SSB 5445 - H AMD **646**
By Representative Cody

ADOPTED AS AMENDED 04/11/2011

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** (1) The legislature finds that the affordable care act requires the establishment of health benefit exchanges. The legislature intends to establish an exchange, including a governance structure. There are many policy decisions associated with establishing an exchange that need to be made that will take a great deal of effort and expertise. It is therefore the intent of the legislature to establish a process through which these policy decisions can be made by the legislature and the governor by the deadline established in the affordable care act.

(2) The exchange is intended to:

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

(b) Provide consumer choice and portability of health insurance, regardless of employment status;

(c) Create an organized, transparent, and accountable health insurance marketplace for Washingtonians to purchase affordable, quality health care coverage, to claim available federal refundable premium tax credits and cost-sharing subsidies, and to meet the personal responsibility requirements for minimum essential coverage as provided under the federal affordable care act;

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

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

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

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

(h) Recognize the need for a private health insurance market to exist outside of the exchange; and

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

NEW SECTION. **Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. Terms and phrases used in this chapter that are not defined in this section must be defined as consistent with implementation of a state health benefit exchange pursuant to the affordable care act.

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

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

(3) "Board" means the governing board established in section 3 of this act.

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

(5) "Exchange" means the Washington health benefit exchange established in section 3 of this act.

NEW SECTION. **Sec. 3.** (1) The Washington health benefit exchange is established and constitutes a public-private partnership separate and distinct from the state, exercising functions delineated in this act. By January 1, 2014, the exchange shall operate consistent with the affordable care act subject to statutory authorization. The exchange shall have a governing board consisting of persons with expertise in the Washington health care system and private and public health care coverage. The initial membership of the board shall be appointed as follows:

(a) By August 1, 2011, each of the two largest caucuses in both the house of representatives and the senate shall submit to the governor a list of five nominees who are not legislators or employees of the state or its political subdivisions, with no caucus submitting the same nominee.

(i) The nominations from the largest caucus in the house of representatives must include at least one employee benefit specialist;

(ii) The nominations from the second largest caucus in the house of representatives must include at least one health economist or actuary;

(iii) The nominations from the largest caucus in the senate must include at least one representative of health consumer advocates;

(iv) The nominations from the second largest caucus in the senate must include at least one representative of small business;

(v) The remaining nominees must have demonstrated and acknowledged expertise in at least one of the following areas: Individual health care coverage, small employer health care coverage, health benefits plan administration, health care finance and economics, actuarial science, or administering a public or private health care delivery system.

(b) By October 1, 2011, the governor shall appoint two members from each list submitted by the caucuses under (a) of this subsection. The appointments made under this subsection (1)(b) must include at least one employee benefits specialist, one health economist or actuary, one representative of small business, and one representative of health consumer advocates. The remaining four members must have a demonstrated and acknowledged expertise in at least one of the following areas: Individual health care coverage, small employer health care coverage, health benefits plan administration, health care finance and economics, actuarial science, or administering a public or private health care delivery system.

(c) By October 1, 2011, the governor shall appoint a ninth member to serve as chair. The chair may not be an employee of the state or its political subdivisions. The chair shall serve as a nonvoting member except in the case of a tie.

(d) The following members shall serve as nonvoting, ex officio members of the board:

(i) The insurance commissioner or his or her designee; and

(ii) The administrator of the health care authority, or his or her designee.

(2) Initial members of the board shall serve staggered terms not to exceed four years. Members appointed thereafter shall serve two-year terms.

(3) A member of the board whose term has expired or who otherwise leaves the board shall be replaced by gubernatorial appointment. When the person leaving was nominated by one of the caucuses of the house of representatives or the senate, his or her replacement shall be appointed from a list of five nominees submitted by that caucus within thirty days after the person leaves. If the member to be replaced is the chair, the governor shall appoint a new chair within thirty days after the vacancy occurs. A person appointed to replace a member who leaves the board prior to the expiration of his or her term shall serve only the duration of the unexpired term. Members of the board may be reappointed to multiple terms.

(4) No board member may be appointed if his or her participation in the decisions of the board could benefit his or her own financial interests or the financial interests of an entity he or she represents. A board member who develops such a conflict of interest shall resign or be removed from the board.

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

(6) The exchange and the board are subject only to the provisions of chapter 42.30 RCW, the open public meetings act, and chapter 42.56 RCW, the public records act, and not to any other law or regulation generally applicable to state agencies. Consistent with the open public meetings act, the board may hold executive sessions to consider proprietary or confidential nonpublished information.

