
SENATE BILL 5445

State of Washington

62nd Legislature

2011 Regular Session

By Senators Keiser, Pflug, White, Conway, and Kline; by request of Governor Gregoire

Read first time 01/25/11. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to the creation of a health benefit exchange;
2 adding a new section to chapter 41.05 RCW; and creating new sections.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that health care costs
5 continue to grow at unsustainable rates, hindering the state's ability
6 to invest in other essential services such as education and public
7 safety, decreasing the competitiveness of our businesses, and placing
8 undue strain on many individuals and families.

9 (2) The legislature therefore intends: (a) That state agencies,
10 large and small businesses, and health care providers, insurers, and
11 consumers work together towards the goal of reducing the growth in
12 health care expenditures in the state to no more than four percent per
13 year within five years; (b) that as a means to this end, in
14 implementing the federal affordable care act in Washington, including
15 the health benefit exchange, there be a constant focus on integrating
16 strategies to improve the quality and affordability of our health care
17 delivery system, tailored to the unique circumstances and
18 characteristics of our state.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.05 RCW
2 to read as follows:

3 The state shall establish a health benefit exchange consistent with
4 the federal affordable care act, P.L. 111-148, to begin operations no
5 later than January 1, 2014, and intended to:

6 (1) Increase access to quality affordable health care coverage and
7 reduce the number of uninsured persons in Washington state;

8 (2) Recognize the need for a private health insurance market to
9 exist outside of the exchange and the need for a regulatory framework
10 that applies both inside and outside of the exchange;

11 (3) Create an organized, transparent, and accountable health
12 insurance marketplace for Washingtonians to purchase affordable,
13 quality health care coverage, to claim available federal refundable
14 premium tax credits and cost-sharing subsidies, and to meet the
15 personal responsibility requirements for minimum essential coverage as
16 provided under the federal affordable care act;

17 (4) Recognize that the regulation of the health insurance market,
18 both inside and outside the exchange, should continue to be performed
19 by the insurance commissioner;

20 (5) Strengthen the state health care delivery system and maximize
21 existing efficiencies within the system;

22 (6) Promote quality improvement, cost containment, and innovative
23 payment structures throughout the state health care system;

24 (7) Increase the availability of health care coverage through the
25 private health insurance market to qualified individuals and small
26 employers;

27 (8) Create a health insurance market that competes on the basis of
28 price, quality, service, or other innovative efforts, and not on risk
29 selection to ensure a sustainable system of health care coverage;

30 (9) Promote consumer literacy and empower consumers to compare
31 plans and make informed decisions about their health care and coverage;

32 (10) Effectively and efficiently administer health care subsidies
33 and determination of eligibility for participation in publicly
34 subsidized health care programs, including the exchange;

35 (11) Seamlessly direct consumers to information about and
36 enrollment in programs in addition to those related to health care that
37 are available to lower income individuals and families; and

1 (12) Create opportunities and flexibility to address possible
2 future changes in federal law and funding challenges.

3 NEW SECTION. **Sec. 3.** The definitions in this section apply
4 throughout sections 4 through 6 of this act, unless the context clearly
5 requires otherwise. Terms and phrases used in sections 4 through 6 of
6 this act that are not defined in this section must be defined as
7 consistent with implementation of a state health benefit exchange
8 pursuant to the affordable care act.

9 (1) "Administrator" means the administrator of the Washington state
10 health care authority, established under chapter 41.05 RCW.

11 (2) "Authority" means the Washington state health care authority,
12 established under chapter 41.05 RCW.

13 (3) "Commissioner" means the insurance commissioner, established in
14 Title 48 RCW.

15 (4) "Exchange" means a state health benefit exchange pursuant to
16 the affordable care act.

17 (5) "Development board" means the health benefit exchange
18 development board established under section 4 of this act.

19 (6) "Affordable care act" means the federal patient protection and
20 affordable care act, P.L. 111-148, as amended by the federal health
21 care and education reconciliation act of 2010, P.L. 111-152, or federal
22 regulations or guidance issued under the affordable care act.

23 NEW SECTION. **Sec. 4.** (1) The health benefit exchange development
24 board is hereby established, composed of seven persons with expertise
25 in the Washington state health care system and private and public
26 health care coverage. By the effective date of this section, the
27 governor shall appoint five members of the board, and the commissioner
28 shall appoint two. The administrator shall serve as the chair of the
29 development board.

30 (2) Members of the development board must be reimbursed for their
31 travel expenses while on official business in accordance with RCW
32 43.03.050 and 43.03.060. The development board shall prescribe rules
33 for the conduct of its business. Meetings of the development board are
34 at the call of the chair.

35 (3) The development board may establish technical advisory

1 committees or seek the advice of technical experts when necessary to
2 execute the powers and duties included in this section and section 5 of
3 this act.

4 (4) The development board is not civilly or criminally liable and
5 may not have any penalty or cause of action of any nature arise against
6 them for any action taken or not taken, including any discretionary
7 decision or failure to make a discretionary decision, when the action
8 or inaction is done in good faith and in the performance of the powers
9 and duties under this section or section 5 of this act. Nothing in
10 this section prohibits legal actions against the development board to
11 enforce the development board's statutory or contractual duties or
12 obligations.

