
SENATE BILL 5777

State of Washington

61st Legislature

2009 Regular Session

By Senators Murray and Parlette

Read first time 02/02/09. Referred to Committee on Health & Long-Term Care.

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

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

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

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

32 (d) Any medicare eligible person (~~upon providing~~):

33 (i) Who does not have access to a reasonable choice of more than
34 one medicare part C coverage option, at least one of which is not a
35 private fee for service plan; and

36 (ii) Who provides (A) evidence of a rejection for medical reasons,
37 (B) a requirement of restrictive riders, (C) an up-rated premium, or

1 (D) a preexisting conditions limitation on a medicare supplemental
2 insurance policy under chapter 48.66 RCW, the effect of any of which is
3 to substantially reduce coverage from that received by a person
4 considered a standard risk by at least one member within six months of
5 the date of application.

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

8 (a) Any person having terminated coverage in the pool unless (i)
9 twelve months have lapsed since termination, or (ii) that person can
10 show continuous other coverage which has been involuntarily terminated
11 for any reason other than nonpayment of premiums. However, these
12 exclusions do not apply to eligible individuals as defined in section
13 2741(b) of the federal health insurance portability and accountability
14 act of 1996 (42 U.S.C. Sec. 300gg-41(b));

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

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

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

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

33 (a) If the health benefit plan offered is other than a catastrophic
34 health plan as defined in RCW 48.43.005, any person enrolled in a pool
35 plan pursuant to subsection (1)(c) of this section in that county shall
36 no longer be eligible for coverage under that plan pursuant to
37 subsection (1)(c) of this section, but may continue to be eligible for
38 pool coverage based upon the results of the standard health

1 questionnaire designated by the board and administered by the pool
2 administrator. The pool administrator shall offer to administer the
3 questionnaire to each person no longer eligible for coverage under
4 subsection (1)(c) of this section within thirty days of determining
5 that he or she is no longer eligible;

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

9 (c) The pool administrator shall provide written notice to any
10 person who is no longer eligible for coverage under a pool plan under
11 this subsection (3) within thirty days of the administrator's
12 determination that the person is no longer eligible. The notice shall:
13 (i) Indicate that coverage under the plan will cease ninety days from
14 the date that the notice is dated; (ii) describe any other coverage
15 options, either in or outside of the pool, available to the person;
16 (iii) describe the procedures for the administration of the standard
17 health questionnaire to determine the person's continued eligibility
18 for coverage under subsection (1)(b) of this section; and (iv) describe
19 the enrollment process for the available options outside 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 **Sec. 3.** RCW 48.41.100 and 2008 c 317 s 4 are each amended to read
27 as follows:

28 (1) The following persons who are residents of this state are
29 eligible for pool coverage:

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

35 (b) Any person who continues to be eligible for pool coverage based
36 upon the results of the standard health questionnaire designated by the

1 board and administered by the pool administrator pursuant to subsection
2 (3) of this section;

3 (c) Any person who resides in a county of the state where no
4 carrier or insurer eligible under chapter 48.15 RCW offers to the
5 public an individual health benefit plan other than a catastrophic
6 health plan as defined in RCW 48.43.005 at the time of application to
7 the pool, and who makes direct application to the pool; and

8 (d) Any medicare eligible person (~~upon providing~~):

9 (i) Who does not have access to a reasonable choice of more than
10 one medicare part C coverage option, at least one of which is not a
11 private fee for service plan; and

12 (ii) Who provides (A) evidence of a rejection for medical reasons,
13 (B) a requirement of restrictive riders, (C) an up-rated premium, or
14 (D) a preexisting conditions limitation on a medicare supplemental
15 insurance policy under chapter 48.66 RCW, the effect of any of which is
16 to substantially reduce coverage from that received by a person
17 considered a standard risk by at least one member within six months of
18 the date of application.

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

21 (a) Any person having terminated coverage in the pool unless (i)
22 twelve months have lapsed since termination, or (ii) that person can
23 show continuous other coverage which has been involuntarily terminated
24 for any reason other than nonpayment of premiums. However, these
25 exclusions do not apply to eligible individuals as defined in section
26 2741(b) of the federal health insurance portability and accountability
27 act of 1996 (42 U.S.C. Sec. 300gg-41(b));

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

30 (c) Inmates of public institutions, and those persons who become
31 eligible for medical assistance after June 30, 2008, as defined in RCW
32 74.09.010. However, these exclusions do not apply to eligible
33 individuals as defined in section 2741(b) of the federal health
34 insurance portability and accountability act of 1996 (42 U.S.C. Sec.
35 300gg-41(b));

36 (d) Any person who resides in a county of the state where any
37 carrier or insurer regulated under chapter 48.15 RCW offers to the
38 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 does not qualify for pool coverage based upon the
3 results of the standard health questionnaire, or pursuant to subsection
4 (1)(d) of this section.

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

8 (a) If the health benefit plan offered is other than a catastrophic
9 health plan as defined in RCW 48.43.005, any person enrolled in a pool
10 plan pursuant to subsection (1)(c) of this section in that county shall
11 no longer be eligible for coverage under that plan pursuant to
12 subsection (1)(c) of this section, but may continue to be eligible for
13 pool coverage based upon the results of the standard health
14 questionnaire designated by the board and administered by the pool
15 administrator. The pool administrator shall offer to administer the
16 questionnaire to each person no longer eligible for coverage under
17 subsection (1)(c) of this section within thirty days of determining
18 that he or she is no longer eligible;

19 (b) Losing eligibility for pool coverage under this subsection (3)
20 does not affect a person's eligibility for pool coverage under
21 subsection (1)(a), (b), or (d) of this section; and

22 (c) The pool administrator shall provide written notice to any
23 person who is no longer eligible for coverage under a pool plan under
24 this subsection (3) within thirty days of the administrator's
25 determination that the person is no longer eligible. The notice shall:
26 (i) Indicate that coverage under the plan will cease ninety days from
27 the date that the notice is dated; (ii) describe any other coverage
28 options, either in or outside of the pool, available to the person;
29 (iii) describe the procedures for the administration of the standard
30 health questionnaire to determine the person's continued eligibility
31 for coverage under subsection (1)(b) of this section; and (iv) describe
32 the enrollment process for the available options outside of the pool.

33 (4) The board shall ensure that an independent analysis of the
34 eligibility standards for the pool coverage is conducted, including
35 examining the eight percent eligibility threshold, eligibility for
36 medicaid enrollees and other publicly sponsored enrollees, and the
37 impacts on the pool and the state budget. The board shall report the
38 findings to the legislature by December 1, 2007.

1 NEW SECTION. **Sec. 4.** The board of the Washington state health
2 insurance pool shall conduct a study of options for equitable, stable,
3 and broad-based funding sources for the operation of the pool. The
4 board is authorized to solicit funds to conduct the study. The board
5 shall report its findings and recommendations to the appropriate
6 committees of the senate and house of representatives by December 15,
7 2009.

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

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

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