
HOUSE BILL 2220

State of Washington 63rd Legislature 2014 Regular Session

By Representatives Manweller and Vick

Read first time 01/14/14. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to broadening health insurance coverage options for
2 the citizens of Washington state; amending RCW 48.43.700, 48.43.705,
3 48.43.715, 48.05.070, and 48.21.047; adding a new section to chapter
4 48.43 RCW; adding a new chapter to Title 48 RCW; and creating a new
5 section.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

8 (a) Because of the federal patient protection and affordable care
9 act, also known as Obamacare, millions of Americans, many of whom live
10 in Washington, had their health insurance plans canceled despite
11 President Obama's promise that they could keep the coverage they had.

12 (b) The Obama administration responded to this problem in the
13 following ways:

14 (i) Allowing state insurance commissioners, for a period of one
15 year, to approve plans that do not meet the requirements of Obamacare;

16 (ii) Suspending the individual mandate for persons whose insurance
17 was canceled due to Obamacare; and

18 (iii) Allowing persons whose insurance was canceled due to
19 Obamacare to purchase catastrophic insurance, regardless of age.

1 (c) The solutions offered by the Obama administration are
2 insufficient for Washington citizens due to:

3 (i) The Washington insurance commissioner's refusal to approve
4 plans that do not meet the requirements of Obamacare; and

5 (ii) The nonexistence or limited availability of the coverage
6 alternatives proposed by the Obama administration in response to the
7 crisis.

8 (2) The legislature therefore intends to expand affordable coverage
9 options for Washington citizens by:

10 (a) Allowing health carriers to continue to offer certain
11 individual or small group health plans in the market outside of the
12 exchange, regardless of whether the plans meet the requirements of
13 Obamacare; and

14 (b) Requiring the Washington insurance commissioner to enter into
15 reciprocal agreements with other states to allow the sale of insurance
16 policies across state lines.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.43 RCW
18 to read as follows:

19 (1) A health carrier may continue to offer an individual or small
20 group health plan in the market outside of the exchange, regardless of
21 whether the plan meets any state or federal requirements applicable to
22 individual or small group plans offered on or after October 1, 2013,
23 if:

24 (a) The health plan was offered in the individual or small group
25 market in Washington on October 1, 2013; and

26 (b) The purchaser of the health plan was actually enrolled in the
27 plan on October 1, 2013.

28 (2) A health carrier choosing to continue to offer an individual or
29 small group health plan under subsection (1) of this section, shall
30 send written notice to all enrollees of that plan who have received a
31 cancellation or termination notice regarding the plan, or who otherwise
32 should have received such notice, informing them of:

33 (a) Any changes in the options available to them;

34 (b) Which market reforms would not be reflected in any continued
35 coverage;

36 (c) Their potential right to enroll in a qualified health plan

1 offered through the exchange and possibly qualify for financial
2 assistance;

3 (d) How to access such coverage through the exchange; and

4 (e) Their right to enroll in health insurance coverage outside of
5 the exchange that complies with the market reforms identified in (b) of
6 this subsection.

7 (3) The commissioner may not adopt any rules or policies that would
8 prohibit or inhibit continuing coverage under this section.

9 **Sec. 3.** RCW 48.43.700 and 2012 c 87 s 6 are each amended to read
10 as follows:

11 (1) For plan or policy years beginning January 1, 2014, a carrier
12 must offer individual or small group health benefit plans that meet the
13 definition of silver and gold level plans in section 1302 of P.L. 111-
14 148 of 2010, as amended, in any market outside the exchange in which it
15 offers a plan that meets the definition of bronze level in section 1302
16 of P.L. 111-148 of 2010, as amended.

17 (2) Except as provided in section 2 of this act, a health benefit
18 plan meeting the definition of a catastrophic plan in RCW
19 48.43.005(8)(c)(i) may only be sold through the exchange.

20 (3) By December 1, 2016, the exchange board, in consultation with
21 the commissioner, must complete a review of the impact of this section
22 on the health and viability of the markets inside and outside the
23 exchange and submit the recommendations to the legislature on whether
24 to maintain the market rules or let them expire.

