FINAL BILL REPORT
SSB 5445

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Synopsis as Enacted

Brief Description: Establishing a health benefit exchange.

Sponsors: Senate Committee on Health & Long-Term Care (originally sponsored by Senators Keiser, Pflug, White, Conway and Kline; by request of Governor Gregoire).

Senate Committee on Health & Long-Term Care
House Committee on Health Care & Wellness
House Committee on Ways & Means

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.

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 recently announced the availability of additional grant opportunities to

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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: The state must establish an Exchange consistent with PPACA intending to:

- increase access to quality affordable health care coverage;
- provide consumer choice and portability of health insurance, regardless of employment status;
- create an organized insurance marketplace that provides access to federal subsidies;
- promote consumer literacy and empower consumers to compare plans and make informed decisions about health care;
- effectively administer subsidies and determine eligibility for all subsidized programs;
- 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 the exchange; and
- recognize that the regulation of the insurance market, inside and outside the exchange, should continue to be performed by the Insurance Commissioner.

The Exchange is established as a public-private partnership separate and distinct from the state, exercising functions delineated by the act. By January 1, 2014, the Exchange must be operational, consistent with federal law, and subject to statutory authorization. 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 other administrative functions necessary to begin operating the Exchange by January 1, 2014. The Exchange has the authority to sue and be sued; make and execute agreements and contracts; employ or contract with personnel; pay administrative costs; and accept grants, donations, and other funding. Any actions relating to substantive policy decisions must be consistent with statutory direction.

The Exchange Board must be appointed by the Governor. By October 1, 2011, each of the four caucuses of the House and Senate must submit a list of five nominees to the Governor. Persons on the list may not be legislators nor government employees. 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. The remaining nominations from each caucus must have demonstrated and acknowledged expertise in one of the following: 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.

By December 15, 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. The Governor must appoint an additional member to act as chair, who will serve

as a nonvoting member except to break ties. The chair may not be a government employee. The Insurance Commissioner or designee and the Administrator of the HCA or designee will serve as nonvoting members.

A board member may not be appointed if the member's participation in the decisions of the Board could benefit his or her own financial interests or the financial interests of the entity the board member represents. Board members that develop a conflict of interest must resign or be removed. The business of the Board must comply with the Public Records Act and the Open Public Meetings Act, but the Board is exempt from any other law or regulation generally applicable to state agencies. The Board must establish an advisory committee to allow for the views of the health care industry and other stakeholders, and the Board must consult with the American Indian Health Commission.

The HCA must collaborate with the Joint Select Committee on Health Reform Implementation (JSC), and submit analysis and recommendations to the Legislature by January 1, 2012, on the broad range of policy options and design features for the Exchange, including:

- the governance, operations, and administration;
- the goals and principles;
- creation of a single state-administered exchange for all geographic areas, and whether the state should consider a regionally administered multistate exchange;
- whether the exchange can serve as an aggregator of funds to gather premium contributions from multiple entities;
- coordination of the exchange with other state programs;
- the development of sustainable funding for administration by 2015;
- the structure needed for information technology to support the implementation of exchange activities;
- whether to adopt a federal Basic Health option, who should administer the option, and whether to merge the risk pool with Medicaid;
- whether to merge the individual and small group risk pools in the Exchange and in the private market;
- whether the small group size should increase to 100 prior to 2016;
- creation of requirements, standards, and criteria for the creation of qualified health plans offered through the exchange;
- certifying, selecting, and facilitating the offer of coverage for individuals and small employer groups through an exchange;
- the role of producers and navigators, including the option of using private insurance market brokers as navigators;
- effective implementation of risk management methods;
- participation in efforts to contain costs in public and private health care coverage;
- the extent under which benefits for spiritual care services that are deductible under the IRS will be made available under the exchange; and
- other business recommendations, such as staffing and resources to administer an exchange.

The HCA must apply for and implement grants, and whenever possible grant applications must allow for partial funding of the JSC. The HCA must develop information for the federal Department of Health and Human Services, including a budget for the development

and operation of the Exchange; an initial plan to achieve financial sustainability; a plan to prevent fraud, waste, and abuse; and a plan describing how capacity for assisting individuals and small business will be created, continued, or expanded, including provision for a call center.

The HCA and the Board must consult with the JSC, the Office of Insurance Commissioner, and interested stakeholders including: consumers; individuals and entities with experience facilitating enrollment in health insurance coverage including health insurance carriers, producers, and navigators; representatives of small businesses, employees of small business, and self-employed individuals; advocates for enrolling hard-to-reach populations and populations enrolled in publicly subsidized health care programs; facilities and providers of health care; and actuaries.

The HCA may enter into information sharing agreements with federal and state agencies and interdepartmental agreements, and provide staff and resources to the extent funding is available. Beginning March 15, 2012, all duties and responsibilities assigned in this act are transferred to the Exchange and the Board. The Health Benefit Exchange Account is created as a non-appropriated account to receive federal grant funds, and the HCA may authorize expenditures initially and the Board may authorize expenditures beginning March 15, 2012.

Votes on Final Passage:

Senate	27	22	
House	75	22	(House amended)
Senate	32	16	(Senate concurred)

Effective: July 22, 2011.