

HOUSE BILL REPORT

SHB 1870

As Amended by the Senate

Title: An act relating to making state law consistent with selected federal consumer protections in the patient protection and affordable care act.

Brief Description: Making state law consistent with selected federal consumer protections in the patient protection and affordable care act.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Davis, Cody, Ryu, Jinkins, Dolan, Senn, Bergquist, Peterson, Thai, Valdez, Morgan, Robinson, Goodman, Kilduff, Fey, Pollet, Appleton, Orwall, Mead, Kirby, Kloba, Gregerson, Fitzgibbon, Stanford and Tharinger).

Brief History:

Committee Activity:

Health Care & Wellness: 2/12/19, 2/20/19 [DPS].

Floor Activity:

Passed House: 3/1/19, 56-38.

Senate Amended.

Passed Senate: 3/27/19, 28-17.

Brief Summary of Substitute Bill

- Codifies certain provisions of the federal Patient Protection and Affordable Care Act.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cody, Chair; Macri, Vice Chair; Davis, Jinkins, Riccelli, Robinson, Stonier, Thai and Tharinger.

Minority Report: Do not pass. Signed by 4 members: Representatives Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers and Maycumber.

Minority Report: Without recommendation. Signed by 1 member: Representative Harris.

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.

Staff: Jim Morishima (786-7191).

Background:

Passed in 2010, the federal Patient Protection and Affordable Care Act (ACA) enacted a variety of provisions related to private health insurance coverage, including guaranteed issue and eligibility, open enrollment periods, limitations on rescissions, essential health benefits, out-of-pocket maximums, prohibiting annual or lifetime limits, uniform explanation of coverage requirements, maximum waiting periods for group coverage, and discrimination prohibitions.

The ACA preempts state laws that prevent its application. Washington law includes some provisions that conflict with the ACA and are therefore not enforced. Additionally, state law includes provisions implementing the ACA, although some of the provisions of the ACA are not addressed in state law.

I. Guaranteed Issue and Eligibility.

A. Federal Law.

The ACA requires most health insurers to accept every employer or individual who applies for coverage. Health carriers are prohibited from imposing pre-existing condition exclusions or waiting periods. Health carriers are also prohibited from establishing eligibility rules based on:

- health status;
- medical condition;
- claims experience;
- receipt of health care;
- medical history;
- genetic information;
- evidence of insurability;
- disability; or
- any other health status-related factor determined appropriate by the Secretary of Health and Human Services (Secretary).

B. State Law.

State law includes provisions relating to guaranteed issue and pre-existing conditions that are not enforced because of the ACA. For example, state law requires an individual to complete the standard health questionnaire prior to purchasing an individual market health insurance plan. Based on the results of the questionnaire, the person may be denied individual market coverage, in which case he or she is eligible to purchase coverage from the Washington State Health Insurance Pool. State law also includes provisions allowing for pre-existing condition waiting periods, except for persons under the age of 19. Because of the rating rules under federal law, the state rating rules only apply to health plans that are grandfathered under the ACA.

II. Open Enrollment Periods.

A. Federal Law.

The ACA allows health carriers to restrict enrollment in health plans to open or special enrollment periods. Open enrollment periods occur once per year. A person who misses open enrollment may enroll in a health plan during a special enrollment period upon the occurrence of a life event such as losing health coverage or the birth of a child.

B. State Law.

The Insurance Commissioner (Commissioner) is required to establish open enrollment periods for persons under the age of 19. The Commissioner may levy fines against a carrier that refuses to sell guaranteed issue policies to persons under the age of 19.

III. Rescissions.

A. Federal Law.

The ACA prohibits health carriers from retroactively rescinding coverage except in cases involving fraud or material misrepresentation.

B. State Law.

State law does not prohibit rescissions. However, the reasons for which a carrier may cancel coverage are limited to nonpayment of premium, violations of the published policies of the carrier, Medicare eligibility, failure to pay cost-sharing, fraud, material breach of contract, or changes in state or federal law.

