

# HOUSE BILL REPORT

## 2SSB 5540

---

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

**Title:** An act relating to expanding opportunities to purchase health care coverage from out-of-state carriers.

**Brief Description:** Expanding opportunities to purchase health care coverage from out-of-state carriers.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Parlette, Schlicher, Becker, Bailey, Dammeier, Keiser, Rolfes and Frockt).

**Brief History:**

**Committee Activity:**

Health Care & Wellness: 3/19/13, 3/26/13 [DPA].

**Brief Summary of Second Substitute 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.

---

### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** Do pass as amended. Signed by 16 members: Representatives Cody, Chair; Jinkins, Vice Chair; Schmick, Ranking Minority Member; Angel, Clibborn, Green, Harris, Manweller, Moeller, Morrell, Riccelli, Rodne, Ross, Short, Tharinger and Van De Wege.

**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 (PPACA),

---

*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.*

states are authorized to enter into compacts allowing carriers to sell health insurance across state lines.

Under the PPACA, 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 either: (a) be licensed in each state in which it offers a plan; or (b) submit to the jurisdiction of the state in which the consumer resides; and
- 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 PPACA;
- will provide coverage to at least a comparable number of residents as the provisions of the PPACA;
- 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.

---

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

Beginning July 1, 2015, the Insurance Commissioner (Commissioner) is authorized to contract with other states to establish and operate a consortium governing the sale of "qualifying reciprocal plans" by "qualifying reciprocal insurers" in the small group market.

A qualifying reciprocal plan is an out-of-state insurance plan that:

- contains an essential health benefits package that is substantially equal to the essential health benefit benchmark plan designated in Washington and provides minimum essential coverage under the PPACA;
- has been approved by a state regulator for a state with which the Commissioner has a reciprocity agreement;
- is not a health savings account or a qualified high deductible health plan; and
- complies with state market rules for individual and small group plans offered inside and outside the Washington's health benefit exchange.

A "qualifying reciprocal insurer" is an out-of-state insurer that:

- meets the definition of "issuer" in the PPACA;
- is authorized in a state that is a member of the consortium;

- proposes to sell only a qualifying reciprocal plan in Washington;
- has and maintains total adjusted capital that is greater than three times its authorized control level risk-based capital; and
- complies with state laws applicable to issuers in Washington to the extent required by reciprocity agreement.

A qualifying reciprocal insurer and its qualifying reciprocal plan are exempt from certain state insurance requirements, including mandates that are not a part of the qualifying reciprocal plan, requirements relating to health plans offered to small businesses, and requirements relating to certificates of authority. A qualifying reciprocal plan must use a premium rate schedule approved by its state of issue and apply the standards for calculating premium required by the federal government for out-of-state coverage. The premium rate schedule may not be adjusted more than once a year. Qualifying reciprocal plans are limited to the small group market.

Qualifying reciprocal plans must be filed with the Commissioner, who must approve the plan if it meets the definition of a qualifying reciprocal plan. When determining whether the qualifying reciprocal plan contains an essential health benefits package that is substantially equal to Washington's essential health benefit benchmark plan, the Commissioner must utilize the same standards and procedures applicable to domestic carriers and may not accept the determination from a consortium state.

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

The benefits in this policy may 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 (or an agent/broker) must also provide applicants with a written side-by-side comparison of the health benefits under the plan, including differences in definition of each benefit between Washington law of the law and the approving state, whether the benefit is required under Washington law, and the difference in the premium rate due to the difference in state laws. A qualifying reciprocal insurer offering a qualifying reciprocal plan must offer the plan through agents/brokers licensed in Washington. The qualifying reciprocal insurer may electronically market plans.

By January 1, 2015, 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.

Insurers must inform consortium states in writing of their intent to offer a qualifying reciprocal plan at least 60 days prior to the first date of offer. Consortium states may establish their own requirements for notification and offer.

A qualifying reciprocal plan may be offered through Washington's health benefit exchange if it meets the exchange's certification requirements and follows state market rules applicable to individual and small group plans.

Beginning in 2016 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.

The Commissioner may enter into one or more personal service contracts to provide the services necessary to accomplish his or her responsibilities with respect to the consortium.

