

# HOUSE BILL REPORT

## SB 6440

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### As Reported by House Committee On: Health Care & Wellness

**Title:** An act relating to expanding opportunities for the purchase of health care coverage outside of state-governed health care coverage programs.

**Brief Description:** Providing health care purchasing options for individuals and small employers.

**Sponsors:** Senators Parlette, Keiser and Becker.

#### **Brief History:**

##### **Committee Activity:**

Health Care & Wellness: 2/16/12, 2/20/12 [DPA].

#### **Brief Summary of Bill (As Amended by Committee)**

- Allows the Insurance Commissioner to enter into reciprocal agreements to allow health insurance policies to be sold across state lines.

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** Do pass as amended. Signed by 9 members: Representatives Cody, Chair; Jinkins, Vice Chair; Schmick, Ranking Minority Member; Bailey, Clibborn, Green, Kelley, Moeller and Van De Wege.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Hinkle, Assistant Ranking Minority Member; Harris.

**Staff:** Jim Morishima (786-7191).

#### **Background:**

In order to sell insurance to Washington residents, a carrier must be licensed by the state and comply with a variety of requirements such as rate review, modified community rating, and mandated benefits. Under the federal Patient Protection and Affordable Care Act, as

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amended by the Health Care and Education Reconciliation Act of 2010 (ACA), states are authorized to enter into compacts allowing carriers to sell health insurance across state lines.

Under the ACA, a carrier selling health insurance across state lines must comply with insurance regulations in the state where the policy is issued, except:

- The carrier would be subject to the following regulations of the state where the consumer resides: market conduct, unfair trade practices, network adequacy, and consumer protection, including addressing disputes in the performance of the contract.
- The carrier would be either (a) licensed in each state in which it offers a plan or (b) submit to the jurisdiction of the state in which the consumer resides.
- The carrier must clearly notify consumers that it may not be subject to all of the laws and regulations of the state in which the consumer resides.

To enter into a compact with another state, a state must first enact a law that authorizes such agreements. All compacts are subject to approval of the federal Department of Health and Human Services, which must approve all compacts that:

- cover the essential health benefits;
- will provide coverage and cost sharing protections against excessive out-of-pocket spending comparable to those in the ACA;
- will provide coverage to at least a comparable number of residents as the provisions of the ACA;
- will not increase the federal deficit; and
- will not weaken state laws regarding market conduct, unfair trade practices, network adequacy, and consumer protection.

No compact may be effective prior to January 1, 2016.

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### **Summary of Amended Bill:**

Beginning July 1, 2013, the Insurance Commissioner (Commissioner) is authorized to contract with other states to establish and operate a consortium governing the sale of "qualifying reciprocal plans" in the small group market. A qualifying reciprocal plan is an out-of-state insurance plan that:

- is authorized to be sold in the consortium;
- proposes to sell a plan in Washington that has benefits substantially equivalent to the essential health benefits established under federal law in Washington, has been approved by a state with a reciprocity agreement with the Commissioner, and is not a health savings account or a qualified high deductible health plan; and
- has and maintains total adjusted capital that is greater than three times its authorized control level risk-based capital.

A qualifying reciprocal plan is exempt from certain state regulations governing the sale of health insurance, including:

- application requirements for a certificate of authority, including providing a charter, bylaws, and financial statements;

- requirements applicable to small group insurers, including rating requirements; and
- health benefit mandates to the extent allowed by federal law.

Qualifying reciprocal plans must be filed with the Commissioner, who must approve the plan if it meets the definition of a qualifying reciprocal plan. The Commissioner may accept the determination from a consortium state as to whether the plan is substantially equivalent to the essential health benefits in Washington.

Qualifying reciprocal plans must contain a declaration in bold face type at the beginning of the document:

"The benefits in this policy do not include each of the benefits required by the state of Washington. (Name of state) initially approved this policy for sale, and the benefit requirements of that state are reflected in the policy. The rates applied to calculate premium were not approved by the state of Washington, but by (Name of State). Those requirements may be different from the requirements for policies approved by Washington. Please consult your insurance agent or insurer to determine which health benefits are covered under the policy."

The qualifying reciprocal plan must also provide applicants with a written side-by-side comparison of the health benefits under the plan, including differences in the definition of each benefit, whether the benefit is required by Washington law, and the difference in the premium rate due to differences in state laws. An insurer offering a qualifying reciprocal plan must offer the plan through agents/brokers licensed in Washington. The insurer may electronically market plans, but an agent/broker must be available to discuss the plan with consumers. An insurer must notify consortium states in writing of its intent to offer a qualifying reciprocal plan no less than 60 days prior to the first date of offer.

By January 1, 2013, the Commissioner must provide the Legislature with a list of states that have been identified and include a plan for entering into a reciprocity agreement with at least one state. The Commissioner may not enter into a reciprocity agreement until he or she has identified at least five states whose regulatory requirements meet or exceed Washington's standards for network adequacy, consumer protection, market requirements, and claims adjudication/processing. The reciprocity consortium may begin with an agreement with just one state. Until at least five states have joined, a state may not join the consortium if it authorizes two or more carriers domiciled in Washington to offer health plans.

The Commissioner may enter into separate agreements or one uniform agreement. A reciprocity agreement must establish rules for the management of consumer questions and complaints related to health benefit plans approved by one member state but sold in another. The agreement must also establish a mechanism for the payment of premium tax and collection of any reinsurance or risk adjustment assessments that would be applicable in Washington.