25 (4) The commissioner shall evaluate plans offered at each actuarial
26 value defined in section 1302 of P.L. 111-148 of 2010, as amended, and
27 determine whether variation in prescription drug benefit cost-sharing,
28 both inside and outside the exchange in both the individual and small
29 group markets results in adverse selection. If so, the commissioner
30 may adopt rules to assure substantial equivalence of prescription drug
31 cost-sharing. Any rules adopted under this subsection do not apply to
32 health plans offered under section 2 of this act.

33 **Sec. 4.** RCW 48.43.705 and 2012 c 87 s 7 are each amended to read
34 as follows:

35 Except as provided in section 2 of this act, all health plans,
36 other than catastrophic health plans, offered outside of the exchange

1 must conform with the actuarial value tiers specified in section 1302
2 of P.L. 111-148 of 2010, as amended, as bronze, silver, gold, or
3 platinum.

4 **Sec. 5.** RCW 48.43.715 and 2013 c 325 s 1 are each amended to read
5 as follows:

6 (1) Consistent with federal law, the commissioner, in consultation
7 with the board and the health care authority, shall, by rule, select
8 the largest small group plan in the state by enrollment as the
9 benchmark plan for the individual and small group market for purposes
10 of establishing the essential health benefits in Washington state under
11 P.L. 111-148 of 2010, as amended.

12 (2) If the essential health benefits benchmark plan for the
13 individual and small group market does not include all of the ten
14 benefit categories specified by section 1302 of P.L. 111-148, as
15 amended, the commissioner, in consultation with the board and the
16 health care authority, shall, by rule, supplement the benchmark plan
17 benefits as needed to meet the minimum requirements of section 1302.

18 (3) Except as provided in section 2 of this act, a health plan
19 required to offer the essential health benefits, other than a health
20 plan offered through the federal basic health program or medicaid,
21 under P.L. 111-148 of 2010, as amended, may not be offered in the state
22 unless the commissioner finds that it is substantially equal to the
23 benchmark plan. When making this determination, the commissioner:

24 (a) Must ensure that the plan covers the ten essential health
25 benefits categories specified in section 1302 of P.L. 111-148 of 2010,
26 as amended;

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

32 (c) Notwithstanding (~~the foregoing~~) this subsection, for benefit
33 years beginning January 1, 2015, and only to the extent permitted by
34 federal law and guidance, must establish by rule the review and
35 approval requirements and procedures for pediatric oral services when
36 offered in stand-alone dental plans in the nongrandfathered individual
37 and small group markets outside of the exchange; and

1 (d) Unless prohibited by federal law and guidance, must allow
2 health carriers to also offer pediatric oral services within the health
3 benefit plan in the nongrandfathered individual and small group markets
4 outside of the exchange.

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

17 NEW SECTION. **Sec. 6.** The definitions in this section apply
18 throughout this chapter unless the context clearly requires otherwise.

19 (1) "Qualifying reciprocal insurer" means a foreign insurer that:

20 (a) Meets the definition of "issuer" pursuant to P.L. 111-148 of
21 2010, as amended;

22 (b) Is authorized in a state that is a member of the consortium
23 authorized in section 9 of this act;

24 (c) Proposes to sell in Washington only a qualifying reciprocal
25 plan;

26 (d) Has and maintains total adjusted capital that is greater than
27 three times its authorized control level risk-based capital; and

28 (e) To the extent required by the reciprocity agreement between the
29 primary state of issue and the commissioner, complies with state laws
30 applicable to issuers in the state of Washington.

31 (2) "Qualifying reciprocal plan" means a plan that:

32 (a) Contains an essential health benefits package that is
33 substantially equal to the essential health benefit benchmark plan
34 designated pursuant to RCW 48.43.715 and provides minimum essential
35 coverage as required by P.L. 111-148 of 2010, as amended;

36 (b) Has been approved by a state regulator for a state with which
37 the commissioner has a reciprocity agreement;

1 (c) Is not a health savings account or qualified high deductible
2 health plan; and

3 (d) Complies with the market rules established in RCW 48.43.700 and
4 48.43.705.

5 NEW SECTION. **Sec. 7.** (1) Each qualifying reciprocal plan issued
6 or renewed must contain the following declaration in bold face type at
7 the beginning of the document: "The benefits in this policy may not
8 include each of the benefits required by the state of Washington.
9 (Name of state) initially approved this policy for sale, and the
10 benefit requirements of that state are reflected in the policy. The
11 rates applied to calculate premium were not approved by the state of
12 Washington, but by (name of state). Those requirements may be
13 different from the requirements for policies approved by Washington.
14 Please consult your insurance agent or insurer to determine which
15 health benefits are covered under the policy."

