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ENGROSSED SUBSTITUTE SENATE BILL 6353

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State of Washington

54th Legislature

1996 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Quigley, Prentice, Wojahn, Fairley, Thibaudeau and Pelz; by request of Insurance Commissioner)

Read first time 02/02/96.

1 AN ACT Relating to expansion of the Washington state health  
2 insurance coverage access act; and amending RCW 48.41.020, 48.41.030,  
3 48.41.040, 48.41.050, 48.41.060, 48.41.070, 48.41.080, 48.41.090,  
4 48.41.100, 48.41.120, and 48.41.180.

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

6 **Sec. 1.** RCW 48.41.020 and 1987 c 431 s 2 are each amended to read  
7 as follows:

8 It is the purpose and intent of the legislature to provide access  
9 to health insurance coverage to all residents of Washington who are  
10 denied adequate health insurance for any reason. It is the intent of  
11 the legislature that adequate levels of health insurance coverage be  
12 made available to residents of Washington who are otherwise considered  
13 uninsurable or who are underinsured. It is the intent of the  
14 Washington state health insurance coverage access act to provide a  
15 mechanism to insure the availability of comprehensive health insurance  
16 to persons unable to obtain such insurance coverage on either an  
17 individual or group basis directly under any health plan. In addition,  
18 it is also the intent of the legislature to expand the Washington state  
19 health insurance coverage access act to include a reinsurance program

1 for individual health insurance to stabilize the rates for individual  
2 health insurance.

3 **Sec. 2.** RCW 48.41.030 and 1989 c 121 s 1 are each amended to read  
4 as follows:

5 As used in this chapter, the following terms have the meaning  
6 indicated, unless the context requires otherwise:

7 (1) "Accounting year" means a twelve-month period determined by the  
8 board for purposes of record-keeping and accounting. The first  
9 accounting year may be more or less than twelve months and, from time  
10 to time in subsequent years, the board may order an accounting year of  
11 other than twelve months as may be required for orderly management and  
12 accounting of the pool.

13 (2) "Administrator" means the entity chosen by the board to  
14 administer the pool under RCW 48.41.080.

15 (3) "Board" means the board of directors of the pool.

16 (4) "Commissioner" means the insurance commissioner.

17 (5) "Health care facility" has the same meaning as in RCW  
18 70.38.025.

19 (6) "Health care provider" means any physician, facility, or health  
20 care professional, who is licensed in Washington state and entitled to  
21 reimbursement for health care services.

22 (7) "Health care services" means services for the purpose of  
23 preventing, alleviating, curing, or healing human illness or injury.

24 (8) "Health insurance" means any group or individual disability  
25 insurance policy, health care service contract, and health maintenance  
26 agreement, except those contracts entered into for the provision of  
27 health care services pursuant to Title XVIII of the Social Security  
28 Act, 42 U.S.C. Sec. 1395 et seq. The term does not include short-term  
29 care, long-term care, dental, vision, accident, fixed indemnity,  
30 disability income contracts, civilian health and medical program for  
31 the uniform services (CHAMPUS), 10 U.S.C. 55, limited benefit or credit  
32 insurance, coverage issued as a supplement to liability insurance,  
33 insurance arising out of the worker's compensation or similar law,  
34 automobile medical payment insurance, or insurance under which benefits  
35 are payable with or without regard to fault and which is statutorily  
36 required to be contained in any liability insurance policy or  
37 equivalent self-insurance.

1 (9) "Health plan" means any arrangement by which persons, including  
2 dependents or spouses, (~~covered or making application to be covered~~  
3 ~~under this pool,~~) have access to hospital and medical benefits or  
4 reimbursement including any group or individual disability insurance  
5 policy; health care service contract; health maintenance agreement;  
6 uninsured arrangements of group or group-type contracts including  
7 employer self-insured, cost-plus, or other benefit methodologies not  
8 involving insurance or not governed by Title 48 RCW; coverage under  
9 group-type contracts which are not available to the general public and  
10 can be obtained only because of connection with a particular  
11 organization or group; and coverage by medicare or other governmental  
12 benefits. This term includes coverage through "health insurance" as  
13 defined under this section, and specifically excludes those types of  
14 programs excluded under the definition of "health insurance" in  
15 subsection (8) of this section.

16 (10) "Insured" means any individual resident of this state who is  
17 eligible to receive benefits from any member, or other health plan.

