

**SHB 1740** - H AMD 314

By Representative Cody

ADOPTED 03/04/2011

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

3  
4 "NEW SECTION. **Sec. 1.** The legislature finds that the affordable  
5 care act requires the states to establish health benefit exchanges.  
6 The legislature intends to establish an exchange, including a  
7 governance structure that will be in place no later than July 1, 2012.  
8 There are many policy decisions associated with establishing an  
9 exchange that need to be made that will take a great deal of effort  
10 and expertise. It is therefore the intent of the legislature to  
11 establish a process through which these policy decisions can be made  
12 by the legislature and the governor by the deadline established in the  
13 affordable care act.

14  
15 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.05 RCW  
16 to read as follows:

17 The state shall establish, by statute, a health benefit exchange  
18 consistent with the federal affordable care act, P.L. 111-148, to  
19 begin operations no later than January 1, 2014, and intended to:

20 (1) Increase access to quality affordable health care coverage,  
21 reduce the number of uninsured persons in Washington state, and  
22 increase the availability of health care coverage through the private  
23 health insurance market to qualified individuals and small employers;

24 (2) Provide consumer choice and portability of health insurance,  
25 regardless of employment status;

26 (3) Create an organized, transparent, and accountable health  
27 insurance marketplace for Washingtonians to purchase affordable,

1 quality health care coverage, to claim available federal refundable  
2 premium tax credits and cost-sharing subsidies, and to meet the  
3 personal responsibility requirements for minimum essential coverage as  
4 provided under the federal affordable care act;

5 (4) Promote consumer literacy and empower consumers to compare  
6 plans and make informed decisions about their health care and  
7 coverage;

8 (5) Effectively and efficiently administer health care subsidies  
9 and determination of eligibility for participation in publicly  
10 subsidized health care programs, including the exchange;

11 (6) Create a health insurance market that competes on the basis of  
12 price, quality, service, and other innovative efforts;

13 (7) Operate in a manner compatible with efforts to improve  
14 quality, contain costs, and promote innovation;

15 (8) Recognize the need for a private health insurance market to  
16 exist outside of the exchange and the need for a regulatory framework  
17 that applies both inside and outside of the exchange; and

18 (9) Recognize that the regulation of the health insurance market,  
19 both inside and outside the exchange, should continue to be performed  
20 by the insurance commissioner.

21  
22 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.05 RCW  
23 to read as follows:

24 (1) The health benefit exchange board shall be established as a  
25 nonprofit, public-private partnership, composed of nine persons with  
26 expertise in the Washington state health care system and private and  
27 public health care coverage. By July 1, 2012, the governor shall  
28 appoint representatives from each of the following groups:

29 (a) Two employee benefits specialists;

30 (b) A health economist or actuary;

31 (c) Small businesses;

32 (d) Health care consumer advocates;

33 (e) The administrator of the health care authority under chapter  
34 41.05 RCW;

1 (f) The insurance commissioner or designee as a nonvoting ex  
2 officio member; and

3 (g) Two appointments from a list of recommendations submitted by  
4 the legislature. Each chamber of the legislature shall forward two  
5 recommendations representing mutually agreed on names from each  
6 caucus. Each person appointed to the board under this subsection  
7 (1)(g) must have demonstrated and acknowledged expertise in at least  
8 one of the following areas:

9 (i) Individual health care coverage;

10 (ii) Small employer health care coverage;

11 (iii) Health benefits plan administration;

12 (iv) Health care finance and economics;

13 (v) Actuarial science;

14 (vi) Administering a public or private health care delivery  
15 system; or

16 (vii) Purchasing health plan coverage.

17 (2) The board shall elect a chair from among its members.

18 (3) No board member may be employed by, a consultant to, a member  
19 of the board of directors of, or otherwise a representative of or a  
20 lobbyist for an entity in the business of, or potentially in the  
21 business of, selling items or services of significant value to the  
22 health benefit exchange.

23 (4) Initial members of the board shall serve staggered terms not  
24 to exceed four years. Initial appointments must be made on or before  
25 July 1, 2012. Members appointed thereafter shall serve two-year  
26 terms.

27 (5) Members of the board must be reimbursed for their travel  
28 expenses while on official business in accordance with RCW 43.03.050  
29 and 43.03.060. The board shall prescribe rules for the conduct of its  
30 business. Meetings of the board are at the call of the chair.

31 (6) The board shall conduct its business consistent with the  
32 provisions of chapter 42.30 RCW, the open public meetings act.  
33 Consistent with the open public meetings act, the board may hold  
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1 executive sessions to consider proprietary or confidential  
2 nonpublished information.

