

HOUSE BILL REPORT

E2SSB 5377

As Passed House - Amended:

April 8, 2021

Title: An act relating to increasing affordability of standardized plans on the individual market.

Brief Description: Increasing affordability of standardized plans on the individual market.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Frockt, Keiser, Conway, Das, Dhingra, Hunt, Kuderer, Lias, Lovelett, Wilson, C., Nguyen, Pedersen, Saldaña and Salomon).

Brief History:

Committee Activity:

Health Care & Wellness: 3/17/21, 3/24/21 [DPA];

Appropriations: 3/31/21, 4/1/21 [DPA(HCW)].

Floor Activity:

Passed House: 4/8/21, 55-43.

Brief Summary of Engrossed Second Substitute Bill (As Amended By House)

- Establishes a state premium assistance program for certain qualified health plans purchased through the Washington Health Benefit Exchange.
- Establishes requirements on standardized health plans offered through the Washington Health Benefit Exchange, including limiting the number of nonstandardized plans that may be offered by a health carrier.
- Establishes contracting requirements on hospitals and the Health Care Authority if public option plans are not available statewide for plan year 2022 and subsequent plan years.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

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

Majority Report: Do pass as amended. Signed by 9 members: Representatives Cody, Chair; Bateman, Vice Chair; Bronoske, Davis, Macri, Riccelli, Simmons, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 2 members: Representatives Schmick, Ranking Minority Member; Rude.

Minority Report: Without recommendation. Signed by 4 members: Representatives Caldier, Assistant Ranking Minority Member; Harris, Maycumber and Ybarra.

Staff: Jim Morishima (786-7191).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Health Care & Wellness. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 13 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Hoff, Jacobsen, Rude, Schmick and Steele.

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

Staff: Meghan Morris (786-7119).

Background:

I. Premium Assistance and Cost-Sharing Reductions for Individual Health Coverage.

Through Washington's Health Benefit Exchange (Exchange), individuals may compare and purchase qualified health plans and access premium subsidies and cost-sharing reductions. Qualified health plans are offered in the following actuarial value tiers: Bronze (60 percent actuarial value), Silver (70 percent actuarial value), Gold (80 percent actuarial value), and Platinum (90 percent actuarial value).

Premium subsidies (in the form of tax credits) are available for individuals purchasing qualified health plans through the Exchange on a sliding scale based on percentage of the individual's income. Under the federal Patient Protection and Affordable Care Act (ACA), individuals between 100 percent and 400 percent of the federal poverty level are eligible for such subsidies. Cost-sharing reductions are available to individuals between 100 percent and 250 percent of the federal poverty level.

The recently enacted federal American Rescue Plan Act of 2021 makes temporary changes to premium subsidy eligibility and amounts for 2021 and 2022 including:

- increasing subsidy amounts for persons already qualified for premium subsidies under the ACA;
- making individuals with incomes over 400 percent of the federal poverty level eligible for premium assistance; and
- making individuals who received unemployment benefits in 2021 eligible for the highest level of premium subsidies.

In 2020 the Exchange, in consultation with the Health Care Authority (HCA) and the Insurance Commissioner (Commissioner), was required to develop a plan to implement and fund premium subsidies for individuals with incomes of less than 500 percent of the federal poverty level. The resulting report recommended a fixed dollar subsidy program and provided different modeling based on the amount of funding available for the program.

II. Standardized Qualified Health Plans.

Health carriers offering qualified health plans on the Exchange must offer standardized health plans designed by the Exchange in consultation with the HCA and the Commissioner. The standardized plans are required to be designed to reduce deductibles, make more services available before the deductible, provide predictable cost sharing, maximize subsidies, limit adverse premium impacts, reduce barriers to maintaining and improving health, and encourage choice based on value while limiting increases in health plan premium rates.

Health carriers subject to this requirement must offer at least one standardized Gold and one standardized Silver plan on the Exchange. If a carrier offers a Bronze plan on the Exchange it must offer a standardized Bronze plan. Carriers may continue to offer nonstandardized plans on the Exchange.

The Exchange, in consultation with the Commissioner, is required to analyze the impact to consumers of offering only standard plans on the Exchange beginning in 2025. The report must be submitted to the Legislature by December 1, 2023, and include an analysis of how plan choice and affordability will be impacted for Exchange customers across the state.

III. State-Procured Qualified Health Plans.

The HCA, in consultation with the Exchange, must contract with at least one health carrier to offer qualified health plans on the Exchange. A health carrier contracting with the HCA must offer at least one Bronze, one Silver, and one Gold qualified health plan in a single county or in multiple counties. The stated goal of the procurement is to have a choice of qualified health plan offered in every county.

