
SECOND ENGROSSED SENATE BILL 5773

State of Washington 62nd Legislature 2011 1st Special Session

By Senators Zarelli, Baumgartner, Hill, Parlette, Schoesler,
Ericksen, and Holmquist Newbry

Read first time 02/11/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to making a health savings account option and high
2 deductible health plan option and a direct patient-provider primary
3 care practice option available to public employees; and amending RCW
4 41.05.065, 41.05.021, and 48.150.040.

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

6 **Sec. 1.** RCW 41.05.065 and 2009 c 537 s 7 are each amended to read
7 as follows:

8 (1) The board shall study all matters connected with the provision
9 of health care coverage, life insurance, liability insurance,
10 accidental death and dismemberment insurance, and disability income
11 insurance or any of, or a combination of, the enumerated types of
12 insurance for employees and their dependents on the best basis possible
13 with relation both to the welfare of the employees and to the state.
14 However, liability insurance shall not be made available to dependents.

15 (2) The board shall develop employee benefit plans that include
16 comprehensive health care benefits for employees. In developing these
17 plans, the board shall consider the following elements:

18 (a) Methods of maximizing cost containment while ensuring access to
19 quality health care;

1 (b) Development of provider arrangements that encourage cost
2 containment and ensure access to quality care, including but not
3 limited to prepaid delivery systems and prospective payment methods;

4 (c) Wellness incentives that focus on proven strategies, such as
5 smoking cessation, injury and accident prevention, reduction of alcohol
6 misuse, appropriate weight reduction, exercise, automobile and
7 motorcycle safety, blood cholesterol reduction, and nutrition
8 education;

9 (d) Utilization review procedures including, but not limited to a
10 cost-efficient method for prior authorization of services, hospital
11 inpatient length of stay review, requirements for use of outpatient
12 surgeries and second opinions for surgeries, review of invoices or
13 claims submitted by service providers, and performance audit of
14 providers;

15 (e) Effective coordination of benefits; and

16 (f) Minimum standards for insuring entities.

17 (3) To maintain the comprehensive nature of employee health care
18 benefits, benefits provided to employees shall be substantially
19 equivalent to the state employees' health benefits plan in effect on
20 January 1, 1993. Nothing in this subsection shall prohibit changes or
21 increases in employee point-of-service payments or employee premium
22 payments for benefits or the administration of a high deductible health
23 plan in conjunction with a health savings account. The board may
24 establish employee eligibility criteria which are not substantially
25 equivalent to employee eligibility criteria in effect on January 1,
26 1993.

27 (4) Except if bargained for under chapter 41.80 RCW, the board
28 shall design benefits and determine the terms and conditions of
29 employee and retired employee participation and coverage, including
30 establishment of eligibility criteria subject to the requirements of
31 this chapter. Employer groups obtaining benefits through contractual
32 agreement with the authority for employees defined in RCW 41.05.011(6)
33 (a) through (d) may contractually agree with the authority to benefits
34 eligibility criteria which differs from that determined by the board.
35 The eligibility criteria established by the board shall be no more
36 restrictive than the following:

37 (a) Except as provided in (b) through (e) of this subsection, an
38 employee is eligible for benefits from the date of employment if the

1 employing agency anticipates he or she will work an average of at least
2 eighty hours per month and for at least eight hours in each month for
3 more than six consecutive months. An employee determined ineligible
4 for benefits at the beginning of his or her employment shall become
5 eligible in the following circumstances:

6 (i) An employee who works an average of at least eighty hours per
7 month and for at least eight hours in each month and whose anticipated
8 duration of employment is revised from less than or equal to six
9 consecutive months to more than six consecutive months becomes eligible
10 when the revision is made.

11 (ii) An employee who works an average of at least eighty hours per
12 month over a period of six consecutive months and for at least eight
13 hours in each of those six consecutive months becomes eligible at the
14 first of the month following the six-month averaging period.