(7)(a) The board shall establish an advisory committee to allow for the views of the health care industry and other stakeholders to be heard in the operation of the health benefit exchange.

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

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

(9) In recognition of the government-to-government relationship between the state of Washington and the federally recognized tribes in the state of Washington, the board shall consult with the American Indian health commission.

NEW SECTION. **Sec. 4.** (1) The exchange may, consistent with the purposes of this chapter: (a) Sue and be sued in its own name; (b) make and execute agreements, contracts, and other instruments, with any public or private person or entity; (c) employ, contract with, or engage personnel; (d) pay administrative costs; and (e) accept grants, donations, loans of funds, and contributions in money, services, materials or otherwise, from the United States or any of its agencies, from the state of Washington and its agencies or from any other source, and use or expend those moneys, services, materials, or other contributions.

(2) The powers and duties of the exchange and the board are limited to those necessary to apply for and administer grants, establish information technology infrastructure, and undertake additional administrative functions necessary to begin operation of the exchange by January 1, 2014. Any actions relating to substantive issues included in section 5 of this act must be consistent with statutory direction on those issues.

NEW SECTION. **Sec. 5.** (1) In collaboration with the joint select committee on health reform implementation, the authority shall:

(a) Apply for and implement grants under the affordable care act. Whenever possible, grant applications shall allow for the possibility of partially funding the activities of the joint select committee on health reform implementation;

(b) Develop and submit to the federal department of health and human services:

(i) A complete budget for the development and operation of an exchange through 2014;

(ii) An initial plan discussing the means to achieve financial sustainability of the exchange by 2015;

(iii) A plan outlining steps to prevent fraud, waste, and abuse; and

(iv) A plan describing how capacity for providing assistance to individuals and small businesses in the state will be created, continued, or expanded, including provision for a call center.

(2) Consistent with the work plan developed in subsection (3) of this section, but in no case later than January 1, 2012, the authority, in collaboration with the joint select committee on health reform implementation and the board, shall develop a broad range of options for operating the exchange and report the options to the governor and the legislature on an ongoing basis. The report must include analysis and recommendations on the following:

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

(i) The goals and principles of the exchange;

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

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

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

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

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

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

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

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

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

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

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

(d) Creation of uniform requirements, standards, and criteria for the creation of qualified health plans offered through the exchange, including promoting participation by carriers and enrollees in the exchange to a level sufficient to provide sustainable funding for the exchange;

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

(f) The role and services provided by producers and navigators, including the option to use private insurance market brokers as navigators;

(g) Effective implementation of risk management methods, including: Reinsurance, risk corridors, risk adjustment, to include the entity designated to operate reinsurance and risk adjustment, and the continuing role of the Washington state health insurance pool;

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

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

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

(k) The extent and circumstances under which benefits for spiritual

care services that are deductible under section 213(d) of the internal revenue code as of January 1, 2010, will be made available under the exchange; and

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

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

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

(5) Beginning January 1, 2012, the exchange shall be responsible for the duties of the authority under this section. Prior to January 1, 2012, the board may make independent recommendations regarding the options developed under subsection (2) of this section to the governor and the legislature.

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

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

(b) Interdepartmental agreements with the office of the insurance commissioner, the department of social and health services, the

department of health, and any other state agencies necessary to implement this act.

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

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

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

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

(3) Beginning January 1, 2012, the board shall:

(a) Be responsible for the duties imposed on the authority under this section; and

(b) Have the powers granted to the authority under this section.

NEW SECTION. **Sec. 7.** The health benefit exchange account is created in the custody of the state treasurer. All receipts from federal grants received under the affordable care act shall be deposited into the account. Expenditures from the account may be used only for purposes consistent with the grants. Until January 1, 2012, only the administrator of the health care authority, or his or her designee, may authorize expenditures from the account. Beginning January 1, 2012, only the board of the Washington health benefit exchange may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec. 9.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state."

Correct the title.

EFFECT: Makes changes to the intent section. Removes the following items from the list of what the exchange is intended to do:

(1) Strengthen the state health care delivery system and maximize existing efficiencies within the system;

(2) Seamlessly direct consumers to information about, and enrollment in, programs in addition to those related to health care that are available to lower income individuals and families;

(3) Create opportunities and flexibility to address possible future changes in federal law and funding challenges; and

(4) Recognize the need for a regulatory framework that applies both inside and outside the exchange.