18 (11) "Medical assistance" means coverage under Title XIX of the  
19 federal Social Security Act (42 U.S.C., Sec. 1396 et seq.) and chapter  
20 74.09 RCW.

21 (12) "Medicare" means coverage under Title XVIII of the Social  
22 Security Act, (42 U.S.C. Sec. 1395 et seq., as amended).

23 (13) "Member" means any commercial insurer which provides  
24 disability insurance or stop-loss coverage, any health care service  
25 contractor, and any health maintenance organization licensed under  
26 Title 48 RCW. "Member" shall also mean, as soon as authorized by  
27 federal law, employers and other entities, including a self-funding  
28 entity and employee welfare benefit plans that provide health plan  
29 benefits in this state on or after May 18, 1987. "Member" does not  
30 include any insurer, health care service contractor, or health  
31 maintenance organization whose products are exclusively dental products  
32 or those products excluded from the definition of "health insurance"  
33 set forth in subsection (8) of this section.

34 (14) "Plan of operation" means the pool, including articles, by-  
35 laws, and operating rules, adopted by the board pursuant to RCW  
36 48.41.050.

37 (15) "Pool" means the Washington state health insurance pool as  
38 created in RCW 48.41.040.

1 (16) "Substantially equivalent health plan" means a "health plan"  
2 as defined in subsection (9) of this section which, in the judgment of  
3 the board or the administrator, offers persons including dependents or  
4 spouses covered or making application to be covered by this pool an  
5 overall level of benefits deemed approximately equivalent to the  
6 minimum benefits available under this pool.

7 **Sec. 3.** RCW 48.41.040 and 1989 c 121 s 2 are each amended to read  
8 as follows:

9 (1) There is hereby created a nonprofit entity to be known as the  
10 Washington state health insurance pool. All members in this state on  
11 or after May 18, 1987, shall be members of the pool. When authorized  
12 by federal law, all self-insured employers shall also be members of the  
13 pool.

14 (2) Pursuant to chapter 34.05 RCW the commissioner shall, within  
15 ninety days after May 18, 1987, give notice to all members of the time  
16 and place for the initial organizational meetings of the pool. A board  
17 of directors shall be established, which shall be comprised of nine  
18 members. The commissioner shall select three members of the board who  
19 shall represent (a) the general public, (b) health care providers, and  
20 (c) health insurance agents. The remaining members of the board shall  
21 be selected by election from among the members of the pool. The  
22 elected members shall, to the extent possible, include at least one  
23 representative of health care service contractors, one representative  
24 of health maintenance organizations, and one representative of  
25 commercial insurers which provides disability insurance. When self-  
26 insured organizations become eligible for participation in the pool,  
27 the membership of the board shall be increased to eleven and at least  
28 one member of the board shall represent the self-insurers.

29 (3) The original members of the board of directors shall be  
30 appointed for intervals of one to three years. Thereafter, all board  
31 members shall serve a term of three years. Board members shall receive  
32 no compensation, but shall be reimbursed for all travel expenses as  
33 provided in RCW 43.03.050 and 43.03.060.

34 (4) The board shall submit to the commissioner a plan of operation  
35 for the pool and any amendments thereto necessary or suitable to assure  
36 the fair, reasonable, and equitable administration of the pool. By  
37 January 1, 1997, the board shall amend the plan to include operation of  
38 the reinsurance program authorized by this chapter. The commissioner

1 shall, after notice and hearing pursuant to chapter 34.05 RCW, approve  
2 the plan of operation if it is determined to assure the fair,  
3 reasonable, and equitable administration of the pool and provides for  
4 the sharing of pool losses on an equitable, proportionate basis among  
5 the members of the pool. The plan of operation shall become effective  
6 upon approval in writing by the commissioner consistent with the date  
7 on which the coverage under this chapter must be made available. If  
8 the board fails to submit a plan of operation within one hundred eighty  
9 days after the appointment of the board or any time thereafter fails to  
10 submit acceptable amendments to the plan, the commissioner shall,  
11 within ninety days after notice and hearing pursuant to chapters 34.05  
12 and 48.04 RCW, adopt such rules as are necessary or advisable to  
13 effectuate this chapter. The rules shall continue in force until  
14 modified by the commissioner or superseded by a plan submitted by the  
15 board and approved by the commissioner.