The total amount the qualified health plan reimburses providers and facilities for all covered

benefits in the statewide aggregate, excluding pharmacy benefits, may not exceed 160 percent of the total amount Medicare would have reimbursed providers and facilities for the same or similar services in the statewide aggregate. Beginning in 2023, the Director of the HCA, in consultation with the Exchange, may waive this requirement if the HCA determines that selective contracting will result in actuarially sound premium rates that are no greater than the qualified health plan's previous plan year rates adjusted for inflation using the Consumer Price Index.

The qualified health plan's reimbursement rates for critical access hospitals and sole community hospitals may not be less than 101 percent of allowable costs. The qualified health plan's reimbursement rates must be at least 135 percent of Medicare rates for primary care services designated by the HCA that are performed by physicians with a primary specialty of family medicine, general internal medicine, or pediatric medicine.

Summary of Amended Bill:

I. Premium Assistance and Cost-Sharing Reductions for Individual Health Coverage.

Subject to the availability of appropriated funds, a premium assistance and cost-sharing reduction program is established to be administered by the Washington Health Benefit Exchange (Exchange). Premium assistance and cost-sharing reduction amounts must be established by the exchange within parameters established in the operating budget. Consistent with the operating budget, the Exchange must establish procedural requirements for eligibility and participation, including participant documentation requirements and procedural requirements for facilitating payments to carriers.

Subject to the availability of appropriated funds, an individual is eligible for the program if he or she:

- is a Washington resident;
- has income up to a threshold determined through appropriation or by the Exchange if no threshold is determined through appropriation;
- is enrolled in a Silver or Gold standardized plan in his or her county of residence;
- applies for and accepts all federal premium assistance prior to receiving any state assistance;
- applies for and accepts all federal cost-sharing reductions before receiving any state cost-sharing reductions;
- is ineligible for Medicare, Medicaid, or premium assistance provided to COFA citizens; and
- meets any other eligibility criteria established by the Exchange

Alternate eligibility criteria may be established in the Omnibus Appropriations Act.

The Exchange may disqualify an individual from the program if he or she:

- no longer meets the eligibility criteria;

- fails without good cause to notify the Exchange of a change of address in a timely manner;
- voluntarily withdraws from the program; or
- performs an act, practice, or omission that constitutes fraud that results in an issuer rescinding the individual's coverage.

The Exchange must develop a process for an individual to appeal a premium assistance or cost-sharing determination from the Exchange.

Prior to establishing or altering premium assistance or cost-sharing reduction amounts, eligibility criteria, or procedural requirements relating to the program, the Exchange must:

- publish notice of the proposal on its web site and electronically to any person who has requested it, which must include an explanation of the proposal, the date, time, and location of the public hearing on the proposal, and instructions and reasonable timelines to submit written comments;
- conduct at least one public hearing no sooner than 20 days after publishing the notice; and
- publish notice of the finalized proposal on its web site and electronically to any person who has requested it, which must include a description of the finalized proposal and an explanation of how it differs from the initial proposal.

For qualified health plans offered on the Exchange, a carrier must accept state premium or cost-sharing assistance or payments as part of an authorized sponsorship program. This neither expands nor restricts the types of sponsorships programs authorized under state and federal law. Such a carrier must also clearly communicate premium assistance amounts to enrollees as part of the invoicing and payment process and must accept and process enrollment and payment data transferred by the Exchange in a timely manner.

The Exchange, in close consultation with the Health Care Authority (HCA) and the Office of the Insurance Commissioner (OIC), must explore all opportunities to apply to the federal government for a waiver or other federal flexibilities to:

- receive federal funds for the implementation of the premium assistance or cost-sharing reduction programs;
- increase access to qualified health plans; and
- implement or expand other Exchange programs that increase affordability or access to health insurance coverage in Washington.

If the Exchange identifies an opportunity to submit a waiver, it may develop an application to be submitted by the HCA. If a waiver application is submitted, the HCA must notify the Legislature and meet all federal public notice and comment requirements.

II. Standardized Qualified Health Plans.

A health carrier offering a qualified health plan on the Exchange must offer the Silver and

Gold standardized plans established by the Exchange, instead of one Silver and one Gold standardized plan. Similarly, if the carrier offers a Bronze plan on the Exchange it must offer the Bronze standardized plans established by the Exchange, instead of one Bronze standardized plan.