IV. Essential Health Benefits.

A. Federal Law.

The ACA requires most individual and small group market health plans to cover 10 categories of essential health benefits:

- ambulatory patient services;
- emergency services;
- hospitalization;
- maternity and newborn care;
- mental health and substance use disorder treatment, including behavioral health treatment;
- prescription drugs;
- rehabilitative and habilitative services and devices;
- laboratory services;
- preventive and wellness services and chronic disease management; and
- pediatric services, including oral and vision care.

To determine the specific services covered within each category, federal rules allow states to choose a benchmark plan and to supplement that plan to ensure it covers all 10 categories.

B. State Law.

State law designates the largest small group plan in the state as the benchmark plan. Consistent with federal law, the Commissioner must supplement the benchmark plan to ensure that all 10 categories of essential health benefits are included.

V. Out-of-Pocket Maximums.

A. Federal Law.

The ACA imposes a maximum for the out-of-pocket costs associated with the essential health benefits an enrollee must pay per plan year. The Secretary sets the maximum for individual and family coverage. The Secretary may adjust the amounts based on increases in premiums for the previous calendar year. Federal rules prohibit a person's out-of-pocket maximum from exceeding the limit for self-only coverage, regardless of whether he or she is enrolled in self-only or family coverage.

B. State Law.

State law does not address the federal out-of-pocket maximums.

VI. Lifetime Limits.

A. Federal Law.

The ACA prohibits health plans from imposing annual or lifetime limits on an essential health benefit for a particular beneficiary.

B. State Law.

Rules adopted by the Commissioner prohibit a health carrier from imposing annual or lifetime limits on an essential health benefit, other than those permitted as reference-based limitations.

VII. Explanation of Coverage.

A. Federal Law.

Under the ACA, a health carrier must provide a summary of benefits and coverage explanation (SBCE), either in paper or electronically, to:

- an applicant at the time of application;
- an enrollee prior to the time of enrollment or re-enrollment; and
- a policyholder or certificate holder at the time of issuance.

The ACA requires the Secretary to develop standards for health carriers to use when providing a SBCE to applicants, enrollees, and policyholders. The standards must require that the SBCE is presented in a uniform format of four pages or less in at least 12-point font,

is culturally and linguistically appropriate and uses terms understandable by the average enrollee, and includes:

- uniform definitions that allow consumers to compare coverage and understand the terms of coverage;
- a description of the coverage; reductions, limitations, and exceptions on coverage; cost-sharing provisions; and renewability and continuation of coverage provisions;
- a coverage facts label that includes examples to illustrate common benefits scenarios, including pregnancy and serious or chronic medical conditions and related cost sharing;
- a statement of whether the plan provides minimum essential coverage under federal law and ensures that the plan share of total allowed costs is no less than 60 percent of the costs;
- a statement that the outline is a summary and that the coverage document itself should be consulted to determine the governing contractual provisions; and
- a contact number for the consumer to call with additional questions and a website where a copy of the actual individual coverage policy or group certificate of coverage may be reviewed and obtained.

The Secretary must periodically review and update the standards.

If a health carrier makes any material modification in any of the terms of the plan that is not reflected in the most recent SBCE, it must provide notice of the modification no less than 60 days prior to the date the modification becomes effective.

A health carrier that fails to provide the required information is subject to a fine of no more than \$1,000 for each failure. A failure for each enrollee constitutes a separate offense.

The Secretary must develop standards for definitions of terms to be used on health insurance coverage, including insurance-related terms and medical terms.

B. State Law.

There are no state requirements regarding the SBCE.

VIII. Waiting Periods for Group Coverage.

A. Federal Law.

A health carrier may not apply a waiting period for group coverage that exceeds 90 days.

B. State Law.

State law does not address waiting periods for group coverage.