15 (b) A seasonal employee is eligible for benefits from the date of
16 employment if the employing agency anticipates that he or she will work
17 an average of at least eighty hours per month and for at least eight
18 hours in each month of the season. A seasonal employee determined
19 ineligible at the beginning of his or her employment who works an
20 average of at least half-time, as defined by the board, per month over
21 a period of six consecutive months and at least eight hours in each of
22 those six consecutive months becomes eligible at the first of the month
23 following the six-month averaging period. A benefits-eligible seasonal
24 employee who works a season of less than nine months shall not be
25 eligible for the employer contribution during the off season, but may
26 continue enrollment in benefits during the off season by self-paying
27 for the benefits. A benefits-eligible seasonal employee who works a
28 season of nine months or more is eligible for the employer contribution
29 through the off season following each season worked.

30 (c) Faculty are eligible as follows:

31 (i) Faculty who the employing agency anticipates will work
32 half-time or more for the entire instructional year or equivalent nine-
33 month period are eligible for benefits from the date of employment.
34 Eligibility shall continue until the beginning of the first full month
35 of the next instructional year, unless the employment relationship is
36 terminated, in which case eligibility shall cease the first month
37 following the notice of termination or the effective date of the
38 termination, whichever is later.

1 (ii) Faculty who the employing agency anticipates will not work for
2 the entire instructional year or equivalent nine-month period are
3 eligible for benefits at the beginning of the second consecutive
4 quarter or semester of employment in which he or she is anticipated to
5 work, or has actually worked, half-time or more. Such an employee
6 shall continue to receive uninterrupted employer contributions for
7 benefits if the employee works at least half-time in a quarter or
8 semester. Faculty who the employing agency anticipates will not work
9 for the entire instructional year or equivalent nine-month period, but
10 who actually work half-time or more throughout the entire instructional
11 year, are eligible for summer or off-quarter coverage. Faculty who
12 have met the criteria of this subsection (4)(c)(ii), who work at least
13 two quarters of the academic year with an average academic year
14 workload of half-time or more for three quarters of the academic year,
15 and who have worked an average of half-time or more in each of the two
16 preceding academic years shall continue to receive uninterrupted
17 employer contributions for benefits if he or she works at least half-
18 time in a quarter or semester or works two quarters of the academic
19 year with an average academic workload each academic year of half-time
20 or more for three quarters. Eligibility under this section ceases
21 immediately if this criteria is not met.

22 (iii) Faculty may establish or maintain eligibility for benefits by
23 working for more than one institution of higher education. When
24 faculty work for more than one institution of higher education, those
25 institutions shall prorate the employer contribution costs, or if
26 eligibility is reached through one institution, that institution will
27 pay the full employer contribution. Faculty working for more than one
28 institution must alert his or her employers to his or her potential
29 eligibility in order to establish eligibility.

30 (iv) The employing agency must provide written notice to faculty
31 who are potentially eligible for benefits under this subsection (4)(c)
32 of their potential eligibility.

33 (v) To be eligible for maintenance of benefits through averaging
34 under (c)(ii) of this subsection, faculty must provide written
35 notification to his or her employing agency or agencies of his or her
36 potential eligibility.

37 (d) A legislator is eligible for benefits on the date his or her
38 term begins. All other elected and full-time appointed officials of

1 the legislative and executive branches of state government are eligible
2 for benefits on the date his or her term begins or they take the oath
3 of office, whichever occurs first.

4 (e) A justice of the supreme court and judges of the court of
5 appeals and the superior courts become eligible for benefits on the
6 date he or she takes the oath of office.

7 (f) Except as provided in (c)(i) and (ii) of this subsection,
8 eligibility ceases for any employee the first of the month following
9 termination of the employment relationship.

10 (g) In determining eligibility under this section, the employing
11 agency may disregard training hours, standby hours, or temporary
12 changes in work hours as determined by the authority under this
13 section.

14 (h) Insurance coverage for all eligible employees begins on the
15 first day of the month following the date when eligibility for benefits
16 is established. If the date eligibility is established is the first
17 working day of a month, insurance coverage begins on that date.

18 (i) Eligibility for an employee whose work circumstances are
19 described by more than one of the eligibility categories in (a) through
20 (e) of this subsection shall be determined solely by the criteria of
21 the category that most closely describes the employee's work
22 circumstances.

