

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5445

Chapter 317, Laws of 2011

62nd Legislature
2011 Regular Session

HEALTH BENEFIT EXCHANGE

EFFECTIVE DATE: 07/22/11

Passed by the Senate April 18, 2011
YEAS 32 NAYS 16

BRAD OWEN

President of the Senate

Passed by the House April 11, 2011
YEAS 75 NAYS 22

FRANK CHOPP

Speaker of the House of Representatives

Approved May 11, 2011, 2:04 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5445** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 11, 2011

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5445

AS AMENDED BY THE HOUSE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By Senate Health & Long-Term Care (originally sponsored by Senators Keiser, Pflug, White, Conway, and Kline; by request of Governor Gregoire)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to the creation of a health benefit exchange;
2 adding a new chapter to Title 43 RCW; and creating new sections.

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

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
5 affordable care act requires the establishment of health benefit
6 exchanges. The legislature intends to establish an exchange, including
7 a governance structure. There are many policy decisions associated
8 with establishing an exchange that need to be made that will take a
9 great deal of effort and expertise. It is therefore the intent of the
10 legislature to establish a process through which these policy decisions
11 can be made by the legislature and the governor by the deadline
12 established in the affordable care act.

13 (2) The exchange is intended to:

14 (a) Increase access to quality affordable health care coverage,
15 reduce the number of uninsured persons in Washington state, and
16 increase the availability of health care coverage through the private
17 health insurance market to qualified individuals and small employers;

18 (b) Provide consumer choice and portability of health insurance,
19 regardless of employment status;

1 (c) Create an organized, transparent, and accountable health
2 insurance marketplace for Washingtonians to purchase affordable,
3 quality health care coverage, to claim available federal refundable
4 premium tax credits and cost-sharing subsidies, and to meet the
5 personal responsibility requirements for minimum essential coverage as
6 provided under the federal affordable care act;

7 (d) Promote consumer literacy and empower consumers to compare
8 plans and make informed decisions about their health care and coverage;

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

12 (f) Create a health insurance market that competes on the basis of
13 price, quality, service, and other innovative efforts;

14 (g) Operate in a manner compatible with efforts to improve quality,
15 contain costs, and promote innovation;

16 (h) Recognize the need for a private health insurance market to
17 exist outside of the exchange; and

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

21 NEW SECTION. **Sec. 2.** The definitions in this section apply
22 throughout this chapter unless the context clearly requires otherwise.
23 Terms and phrases used in this chapter that are not defined in this
24 section must be defined as consistent with implementation of a state
25 health benefit exchange pursuant to the affordable care act.

26 (1) "Affordable care act" means the federal patient protection and
27 affordable care act, P.L. 111-148, as amended by the federal health
28 care and education reconciliation act of 2010, P.L. 111-152, or federal
29 regulations or guidance issued under the affordable care act.

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

32 (3) "Board" means the governing board established in section 3 of
33 this act.

34 (4) "Commissioner" means the insurance commissioner, established in
35 Title 48 RCW.

36 (5) "Exchange" means the Washington health benefit exchange
37 established in section 3 of this act.

1 NEW SECTION. **Sec. 3.** (1) The Washington health benefit exchange
2 is established and constitutes a public-private partnership separate
3 and distinct from the state, exercising functions delineated in this
4 act. By January 1, 2014, the exchange shall operate consistent with
5 the affordable care act subject to statutory authorization. The
6 exchange shall have a governing board consisting of persons with
7 expertise in the Washington health care system and private and public
8 health care coverage. The initial membership of the board shall be
9 appointed as follows:

10 (a) By October 1, 2011, each of the two largest caucuses in both
11 the house of representatives and the senate shall submit to the
12 governor a list of five nominees who are not legislators or employees
13 of the state or its political subdivisions, with no caucus submitting
14 the same nominee.

15 (i) The nominations from the largest caucus in the house of
16 representatives must include at least one employee benefit specialist;

17 (ii) The nominations from the second largest caucus in the house of
18 representatives must include at least one health economist or actuary;

19 (iii) The nominations from the largest caucus in the senate must
20 include at least one representative of health consumer advocates;

21 (iv) The nominations from the second largest caucus in the senate
22 must include at least one representative of small business;

23 (v) The remaining nominees must have demonstrated and acknowledged
24 expertise in at least one of the following areas: Individual health
25 care coverage, small employer health care coverage, health benefits
26 plan administration, health care finance and economics, actuarial
27 science, or administering a public or private health care delivery
28 system.

29 (b) By December 15, 2011, the governor shall appoint two members
30 from each list submitted by the caucuses under (a) of this subsection.
31 The appointments made under this subsection (1)(b) must include at
32 least one employee benefits specialist, one health economist or
33 actuary, one representative of small business, and one representative
34 of health consumer advocates. The remaining four members must have a
35 demonstrated and acknowledged expertise in at least one of the
36 following areas: Individual health care coverage, small employer
37 health care coverage, health benefits plan administration, health care

1 finance and economics, actuarial science, or administering a public or
2 private health care delivery system.