16 (2) Each qualifying reciprocal insurer offering a qualifying
17 reciprocal plan must provide applicants with a written side-by-side
18 comparison of health benefits under the plan, including differences in
19 definition of each benefit between Washington law and the law of the
20 approving state, whether the benefit is required under Washington law,
21 and the difference in the premium rate due to the difference in state
22 laws. Where a producer is offering the plan to an applicant, the
23 producer must provide the written comparison.

24 (3) A qualifying reciprocal insurer offering qualifying reciprocal
25 plans must offer the plan through producers licensed under chapter
26 48.17 RCW. Electronic marketing and sales of out-of-state policies are
27 permitted under this section.

28 NEW SECTION. **Sec. 8.** (1) A qualifying reciprocal plan must use a
29 premium rate schedule approved by its state of issue for the plan, and
30 apply the standards for calculating the premium required by the United
31 States department of health and human services for out-of-state
32 coverage.

33 (2) The premium rate schedule for a qualifying reciprocal plan may
34 not be adjusted more frequently than once a year.

35 (3) A qualifying reciprocal plan is not required to include health

1 benefit mandates required under this title that are not included in the
2 qualifying reciprocal plan.

3 (4) A qualifying reciprocal plan must be filed with the
4 commissioner for approval prior to use pursuant to RCW 48.18.100. The
5 commissioner shall approve the plan for use in Washington state if the
6 plan meets the requirements of this chapter and shall disapprove it if
7 it does not. When determining whether the qualifying reciprocal plan
8 contains an essential health benefits package that is substantially
9 equal to the essential health benefit benchmark plan designated
10 pursuant to RCW 48.43.715, the commissioner shall utilize the same
11 standards and procedures applicable to carriers licensed in Washington.
12 The commissioner may not rely upon the determination of a member
13 consortium state as to whether the qualifying reciprocal plan contains
14 an essential health benefits package substantially equal to the
15 essential health benefit benchmark plan designated pursuant to RCW
16 48.43.715.

17 (5) Except as provided in this section, RCW 48.18.110 may not be
18 grounds for disapproval of a qualifying reciprocal plan.

19 (6) To the extent consistent with federal law, and except as
20 provided in this chapter, the requirements of chapter 48.43 RCW do not
21 apply to a qualifying reciprocal plan.

22 NEW SECTION. **Sec. 9.** (1) Beginning July 1, 2015, the commissioner
23 shall contract with any other states willing to establish and operate
24 a consortium formed through written agreement governing the sale to
25 individuals or small groups of a qualifying reciprocal plan, by
26 qualifying reciprocal insurers admitted in one of the states in the
27 consortium. A reciprocity agreement must be executed between the
28 commissioner and the appropriate entity in a participating state prior
29 to the offer and issue of a qualifying reciprocal plan under this
30 chapter. The consortium is not intended to operate as a compact.

31 (2) The consortium may commence with a reciprocity agreement with
32 just one of the states.

33 (3) A state may not join the consortium if it has admitted two or
34 more issuers domiciled in Washington that offer health benefit plans,
35 unless five or more other states have joined the consortium.

36 (4) The commissioner may enter into separate reciprocity
37 agreements, or one uniform agreement. Each reciprocity agreement must

1 establish rules for the management of consumer questions and complaints
2 related to health benefit plans approved by one member state but sold
3 in another. The commissioner may adopt rules to implement consortium
4 rules as necessary to comply with the consortium agreement.

5 (5) Consortium member states must agree to provide the commissioner
6 with a list of approved qualifying reciprocal plans that meet the
7 standards under this chapter, and their premium rate schedules as they
8 are approved. If a qualifying reciprocity plan is disapproved or
9 otherwise removed from the market pursuant to regulatory action or
10 order, the primary state of issue must notify the commissioner of this
11 action.

12 (6) The reciprocity agreement must establish a mechanism for
13 payment of premium tax pursuant to chapter 48.14 RCW, payment of
14 regulatory surcharge pursuant to RCW 48.02.190, and collection of any
15 reinsurance or risk adjustment assessments that would otherwise be
16 applicable but for the domicile of the selling insurer.