23 (j) Except for an employee eligible for benefits under (b) or
24 (c)(ii) of this subsection, an employee who has established eligibility
25 for benefits under this section shall remain eligible for benefits each
26 month in which he or she is in pay status for eight or more hours, if
27 (i) he or she remains in a benefits-eligible position and (ii) leave
28 from the benefits-eligible position is approved by the employing
29 agency. A benefits-eligible seasonal employee is eligible for the
30 employer contribution in any month of his or her season in which he or
31 she is in pay status eight or more hours during that month.
32 Eligibility ends if these conditions are not met, the employment
33 relationship is terminated, or the employee voluntarily transfers to a
34 noneligible position.

35 (k) For the purposes of this subsection:

36 (i) "Academic year" means summer, fall, winter, and spring quarters
37 or semesters;

1 (ii) "Half-time" means one-half of the full-time academic workload
2 as determined by each institution, except that half-time for community
3 and technical college faculty employees shall have the same meaning as
4 "part-time" under RCW 28B.50.489;

5 (iii) "Benefits-eligible position" shall be defined by the board.

6 (5) The board may authorize premium contributions for an employee
7 and the employee's dependents in a manner that encourages the use of
8 cost-efficient managed health care systems.

9 (6) For any open enrollment period following the effective date of
10 this section, the board shall (~~develop~~) offer a health savings
11 account option for employees that conforms to section 223, Part VII of
12 subchapter B of chapter 1 of the internal revenue code of 1986. The
13 board shall comply with all applicable federal standards related to the
14 establishment of health savings accounts.

15 (7) Notwithstanding any other provision of this chapter, for any
16 open enrollment period following the effective date of this section,
17 the board shall (~~develop~~) offer a high deductible health plan (~~to be~~
18 ~~offered~~) in conjunction with a health savings account developed under
19 subsection (6) of this section.

20 (8) Employees shall choose participation in one of the health care
21 benefit plans developed by the board and may be permitted to waive
22 coverage under terms and conditions established by the board.

23 (9) The board shall review plans proposed by insuring entities that
24 desire to offer property insurance and/or accident and casualty
25 insurance to state employees through payroll deduction. The board may
26 approve any such plan for payroll deduction by insuring entities
27 holding a valid certificate of authority in the state of Washington and
28 which the board determines to be in the best interests of employees and
29 the state. The board shall adopt rules setting forth criteria by which
30 it shall evaluate the plans.

31 (10) Before January 1, 1998, the public employees' benefits board
32 shall make available one or more fully insured long-term care insurance
33 plans that comply with the requirements of chapter 48.84 RCW. Such
34 programs shall be made available to eligible employees, retired
35 employees, and retired school employees as well as eligible dependents
36 which, for the purpose of this section, includes the parents of the
37 employee or retiree and the parents of the spouse of the employee or
38 retiree. Employees of local governments, political subdivisions, and

1 tribal governments not otherwise enrolled in the public employees'
2 benefits board sponsored medical programs may enroll under terms and
3 conditions established by the administrator, if it does not jeopardize
4 the financial viability of the public employees' benefits board's long-
5 term care offering.

6 (a) Participation of eligible employees or retired employees and
7 retired school employees in any long-term care insurance plan made
8 available by the public employees' benefits board is voluntary and
9 shall not be subject to binding arbitration under chapter 41.56 RCW.
10 Participation is subject to reasonable underwriting guidelines and
11 eligibility rules established by the public employees' benefits board
12 and the health care authority.

13 (b) The employee, retired employee, and retired school employee are
14 solely responsible for the payment of the premium rates developed by
15 the health care authority. The health care authority is authorized to
16 charge a reasonable administrative fee in addition to the premium
17 charged by the long-term care insurer, which shall include the health
18 care authority's cost of administration, marketing, and consumer
19 education materials prepared by the health care authority and the
20 office of the insurance commissioner.

21 (c) To the extent administratively possible, the state shall
22 establish an automatic payroll or pension deduction system for the
23 payment of the long-term care insurance premiums.

24 (d) The public employees' benefits board and the health care
25 authority shall establish a technical advisory committee to provide
26 advice in the development of the benefit design and establishment of
27 underwriting guidelines and eligibility rules. The committee shall
28 also advise the board and authority on effective and cost-effective
29 ways to market and distribute the long-term care product. The
30 technical advisory committee shall be comprised, at a minimum, of
31 representatives of the office of the insurance commissioner, providers
32 of long-term care services, licensed insurance agents with expertise in
33 long-term care insurance, employees, retired employees, retired school
34 employees, and other interested parties determined to be appropriate by
35 the board.