16 **Sec. 4.** RCW 48.41.050 and 1987 c 431 s 5 are each amended to read  
17 as follows:

18 The plan of operation submitted by the board to the commissioner  
19 shall:

20 (1) Establish procedures for the handling and accounting of assets  
21 and moneys of the pool;

22 (2) Establish regular times and places for meetings of the board of  
23 directors;

24 (3) Establish procedures for records to be kept of all financial  
25 transactions and for an annual fiscal reporting to the commissioner;

26 (4) Contain additional provisions necessary and proper for the  
27 execution of the powers and duties of the pool;

28 (5) Establish procedures for the collection of assessments from all  
29 members to provide for claims paid under the plan and for  
30 administrative expenses incurred or estimated to be incurred during the  
31 period for which the assessment is made;

32 (6) Establish the amount of assessment pursuant to RCW 48.41.060  
33 for both reinsurance and health insurance, which shall occur after  
34 March 1st of each calendar year, and which shall be due and payable  
35 within thirty days of the receipt of the assessment notice;

36 (7) Select an administrator in accordance with RCW 48.41.080;

1 (8) Develop and implement a program to publicize the existence of  
2 the plan, the eligibility requirements and procedures for enrollment,  
3 and to maintain public awareness of the plan; and

4 (9) Establish procedures under which applicants and participants  
5 may have grievances reviewed by an impartial body and reported to the  
6 board.

7 **Sec. 5.** RCW 48.41.060 and 1989 c 121 s 3 are each amended to read  
8 as follows:

9 The board shall have the general powers and authority granted under  
10 the laws of this state to insurance companies licensed to transact the  
11 kinds of insurance defined under this title. In addition thereto, the  
12 board may:

13 (1) Enter into contracts as are necessary or proper to carry out  
14 the provisions and purposes of this chapter including the authority,  
15 with the approval of the commissioner, to enter into contracts with  
16 similar pools of other states for the joint performance of common  
17 administrative functions, or with persons or other organizations for  
18 the performance of administrative functions;

19 (2) Sue or be sued, including taking any legal action as necessary  
20 to avoid the payment of improper claims against the pool or the  
21 coverage provided by or through the pool;

22 (3) Establish appropriate rates, rate schedules, rate adjustments,  
23 expense allowances, agent referral fees, claim reserve formulas and any  
24 other actuarial functions appropriate to the operation of the pool.  
25 Rates shall not be unreasonable in relation to the coverage provided,  
26 the risk experience, and expenses of providing the coverage. Rates and  
27 rate schedules may be adjusted for appropriate risk factors such as age  
28 and area variation in claim costs and shall take into consideration  
29 appropriate risk factors in accordance with established actuarial  
30 underwriting practices;

31 (4) Assess members of the pool in accordance with the provisions of  
32 this chapter, and make advance interim assessments as may be reasonable  
33 and necessary for the organizational or interim operating expenses.  
34 Any interim assessments will be credited as offsets against any regular  
35 assessments due following the close of the year;

36 (5) Issue policies of insurance and reinsurance in accordance with  
37 the requirements of this chapter;

1 (6) Appoint appropriate legal, actuarial and other committees as  
2 necessary to provide technical assistance in the operation of the pool,  
3 policy, and other contract design, and any other function within the  
4 authority of the pool; and

5 (7) Conduct periodic audits to assure the general accuracy of the  
6 financial data submitted to the pool, and the board shall cause the  
7 pool to have an annual audit of its operations by an independent  
8 certified public accountant.

9 **Sec. 6.** RCW 48.41.070 and 1989 c 121 s 4 are each amended to read  
10 as follows:

11 The pool programs shall be subject to examination by the  
12 commissioner as provided under chapter 48.03 RCW. The board of  
13 directors shall submit to the commissioner, not later than one hundred  
14 twenty days after the end of each accounting year, a financial report  
15 for the year in a form approved by the commissioner. The board of  
16 directors shall further report to the appropriate standing committees  
17 of each house of the legislature by March 1st of each year.

18 **Sec. 7.** RCW 48.41.080 and 1989 c 121 s 5 are each amended to read  
19 as follows:

20 The board shall select an administrator from the membership of the  
21 pool whether domiciled in this state or another state through a  
22 competitive bidding process to administer the pool programs.

