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HOUSE BILL 1712

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State of Washington

63rd Legislature

2013 Regular Session

By Representative Schmick

Read first time 02/06/13. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to state implementation of the federal patient  
2 protection and affordable care act; amending RCW 43.71.010, 43.71.030,  
3 43.71.075, 43.71.065, and 48.43.715; and repealing RCW 48.43.700,  
4 48.43.705, and 70.47.250.

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

6 **Sec. 1.** RCW 43.71.010 and 2012 c 87 s 2 are each amended to read  
7 as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise. Terms and phrases used  
10 in this chapter that are not defined in this section must be defined as  
11 consistent with implementation of a state health benefit exchange  
12 pursuant to the affordable care act.

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

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

19 (3) "Board" means the governing board established in RCW 43.71.020.

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

3 (5) "Exchange" means the Washington health benefit exchange  
4 established in RCW 43.71.020.

5 (6) "Self-sustaining" means capable of operating without direct  
6 state tax subsidy. Self-sustaining sources include, but are not  
7 limited to, federal grants, federal premium tax subsidies and credits,  
8 charges to health carriers, and premiums or user fees paid by  
9 enrollees.

10 **Sec. 2.** RCW 43.71.030 and 2012 c 87 s 4 are each amended to read  
11 as follows:

12 (1)(a) The exchange may, consistent with the purposes of this  
13 chapter: ~~((+a))~~ (i) Sue and be sued in its own name; ~~((+b))~~ (ii)  
14 make and execute agreements, contracts, and other instruments, with any  
15 public or private person or entity; ~~((+c))~~ (iii) employ, contract  
16 with, or engage personnel; ~~((+d))~~ (iv) pay administrative costs;  
17 ~~((+e))~~ (v) accept grants, donations, loans of funds, and contributions  
18 in money, services, materials or otherwise, from the United States or  
19 any of its agencies, from the state of Washington and its agencies or  
20 from any other source, and use or expend those moneys, services,  
21 materials, or other contributions; ~~((+f))~~ (vi) aggregate or delegate  
22 the aggregation of funds that comprise the premium for a health plan;  
23 and ~~((+g))~~ (vii) complete other duties necessary to begin open  
24 enrollment in qualified health plans through the exchange beginning  
25 October 1, 2013.

26 (b) The exchange may not provide information about, or enroll  
27 individuals in, any programs other than public and private health  
28 coverage as required by the affordable care act.

29 (2) The board shall develop a methodology to ensure the exchange is  
30 self-sustaining after December 31, 2014. The board shall seek input  
31 from health carriers to develop funding mechanisms that fairly and  
32 equitably apportion among carriers the reasonable administrative costs  
33 and expenses incurred to implement the provisions of this chapter. The  
34 board shall submit its recommendations to the legislature by December  
35 1, 2012. If the legislature does not enact legislation during the 2013  
36 regular session to modify or reject the board's recommendations, the  
37 board may proceed with implementation of the recommendations.

1 (3) The board shall establish policies that permit city and county  
2 governments, Indian tribes, tribal organizations, urban Indian  
3 organizations, private foundations, and other entities to pay premiums  
4 on behalf of qualified individuals.

5 (4) The employees of the exchange may participate in the public  
6 employees' retirement system under chapter 41.40 RCW and the public  
7 employees' benefits board under chapter 41.05 RCW.

8 (5) Qualified employers may access coverage for their employees  
9 through the exchange for small groups under section 1311 of P.L. 111-  
10 148 of 2010, as amended. The exchange shall enable any qualified  
11 employer to specify a level of coverage so that any of its employees  
12 may enroll in any qualified health plan offered through the small group  
13 exchange at the specified level of coverage.

14 (6) The exchange shall report its activities and status to the  
15 governor and the legislature as requested, and no less often than  
16 annually.

17 **Sec. 3.** RCW 43.71.075 and 2012 c 87 s 25 are each amended to read  
18 as follows:

19 (1) A person or entity functioning as a navigator consistent with  
20 the requirements of section 1311(i) of P.L. 111-148 of 2010, as  
21 amended, shall not be considered soliciting or negotiating insurance as  
22 stated under chapter 48.17 RCW.

23 (2) A person or entity functioning as a navigator shall utilize  
24 grant funding from the exchange only for purposes of providing  
25 information about, or enrolling individuals in, qualified health plans.