36 (e) The health care authority shall offer employees, retired
37 employees, and retired school employees the option of purchasing long-
38 term care insurance through licensed agents or brokers appointed by the

1 long-term care insurer. The authority, in consultation with the public
2 employees' benefits board, shall establish marketing procedures and may
3 consider all premium components as a part of the contract negotiations
4 with the long-term care insurer.

5 (f) In developing the long-term care insurance benefit designs, the
6 public employees' benefits board shall include an alternative plan of
7 care benefit, including adult day services, as approved by the office
8 of the insurance commissioner.

9 (g) The health care authority, with the cooperation of the office
10 of the insurance commissioner, shall develop a consumer education
11 program for the eligible employees, retired employees, and retired
12 school employees designed to provide education on the potential need
13 for long-term care, methods of financing long-term care, and the
14 availability of long-term care insurance products including the
15 products offered by the board.

16 (11) The board may establish penalties to be imposed by the
17 authority when the eligibility determinations of an employing agency
18 fail to comply with the criteria under this chapter.

19 **Sec. 2.** RCW 41.05.021 and 2009 c 537 s 4 are each amended to read
20 as follows:

21 (1) The Washington state health care authority is created within
22 the executive branch. The authority shall have an administrator
23 appointed by the governor, with the consent of the senate. The
24 administrator shall serve at the pleasure of the governor. The
25 administrator may employ up to seven staff members, who shall be exempt
26 from chapter 41.06 RCW, and any additional staff members as are
27 necessary to administer this chapter. The administrator may delegate
28 any power or duty vested in him or her by this chapter, including
29 authority to make final decisions and enter final orders in hearings
30 conducted under chapter 34.05 RCW. The primary duties of the authority
31 shall be to: Administer state employees' insurance benefits and
32 retired or disabled school employees' insurance benefits; administer
33 the basic health plan pursuant to chapter 70.47 RCW; study state-
34 purchased health care programs in order to maximize cost containment in
35 these programs while ensuring access to quality health care; implement
36 state initiatives, joint purchasing strategies, and techniques for
37 efficient administration that have potential application to all state-

1 purchased health services; and administer grants that further the
2 mission and goals of the authority. The authority's duties include,
3 but are not limited to, the following:

4 (a) To administer health care benefit programs for employees and
5 retired or disabled school employees as specifically authorized in RCW
6 41.05.065 and in accordance with the methods described in RCW
7 41.05.075, 41.05.140, and other provisions of this chapter;

8 (b) To analyze state-purchased health care programs and to explore
9 options for cost containment and delivery alternatives for those
10 programs that are consistent with the purposes of those programs,
11 including, but not limited to:

12 (i) Creation of economic incentives for the persons for whom the
13 state purchases health care to appropriately utilize and purchase
14 health care services, including the development of flexible benefit
15 plans to offset increases in individual financial responsibility;

16 (ii) Utilization of provider arrangements that encourage cost
17 containment, including but not limited to prepaid delivery systems,
18 utilization review, and prospective payment methods, and that ensure
19 access to quality care, including assuring reasonable access to local
20 providers, especially for employees residing in rural areas;

21 (iii) Coordination of state agency efforts to purchase drugs
22 effectively as provided in RCW 70.14.050;

23 (iv) Development of recommendations and methods for purchasing
24 medical equipment and supporting services on a volume discount basis;

25 (v) Development of data systems to obtain utilization data from
26 state-purchased health care programs in order to identify cost centers,
27 utilization patterns, provider and hospital practice patterns, and
28 procedure costs, utilizing the information obtained pursuant to RCW
29 41.05.031; and

30 (vi) In collaboration with other state agencies that administer
31 state purchased health care programs, private health care purchasers,
32 health care facilities, providers, and carriers:

33 (A) Use evidence-based medicine principles to develop common
34 performance measures and implement financial incentives in contracts
35 with insuring entities, health care facilities, and providers that:

36 (I) Reward improvements in health outcomes for individuals with
37 chronic diseases, increased utilization of appropriate preventive
38 health services, and reductions in medical errors; and