23 (1) The board shall evaluate bids based upon criteria established  
24 by the board, which shall include:

25 (a) The administrator's proven ability to handle reinsurance,  
26 accident, and health insurance;

27 (b) The efficiency of the administrator's claim-paying procedures;

28 (c) An estimate of the total charges for administering the plan;  
29 and

30 (d) The administrator's ability to administer the pool in a cost-  
31 effective manner.

32 (2) The administrator shall serve for a period of three years  
33 subject to removal for cause. At least six months prior to the  
34 expiration of each three-year period of service by the administrator,  
35 the board shall invite all interested parties, including the current  
36 administrator, to submit bids to serve as the administrator for the  
37 succeeding three-year period. Selection of the administrator for this

1 succeeding period shall be made at least three months prior to the end  
2 of the current three-year period.

3 (3) The administrator shall perform such duties as may be assigned  
4 by the board including:

5 (a) All eligibility and administrative claim payment functions  
6 relating to the pool;

7 (b) Establishing a premium billing procedure for collection of  
8 premiums from insured persons and reinsured companies. Billings shall  
9 be made on a periodic basis as determined by the board, which shall not  
10 be more frequent than a monthly billing;

11 (c) Performing all necessary functions to assure timely payment of  
12 benefits to covered persons under the pool including:

13 (i) Making available information relating to the proper manner of  
14 submitting a claim for benefits to the pool, and distributing forms  
15 upon which submission shall be made; and

16 (ii) Evaluating the eligibility of each claim for payment by the  
17 pool;

18 (d) Submission of regular reports to the board regarding the  
19 operation of the pool. The frequency, content, and form of the report  
20 shall be as determined by the board;

21 (e) Following the close of each accounting year, determination of  
22 net paid and earned premiums, the expense of administration, and the  
23 paid and incurred losses for the year and reporting this information to  
24 the board and the commissioner on a form as prescribed by the  
25 commissioner.

26 (4) The administrator shall be paid as provided in the contract  
27 between the board and the administrator for its expenses incurred in  
28 the performance of its services.

29 **Sec. 8.** RCW 48.41.090 and 1989 c 121 s 6 are each amended to read  
30 as follows:

31 (1) Following the close of each accounting year, the pool  
32 administrator shall determine the net premium (premiums less  
33 administrative expense allowances), the pool expenses of  
34 administration, and incurred losses for the year, taking into account  
35 investment income and other appropriate gains and losses for all  
36 programs administered by the board.

37 (2)(a) Each member's proportion of participation in the pool shall  
38 be determined annually by the board based on annual statements and



1 other reports deemed necessary by the board and filed by the member  
2 with the commissioner; and shall be determined by multiplying the total  
3 cost of pool operation by a fraction, the numerator of which equals  
4 that member's total number of resident insured persons, including  
5 spouse and dependents under the member's health plan in the state  
6 during the preceding calendar year, and the denominator of which equals  
7 the total number of resident insured persons including spouses and  
8 dependents insured under all health plans in the state by pool members.  
9 In calculating assessments for reinsurance, (i) the numerator shall not  
10 include the total number of resident insured persons, including spouses  
11 and dependents, in health plans sold by pool members that cover groups  
12 of fifty persons or less, and (ii) the numerator for reinsured members  
13 shall not include any business reinsured with the pool.

14 (b) Any deficit incurred by the pool shall be recouped by  
15 assessments among members apportioned under this subsection pursuant to  
16 the formula set forth by the board among members.

17 (3) The board may abate or defer, in whole or in part, the  
18 assessment of a member if, in the opinion of the board, payment of the  
19 assessment would endanger the ability of the member to fulfill its  
20 contractual obligations. If an assessment against a member is abated  
21 or deferred in whole or in part, the amount by which such assessment is  
22 abated or deferred may be assessed against the other members in a  
23 manner consistent with the basis for assessments set forth in  
24 subsection (2) of this section. The member receiving such abatement or  
25 deferment shall remain liable to the pool for the deficiency.

26 (4) If assessments exceed actual losses and administrative expenses  
27 of the pool, the excess shall be held at interest and used by the board  
28 to offset future losses or to reduce pool premiums. As used in this  
29 subsection, "future losses" includes reserves for incurred but not  
30 reported claims.