17 (7) Qualifying reciprocal insurers must inform each consortium
18 state in writing of the intent to offer a qualifying reciprocal policy
19 in a state not less than sixty days prior to the first date of offer.
20 Reciprocity consortium member states may establish additional
21 requirements for notification and offer applicable to that state.

22 (8) The commissioner may enter into one or more personal services
23 contracts with third-party contractors to provide services necessary to
24 accomplish the commissioner's responsibilities under this chapter.

25 NEW SECTION. **Sec. 10.** A qualifying reciprocal plan may be
26 certified as a qualified health plan through the exchange only if it,
27 and its qualifying reciprocal insurer, meet the requirements of the
28 exchange for certification as a qualified health plan, and if the plan
29 follows the market rules established in RCW 48.43.700.

30 NEW SECTION. **Sec. 11.** (1) By January 1, 2016, the commissioner
31 must report to the legislature of his or her progress toward
32 establishing the consortium under section 9 of this act.

33 (2) The commissioner must report to the legislature by December 1,
34 2017, and December 1st of each year following, the status of the
35 reciprocity consortium's formation, membership, the number of
36 qualifying reciprocal plans offered in Washington through the

1 consortium, the effect on the marketplace in Washington, including the
2 health benefits exchange, and must recommend whether continuing
3 reciprocity sales serves the public health and welfare.

4 **Sec. 12.** RCW 48.05.070 and 1947 c 79 s .05.07 are each amended to
5 read as follows:

6 To apply for an original certificate of authority an insurer shall:

7 (1) File with the commissioner its request therefor showing:

8 (a) Its name, home office location, type of insurer, organization
9 date, and state or country of its domicile.

10 (b) The kinds of insurance it proposes to transact.

11 (c) Additional information as the commissioner may reasonably
12 require.

13 (2)~~(a)~~ File with the commissioner:

14 ~~((a))~~ (i) A copy of its charter as amended, certified, if a
15 foreign or alien insurer, by the proper public officer of the state or
16 country of domicile.

17 ~~((b))~~ (ii) A copy of its bylaws, certified by its proper officer.

18 ~~((c))~~ (iii) A statement of its financial condition, management,
19 and affairs on a form satisfactory to or furnished by the commissioner.

20 ~~((d))~~ (iv) If a foreign or alien insurer, or a domestic
21 reciprocal insurer, an appointment of the commissioner as its attorney
22 to receive service of legal process.

23 ~~((e))~~ (v) If an alien insurer, a copy of the appointment and
24 authority of its United States manager, certified by its proper
25 officer.

26 ~~((f))~~ (vi) If a foreign or alien insurer, a certificate from the
27 proper public official of its state or country of domicile showing that
28 it is duly organized and is authorized to transact the kinds of
29 insurance proposed to be transacted.

30 ~~((g))~~ (vii) If a domestic reciprocal insurer, the declaration
31 required by RCW 48.10.090 of this code.

32 ~~((h))~~ (viii) Other documents or stipulations as the commissioner
33 may reasonably require to evidence compliance with the provisions of
34 this code.

35 (b) A qualifying reciprocal insurer, as defined in section 6 of
36 this act, is not required to comply with (a)(i), (ii), (iii), (v), or
37 (vii) of this subsection.

1 (3) Deposit with the commissioner the fees required by this code to
2 be paid for filing the accompanying documents, and for the certificate
3 of authority, if granted.

4 **Sec. 13.** RCW 48.21.047 and 2010 c 292 s 8 are each amended to read
5 as follows:

6 (1) An insurer may not offer any health benefit plan to any small
7 employer without complying with RCW 48.21.045(3).

8 (2) Employers purchasing health plans provided through associations
9 or through member-governed groups formed specifically for the purpose
10 of purchasing health care are not small employers and the plans are not
11 subject to RCW 48.21.045(3).

12 (3) A qualifying reciprocal plan, as defined in section 6 of this
13 act, is not subject to RCW 48.21.045.

14 (4) For purposes of this section, "health benefit plan," "health
15 plan," and "small employer" mean the same as defined in RCW 48.43.005.

16 ~~((+4))~~ (5) For purposes of this section, "census date" has the
17 same meaning as defined in RCW 48.44.010.

18 NEW SECTION. **Sec. 14.** Sections 6 through 11 of this act
19 constitute a new chapter in Title 48 RCW.

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