1 (II) Increase, through appropriate incentives to insuring entities,
2 health care facilities, and providers, the adoption and use of
3 information technology that contributes to improved health outcomes,
4 better coordination of care, and decreased medical errors;

5 (B) Through state health purchasing, reimbursement, or pilot
6 strategies, promote and increase the adoption of health information
7 technology systems, including electronic medical records, by hospitals
8 as defined in RCW 70.41.020(4), integrated delivery systems, and
9 providers that:

10 (I) Facilitate diagnosis or treatment;

11 (II) Reduce unnecessary duplication of medical tests;

12 (III) Promote efficient electronic physician order entry;

13 (IV) Increase access to health information for consumers and their
14 providers; and

15 (V) Improve health outcomes;

16 (C) Coordinate a strategy for the adoption of health information
17 technology systems using the final health information technology report
18 and recommendations developed under chapter 261, Laws of 2005;

19 (c) To analyze areas of public and private health care interaction;

20 (d) To provide information and technical and administrative
21 assistance to the board;

22 (e) To review and approve or deny applications from counties,
23 municipalities, and other political subdivisions of the state to
24 provide state-sponsored insurance or self-insurance programs to their
25 employees in accordance with the provisions of RCW 41.04.205 and (g) of
26 this subsection, setting the premium contribution for approved groups
27 as outlined in RCW 41.05.050;

28 (f) To review and approve or deny the application when the
29 governing body of a tribal government applies to transfer their
30 employees to an insurance or self-insurance program administered under
31 this chapter. In the event of an employee transfer pursuant to this
32 subsection (1)(f), members of the governing body are eligible to be
33 included in such a transfer if the members are authorized by the tribal
34 government to participate in the insurance program being transferred
35 from and subject to payment by the members of all costs of insurance
36 for the members. The authority shall: (i) Establish the conditions
37 for participation; (ii) have the sole right to reject the application;
38 and (iii) set the premium contribution for approved groups as outlined

1 in RCW 41.05.050. Approval of the application by the authority
2 transfers the employees and dependents involved to the insurance,
3 self-insurance, or health care program approved by the authority;

4 (g) To ensure the continued status of the employee insurance or
5 self-insurance programs administered under this chapter as a
6 governmental plan under section 3(32) of the employee retirement income
7 security act of 1974, as amended, the authority shall limit the
8 participation of employees of a county, municipal, school district,
9 educational service district, or other political subdivision, or a
10 tribal government, including providing for the participation of those
11 employees whose services are substantially all in the performance of
12 essential governmental functions, but not in the performance of
13 commercial activities;

14 (h) To establish billing procedures and collect funds from school
15 districts in a way that minimizes the administrative burden on
16 districts;

17 (i) To publish and distribute to nonparticipating school districts
18 and educational service districts by October 1st of each year a
19 description of health care benefit plans available through the
20 authority and the estimated cost if school districts and educational
21 service district employees were enrolled;

22 (j) To apply for, receive, and accept grants, gifts, and other
23 payments, including property and service, from any governmental or
24 other public or private entity or person, and make arrangements as to
25 the use of these receipts to implement initiatives and strategies
26 developed under this section;

27 (k) To issue, distribute, and administer grants that further the
28 mission and goals of the authority;

29 (l) To adopt rules consistent with this chapter as described in RCW
30 41.05.160 including, but not limited to:

31 (i) Setting forth the criteria established by the board under RCW
32 41.05.065 for determining whether an employee is eligible for benefits;

33 (ii) Establishing an appeal process in accordance with chapter
34 34.05 RCW by which an employee may appeal an eligibility determination;

35 (iii) Establishing a process to assure that the eligibility
36 determinations of an employing agency comply with the criteria under
37 this chapter, including the imposition of penalties as may be
38 authorized by the board.

1 (2) On and after January 1, 1996, the public employees' benefits
2 board may implement strategies to promote managed competition among
3 employee health benefit plans. Strategies may include but are not
4 limited to:

5 (a) Standardizing the benefit package;

6 (b) Soliciting competitive bids for the benefit package;

7 (c) Limiting the state's contribution to a percent of the lowest
8 priced qualified plan within a geographical area;

9 (d) Monitoring the impact of the approach under this subsection
10 with regards to: Efficiencies in health service delivery, cost shifts
11 to subscribers, access to and choice of managed care plans statewide,
12 and quality of health services. The health care authority shall also
13 advise on the value of administering a benchmark employer-managed plan
14 to promote competition among managed care plans.