31 **Sec. 9.** RCW 48.41.100 and 1995 c 34 s 5 are each amended to read  
32 as follows:

33 (1) Any individual person who is a resident of this state is  
34 eligible for coverage upon providing evidence of rejection for medical  
35 reasons, a requirement of restrictive riders, an up-rated premium, or  
36 a preexisting conditions limitation on health insurance, the effect of  
37 which is to substantially reduce coverage from that received by a  
38 person considered a standard risk, by at least one member within six

1 months of the date of application. Evidence of rejection may be waived  
2 in accordance with rules adopted by the board.

3 (2) The following persons are not eligible for coverage by the  
4 pool:

5 (a) Any person having terminated coverage in the pool unless (i)  
6 twelve months have lapsed since termination, or (ii) that person can  
7 show continuous other coverage which has been involuntarily terminated  
8 for any reason other than nonpayment of premiums;

9 (b) Any person on whose behalf the pool has paid out five hundred  
10 thousand dollars in benefits;

11 (c) Inmates of public institutions and persons whose benefits are  
12 duplicated under public programs.

13 (3) Any person whose health insurance coverage is involuntarily  
14 terminated for any reason other than nonpayment of premium may apply  
15 for coverage under the plan.

16 (4) Any member offering individual health insurance shall be  
17 considered to have reinsurance of such benefits in accordance with the  
18 standards established by the board.

19 **Sec. 10.** RCW 48.41.120 and 1989 c 121 s 8 are each amended to read  
20 as follows:

21 (1) Subject to the limitation provided in subsection (3) of this  
22 section, a pool policy offered in accordance with this chapter shall  
23 impose a deductible. Deductibles of five hundred dollars and one  
24 thousand dollars on a per person per calendar year basis shall  
25 initially be offered. The board may authorize deductibles in other  
26 amounts. The deductible shall be applied to the first five hundred  
27 dollars, one thousand dollars, or other authorized amount of eligible  
28 expenses incurred by the covered person.

29 (2) Subject to the limitations provided in subsection (3) of this  
30 section, a mandatory coinsurance requirement shall be imposed at the  
31 rate of twenty percent of eligible expenses in excess of the mandatory  
32 deductible.

33 (3) The maximum aggregate out of pocket payments for eligible  
34 expenses by the insured in the form of deductibles and coinsurance  
35 shall not exceed in a calendar year:

36 (a) One thousand five hundred dollars per individual, or three  
37 thousand dollars per family, per calendar year for the five hundred  
38 dollar deductible policy;

1 (b) Two thousand five hundred dollars per individual, or five  
2 thousand dollars per family per calendar year for the one thousand  
3 dollar deductible policy; or

4 (c) An amount authorized by the board for any other deductible  
5 policy.

6 (4) Eligible expenses incurred by a covered person in the last  
7 three months of a calendar year, and applied toward a deductible, shall  
8 also be applied toward the deductible amount in the next calendar year.

9 (5) A pool reinsurance policy shall be developed by the pool in  
10 accordance with this chapter using the system the pool finds most  
11 conducive to promoting access to affordable health insurance,  
12 containing health care costs, and stabilizing individual insurance  
13 premiums at rates no higher than those of comparable insurance sold to  
14 groups. The pool may apply deductibles, copayments, and thresholds for  
15 such reinsurance at any levels or in any forms it believes will best  
16 accomplish these purposes. The pool shall apply any managed care and  
17 claims handling techniques it may determine the need for, so long as  
18 they are applied consistently with respect to all reinsured members.

19 **Sec. 11.** RCW 48.41.180 and 1987 c 431 s 18 are each amended to  
20 read as follows:

21 (1) Commencing with May 18, 1987, every member shall provide a  
22 notice and an application for coverage by the pool to any person who  
23 receives a rejection of coverage for health insurance or health care  
24 services, or has any health condition limited or excluded. The notice  
25 shall state that the person is eligible to apply for health insurance  
26 provided by the pool.

27 (2) Members of the pool shall provide the brochure outlining the  
28 benefits and exclusions of the pool policy to any person who is  
29 rejected by a member or who is offered a policy containing restrictive  
30 riders, up-rated premiums, or a preexisting conditions limitation on a  
31 health insurance plan.

32 (3) Commencing with July 1, 1996, every member who offers or  
33 provides group health insurance shall actively market to small groups  
34 and individuals the model basic health plan. Rates for individual  
35 plans established by the member shall not exceed the rate charged for  
36 small group plans by the member. The health care authority shall  
37 ensure that its model basic health plan is designed to permit both  
38 managed care and indemnity type benefit plans.

1        NEW SECTION.    **Sec. 12.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

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