IX. Non-Discrimination.

A. Federal Law.

The ACA prohibits a health carrier from making coverage decisions, determining reimbursement amounts, establishing incentive programs, or designing benefits in a way that discriminates against individuals because of their age, disability, or life expectancy. Similarly, health carriers are required to ensure that essential health benefits are not subject to denial based on age, life expectancy, disability, degree of medical dependency, or quality of life. Qualified health plans are prohibited from employing marketing practices or benefit designs that have the effect of discouraging enrollment in the plan by individuals with significant health needs.

B. State Law.

State law prohibits discrimination in insurance transactions based on sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal. Health care service contractors are prohibited from discriminating on the basis of race, religion, national origin, or the presence of any sensory, mental, or physical handicap. Health maintenance organizations are prohibited from discriminating on the bases of any sensory, mental, or physical handicap. This does not prohibit a health care service contractor or health maintenance organization from limiting or denying coverage when a person does not meet essential eligibility requirements because of a medical condition.

Summary of Substitute Bill:

I. Guaranteed Issue and Eligibility.

A health carrier is prohibited from rejecting an applicant based on a pre-existing condition. Similarly, a health carrier may not deny, exclude, or otherwise limit coverage for an individual's pre-existing condition, including pre-existing condition exclusions or waiting periods. Provisions relating to pre-existing condition exclusions and waiting periods and the standard health questionnaire are eliminated or repealed.

A health carrier may not establish eligibility rules based on:

- health status;
- medical condition;
- claims experience;
- receipt of health care;
- medical history;
- genetic information;
- evidence of insurability;
- disability; or
- any other health status-related factor determined appropriate by the Commissioner.

II. Open Enrollment Periods.

The Commissioner's requirement to establish open enrollment periods is expanded to include all persons, instead of only persons under the age of 19. The Commissioner may levy fines against a carrier that refuses to sell guaranteed issue policies to any person, instead of only persons under the age of 19.

III. Rescissions.

A health plan or health carrier may not rescind coverage for an enrollee once the enrollee is covered under the plan, except in situations involving fraud or material misrepresentation.

IV. Essential Health Benefits.

The 10 essential health benefit categories are defined to include:

- ambulatory patient services;
- emergency services;
- hospitalization;
- maternity and newborn care;
- mental health and substance use disorder treatment, including behavioral health treatment;
- prescription drugs;
- rehabilitative and habilitative services and devices;
- laboratory services;
- preventive and wellness services and chronic disease management; and
- pediatric services, including oral and vision care.

References to federal law are eliminated in provisions relating to selecting and supplementing of the state benchmark plan.

V. Out-of-Pocket Maximums.

For plan years beginning in 2020, the cost-sharing incurred under a health plan for the essential health benefits may not exceed the amount required under federal law for the calendar year. If there are no cost-sharing requirements under federal law, the cost sharing may not exceed \$8,200 for self-only coverage and \$16,400 for family coverage, increased by the premium adjustment percentage for the calendar year. An enrollee's cost-sharing may not exceed the self-only limit regardless of whether he or she is enrolled in self-only or family coverage.

The premium adjustment percentage for the calendar year is the percentage, if any, by which the average per capita premium for health insurance in Washington for the previous year exceeds the average per capita premium for 2020 as determined by the Commissioner.

VI. Lifetime Limits.

A health carrier may not impose annual or lifetime limits on an essential health benefit, other than those permitted as reference-based limitations under rules adopted by the Commissioner.

VII. Explanation of Coverage.

A health carrier must provide a summary of benefits and coverage explanation (SBCE), either in paper or electronically, to:

- an applicant at the time of application;

- an enrollee prior to the time of enrollment or re-enrollment; and
- a policyholder certificate holder at the time of issuance.

