

# SENATE BILL REPORT

## ESHB 1740

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As of March 15, 2011

**Title:** An act relating to the creation of a health benefit exchange.

**Brief Description:** Establishing a health benefit exchange.

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Cody, Schmick, Jinkins and Hinkle; by request of Governor Gregoire).

**Brief History:** Passed House: 3/04/11, 79-18.

**Committee Activity:** Health & Long-Term Care: 3/14/11.

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### SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

**Staff:** Mich'l Needham (786-7442)

**Background:** The federal Patient Protection and Affordable Care Act (PPACA), passed in March 2010, requires states to establish health insurance exchanges (Exchange) by January 1, 2014, to facilitate the purchase of individual insurance and small employer group insurance, and provide access to premium tax credits and cost-sharing reductions for individuals with family incomes between 133 percent and 400 percent of the Federal Poverty Level (FPL). Individuals with income below 133 percent will have access to expanded Medicaid programs. The federal subsidies for individuals will only be available through the Exchange, or through a federal Basic Health option that states may choose to have available for individuals with family income between 133 percent and 200 percent of the FPL.

The Exchanges are responsible for a number of functions or services, including:

- certifying qualified health plans that may offer products;
- seamless linking with Medicaid eligibility and enrollment;
- verifying income and citizenship status;
- ensuring the benefit packages offered include the essential health benefits and are available at four benefit values – 60 percent, 70 percent, 80 percent, and 90 percent;
- applying risk adjustment and reinsurance;
- operating a toll-free hotline and consumer portal that allows comparison shopping and premium calculation and facilitates enrollment; and
- adjudicating appeals.

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Exchanges may be administered by public agencies, private nonprofit entities, or some combination. States have a number of policy decisions about the structure and focus of the Exchange, and must demonstrate good progress toward development of an Exchange by January 1, 2013, as certified by the federal Department of Health and Human Services (HHS). HHS has made grant funding available to all states to help with the research and planning, and has announced the availability of additional grant opportunities to fund the development and implementation. HHS will establish an Exchange for residents and small employer groups in states that choose not to establish their own Exchange.

**Summary of Bill:** The state must establish, by statute, an Exchange no later than January 1, 2014. The Exchange is intended to:

- increase access to quality affordable health care coverage, reduce the number of uninsured persons in Washington and increase the availability of health care coverage through the private health insurance market to qualified individuals and small employers;
- provide consumer choice and portability of health insurance, regardless of employment status;
- 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;
- promote consumer literacy and empower consumers to compare plans and make informed decisions about their health care and coverage;
- effectively and efficiently administer health care subsidies and determination of eligibility for participation in publicly subsidized health care programs, including the Exchange;
- create a health insurance market that competes on the basis of price, quality, service, and other innovative efforts;
- operate in a manner compatible with efforts to improve quality, contain costs, and promote innovation;
- recognize the need for a private health insurance market to exist outside of the Exchange and the need for a regulatory framework that applies both inside and outside of the Exchange; and
- recognize that the regulation of the health insurance market, both inside and outside the Exchange, should continue to be performed by the Insurance Commissioner.

The Health Benefit Exchange Board (Board) is established as a nonprofit, public-private partnership with nine members appointed by the Governor by July 1, 2012. The membership of the Board must include representatives of the following groups:

- 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:

- individual health care coverage,
- small employer health care coverage,
- health benefits plan administration,
- health care finance and economics,
- actuarial science,
- administering a public or private health care delivery system, or
- purchasing health plan coverage.

Board members may not be:

- 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.

Members of the Board are immune from civil or criminal liability for actions taken, or not taken, in the performance of their official duties, as long as they are acting in good faith. However, this immunity does not prohibit legal actions to enforce the Board's statutory or contractual duties or obligations.

The Board must establish an advisory committee to allow for the views of the health care industry and other stakeholders. The Board may establish technical advisory committees and consult with experts. The Board must consult with the American Indian Health Commission on an ongoing basis.

The Health Care Authority (HCA) must apply for establishment and planning grants under the PPACA in collaboration with the Joint Select Committee on Health Care Reform Implementation (JSC). Whenever possible, the grant applications must allow for using grant funds to partially fund the activities of the JSC. The HCA, in collaboration with the JSC, must implement any grants received by the federal government.