Beginning January 1, 2023, the number of nonstandardized plans a health carrier may offer in each county where the carrier offers a qualified health plan is limited to:

- two nonstandardized Gold and Bronze plans;
- one nonstandardized Silver plan;
- one nonstandardized Platinum plan; and
- one nonstandardized catastrophic health plan.

The report due to the Legislature on December 1, 2023, is expanded to include an analysis of offering a Bronze standardized high-deductible health plan compatible with a health savings account and a Gold standardized health plan closer in actuarial value to the Silver standardized plan.

III. State-Procured Qualified Health Plans.

If a public option plan is not available in plan year 2022 or later, a hospital that receives payment from Medicaid or a public or school employee benefits program must, upon an offer from a public option plan, contract with at least one public option plan to provide in-network services to enrollees of the plan. A hospital owned and operated by a health maintenance organization is exempt from the contracting requirement. The HCA must also contract with one or more carriers to provide public option plans in every county of the state or in each county within a region of the state.

Health carriers and hospitals may not condition negotiations or participation of a hospital in any health plan offered by a carrier on the hospital's negotiations or participation in a public option plan.

The HCA, in consultation with the OIC, may adopt rules to ensure compliance with the contracting requirement, including fines and other contract actions it deems necessary. At the request of the HCA for monitoring, enforcement, or program and quality improvement activities, a public option plan must provide cost and quality of care information and data to the HCA and may not enter into an agreement with a provider or third party that would restrict the plan from providing this information or data. Information or data submitted to the HCA is exempt from public disclosure.

By December 1 of the plan year during which enrollment in public option plans is greater than 10,000 covered lives:

- The Exchange must analyze public option plan rates paid to hospitals for in-network services and whether they have impacted hospital financial sustainability. The analysis must include any impact on hospitals' operating margins, the estimated

margins in future years if enrollment increases, and the income levels of public option plan enrollees over time. The analysis may examine a sample of hospitals of various sizes and locations. The Exchange must give substantial weight to any available reporting of health care provider and health care system costs by the Health Care Cost Transparency Board.

- The Health Care Cost Transparency Board must analyze the effect that enrollment in public option plans has had on consumers, including an analysis of the benefits provided to, and premium and cost-sharing amounts paid by, consumers enrolled in public option plans compared to other standardized and nonstandardized qualified health plans.
- The Exchange, in consultation with the Insurance Commissioner, the HCA, and interested stakeholders, must review the analyses and develop recommendations to the Legislature to address financial or other issues identified therein.

The authority for the HCA to waive provider or facility reimbursement requirements beginning in 2023 is eliminated.

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 (Health Care & Wellness):

(In support) Washingtonians are paying more for health insurance and many are struggling to afford the coverage they need, especially communities of color, the working poor, and people with complex, chronic conditions. For many families, rising costs crowd out spending on other priorities like education and retirement. The federal stimulus bill provides crucial help, but it is temporary and leaves gaps. Some groups will be left out entirely. Placing reasonable limits on nonstandardized plans is important because the federal stimulus will result in people migrating to the Health Benefit Exchange (Exchange) for coverage. This bill will establish a premium subsidy with enough flexibility that it can be coordinated with the federal stimulus bill.

(Opposed) Most people are covered either by employer-sponsored or government-sponsored coverage. To move to a single payer, comprehensive system, the remaining people must be covered. The state should not endorse for-profit health insurers during a pandemic. This bill will increase costs on employers when they can least afford it by subsidizing one sector at the cost of another.

(Other) This bill contains a lot of policy changes, which should be debated more carefully among stakeholders. The federal stimulus bill renders this bill moot for some time.

Cascade Care has the potential to deliver low-cost care, but public option plans had a difficult time convincing hospitals to contract at the required reimbursement rates. The section of this bill dealing with hospital contracting is well-intentioned, but misunderstands the way carriers and providers work together. Instead, the bill should return to the idea of providing a linkage between public option plans and plans offered to public employees. The hospital contracting provisions only address one side of the affordability equation. It will take both the hospitals and the carriers to do this. Hospitals should only be required to contract with one public option plan, not two. As enrollment increases, hospitals should have more choice in contracting with public option plans. Hospitals rely on commercial coverage to offset losses from Medicare and Medicaid coverage. Hospitals haven't seen a rate increase in 20 years.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill sets the pathway for affordable health coverage. Nearly 500,000 Washington residents remain uninsured. Those who manage to buy coverage are stretched to the brink. One in seven enrollees on the Health Benefit Exchange (Exchange) spend more than 10 percent of their income on a basic plan. Lower income, essential workers, and older residents have even more difficulty. This bill will set a foundation for an affordability program that can be scaled as necessary. The American Rescue Plan Act of 2021 temporarily boosts subsidies for many people through 2022. This allows the state to maximize federal dollars first, focus on those left behind, and prevent an affordability cliff once the federal program expires. Consumers cannot afford to wait. This bill will help the uninsured and those at risk of losing coverage. Subsidies can also be targeted to address affordability barriers in gap populations. The cost of the bill has no impact on the General Fund, and the one-time costs will allow the state to scale the program in the future.