The Commissioner must develop standards for health carriers to use when providing a SBCE to applicants, enrollees, and policyholders. The standards must require that the SBCE is presented in a uniform format of four pages or less in at least 12-point font, is culturally and linguistically appropriate, and uses terms understandable by the average enrollee, and includes:

- uniform definitions that allow consumers to compare coverage and understand the terms of coverage;
- a description of the coverage; reductions, and exceptions on coverage; cost-sharing provisions; and renewability and continuation of coverage provisions;
- a coverage facts label that includes examples to illustrate common benefits scenarios, including pregnancy and serious or chronic medical conditions and related cost sharing;
- a statement of whether the plan provides minimum essential coverage under federal law and ensures that the plan share of total allowed costs is no less than 60 percent of the costs;
- a statement that the outline is a summary and that the coverage document itself should be consulted to determine the governing contractual provisions; and
- a contact number for the consumer to call with additional questions and a website where a copy of the actual individual coverage policy or group certificate of coverage may be reviewed and obtained.

The Commissioner must use the current federal SBCE standards when developing the state standards. The Commissioner must periodically review and update the standards. If a health carrier makes any material modification in any of the terms of the plan that is not reflected in the most recent SBCE, it must provide notice of the modification no less than 60 days prior to the date the modification becomes effective.

A health carrier that fails to provide the required information is subject to a fine of no more than \$1,000 for each failure. A failure for each enrollee constitutes a separate offense.

The Commissioner must develop standards for definitions of terms to be used on health insurance coverage, including insurance-related terms and medical terms.

VIII. Waiting Periods for Group Coverage.

A group health plan and a health carrier offering group coverage may not apply any waiting period that exceeds 90 days.

IX. Non-Discrimination.

A health carrier may not make coverage decisions, determine reimbursement amounts, establish incentive programs, or design benefits in a way that discriminates against individuals because of their age, disability, or life expectancy. Health carriers must ensure that essential health benefits are not subject to denial based on age, life expectancy, disability, degree of medical dependency, or quality of life. Qualified health plans may not employ

marketing practices or benefit designs that have the effect of discouraging enrollment in the plan by individuals with significant health needs.

XI. Rulemaking.

Unless preempted by federal law, the Commissioner must adopt any rules necessary to implement the provisions relating to guaranteed issue and eligibility, open enrollment periods, limitations on rescissions, essential health benefits, out-of-pocket maximums, prohibiting annual or lifetime limits, uniform explanation of coverage requirements, maximum waiting periods for group coverage, and discrimination prohibitions. The rules must be consistent with federal rules and guidance in effect on January 1, 2017, implementing the Patient Protection and Affordable Care Act.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment: clarifies that the prohibitions against health plan discrimination apply only to non-grandfathered plans in the individual and small group market; replaces the prohibition against discrimination in coverage decisions, reimbursement rate determinations, and incentive programs with a prohibition against discrimination in benefit design; replaces the prohibition against a health carrier denying essential health benefits in a discriminatory manner with a general prohibition against discrimination; clarifies that the non-discrimination provisions do not prohibit an issuer from using reasonable medical management techniques; and inserts an emergency clause with an immediate effective date.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) When the Patient Protection and Affordable Care Act (ACA) passed, patients across the country were able to access health care when they needed it. There have been many attempts on the federal level to roll back the ACA. This makes people worried that they will lose coverage or will no longer be able to afford coverage. There needs to be a safety net to address these concerns. This bill should address coverage discrimination, which is discrimination in the way benefits are designed. This bill will ensure that the protections of the ACA will stay in place no matter what happens on the federal level by putting critical protections in state law.

(Opposed) None.

(Other) The consumer benefits in the ACA should be maintained. The affordability protections of the ACA should be added to this bill. The conversion policy provisions should be repealed—people with conversion policies could enroll in individual market plans. This bill sets up processes that parallel current federal processes. The bill should be amended so

that these mirror processes only are effective if the ACA is repealed in order to avoid duplication of effort. This bill extends the essential health benefit requirements to the large group market. The status quo should be preserved for the large group market.

Persons Testifying: (In support) Representative Davis, prime sponsor; Erin Dzieczic, Bleeding Disorder Foundation of Washington; and Alexa Silver, Northwest Health Law Advocates.

(Other) Meg Jones, Association of Washington Healthcare Plans.

Persons Signed In To Testify But Not Testifying: None.