15 (3)(a) During the 2013 and 2014 plan years, the authority must
16 include in its provider network for a self-insured health benefit plan
17 a direct patient-provider primary care practice as provided in chapter
18 48.150 RCW.

19 (b) The authority shall use best efforts to enroll at least one
20 thousand members residing in King, Pierce, or Thurston counties.

21 (c) To participate in the network, a practice must have prior
22 experience with at least two thousand direct patients, as defined in
23 RCW 48.150.010, and must have the capability to produce and analyze
24 data on disease management, prevention measures, practice utilization,
25 medication utilization, and referrals and be able to link to downstream
26 utilization data provided by the plan.

27 (d) By November 30, 2015, the authority shall submit to the
28 legislature a performance evaluation of direct patient-provider primary
29 care practices participation under this subsection. The evaluation
30 shall include the cost effectiveness of this model and the impact on
31 employee access to quality, affordable health care.

32 (e) Funding for services provided by a direct patient-provider
33 primary care practice under this section must not increase the
34 resources provided by employer funding rates provided for employee
35 health benefits in the omnibus appropriations act in the absence of
36 these provisions.

1 **Sec. 3.** RCW 48.150.040 and 2009 c 552 s 2 are each amended to read
2 as follows:

3 (1) Direct practices may not:

4 (a) Enter into a participating provider contract as defined in RCW
5 48.44.010 or 48.46.020 with any carrier or with any carrier's
6 contractor or subcontractor, or plans administered under chapter
7 (~~41.05~~) 70.47(~~(7)~~) or 70.47A RCW, to provide health care services
8 through a direct agreement except as set forth in subsection (2) of
9 this section;

10 (b)(i) Submit a claim for payment to any carrier or any carrier's
11 contractor or subcontractor, or plans administered under chapter
12 (~~41.05~~) 70.47(~~(7)~~) or 70.47A RCW, for health care services provided
13 to direct patients as covered by their agreement; or

14 (ii) Submit a claim for payment, other than the direct fee and any
15 other negotiated ancillary costs, to any plan administered under
16 chapter 41.05 RCW, for health care services provided to direct patients
17 as covered by their agreement;

18 (c) With respect to services provided through a direct agreement,
19 be identified by a carrier or any carrier's contractor or
20 subcontractor, or plans administered under chapter (~~41.05~~)
21 70.47(~~(7)~~) or 70.47A RCW, as a participant in the carrier's or any
22 carrier's contractor or subcontractor network for purposes of
23 determining network adequacy or being available for selection by an
24 enrollee under a carrier's benefit plan; or

25 (d) Pay for health care services covered by a direct agreement
26 rendered to direct patients by providers other than the providers in
27 the direct practice or their employees, except as described in
28 subsection (2)(b) of this section.

29 (2) Direct practices and providers may:

30 (a) Enter into a participating provider contract as defined by RCW
31 48.44.010 and 48.46.020 or plans administered under chapter 41.05,
32 70.47, or 70.47A RCW for purposes other than payment of claims for
33 services provided to direct patients through a direct agreement. Such
34 providers shall be subject to all other provisions of the participating
35 provider contract applicable to participating providers including but
36 not limited to the right to:

37 (i) Make referrals to other participating providers;

1 (ii) Admit the carrier's members to participating hospitals and
2 other health care facilities;
3 (iii) Prescribe prescription drugs; and
4 (iv) Implement other customary provisions of the contract not
5 dealing with reimbursement of services;
6 (b) Pay for charges associated with the provision of routine lab
7 and imaging services. In aggregate such payments per year per direct
8 patient are not to exceed fifteen percent of the total annual direct
9 fee charged that direct patient. Exceptions to this limitation may
10 occur in the event of short-term equipment failure if such failure
11 prevents the provision of care that should not be delayed; and
12 (c) Charge an additional fee to direct patients for supplies,
13 medications, and specific vaccines provided to direct patients that are
14 specifically excluded under the agreement, provided the direct practice
15 notifies the direct patient of the additional charge, prior to their
16 administration or delivery.

--- END ---