3 (7)(a) The board shall establish an advisory committee to allow  
4 for the views of the health care industry and other stakeholders to be  
5 heard in the operation of the health benefit exchange. The advisory  
6 committee shall provide expertise and recommendations to the board,  
7 but shall have no authority to promulgate rules or enter into  
8 contracts on behalf of the health benefit exchange.

9 (b) The board may establish technical advisory committees or seek  
10 the advice of technical experts when necessary to execute the powers  
11 and duties included in this act.

12 (8) Members of the board are not civilly or criminally liable and  
13 may not have any penalty or cause of action of any nature arise  
14 against them for any action taken or not taken, including any  
15 discretionary decision or failure to make a discretionary decision,  
16 when the action or inaction is done in good faith and in the  
17 performance of the powers and duties under this act. Nothing in this  
18 section prohibits legal actions against the board to enforce the  
19 board's statutory or contractual duties or obligations.

20 (9) In recognition of the government to government relationship  
21 between the state of Washington and the federally recognized tribes in  
22 the state of Washington, the board shall consult with the American  
23 Indian health commission on an ongoing basis.

24  
25 NEW SECTION. **Sec. 4.** The definitions in this section apply  
26 throughout sections 1 and 4 through 6 of this act, unless the context  
27 clearly requires otherwise. Terms and phrases used in sections 1 and  
28 4 through 6 of this act that are not defined in this section must be  
29 defined as consistent with implementation of a state health benefit  
30 exchange pursuant to the affordable care act.

31 (1) "Affordable care act" means the federal patient protection and  
32 affordable care act, P.L. 111-148, as amended by the federal health  
33 care and education reconciliation act of 2010, P.L. 111-152, or  
34 federal regulations or guidance issued under the affordable care act.

1 (2) "Authority" means the Washington state health care authority,  
2 established under chapter 41.05 RCW.

3 (3) "Commissioner" means the insurance commissioner, established  
4 in Title 48 RCW.

5 (4) "Exchange" means a state health benefit exchange pursuant to  
6 the affordable care act.

7  
8 NEW SECTION. **Sec. 5.** (1)(a) In collaboration with the joint  
9 select committee on health reform implementation, the authority shall  
10 apply for planning and establishment grants pursuant to the affordable  
11 care act. Whenever possible, planning and establishment grant  
12 applications shall allow for the possibility of partially funding the  
13 activities of the joint select committee on health reform  
14 implementation.

15 (b) The authority, in collaboration with the joint select  
16 committee on health reform implementation, shall implement provisions  
17 of the planning and establishment grants as approved by the United  
18 States secretary of health and human services.

19 (2) Consistent with the work plan developed in subsection (3) of  
20 this section, but in no case later than January 1, 2012, the  
21 authority, in collaboration with the joint select committee on health  
22 reform implementation, shall develop a broad range of options for  
23 establishing and implementing a state- administered health benefit  
24 exchange. The options must include analysis and recommendations on  
25 the following:

26 (a) The operations and administration of the exchange, including:

27 (i) The goals and principles of the exchange;

28 (ii) The creation and implementation of a single state-  
29 administered exchange for all geographic areas in the state that  
30 operates as the exchange for both the individual and small employer  
31 markets by January 1, 2014;

32 (iii) Whether and under what circumstances the state should  
33 consider establishment of, or participation in, a regionally  
34 administered multistate exchange;

1 (iv) Whether the role of an exchange includes serving as an  
2 aggregator of funds that comprise the premium for a health plan  
3 offered through the exchange;

4 (v) The administrative, fiduciary, accounting, contracting, and  
5 other services to be provided by the exchange;

6 (vi) Coordination of the exchange with other state programs;

7 (vii) Development of sustainable funding for administration of the  
8 exchange as of January 1, 2015; and

9 (viii) Recognizing the need for expedience in determining the  
10 structure of needed information technology, the necessary information  
11 technology to support implementation of exchange activities.

12 (b) Whether to adopt and implement a federal basic health plan  
13 option as authorized in the affordable care act, whether the federal  
14 basic health plan option should be administered by the entity that  
15 administers the exchange or by a state agency, and whether the federal  
16 basic health plan option should merge risk pools for rating with any  
17 portion of the state's medicaid program;

18 (c) Individual and small group market impacts, including whether  
19 to:

20 (i) Merge the risk pools for rating the individual and small group  
21 markets in the exchange and the private health insurance markets; and

22 (ii) Increase the small group market to firms with up to one  
23 hundred employees;

24 (d) Creation of a competitive purchasing environment for qualified  
25 health plans offered through the exchange, including promoting  
26 participation in the exchange to a level sufficient to provide  
27 sustainable funding for the exchange;

28 (e) Certifying, selecting, and facilitating the offer of  
29 individual and small group plans through an exchange, to include  
30 designation of qualified health plans and the levels of coverage for  
31 the plans;

