

# HOUSE BILL REPORT

## E2SSB 5540

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### 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: 2/19/14, 2/20/14 [DP].

#### **Brief Summary of Engrossed Second Substitute Bill**

- 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. Signed by 14 members: Representatives Cody, Chair; Riccelli, Vice Chair; Schmick, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Clibborn, DeBolt, G. Hunt, Jinkins, Manweller, Moeller, Morrell, Rodne, Ross and Short.

**Minority Report:** Do not pass. Signed by 2 members: Representatives 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

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mandated benefits. Under the federal Patient Protection and Affordable Care Act (PPACA), 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: (1) be licensed in each state in which it offers a plan; or (2) 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 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.

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### **Summary of 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 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 the 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 premiums 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 premiums 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 and the law of 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.

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.

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. 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. These reporting requirements are null and void if specific funding is not provided by June 30, 2014, in the omnibus appropriations act.

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.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed except for section 6, relating to the Insurance Commissioner's reporting requirements, which is null and void unless funded in the budget.

**Staff Summary of Public Testimony:**

(In support) This bill is consistent with Washington's tradition of forward-thinking in the area of health care policy. Consumers should be given as many choices as possible. There is currently frustration, uncertainty, and concern with the way in which the PPACA is being

implemented; the current marketplace is not meeting the needs of small businesses. There are no assurances that more small group plans will be on the market next year. This bill will help ensure that there are more options available in the small group market. There are lots of consumer protections built into this bill, including the requirement that the Commissioner agree to the consortium, the requirement of reciprocity, and the requirement that at least five states be involved. Network adequacy is important, but small businesses will not purchase products with inadequate networks. This bill will result in more competition and vitality in the small group market. The approach taken by this bill is allowed under the PPACA.

(With concerns) Out-of-state insurers would not have to follow Washington consumer protections under this bill. It is also unclear which of Washington's mandated benefits would apply to the out-of-state insurers. This bill will create an uneven playing field for Washington's health insurance carriers, who would be required to follow requirements from which the out-of-state carriers are exempt. Competition and choice are good, but this approach is not workable and is not in the best interest of Washington consumers.

(Opposed) Competition is important, but it must be on a level playing field. If Washington's regulatory environment is preventing insurers from entering the market, the regulatory environment should be changed. This bill is disadvantageous to Washington companies. The consumer protections in this bill are inadequate; out-of-state insurers will be exempt from Washington's patient and consumer protections, which defeats the purposes of the protections. Conflicts regarding coverage for Washington citizens will have to be resolved in other states. Not all of Washington's mandates will apply to the out-of-state carriers under this bill; this bill puts mandates like the state mental health parity requirement at risk. This bill will erode the regulatory authority of the Commissioner. The fact that out-of-state carriers only have to offer benefits that are "substantially" equal to Washington's benchmark plan creates a loophole that will erode coverage. This bill is an insult to anyone who cares about the welfare of Washington citizens. Providers may have trouble competing in Washington without the protections that are in place to help these providers compete fairly. Out-of-state carriers may have inadequate provider networks. This bill could result in a two-tiered insurance system in Washington. Laws like this one do not do the job that is intended; consortia have not developed in states with similar laws. This bill is unclear about whether rules adopted by the Commissioner (such as network adequacy rules) or mandates that are not a part of the state's essential health benefits package will apply to out-of-state insurers. Some of Washington's homegrown insurers are prohibited from doing business in other states; this bill will force these insurers to face competition from other states when they are not allowed to do the same. Last year, several insurers tried to enter Washington's small group market, which means that more competition is on its way without this bill.

**Persons Testifying:** (In support) Senator Parlette, prime sponsor; Carolyn Logue, Washington Food Industry Association and South Sound Chambers; and Gary Smith, Independent Business Association.

(With concerns) Leslie Emerick, Home Care Association of Washington, Washington East Asian Medicine Association, Washington State Hospice and Palliative Care Organization, and Association of Advanced Practice Psychiatric Nurses; and Sydney Smith Zvara, Association of Washington Healthcare Plans.

(Opposed) Amber Ulvenes, Group Health Cooperative; Mary McHale, American Cancer Society Cancer Action Network; Brad Tower, Optometric Physicians of Washington; Lori Grassi, Washington State Chiropractic Association; Melanie Stewart, Washington State Podiatric Association, American Massage Therapy Association Washington Chapter, and Washington Mental Health Counselors Association; Chris Bandoli, Regence Blue Shield; Len Sorrin, Premera Blue Cross; Lucy Homans, Washington State Psychological Association; Lisa Thatcher, Washington State Hospital Association; and Rebecca Johnson, Planned Parenthood Voters Northwest.

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