3 (c) By December 15, 2011, the governor shall appoint a ninth member
4 to serve as chair. The chair may not be an employee of the state or
5 its political subdivisions. The chair shall serve as a nonvoting
6 member except in the case of a tie.

7 (d) The following members shall serve as nonvoting, ex officio
8 members of the board:

- 9 (i) The insurance commissioner or his or her designee; and
- 10 (ii) The administrator of the health care authority, or his or her
11 designee.

12 (2) Initial members of the board shall serve staggered terms not to
13 exceed four years. Members appointed thereafter shall serve two-year
14 terms.

15 (3) A member of the board whose term has expired or who otherwise
16 leaves the board shall be replaced by gubernatorial appointment. When
17 the person leaving was nominated by one of the caucuses of the house of
18 representatives or the senate, his or her replacement shall be
19 appointed from a list of five nominees submitted by that caucus within
20 thirty days after the person leaves. If the member to be replaced is
21 the chair, the governor shall appoint a new chair within thirty days
22 after the vacancy occurs. A person appointed to replace a member who
23 leaves the board prior to the expiration of his or her term shall serve
24 only the duration of the unexpired term. Members of the board may be
25 reappointed to multiple terms.

26 (4) No board member may be appointed if his or her participation in
27 the decisions of the board could benefit his or her own financial
28 interests or the financial interests of an entity he or she represents.
29 A board member who develops such a conflict of interest shall resign or
30 be removed from the board.

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

35 (6) The exchange and the board are subject only to the provisions
36 of chapter 42.30 RCW, the open public meetings act, and chapter 42.56
37 RCW, the public records act, and not to any other law or regulation

1 generally applicable to state agencies. Consistent with the open
2 public meetings act, the board may hold executive sessions to consider
3 proprietary or confidential nonpublished information.

4 (7)(a) The board shall establish an advisory committee to allow for
5 the views of the health care industry and other stakeholders to be
6 heard in the operation of the health benefit exchange.

7 (b) The board may establish technical advisory committees or seek
8 the advice of technical experts when necessary to execute the powers
9 and duties included in this act.

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

18 (9) In recognition of the government-to-government relationship
19 between the state of Washington and the federally recognized tribes in
20 the state of Washington, the board shall consult with the American
21 Indian health commission.

22 NEW SECTION. **Sec. 4.** (1) The exchange may, consistent with the
23 purposes of this chapter: (a) Sue and be sued in its own name; (b)
24 make and execute agreements, contracts, and other instruments, with any
25 public or private person or entity; (c) employ, contract with, or
26 engage personnel; (d) pay administrative costs; and (e) accept grants,
27 donations, loans of funds, and contributions in money, services,
28 materials or otherwise, from the United States or any of its agencies,
29 from the state of Washington and its agencies or from any other source,
30 and use or expend those moneys, services, materials, or other
31 contributions.

32 (2) The powers and duties of the exchange and the board are limited
33 to those necessary to apply for and administer grants, establish
34 information technology infrastructure, and undertake additional
35 administrative functions necessary to begin operation of the exchange
36 by January 1, 2014. Any actions relating to substantive issues

1 included in section 5 of this act must be consistent with statutory
2 direction on those issues.

3 NEW SECTION. **Sec. 5.** (1) In collaboration with the joint select
4 committee on health reform implementation, the authority shall:

5 (a) Apply for and implement grants under the affordable care act.
6 Whenever possible, grant applications shall allow for the possibility
7 of partially funding the activities of the joint select committee on
8 health reform implementation;

9 (b) Develop and submit to the federal department of health and
10 human services:

11 (i) A complete budget for the development and operation of an
12 exchange through 2014;

13 (ii) An initial plan discussing the means to achieve financial
14 sustainability of the exchange by 2015;

15 (iii) A plan outlining steps to prevent fraud, waste, and abuse;
16 and

17 (iv) A plan describing how capacity for providing assistance to
18 individuals and small businesses in the state will be created,
19 continued, or expanded, including provision for a call center.

20 (2) Consistent with the work plan developed in subsection (3) of
21 this section, but in no case later than January 1, 2012, the authority,
22 in collaboration with the joint select committee on health reform
23 implementation and the board, shall develop a broad range of options
24 for operating the exchange and report the options to the governor and
25 the legislature on an ongoing basis. The report must include analysis
26 and recommendations on the following:

27 (a) The operations and administration of the exchange, including:

28 (i) The goals and principles of the exchange;

29 (ii) The creation and implementation of a single state-administered
30 exchange for all geographic areas in the state that operates as the
31 exchange for both the individual and small employer markets by January
32 1, 2014;

33 (iii) Whether and under what circumstances the state should
34 consider establishment of, or participation in, a regionally
35 administered multistate exchange;