26 **Sec. 4.** RCW 43.71.065 and 2012 c 87 s 8 are each amended to read  
27 as follows:

28 (1) The board shall certify a plan as a qualified health plan to be  
29 offered through the exchange if the plan is determined by the:

30 (a) Insurance commissioner to meet the requirements of Title 48 RCW  
31 and rules adopted by the commissioner pursuant to chapter 34.05 RCW to  
32 implement the requirements of Title 48 RCW; and

33 (b) Board to meet the requirements of the affordable care act for  
34 certification as a qualified health plan(~~and~~

35 ~~(c) Board to include tribal clinics and urban Indian clinics as~~  
36 ~~essential community providers in the plan's provider network consistent~~

1 ~~with federal law. If consistent with federal law, integrated delivery~~  
2 ~~systems shall be exempt from the requirement to include essential~~  
3 ~~community providers in the provider network)).~~

4 (2) Consistent with section 1311 of P.L. 111-148 of 2010, as  
5 amended, the board shall allow stand-alone dental plans to offer  
6 coverage in the exchange beginning January 1, 2014. Dental benefits  
7 offered in the exchange must be offered and priced separately to assure  
8 transparency for consumers.

9 (3) The board may permit direct primary care medical home plans,  
10 consistent with section 1301 of P.L. 111-148 of 2010, as amended, to be  
11 offered in the exchange beginning January 1, 2014.

12 (4) Upon request by the board, a state agency shall provide  
13 information to the board for its use in determining if the requirements  
14 under subsection (1)(b) (~~(or (c))~~) of this section have been met.  
15 Unless the agency and the board agree to a later date, the agency shall  
16 provide the information within sixty days of the request. The exchange  
17 shall reimburse the agency for the cost of compiling and providing the  
18 requested information within one hundred eighty days of its receipt.

19 (5) A decision by the board denying a request to certify or  
20 recertify a plan as a qualified health plan may be appealed according  
21 to procedures adopted by the board.

22 **Sec. 5.** RCW 48.43.715 and 2012 c 87 s 13 are each amended to read  
23 as follows:

24 (1) Consistent with federal law, the commissioner, in consultation  
25 with the board and the health care authority, shall, by rule, select  
26 the largest small group plan in the state by enrollment as the  
27 benchmark plan for the individual and small group market for purposes  
28 of establishing the essential health benefits in Washington state under  
29 P.L. 111-148 of 2010, as amended.

30 (2) If the essential health benefits benchmark plan for the  
31 individual and small group market does not include all of the ten  
32 benefit categories specified by section 1302 of P.L. 111-148, as  
33 amended, the commissioner, in consultation with the board and the  
34 health care authority, shall, by rule, supplement the benchmark plan  
35 benefits as needed, but no more than the extent necessary to meet the  
36 minimum requirements of section 1302.

1 (3) A health plan required to offer the essential health benefits,  
2 other than a health plan offered through ~~((the federal basic health~~  
3 ~~program or))~~ medicaid, under P.L. 111-148 of 2010, as amended, may  
4 ~~((not))~~ be offered in the state unless the commissioner finds that it  
5 is not substantially equal to the benchmark plan. ~~((When making this~~  
6 ~~determination, the commissioner must:~~

7 ~~(a) Ensure that the plan covers the ten essential health benefits~~  
8 ~~categories specified in section 1302 of P.L. 111-148 of 2010, as~~  
9 ~~amended; and~~

10 ~~(b) May consider whether the health plan has a benefit design that~~  
11 ~~would create a risk of biased selection based on health status and~~  
12 ~~whether the health plan contains meaningful scope and level of benefits~~  
13 ~~in each of the ten essential health benefit categories specified by~~  
14 ~~section 1302 of P.L. 111-148 of 2010, as amended.))~~

15 (4) Beginning December 15, 2012, and every year thereafter, the  
16 commissioner shall submit to the legislature a list of state-mandated  
17 health benefits, the enforcement of which will result in federally  
18 imposed costs to the state related to the plans sold through the  
19 exchange because the benefits are not included in the essential health  
20 benefits designated under federal law. The list must include the  
21 anticipated costs to the state of each state-mandated health benefit on  
22 the list and any statutory changes needed if funds are not appropriated  
23 to defray the state costs for the listed mandate. The commissioner may  
24 enforce a mandate on the list for the entire market only if funds are  
25 appropriated in an omnibus appropriations act specifically to pay the  
26 state portion of the identified costs.

27 NEW SECTION. **Sec. 6.** The following acts or parts of acts are each  
28 repealed:

29 (1) RCW 48.43.700 (Exchange--Plans that a carrier must offer--  
30 Review--Rules) and 2012 c 87 s 6;

31 (2) RCW 48.43.705 (Plans offered outside of exchange) and 2012 c 87  
32 s 7; and

33 (3) RCW 70.47.250 (Federal basic health option--Report to  
34 legislature--Certification--Director's findings--Program's guiding  
35 principles) and 2012 c 87 s 15.

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