
SUBSTITUTE SENATE BILL 5445

State of Washington

62nd Legislature

2011 Regular Session

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

READ FIRST TIME 02/21/11.

1 AN ACT Relating to the creation of a health benefit exchange;
2 adding new sections to chapter 41.05 RCW; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that health care
5 costs continue to grow at unsustainable rates, hindering the state's
6 ability to invest in other essential services such as education and
7 public safety, decreasing the competitiveness of our businesses, and
8 placing undue strain on many individuals and families.

9 (2) The legislature therefore intends: (a) That state agencies,
10 large and small businesses, and health care providers, insurers, and
11 consumers work together towards the goal of providing universal access
12 to affordable, portable health insurance products; (b) that as a means
13 to this end, in implementing the federal affordable care act in
14 Washington, including the health benefit exchange, there be a constant
15 focus on integrating strategies to improve the quality and
16 affordability of our health care delivery system, tailored to the
17 unique circumstances and characteristics of our state.

18 (3) The legislature further intends to demonstrate good progress in

1 the development of an exchange that aims to meet criteria established
2 by the health and human services department for level two funding
3 opportunities to support the establishment of an exchange.

4 NEW SECTION. **Sec. 2.** The state shall establish a health benefit
5 exchange consistent with the federal affordable care act, P.L. 111-148,
6 to begin operations no later than January 1, 2014, and intended to:

7 (1) Increase access to quality affordable health care coverage and
8 reduce the number of uninsured persons in Washington state;

9 (2) Recognize the need for a private health insurance market to
10 exist outside of the exchange and the need for a regulatory framework
11 that applies both inside and outside of the exchange;

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

18 (4) 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 (5) Strengthen the state health care delivery system and maximize
22 existing efficiencies within the system;

23 (6) Promote quality improvement, cost containment, and innovative
24 payment structures throughout the state health care system;

25 (7) Increase the availability of health care coverage through the
26 private health insurance market to qualified individuals and small
27 employers;

28 (8) Encourage carrier competition based on price and quality, and
29 not on risk selection to ensure a sustainable system of health care
30 coverage;

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

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

36 (11) Seamlessly direct consumers to information about and

1 enrollment in programs in addition to those related to health care that
2 are available to lower income individuals and families; and

3 (12) Enhance portability of insurance coverage and ensure seamless
4 coverage options for enrollees with income and eligibility changes;

5 (13) Create opportunities and flexibility to address possible
6 future changes in federal law and funding challenges.

7 NEW SECTION. **Sec. 3.** The definitions in this section apply
8 throughout sections 2 and 4 through 6 of this act, unless the context
9 clearly requires otherwise. Terms and phrases used in sections 2 and
10 4 through 6 of this act that are not defined in this section must be
11 defined as consistent with implementation of a state health benefit
12 exchange pursuant to the affordable care act.

13 (1) "Administrator" means the administrator of the Washington state
14 health care authority, established under chapter 41.05 RCW.

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

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

21 (4) "Board" means the health benefit exchange board established
22 under section 4 of this act.

23 (5) "Commissioner" means the insurance commissioner, established in
24 Title 48 RCW.

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

27 NEW SECTION. **Sec. 4.** (1) The health benefit exchange board shall
28 be established as a nonprofit, public-private partnership, composed of
29 nine persons with expertise in the Washington state health care system
30 and private and public health care coverage. By September 1, 2011, the
31 governor shall appoint representatives from each of the following
32 groups:

- 33 (a) Two employee benefits specialists;
- 34 (b) A health economist or actuary;
- 35 (c) Small businesses;
- 36 (d) Health care consumer advocates;

1 (e) The administrator of the health care authority under chapter
2 41.05 RCW;

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

5 (g) Two appointments from a list of recommendations submitted by
6 the legislature. Each chamber of the legislature shall forward two
7 recommendations representing mutually agreed on names from each caucus.

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

9 (3) Board members may not have any conflicts of interest relating
10 to the work of the board. Board members who develop a conflict of
11 interest must be removed from the board.

12 (4) Initial members of the board shall serve staggered terms not to
13 exceed four years. Initial appointments must be made on or before
14 September 1, 2011. Members appointed thereafter shall serve two-year
15 terms.

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

20 (6) The board shall conduct its business consistent with the
21 provisions of chapter 42.30 RCW, the open public meetings act.
22 Consistent with the open public meetings act, the board may hold
23 executive sessions to consider proprietary or confidential nonpublished
24 information.

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

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

36 NEW SECTION. **Sec. 5.** (1)(a) In consultation with the joint select
37 committee on health reform implementation, the board and the authority

1 shall apply for planning and establishment grants pursuant to the
2 affordable care act. Whenever possible, planning and establishment
3 grant applications shall allow for the possibility of partially funding
4 the activities of the joint select committee on health reform
5 implementation.

6 (b) The authority and the board, in consultation with the joint
7 select committee on health reform implementation, shall implement
8 provisions of the planning and establishment grants as approved by the
9 United States secretary of health and human services.

10 (2) By December 1, 2011, the authority and the board, in
11 consultation with the joint select committee on health reform
12 implementation, shall develop a broad range of options for establishing
13 and implementing a state-administered health benefit exchange. The
14 options must include analysis and recommendations on the following:

15 (a) The structure of the public-private partnership that will
16 govern the exchange, operations of the exchange, and administration of
17 the exchange, including:

18 (i) The goals and principles of governing the exchange;

19 (ii) The creation and implementation of a single state-administered
20 exchange for all geographic areas in the state that operates as the
21 exchange for both the individual and small employer markets by January
22 1, 2014;

23 (iii) Whether and under what circumstances the state should
24 consider establishment of a regionally administered multistate exchange
25 as an option after implementation of the single state-administered
26 exchange;

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

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

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

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

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

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

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

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

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

13 (d) Creation of a competitive purchasing environment for qualified
14 health plans offered through the exchange, including promoting
15 participation in the exchange to a level sufficient to provide
16 sustainable funding for the exchange;

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

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

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

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

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

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

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

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

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

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

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

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

28 (b) Interdepartmental agreements with the office of the insurance
29 commissioner, the department of social and health services, the
30 department of health, and any other state agencies necessary to
31 implement this act.

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

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

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

35 (c) Expend funds specifically appropriated by the legislature to
36 implement the provisions of this act; and

1 (d) Adopt all rules necessary for the implementation of this act.
2 All rules must be adopted in accordance with chapter 34.05 RCW.

3 NEW SECTION. **Sec. 7.** Sections 2 through 6 of this act are each
4 added to chapter 41.05 RCW.

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