36 (iv) Whether the role of an exchange includes serving as an

1 aggregator of funds that comprise the premium for a health plan offered
2 through the exchange;

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

5 (vi) Coordination of the exchange with other state programs;

6 (vii) Development of sustainable funding for administration of the
7 exchange as of January 1, 2015; and

8 (viii) Recognizing the need for expedience in determining the
9 structure of needed information technology, the necessary information
10 technology to support implementation of exchange activities;

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

17 (c) Individual and small group market impacts, including whether
18 to:

19 (i) Merge the risk pools for rating the individual and small group
20 markets in the exchange and the private health insurance markets; and

21 (ii) Increase the small group market to firms with up to one
22 hundred employees;

23 (d) Creation of uniform requirements, standards, and criteria for
24 the creation of qualified health plans offered through the exchange,
25 including promoting participation by carriers and enrollees in the
26 exchange to a level sufficient to provide sustainable funding for the
27 exchange;

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

31 (f) The role and services provided by producers and navigators,
32 including the option to use private insurance market brokers as
33 navigators;

34 (g) Effective implementation of risk management methods, including:
35 Reinsurance, risk corridors, risk adjustment, to include the entity
36 designated to operate reinsurance and risk adjustment, and the
37 continuing role of the Washington state health insurance pool;

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;

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

10 (k) The extent and circumstances under which benefits for spiritual
11 care services that are deductible under section 213(d) of the internal
12 revenue code as of January 1, 2010, will be made available under the
13 exchange; and

14 (1) Any other areas identified by the joint select committee on
15 health reform implementation.

16 (3) In collaboration with the joint select committee on health
17 reform implementation, the authority shall develop a work plan for the
18 development of options under subsection (2) of this section in
19 discrete, prioritized stages.

20 (4) The authority and the board shall consult with the
21 commissioner, the joint select committee on health reform
22 implementation, and stakeholders relevant to carrying out the
23 activities required under this section, including: (a) Educated health
24 care consumers who are enrolled in commercial health insurance coverage
25 and publicly subsidized health care programs; (b) individuals and
26 entities with experience in facilitating enrollment in health insurance
27 coverage, including health carriers, producers, and navigators; (c)
28 representatives of small businesses, employees of small businesses, and
29 self-employed individuals; (d) advocates for enrolling hard to reach
30 populations and populations enrolled in publicly subsidized health care
31 programs; (e) facilities and providers of health care; (f)
32 representatives of publicly subsidized health care programs; and (g)
33 members in good standing of the American academy of actuaries.

34 (5) Beginning March 15, 2012, the exchange shall be responsible for
35 the duties of the authority under this section. Prior to March 15,
36 2012, the board may make independent recommendations regarding the
37 options developed under subsection (2) of this section to the governor
38 and the legislature.

1 NEW SECTION. **Sec. 6.** (1) The authority may enter into:

2 (a) Information sharing agreements with federal and state agencies
3 and other state exchanges to carry out the provisions of this act:
4 PROVIDED, That such agreements include adequate protections with
5 respect to the confidentiality of the information to be shared and
6 comply with all state and federal laws and regulations; and

7 (b) Interdepartmental agreements with the office of the insurance
8 commissioner, the department of social and health services, the
9 department of health, and any other state agencies necessary to
10 implement this act.

11 (2) To the extent funding is available, the authority shall:

12 (a) Provide staff and resources to implement this act;

13 (b) Manage and administer the grant and other funds; and

14 (c) Expend funds specifically appropriated by the legislature to
15 implement the provisions of this act.

16 (3) Beginning March 15, 2012, the board shall:

17 (a) Be responsible for the duties imposed on the authority under
18 this section; and

19 (b) Have the powers granted to the authority under this section.

20 NEW SECTION. **Sec. 7.** The health benefit exchange account is
21 created in the custody of the state treasurer. All receipts from
22 federal grants received under the affordable care act shall be
23 deposited into the account. Expenditures from the account may be used
24 only for purposes consistent with the grants. Until March 15, 2012,
25 only the administrator of the health care authority, or his or her
26 designee, may authorize expenditures from the account. Beginning March
27 15, 2012, only the board of the Washington health benefit exchange may
28 authorize expenditures from the account. The account is subject to
29 allotment procedures under chapter 43.88 RCW, but an appropriation is
30 not required for expenditures.

31 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act constitute
32 a new chapter in Title 43 RCW.

33 NEW SECTION. **Sec. 9.** If any part of this act is found to be in
34 conflict with federal requirements that are a prescribed condition to
35 the allocation of federal funds to the state, the conflicting part of

1 this act is inoperative solely to the extent of the conflict and with
2 respect to the agencies directly affected, and this finding does not
3 affect the operation of the remainder of this act in its application to
4 the agencies concerned. Rules adopted under this act must meet federal
5 requirements that are a necessary condition to the receipt of federal
6 funds by the state.

Passed by the Senate April 18, 2011.

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