32 (f) The role and services provided by producers and navigators;

33 (g) Effective implementation of risk management methods,  
34 including: Reinsurance, risk corridors, risk adjustment, to include

1 the entity designated to operate reinsurance and risk adjustment, and  
2 the continuing role of the Washington state health insurance pool;

3 (h) Participation in innovative efforts to contain costs in  
4 Washington's markets for public and private health care coverage;

5 (i) Providing federal refundable premium tax credits and reduced  
6 cost-sharing subsidies through the exchange, including the processes  
7 and entity responsible for determining eligibility to participate in  
8 the exchange and the cost-sharing subsidies provided through the  
9 exchange;

10 (j) The staff, resources, and revenues necessary to operate and  
11 administer an exchange for the first two years of operation; and

12 (k) Any other areas identified by the joint select committee on  
13 health reform implementation.

14 (3)(a) In collaboration with the joint select committee on health  
15 reform implementation, the authority shall develop a work plan for the  
16 development of options under subsection (2) of this section in  
17 discrete, prioritized stages.

18 (b) The joint select committee on health reform implementation may  
19 submit to the authority specific questions pertaining to the  
20 establishment of a health benefit exchange under section 2 of this  
21 act.

22 (4) The authority shall consult with the commissioner, the joint  
23 select committee on health reform implementation, and stakeholders  
24 relevant to carrying out the activities required under this section,  
25 including: (a) Educated health care consumers who are enrolled in  
26 commercial health insurance coverage and publicly subsidized health  
27 care programs; (b) individuals and entities with experience in  
28 facilitating enrollment in health insurance coverage, including health  
29 carriers, producers, and navigators; (c) representatives of small  
30 businesses, employees of small businesses, and self-employed  
31 individuals; (d) advocates for enrolling hard to reach populations and  
32 populations enrolled in publicly subsidized health care programs; (e)  
33 facilities and providers of health care; (f) representatives of  
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1 publicly subsidized health care programs; and (g) members in good  
2 standing of the American academy of actuaries.

3

4 NEW SECTION. **Sec. 6.** (1) The authority may enter into:

5 (a) Information sharing agreements with federal and state agencies  
6 and other state exchanges to carry out the provisions of this act:  
7 PROVIDED, That, such agreements include adequate protections with  
8 respect to the confidentiality of the information to be shared and  
9 comply with all state and federal laws and regulations; and

10 (b) Interdepartmental agreements with the office of the insurance  
11 commissioner, the department of social and health services, the  
12 department of health, and any other state agencies necessary to  
13 implement this act.

14 (2) To the extent funding is available, the authority shall:

15 (a) Provide staff and resources to implement this act;

16 (b) Manage and administer the grant and other funds; and

17 (c) Expend funds specifically appropriated by the legislature to  
18 implement the provisions of this act."

19

EFFECT:

Requires the state to establish a health benefit exchange by  
statute.

Establishes a health benefit exchange board whose members will be  
appointed by July 1, 2012. Requires the Governor to appoint the  
members of the board by July 1, 2012, as follows:

- Two employee benefits specialists;
- A health economist or actuary;
- Small businesses;
- Health care consumer advocates;
- The administrator of the Health Care Authority;
- The Insurance Commissioner (as an ex-officio member); and
- Two members from a list of four recommendations submitted by the  
Legislature. Each chamber of the Legislature must submit two  
names, which must be mutually agreed on by each caucus. The  
persons on the list must have expertise in at least one of the  
following areas:
  - o Individual health care coverage;

..



- o Small employer health care coverage;
- o Health benefits plan administration;
- o Health care finance and economics;
- o Actuarial science;
- o Administering a public or private health care delivery system; or
- o Purchasing health plan coverage.

Prohibits board members from being employed by, a consultant to, a member of the board of directors of, or otherwise a representative of or a lobbyists for an entity in the business of, or potentially in the business of, selling items or services of significant value to the health benefit exchange.

Requires the board to establish an advisory committee to allow for the views of the health care industry and other stakeholders. Allows the board to establish technical advisory committees and to consult with experts. Provides immunity to members of the board, but does not prohibit legal actions against the board to enforce the board's statutory or contractual duties or obligations. Requires the board to consult with the American Indian Health Commission on an ongoing basis.

Requires the Health Care Authority to "collaborate" (as opposed to "consult") with the Joint Select Committee on Health Care Reform when conducting its activities under the act.

Removes language stating that a multi-state exchange is an option only after the state-administered exchange is established.

Removes the Health Care Authority's rulemaking authority.

Adds health care providers and facilities to the persons and entities with whom the Health Care Authority must consult when conducting its activities under the act.

Makes changes to the intent section.

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