Reciprocity states must agree to provide the Commissioner with a list of approved qualifying reciprocal plans and their premium rate schedules as they are approved. The reciprocity states must notify the Commissioner if a plan is disapproved or otherwise removed from the market.

The Commissioner must report to the Legislature by December 1 of each year on the reciprocity consortium's formation, membership, the number of plans offered in Washington through the consortium, the effect on the marketplace in Washington, and recommendations on whether continuing reciprocity sales serves the public health and welfare.

A qualifying reciprocal plan may be offered in the Washington Health Benefit Exchange if it meets the qualifications for certification as a qualified health plan.

The act is declared null and void if Title I of the ACA is declared unconstitutional or is repealed.

#### **Amended Bill Compared to Original Bill:**

The amended bill:

- changes the date after which the Commissioner must allow reciprocal policies in Washington via a consortium from January 2014 to July 1, 2013;
- provides a definition for "qualified reciprocal plans" that may be sold through the consortium;
- requires such plans to have benefits substantially equivalent to Washington's essential health benefits designated under federal law;
- requires qualified reciprocal plans to make certain disclosures to consumers, including a declaration and a side-by-side comparison of the health benefits in the plan;
- requires qualified reciprocal plans to be sold by insurance producers (agents/brokers), but allows electronic marketing and sales as long as a producer is available in Washington with whom the applicant can discuss the plan;
- exempts qualified reciprocal plans from application requirements, rate review requirements, and other insurance regulations (including benefit mandates) to the extent that such an exemption does not conflict with federal law;
- prohibits the Commissioner from entering into an agreement with another state to sell qualified reciprocal plans in Washington until at least five states have been identified that meet or exceed Washington standards (instead of National Association of Insurance Commissioners standards) in network adequacy, consumer protection, market requirements, and claims adjudication and processing;
- by January 1, 2013, requires the Commissioner to report to the Legislature which states have been identified and a plan for seeking a reciprocity agreement with at least one state;
- allows states that authorize two or more carriers domiciled in Washington to join the consortium once five or more states are members of the consortium;
- allows qualified reciprocal plans to be sold through the Exchange if they meet the standards for Exchange certification for qualified health plans. Specifies operating standards for the consortium; and
- declares the act null and void if the ACA is repealed or found unconstitutional.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 21, 2012.

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

**Staff Summary of Public Testimony:**

(In support) There is a need for more choice for small businesses in Washington; right now prices are going up and the number of choices is going down. Businesses are looking for ways to improve coverage for their employees, which will help both the businesses and the employees. This bill will increase the options available and will empower consumers. This bill takes a balanced approach and provides a level playing field for out-of-state insurers to compete in Washington. The policies allowed by this bill must be equivalent to the policies available to federal employees, which provide richer benefits than the plans that are offered in Washington. This bill is a step in the right direction. The timing of this bill is perfect given the changes made by the ACA, which will leave some small businesses out. Out-of-state plans are subject to regulation in their home states, which know how to regulate insurance just as well as Washington. This bill will be good for Washington insurers by allowing them to sell in other states. These plans will not compete with the Washington Health Benefit Exchange. This bill will address health care costs by increasing competition. Businesses do not want "skinny" plans.

(With concerns) Out-of-state plans are not subject to state mandated benefits such as mental health parity, and every category of provider. There is already competition in the small group market in Washington. Although the federal benefits are richer than Washington, this could change based on federal, not state, law. This bill could cause confusion regarding who enforces consumer protections. The federal plans provide similar benefits to those offered in Washington. Reciprocal plans should be allowed to be sold in the Washington Health Benefit Exchange. Carriers domiciled in Washington should also be allowed to participate in the reciprocal agreements. At least two states, Georgia and Wyoming, have similar laws in place.

(Opposed) A simpler way to address the goals of this bill would be to remove undesirable insurance regulations in Washington. This bill provides a mechanism that is different from what the ACA allows. This bill moves the locus of control from Washington to the federal government and other states. It is not clear who enforces consumer protections under this bill, which will make it difficult for consumers to enforce their rights. The enforcer of consumer protections should have a full suite of options available; only allowing a certificate of authority to be removed is insufficient. Reciprocal plans should be subject to Washington's Consumer Protection Act. This bill raises the threat of adverse selection in the Washington Health Benefit Exchange. The timing of this bill is off; the ACA rules on interstate compacts have not yet been released. This bill will disadvantage Washington carriers.

**Persons Testifying:** (In support) Senator Parlette, prime sponsor; Dave Morell; Carolyn Logue, Washington Food Industry Association and South Sound Chamber of Commerce; Dean Hartmon, Capital Business Machines; Ned Witting and Patrick Connor, National Federation of Independent Business; Donna Steward, Association of Washington Business;

Tom Kwieciak, Building Industry Association of Washington; Jim Fricke, Capital Aeroporter; and Gary Smith, Independent Business Association.

(With concerns) Leslie Emerick, Association of Advanced Practice Psychiatric Nurses, Washington East Asian Medicine Association, Home Care Association of Washington, and Washington State Hospice and Palliative Care Organization; Lori Bielinski, Washington State Chiropractic Association; and Drew Bouton, Office of the Insurance Commissioner.

(Opposed) Joe King and Diana Birkett Rakow, Group Health Cooperative; Liz Arjun, Community Health Plan of Washington; Brad Tower, Optometric Physicians of Washington; and Seth Armstrong.

**Persons Signed In To Testify But Not Testifying:** None.