13 NEW SECTION. **Sec. 5.** (1) The health benefit development board
14 shall coordinate with the administrator to successfully complete
15 implementation of planning and establishment grants received by the
16 authority pursuant to the affordable care act. Upon establishment of
17 the development board, the administrator shall consult with the
18 development board regarding the submission of grant proposals to assist
19 with the planning and establishment of a state-administered health
20 benefit exchange, including additional applications for planning and
21 establishment grants to the United States secretary of health and human
22 services. The administrator, in consultation with the development
23 board, shall implement the provisions of the planning and establishment
24 grants as approved by the United States secretary of health and human
25 services, such as development of the necessary information technology
26 to support implementation of exchange activities.

27 (2) By January 1, 2012, the development board, in coordination with
28 the administrator, shall develop a business plan and timeline for
29 establishing and implementing a state-administered health benefits
30 exchange. The business plan and timeline must include analysis and
31 recommendations on the following:

32 (a) The governance, operations, and administration of the exchange,
33 including:

- 34 (i) The goals and principles of governing the exchange;
- 35 (ii) The creation and implementation of a single state-administered
36 exchange for all geographic areas in the state that operates as the

1 exchange for both the individual and small employer markets by January
2 1, 2014;

3 (iii) Whether and under what circumstances the state should
4 consider establishment of a regionally administered multistate exchange
5 as an option after implementation of the single state-administered
6 exchange;

7 (iv) Whether the role of an exchange includes serving as an
8 aggregator of funds that comprise the premium for a health plan offered
9 through the exchange;

10 (v) The administrative, fiduciary, accounting, contracting, and
11 other services to be provided by the exchange;

12 (vi) Coordination of the exchange with other state programs; and
13 (vii) Development of sustainable funding for administration of the
14 exchange as of January 1, 2015;

15 (b) Whether to adopt and implement a federal basic health plan
16 option as authorized in the affordable care act, whether the federal
17 basic health plan option should be administered by the entity that
18 administers the exchange or by a state agency, and whether the federal
19 basic health plan option should merge risk pools for rating with any
20 portion of the state's medicaid program;

21 (c) Individual and small group market impacts, including whether
22 to:

23 (i) Merge the risk pools for rating the individual and small group
24 markets in the exchange and the private health insurance markets; and
25 (ii) Increase the small group market to firms with up to one
26 hundred employees;

27 (d) Creation of a competitive purchasing environment for qualified
28 health plans offered through the exchange, including promoting
29 participation in the exchange to a level sufficient to provide
30 sustainable funding for the exchange;

31 (e) Certifying, selecting, and facilitating the offer of individual
32 and small group plans through an exchange, to include designation of
33 qualified health plans and the levels of coverage for the plans;

34 (f) The role and services provided by producers and navigators;

35 (g) Effective implementation of risk management methods:
36 Reinsurance, risk corridors, and risk adjustment, to include the entity
37 designated to operate reinsurance and risk adjustment;

1 (h) Participation in innovative efforts to contain costs in
2 Washington's markets for public and private health care coverage;

3 (i) Providing federal refundable premium tax credits and reduced
4 cost-sharing subsidies through the exchange, including the processes
5 and entity responsible for determining eligibility to participate in
6 the exchange and the cost-sharing subsidies provided through the
7 exchange; and

8 (j) The staff, resources, and revenues necessary to operate and
9 administer an exchange for the first two years of operation.

10 (3) The development board shall consult with stakeholders relevant
11 to carrying out the activities required under this section, including:

12 (a) Educated health care consumers who are enrolled in commercial
13 health insurance coverage and publicly subsidized health care programs;

14 (b) individuals and entities with experience in facilitating enrollment
15 in health insurance coverage, including health carriers, producers, and

16 navigators; (c) representatives of small businesses, employees of small
17 businesses, and self-employed individuals; (d) advocates for enrolling

18 hard to reach populations and populations enrolled in publicly
19 subsidized health care programs; (e) the office of the insurance

20 commissioner; (f) publicly subsidized health care programs; and (g)
21 members in good standing of the American academy of actuaries.

22 NEW SECTION. **Sec. 6.** (1) The administrator, in coordination with
23 the development board, may enter into:

24 (a) Information-sharing agreements with federal and state agencies
25 and other state exchanges to carry out the provisions of this act:
26 PROVIDED, That, such agreements include adequate protections with
27 respect to the confidentiality of the information to be shared and
28 comply with all state and federal laws and regulations; and

29 (b) Interdepartmental agreements with the office of the insurance
30 commissioner, the department of social and health services, the
31 department of health, and any other state agencies necessary to
32 implement this act.

33 (2) To the extent funding is available, the administrator shall:

34 (a) Provide staff and resources to assist the development board in
35 the implementation of this act;

36 (b) In consultation with the development board, apply for planning
37 and establishment grants pursuant to the affordable care act;

- 1 (c) Manage and administer the grant and other funds;
- 2 (d) Expend funds specifically appropriated by the legislature to
- 3 implement the provisions of this act; and
- 4 (e) Adopt all rules necessary for the implementation of this act.
- 5 All rules must be adopted in accordance with chapter 34.05 RCW.

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