county of residence. The plan options must
20 include coverage at least as comprehensive as a plan F medicare
21 supplement plan combined with medicare parts A and B. The plan options
22 must also provide access to adequate and stable provider networks that
23 have been in place for at least two years and that make up-to-date
24 provider directories easily accessible on the carrier web site, and
25 will provide them in hard copy, if requested. In addition, if no
26 health maintenance organization or preferred provider organization plan
27 includes the health care provider with whom the person has an
28 established care relationship and from whom he or she has received
29 treatment within the past twelve months, the person does not have
30 reasonable access.

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

33 (a) Any person having terminated coverage in the pool unless (i)
34 twelve months have lapsed since termination, or (ii) that person can
35 show continuous other coverage which has been involuntarily terminated
36 for any reason other than nonpayment of premiums. However, these
37 exclusions do not apply to eligible individuals as defined in section

1 2741(b) of the federal health insurance portability and accountability
2 act of 1996 (42 U.S.C. Sec. 300gg-41(b));

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

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

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

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

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

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

36 (c) The pool administrator shall provide written notice to any
37 person who is no longer eligible for coverage under a pool plan under
38 this subsection (3) within thirty days of the administrator's

1 determination that the person is no longer eligible. The notice shall:
2 (i) Indicate that coverage under the plan will cease ninety days from
3 the date that the notice is dated; (ii) describe any other coverage
4 options, either in or outside of the pool, available to the person;
5 (iii) describe the procedures for the administration of the standard
6 health questionnaire to determine the person's continued eligibility
7 for coverage under subsection (1)((~~b~~)) (a)(ii) of this section; and
8 (iv) describe the enrollment process for the available options outside
9 of the pool.

10 (4) The board shall ensure that an independent analysis of the
11 eligibility standards for the pool coverage is conducted, including
12 examining the eight percent eligibility threshold, eligibility for
13 medicaid enrollees and other publicly sponsored enrollees, and the
14 impacts on the pool and the state budget. The board shall report the
15 findings to the legislature by December 1, 2007.

16 **Sec. 3.** RCW 48.41.100 and 2008 c 317 s 4 are each amended to read
17 as follows:

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

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

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

30 ((~~c~~)) (iii) Any person who resides in a county of the state where
31 no carrier or insurer eligible under chapter 48.15 RCW offers to the
32 public an individual health benefit plan other than a catastrophic
33 health plan as defined in RCW 48.43.005 at the time of application to
34 the pool, and who makes direct application to the pool; ((and

35 ~~(d) Any medicare eligible person upon providing~~) (iv) Any person
36 becoming eligible for medicare before August 1, 2009, who provides
37 evidence of (A) a rejection for medical reasons, (B) a requirement of

1 restrictive riders, ~~(C)~~ an up-rated premium, ~~((or))~~ (D) a preexisting
2 conditions limitation ~~((or a))~~, or (E) lack of access to or for a
3 comprehensive medicare supplemental insurance policy under chapter
4 48.66 RCW, the effect of any of which is to substantially reduce
5 coverage from that received by a person considered a standard risk by
6 at least one member within six months of the date of application; and

7 (v) Any person becoming eligible for medicare on or after August 1,
8 2009, who does not have access to a reasonable choice of comprehensive
9 medicare part C plans, as defined in (b) of this subsection, and who
10 provides evidence of (A) a rejection for medical reasons, (B) a
11 requirement of restrictive riders, (C) an up-rated premium, (D) a
12 preexisting conditions limitation, or (E) lack of access to or for a
13 comprehensive medicare supplemental insurance policy under chapter
14 48.66 RCW, the effect of any of which is to substantially reduce
15 coverage from that received by a person considered a standard risk by
16 at least one member within six months of the date of application.

17 (b) For purposes of (a)(v) of this subsection (1), a person does
18 not have access to a reasonable choice of plans unless the person has
19 a choice of health maintenance organization or preferred provider
20 organization medicare part C plans offered by at least three different
21 carriers in the person's county of residence. The plan options must
22 include coverage at least as comprehensive as a plan F medicare
23 supplement plan combined with medicare parts A and B. The plan options
24 must also provide access to adequate and stable provider networks that
25 have been in place for at least two years and that make up-to-date
26 provider directories easily accessible on the carrier web site, and
27 will provide them in hard copy, if requested. In addition, if no
28 health maintenance organization or preferred provider organization plan
29 includes the health care provider with whom the person has an
30 established care relationship and from whom he or she has received
31 treatment within the past twelve months, the person does not have
32 reasonable access.

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

35 (a) Any person having terminated coverage in the pool unless (i)
36 twelve months have lapsed since termination, or (ii) that person can
37 show continuous other coverage which has been involuntarily terminated
38 for any reason other than nonpayment of premiums. However, these

1 exclusions do not apply to eligible individuals as defined in section
2 2741(b) of the federal health insurance portability and accountability
3 act of 1996 (42 U.S.C. Sec. 300gg-41(b));

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

6 (c) Inmates of public institutions, and those persons who become
7 eligible for medical assistance after June 30, 2008, as defined in RCW
8 74.09.010. However, these exclusions do not apply to eligible
9 individuals as defined in section 2741(b) of the federal health
10 insurance portability and accountability act of 1996 (42 U.S.C. Sec.
11 300gg-41(b));

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

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

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

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

37 (c) The pool administrator shall provide written notice to any
38 person who is no longer eligible for coverage under a pool plan under

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

11 (4) The board shall ensure that an independent analysis of the
12 eligibility standards for the pool coverage is conducted, including
13 examining the eight percent eligibility threshold, eligibility for
14 medicaid enrollees and other publicly sponsored enrollees, and the
15 impacts on the pool and the state budget. The board shall report the
16 findings to the legislature by December 1, 2007.

17 NEW SECTION. **Sec. 4.** The board of the Washington state health
18 insurance pool shall conduct a study of options for equitable, stable,
19 and broad-based funding sources for the operation of the pool. The
20 board is authorized to solicit funds to conduct the study. The board
21 shall report its findings and recommendations to the appropriate
22 committees of the senate and house of representatives by December 15,
23 2009.

24 NEW SECTION. **Sec. 5.** Section 2 of this act takes effect if
25 section 4, chapter 317, Laws of 2008 is null and void on the effective
26 date of this act; otherwise section 2 of this act is null and void.

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

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