#### **Amended Bill Compared to Second Substitute Bill:**

The amended bill:

- requires a qualifying reciprocal insurer to meet the definition of "issuer" in the PPACA;
- requires qualifying reciprocal insurers to comply with state laws to the extent required by the reciprocity agreement;
- requires a qualifying reciprocal plan to contain an essential health benefits package that is substantially equal (as opposed to equivalent) to Washington's essential health benefit benchmark plan and to provide minimum essential coverage as required in the PPACA;
- requires the Commissioner to utilize the same standards and procedures applicable to domestic carriers when determining whether a qualifying reciprocal plan contains an essential health benefits package that is substantially equal to Washington's essential health benefit benchmark plan;

- prohibits the Commissioner from relying on a foreign state's determination as to whether the qualifying reciprocal plan contains an essential health benefits package that is substantially equal to Washington's essential health benefit benchmark plan;
- requires a qualifying reciprocal plan to be approved by a state regulator, instead of a state;
- requires the disclosure a qualifying reciprocal plan must make to consumers to inform them that the benefits in the qualifying reciprocal plan may not (instead of "do not") include each of the benefits required in Washington;
- requires the written comparison to be provided by a producer if he or she is offering the plan to the applicant;
- requires a producer offering a qualifying reciprocal plan to be licensed in Washington (instead of in compliance with the Washington laws relating to producers);
- removes the requirement that a producer be available for discussion if a qualifying reciprocal plan is marketed or sold electronically;
- requires a qualifying reciprocal plan to use a premium rate schedule approved by its issuing state and apply the standards for calculating the premium required by the federal government for out-of-state coverage;
- prohibits the rate schedule of a qualifying reciprocal plan from being adjusted more than once per year;
- restricts qualifying reciprocal plans to the small group market;
- requires a qualifying reciprocal plan to be filed with the Commissioner prior to use;
- clarifies that the consortium is not intended to operate as a compact;
- delays the date upon which the Commissioner may enter into a consortium agreement to July 1, 2015, (from July 1, 2014);
- delays the Commissioner's obligation to report on the states that have been identified for the consortium to January 1, 2015, (from January 1, 2014);
- delays the start of the annual reporting requirement to December 1, 2016, (from December 1, 2014);
- allows the Commissioner to enter into one or more personal service contracts with third-party contractors to provide the services necessary to accomplish the Commissioner's responsibilities under the act; and
- makes the reporting requirements null and void if specific funding is not appropriated for that purpose.

---

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However section 6 relating to reporting by the Commissioner is null and void unless specifically funded in the budget.

**Staff Summary of Public Testimony:**

(In support) Allowing small businesses to purchase across state lines will increase access to quality plans and foster competition. There are too few plans right now in Washington for a

competitive marketplace. This bill requires that the out-of-state plans offered in Washington be substantially similar to Washington plans and subject to many of the same regulations. The plans must also come from states that meet or exceed Washington's standards. Consumers must go through a broker to purchase these plans, which will ensure that they receive the information they need. The bill will also open up markets in other states to Washington insurance products.

(With concerns) Only three states currently authorize this type of consortium, but the bill requires the Commissioner to find five. Consumer protections, such as market conduct and network adequacy, should apply to the out-of-state insurers. Out-of-state insurers should not be exempt from community rating. The Commissioner should be allowed to utilize a contractor to fulfill some of the tasks in the bill.

(Opposed) Out-of-state insurers are exempt from many important consumer protections under this bill. The bill exempts out-of-state insurers from many of the state's mandates, including mental health parity and every category of provider. Although the out-of-state insurers will be subject to the federal mental health parity mandate, this mandate provides less protection than Washington's. Out-of-state insurers should be subject to every category of provider mandate in order to ensure that patients have access to quality care. The bill does not define "substantial equivalence" and allows the Commissioner to accept another state's determination of equivalence. It is not clear who will deal with consumer complaints regarding out-of-state insurers.

**Persons Testifying:** (In support) Patrick Connor, National Federation of Independent Business.

(With concerns) Drew Bouton, Office of the Insurance Commissioner.

(Opposed) Lucy Homans, Washington State Psychological Association; Len McComb, Washington State Hospital Association; Leslie Emerick, Association of Advanced Practice Psychiatric Nurses and Washington East Asian Medicine Association; and Lori Grassi, Washington State Chiropractic Association.

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