

FINAL BILL REPORT

ESHB 2222

C 30 L 17 E 3
Synopsis as Enacted

Brief Description: Protecting information obtained to develop or implement an individual health insurance market stability program.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Cody and Manweller; by request of Insurance Commissioner).

House Committee on Health Care & Wellness
Senate Committee on Health Care

Background:

Disclosure of Public Records.

The Public Records Act (PRA) requires state and local agencies to make all public records available for public inspection and copying, unless a record falls within an exemption in the PRA or another statute that exempts or prohibits disclosure of specific information or records. The PRA provides exemptions for certain information related to insurance and financial institutions. For example, materials related to a financial or market conduct examination and materials related to an insurer's internal risk assessment are exempt. The PRA is liberally construed and its exemptions narrowly construed. If the PRA conflicts with any other law, the provisions of the PRA govern.

Premium Stabilization Programs under the Affordable Care Act.

The federal Affordable Care Act created three premium stabilization programs to address adverse selection inside and outside of the Health Benefit Exchange (Exchange)—risk adjustment, reinsurance, and risk corridors.

- **Risk Adjustment:** The risk adjustment program, which is a permanent program, assesses plans with lower-risk enrollees and makes disbursements to plans with higher-risk enrollees.
- **Reinsurance:** The reinsurance program, which expired in 2016, required most health plans (both inside and outside the Exchange) to contribute funds for disbursement to individual market plans with high-cost enrollees.
- **Risk Corridors:** The risk corridor program, which expired in 2016, was designed to compensate for the difficulty of establishing initial rates in the Exchange. Plans that had lower-than-expected costs made payments to the federal government, which then disbursed those funds to plans with higher-than-expected costs.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

To operate the risk adjustment and reinsurance programs, insurers are required to provide the federal government with de-identified data through a dedicated distributed data environment.

Washington State Health Insurance Pool.

The Washington State Health Insurance Pool (WSHIP), Washington's high risk pool, provides coverage for:

- individuals ineligible for Medicare who were enrolled in WSHIP health plans prior to January 1, 2014, or who live in a county where individual health coverage is unavailable; and
- Medicare-eligible individuals who do not have access to a reasonable choice of Medicare Advantage plans and provide evidence of rejection for medical reasons, restrictive riders, an up-rated premium, preexisting condition limitations, or lack of access to a comprehensive Medicare supplemental plan.

Summary:

For purposes of developing or implementing an individual health insurance market stability program, reports, data, documents, or other materials that health carriers submit to or receive from the United States Department of Health and Human Services (HHS) as part of a risk adjustment or reinsurance program, or that the Washington State Health Insurance Pool (WSHIP) prepares, are confidential and not subject to disclosure under the Public Records Act when they are in the custody of the Insurance Commissioner (Commissioner).

The Commissioner may not disclose these materials except in furtherance of developing and implementing an individual health insurance market stability program. This study may be conducted one time only, and the date requested must be agreed on by the Commissioner and carriers. The Commissioner may share such materials with contractors conducting actuarial, economic, or other analyses necessary to develop or implement an individual health insurance market stability program. In addition, the Commissioner may enter into agreements governing the sharing and use of such information. A waiver of a claim of confidentiality or privilege does not occur as a result of disclosure to the Commissioner or as a result of the Commissioner sharing such information.

The Commissioner is not authorized to submit a complete application to the federal government for a waiver of any provision of federal law, including the Affordable Care Act. In addition, the Commissioner must provide the Joint Select Committee on Health Care Oversight with a progress report prior to submitting a draft waiver application.

These provisions apply to materials obtained by the Commissioner as of December 31, 2019.

Votes on Final Passage:

Third Special Session

House	94	0	
Senate	48	1	(Senate amended)
House	93	0	(House concurred)

Effective: July 7, 2017