By January 1, 2012, the HCA, in collaboration with the JSC, must develop a broad range of options for establishing and implementing a state-administered Exchange. The options must include recommendations on:

- the structure of the public-private partnership that will administer the Exchange, operations of the Exchange, and administration of the Exchange, including:
  - the goals and principles of the Exchange;
  - the creation and implementation of a single, state-administered Exchange for all geographic areas of the state that operates for both individual and small group markets;
  - whether, and under what circumstances, the state should consider establishing a multi-state Exchange;
  - whether the Exchange should serve as an aggregator of funds that compromise the premium for a health plan in the Exchange;

- the administrative, fiduciary, accounting, contracting, and other services to be provided by the Exchange;
- coordination with other state programs;
- development of sustainable funding as of January 1, 2015; and
- recognizing the need for expedience in determining the structure of needed information technology, the necessary information technology to support implementation of Exchange activities;
- whether to adopt and implement the federal Basic Health option, whether it should be administered by the entity that administers the Exchange, and whether it should merge risk pools with any portion of the state's Medicaid program;
- individual and small group market impacts, including whether to merge the risk pools in the individual and small group markets and increase the small group market to firms with up to 100 employees;
- creation of a competitive purchasing environment for qualified health plans in the Exchange;
- certifying, selecting, and facilitating the offer of individual and small group plans in the Exchange;
- the role and services provided by producers and navigators;
- effective implementation of risk management methods, including reinsurance, risk corridors, and risk adjustment, and the continuing role of the Washington State Health Insurance Pool;
- participating in innovative cost-containment efforts;
- providing federal refundable premium tax credits and reduced cost-sharing subsidies through the Exchange, including the processing and entity responsible for determining eligibility;
- the staff, resources, and revenues necessary to operate and administer the Exchange for the first two years; and
- any other areas identified by the JSC.

In collaboration with the JSC, the HCA must develop a work plan for the development of the options in discrete, prioritized stages.

The HCA must consult with the Insurance Commissioner, the JSC, and stakeholders including consumers; individuals and entities with experience facilitating enrollment in health insurance coverage; representatives of small businesses, employees of small businesses, and self-employed individuals; advocates for enrolling hard-to-reach populations and populations enrolled in publicly subsidized health programs; health care providers and facilities; publicly subsidized health care programs; and members of the American Academy of Actuaries.

The HCA may enter into information sharing agreements with federal and state agencies and interdepartmental agreements with other state agencies. The HCA must also provide staff and resources, manage grant and other funds, and expend appropriated funds.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This still needs a little work. There is a request for an amendment to include the Office of Insurance Commissioner (OIC), and some suggestions from the OIC Realization Committee for refinements; however, this version is very similar to the Senate version with the main difference being the date the Board is established. The House bill represented a bipartisan vote on establishing an Exchange, recognizing it is better for Washington State to begin development than leaving it to the federal government. The bill leaves sufficient flexibility to time the development and applications for additional funding opportunities; however, the nonprofit public-private partnership needs more clarifying language. The structure with the Joint Select Committee formalizes the routine communication that we had anticipated would continue.

The date for establishment of the Board should be earlier like the Senate version. The composition of the Board could be modified to include more consumer representatives and labor representatives. We would like to see the Exchange be an active purchaser, and have the bill reflect the development of one single administrative Exchange. We would like to replace Sec 2. language referring to the intent of the Exchange with 'shall be at a minimum.' More direction and statutory language for moving forward is needed. The conflict of interest section should add the phrase from the Senate bill indicating Board members must not have a conflict of interest. It should clearly indicate there will be one-door entry and seamless coverage for low-income populations. This is a work in progress and it needs some perfections – consider adding a null and void clause. We appreciate the connection with the Joint Select Committee oversight, and the need for future statutory language. We would like to see additional language about the quality of the market inside and outside the Exchange and ensuring diversity of choices in and out. The consumer literacy language in the bill was a good addition. Any technical advisory committee that includes discussion of quality care should include nurses. The date for the Board should be moved up. Organized workers should be added to the Board. The bill should go further in outlining an Exchange as a selective purchaser, setting a floor for coverage, and identifying a single entity for administration. Eligibility should be administered by the Medicaid agency to ensure low-income populations are covered smoothly. Include an option for consumers to choose a plan based on access and cultural competency of services, that may include items like transportation. Include some additional refinements with suggestions from the OIC realization committee.

OTHER: The Exchange needs more consumer protections. Board members should not be exempt from liability – insurance carrier boards are not exempt. The Exchange must be self-sustaining by 2015 and may have taxing authority that is not addressed in this bill. An opportunity for a regional Exchange should be explored.

**Persons Testifying:** PRO: Representative Cody, prime sponsor; Jonathan Seib, Governor's Office; Molly Voris, Health Care Authority; Misha Werschkul, Service Employees International Union 775 NW; Steve Breaux, WA Public Interest Research Group; Jenifer Allen, Planned Parenthood, Healthy WA Coalition; Patrick Connor, National Federation of Independent Businesses; Donna Steward, Assn. of WA Businesses; Mel Sorensen, America's

Health Insurance Plans, WA Assn. of Health Underwriters, National Assn. of Insurance and Financial Advisors; Sofia Aragon, WA State Nurses Assn.; Teresa Mosqueda, AFLCIO, WA State Labor Council; Pam Crone, Community Health Network of WA; Sean Corry, Rud Browne, OIC Realization Committee.

OTHER: Randy Ray, Lyfebank; Scott Dahlman, WA Farm Bureau.