

SSB 5445 - H COMM AMD

By Committee on Health Care & Wellness

NOT ADOPTED 04/11/2011

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

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

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

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

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

24 (3) "Board" means the health benefit exchange board established in
25 section 4 of this act.

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

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

1 NEW SECTION. **Sec. 3.** The state shall establish, by statute, a
2 health benefit exchange consistent with the federal affordable care
3 act, P.L. 111-148, to begin operations no later than January 1, 2014.
4 Initially, the powers and duties of the exchange, and its board, shall
5 be limited as provided in section 4(10) of this act. Once operational,
6 the exchange is intended to:

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

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

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

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

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

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

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

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

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

34 NEW SECTION. **Sec. 4.** (1) The health benefit exchange shall be
35 established by July 1, 2012, as a quasi-governmental, public-private
36 partnership with a health benefit exchange board composed of nine

1 persons with expertise in the Washington state health care system and
2 private and public health care coverage. The governor shall appoint
3 members of the board as follows:

4 (a) Two employee benefits specialists;

5 (b) A health economist or actuary;

6 (c) A representative of small businesses;

7 (d) A representative of health care consumer advocates;

8 (e) The administrator of the health care authority under chapter
9 41.05 RCW;

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

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

18 (i) Individual health care coverage;

19 (ii) Small employer health care coverage;

20 (iii) Health benefits plan administration;

21 (iv) Health care finance and economics;

22 (v) Actuarial science;

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

24 or

25 (vii) Purchasing health plan coverage.

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

27 (3) No board member may be employed by, a consultant to, a member
28 of the board of directors of, or otherwise a representative of or a
29 lobbyist for an entity in the business of, or potentially in the
30 business of, selling items or services of significant value to the
31 health benefit exchange.

32 (4) Initial members of the board shall serve staggered terms not to
33 exceed four years. Initial appointments must be made on or before July
34 1, 2012. Members appointed thereafter shall serve two-year terms.

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

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

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

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

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

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

27 (10)(a) The powers and duties of the exchange and the board are
28 limited to those necessary to apply for and administer grants,
29 establish information technology infrastructure, and other
30 administrative functions necessary to begin operating the exchange by
31 January 1, 2014. Neither the exchange nor the board may begin
32 operating the exchange or make substantive decisions regarding the
33 options developed under section 5 of this act unless specifically
34 authorized to do so by statute.

35 (b) Neither the exchange nor the board shall be deemed to be
36 established until all of the members of the board are appointed as
37 provided in subsection (1) of this section.

1 (c) Prior to the establishment of the exchange and the board, the
2 authority shall:

3 (i) Be responsible for the duties imposed on the exchange and the
4 board under (a) of this subsection; and

5 (ii) Have the powers granted to the exchange and the board under
6 (a) of this subsection.

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

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

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

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

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

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

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

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

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

1 (vi) Coordination of the exchange with other state programs;
2 (vii) Development of sustainable funding for administration of the
3 exchange as of January 1, 2015; and

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

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

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

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

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

19 (d) Creation of a competitive purchasing environment for qualified
20 health plans offered through the exchange, including promoting
21 participation in the exchange to a level sufficient to provide
22 sustainable funding for the exchange;

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

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

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

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

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

1 the exchange and the cost-sharing subsidies provided through the
2 exchange;

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

5 (k) The extent and circumstances under which benefits for spiritual
6 care services that are deductible under section 213(d) of the internal
7 revenue code as of January 1, 2010, will be made available under the
8 exchange; and

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

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

15 (b) The joint select committee on health reform implementation may
16 submit to the authority specific questions pertaining to the
17 establishment of a health benefit exchange under section 3 of this act.

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

32 (5) Once established under section 4 of this act, the exchange and
33 the board shall be responsible for the duties imposed on the authority
34 under this section.

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

36 (a) Information sharing agreements with federal and state agencies
37 and other state exchanges to carry out the provisions of this act:

1 PROVIDED, That such agreements include adequate protections with
2 respect to the confidentiality of the information to be shared and
3 comply with all state and federal laws and regulations; and

4 (b) Interdepartmental agreements with the office of the insurance
5 commissioner, the department of social and health services, the
6 department of health, and any other state agencies necessary to
7 implement this act.

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

- 9 (a) Provide staff and resources to implement this act;
- 10 (b) Manage and administer the grant and other funds; and
- 11 (c) Expend funds specifically appropriated by the legislature to
12 implement the provisions of this act.

13 (3) Once established under section 4 of this act, the exchange and
14 the board shall:

- 15 (a) Be responsible for the duties imposed on the authority under
16 this section; and
- 17 (b) Have the powers granted to the authority under this section.

18 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute
19 a new chapter in Title 43 RCW."

20 Correct the title.

EFFECT: (1) Requires that the exchange be established by statute.
Requires the exchange to be established by July 1, 2012, as a quasi-
governmental, public-private partnership with a board. Limits the
powers and duties of the exchange and the 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. Prohibits the exchange and
the board from beginning exchange operations or making substantive
policy decisions unless specifically authorized to do so by statute.
Prohibits the exchange or the board from being established until all of
the members of the board are appointed. Requires the exchange and the
board, once established, to assume the duties and responsibilities of
the Health Care Authority with respect to establishing the exchange.

(2) Removes the following items from the list of what the exchange
is intended to do:

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

- (b) 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;
- (c) Create opportunities and flexibility to address possible future changes in federal law and funding challenges.
- (3) Changes the following items on the list of what the exchange is intended to do:
- (a) 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");
- (b) 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"); and
- (c) 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").
- (4) Requires the board members appointed from the list submitted by the Legislature to have expertise in one of the following areas:
- (a) Individual health coverage;
- (b) Small employer health care coverage;
- (c) Health benefits plan administration;
- (d) Health care finance and economics;
- (e) Actuarial science;
- (f) Administering a public or private health care delivery system;
- or
- (g) Purchasing health plan coverage.
- (5) Removes the prohibition against members of the board having any conflicts of interest. Instead, 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 lobbyist 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.
- (6) Requires the board to establish an advisory committee to allow for the views of the health care industry and other stakeholders.
- (7) Requires the board to consult with the American Indian Health Commission on an ongoing basis.
- (8) Provides qualified immunity to members of the board, instead of to the board itself.
- (9) Requires the Health Care Authority (or the exchange and the board, once established) to "collaborate" (instead of "consult") with the Joint Select Committee on Health Reform Implementation when conducting its activities under the act.
- (10) Requires the options developed by the Health Care Authority (or the exchange and the board, once established) to be completed by January 1, 2012 (instead of December 1, 2011).
- (11) 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).
- (12) Removes language stating that a multistate exchange is an option only after the state-administered exchange is established.
- (13) 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.

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

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

(16) Makes changes to the intent section.

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