People living with chronic illnesses receive care from numerous specialists and access a range of services to live. Without this care, they experience greater disability and poorer outcomes. Washington offers high quality, comprehensive, and easy-to-understand health coverage. Targeting the premium subsidy towards high-quality gold and silver standardized plans ensures the best coverage options for Washingtonians. People have worked hard to create quality standards to provide predictable costs for consumers, consistency between plans, and improved access to pre-deductible services. Nonstandardized silver plans have deductibles up to \$7,000. The state should not invest in these plans. The state remains at the forefront of health care innovation, and funding subsidies are critical to achieving health care equity during a strong economic recovery.

(Opposed) This bill outwardly appears to help consumers, but instead continues to fund an overpriced and ineffective health care financing system. The state should follow the recommendations of the Universal Health Care Advisory Work Group report released in January 2021. The state's health care system has many disparities, and this bill does not do enough to create real health care justice for vulnerable populations. All citizens need access to health care as a human right regardless of race, income, sex, gender, immigrant status, or

indigenous quota.

(Other) Subsidies will improve the affordability on the individual market. However, the bill only makes state subsidies available to a small subset enrollees on the Exchange. Less than 15 percent are on those standardized plans. The notion of limiting subsidy applicability to only gold and silver standardized plans is concerning. Consumers should be able to choose a high-quality plan in any of the metallic levels. The subsidy program should treat all customers alike whether they prefer standard or nonstandard health plans. Research shows that greater competition lowers prices for consumers. Survey data also shows there is not wide agreement on the type of plans consumers prefer. Consumers want value and choice.

Section 5 of the bill is problematic and should be removed. The section deals with plan and provider contracting and mandates hospital participation in the public option. Last year hospitals were deciding to participate in provider networks while navigating the demands of the COVID-19 pandemic. While not every large system participated, many large and small hospitals did. The public option is a new product. It is the first public option health plan in the country. It took several years for the individual market on the Exchange to mature. After only one year, it is premature to mandate that hospitals participate and dictate the terms of how many plans hospitals must contract with for the next year. If the section is removed, stakeholders can work on the underlying goal over the summer.

The timing of the program starting in 2021 or 2022 is also concerning due to the operational issues of implementing the current federal subsidies in the middle of plan years. Beginning in 2023 is more feasible and would allow for a smoother implementation for the plans and the Exchange.

Persons Testifying (Health Care & Wellness): (In support) Stephanie Simpson, Bleeding Disorder Foundation of Washington; Pam MacEwan, Washington Health Benefit Exchange; Sue Birch, Health Care Authority; and Jane Beyer, Office of the Insurance Commissioner.

(Opposed) Amy Anderson, Association of Washington Business; and Kathryn Lewandowsky, Whole Washington.

(Other) Gary Strannigan, Premera Blue Cross; Zach Snyder, Regence; Chris Bandoli, Association of Washington Healthcare Plans; and Chelene Whiteaker, Washington State Hospital Association.

Persons Testifying (Appropriations): (In support) Jim Freeburg, Coalition of Patient Advocacy Groups; Emily Brice, Northwest Health Law Advocates; Seth Greiner, National Multiple Sclerosis Society; Pam MacEwan, Washington Health Benefit Exchange; and Sue Birch, Health Care Authority.

(Opposed) Kathryn Lewandowsky, Whole Washington; and Rhonda Walker.

(Other) Gary Strannigan, Premera Blue Cross; Zach Snyder, Regence Blue Shield; Lisa

Thatcher, Washington State Hospital Association; and Chris Bandoli, Association of Washington Healthcare Plans.

Persons Signed In To Testify But Not Testifying (Health Care & Wellness): Carrie Glover; Emily Brice, Northwest Health Law Advocates; Sam Hatzenbeler, Economic Opportunity Institute; Jim Freeburg, Coalition of Patient Advocacy Groups; Kathy Duprey, Lana Bostic, Jason Call, and Sarah Moe, Whole Washington; Dhyan Lal, Virginia Mason Franciscan Health; and Meg Jones, PacificSource Health Plans.

Persons Signed In To Testify But Not Testifying (Appropriations): None.