Changes the following items on the list of what the exchange is intended to do:

(1) Operate in a manner compatible with efforts to improve quality, contain costs, and promote innovation (as opposed to "promote quality improvement, cost containment, and innovative payment structures");

(2) Create a health insurance market that competes on the basis of price, quality, service, and other innovative efforts (as opposed to "encourage carrier competition based on price and quality, not on risk selection");

(3) Provide consumer choice and portability of health insurance (as opposed to "enhance portability of insurance coverage and encourage seamless coverage options for enrollees with income and eligibility changes").

Establishes the exchange as a public-private partnership separate and distinct from the state, exercising functions delineated by the act (the underlying bill establishes the exchange Board as a nonprofit public-private partnership). Requires, by January 1, 2014, the exchange to operate consistent with federal law and subject to statutory authorization. Gives the exchange the authority to sue and be sued; make and execute agreements, contracts, and other instruments; employ, contract with, or engage personnel; pay administrative costs; and accept grants, donations, loans, and contributions from the federal government, the state, and other sources. Limits the powers and duties of the exchange and its board to those necessary to apply for and administer grants, establish information technology infrastructure, and other administrative functions necessary to begin operating the exchange by January 1, 2014. Requires any actions relating to substantive policy decisions to be made consistent with statutory direction.

Changes the manner in which members of the governing board (Board) are appointed:

(1) By August 1, 2011, each of the four caucuses in the House and Senate must submit a list of five nominees to the Governor. Persons on the list may not be legislators or government employees.

(2) Nominations from the largest caucus in the House must include one employee benefits specialist. Nominations from the second largest caucus in the House must include one health economist or actuary. Nominations from the largest caucus in the Senate must include one representative of health consumer advocates. Nominations from the

second largest caucus in the Senate must include one representative of small business.

(3) The remaining nominations from each caucus must have demonstrated and acknowledged expertise in: Individual health care coverage, small employer health care coverage, health benefits plan administration, health care finance and economics, actuarial science, or administering a public or private health care delivery system.

(4) By October 1, 2011, the Governor must appoint two members from each list submitted by the caucuses, including at least one employee benefits specialist, one health economist or actuary, one representative of small business, and one representative of health consumer advocates.

(5) By October 1, 2011, the Governor must appoint one member to act as a chair, who will serve as a nonvoting member except to break ties. The chair may not be a government employee.

(6) The Insurance Commissioner (or designee) and the administrator of the Health Care Authority (or designee) serve as nonvoting members.

(7) Members who leave the board must be replaced in the same manner they were appointed; i.e., through appointment from a list submitted by the caucuses or, in the case of the chair, by direct gubernatorial appointment. Board members may serve multiple terms.

Eliminates provisions prohibiting board members from having conflicts of interest relating to the work of the board and requiring them to be removed when such conflicts arise. Instead, prohibits a board member from being appointed if his or her participation in the decisions of the board could benefit his or her own financial interests or the financial interests of an entity he or she represents. Requires a board member who develops such a conflict of interest to resign or be removed from the board.

Requires the Board to establish an advisory committee (in addition to the technical advisory committees) to allow for the views of the health care industry and other stakeholders.

Requires the Board to comply with the public records act (in addition to the open public meetings act) and exempts the Board from any other law or regulation generally applicable to state agencies.

Requires the Board to consult with the American Indian Health Commission.

Provides qualified immunity to members of the Board, instead of to the Board itself.

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

Requires the Health Care Authority to develop and submit to the federal Department of Health and Human Services:

(1) A complete budget for the development and operation of the exchange through 2014;

(2) An initial plan discussing the means to achieve financial sustainability of the exchange by 2015;

(3) A plan to prevent fraud, waste, and abuse; and

(4) A plan describing how capacity for providing assistance to individuals and small businesses in the state will be created, continued, or expanded, including provision for a call center.

Requires the options developed by the Health Care Authority to be completed by January 1, 2012 (instead of December 1, 2011).

Requires the options to include the operations and administration of the exchange (instead of the structure of the public-private

partnership that will govern the exchange, operations of the exchange, and administration of the exchange).

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

Requires the options regarding navigators to include the option to use private insurance market brokers as navigators.

Requires the options to include the extent and circumstances under which benefits for spiritual care services that are tax deductible under federal law will be made available under the exchange.

Requires the Health Care Authority (or the exchange and the Board, once established) to consult with health care providers and facilities.

Requires the exchange and the Board to assume the duties and responsibilities of the Health Care Authority with respect to establishing the exchange beginning January 1, 2012. Prior to January 1, 2012, allows the Board to make independent recommendations regarding the policy options developed by the Health Care Authority.

Removes the Health Care Authority's rule-making authority.

Creates a nonappropriated account to receive federal grant funds.

Inserts a federal severability clause.

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