

# HOUSE BILL REPORT

## SHB 2516

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### As Passed Legislature

**Title:** An act relating to modernizing the health benefit exchange statutes by aligning statutes with current practice and making clarifying changes to the health benefit exchange enabling statute.

**Brief Description:** Updating health benefit exchange statutes.

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Cody, Harris, Jinkins, Robinson, Tharinger, Caldier and Macri).

#### Brief History:

##### Committee Activity:

Health Care & Wellness: 1/17/18, 1/31/18 [DPS].

##### Floor Activity:

Passed House: 2/12/18, 58-40.

Passed Senate: 2/27/18, 37-12.

Passed Legislature.

#### Brief Summary of Substitute Bill

- Removes all references to the Affordable Care Act found in the Health Benefit Exchange (Exchange) statutes.
- Repeals or consolidates any responsibilities and duties that were only needed to establish the Exchange.
- Requires members of the Exchange's Board to serve until a successor has assumed office, following the expiration of their term.
- Allows an assessment on insurers that is assessed only if the funds are insufficient to fund exchange operations for the following calendar year, to include three months of additional operating costs.

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Cody, Chair; Macri, Vice Chair; Graves, Assistant

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*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.*

Ranking Minority Member; Caldier, Clibborn, DeBolt, Harris, Jinkins, Maycumber, Riccelli, Robinson, Slatter, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Schmick, Ranking Minority Member; MacEwen.

**Staff:** Kim Weidenaar (786-7120).

**Background:**

Health Benefit Exchange.

The Affordable Care Act (ACA) required every state to have a health insurance exchange established by January 1, 2014. The Washington Health Benefit Exchange (Exchange) was established pursuant to the ACA and is an online marketplace for individuals, families, and small businesses in Washington to compare and enroll in health insurance coverage and gain access to tax credits, reduced cost sharing, and public programs such as Medicaid. The Exchange began enrolling consumers on October 1, 2013, for health insurance coverage beginning on January 1, 2014. The Exchange's governing board consists of 11 members, who serve two-year terms and may be reappointed to multiple terms.

The Health Care Authority was provided with a number of duties and authorities to set up the Exchange including developing the budget, applying for grants under the ACA, developing operations and administration plans, and entering into information sharing agreements. Once established, these powers and authorities generally transferred to the Exchange.

The Exchange was established as a self-sustaining public-private partnership that is separate and distinct from the state. To be "self-sustaining," the Exchange must be capable of operating with revenue attributable to the operations of the Exchange. Beginning January 1, 2015, the Exchange was allowed to impose an assessment on health and dental plans sold through the Exchange in an amount necessary to fund the operations of the Exchange in the following calendar year. The Exchange may only impose the assessment if the expected insurance premium taxes and other funds deposited in the Health Benefit Exchange Account are insufficient to fund the Exchange's operations in the following calendar year at the level appropriated by the Legislature in the omnibus appropriations act.

The Exchange is required to prepare an annual strategic plan and report that includes the salaries and compensation for Exchange staff, all expenses, fund balances by source, and an accounting of staff required to operate the Exchange.

The Exchange must notify enrollees who are delinquent on payment of premium that they may report a change in income or circumstances, which may result in a change in the premium amount or program eligibility. The Exchange must also notify health plans and perform eligibility checks on enrollees in the grace period to determine eligibility for Medicaid. For plans sold on the market place to those receiving premium tax credits, individuals are given a 90-day grace period before coverage may end. Each year the Exchange must report to the Legislature on the number of individuals entering the grace period, the average length individuals are in the grace period, and the number who are terminated due to nonpayment. As of September 2015, the Exchange no longer has payment

related responsibilities, which were transitioned to the insurers. Accordingly, any data the Exchange collects or reports on the grace period is received from the plans on an annual basis.

#### Health Reimbursement Arrangements.

In 2016 the 21st Century Cures Act created Qualified Small Employer Health Reimbursement Arrangements (QSEHRA), sometimes called Small Business HRAs. A QSEHRA allows certain small employers that do not offer a group health plan to provide a monthly allowance that is used to reimburse employees for personal medical expenses.

#### **Summary of Substitute Bill:**

All references to the Affordable Care Act (ACA) found in the Health Benefit Exchange (Exchange) statutes are replaced with "applicable federal law" or similar language. Reference to the ACA's definition of Navigator is removed and is defined as a person or entity certified by the Exchange to provide culturally and linguistically appropriate education and assistance and facilitate enrollment in qualified health plans and federal and state health care programs, in a manner consistent with federal law.

Members of the Exchange's Board are required to serve until a successor has assumed office, following the expiration of the member's term.

The Exchange's authorities and powers are condensed and clarified, including the authority to certify qualified health and dental plans offered through the Exchange, provide consumer education, determine eligibility to tax credits, cost sharing reductions, and state and federal health care programs, and to provide data necessary to facilitate subsidies. Authorities and powers originally granted to the Health Care Authority to establish the Exchange that are no longer necessary are repealed or removed. Other requirements only pertaining to the establishment of the Exchange, or with dates that have already past, are also removed.

The assessment on insurers that is assessed only if the funds are insufficient to fund Exchange operations for the following calendar year may now include three months of additional operating costs.

The annual strategic plan and report no longer includes the salary and compensation data of Exchange staff.

The bill removes the requirements on the Exchange to notify enrollees who have entered the grace period, to perform eligibility checks on those in the grace period for Medicaid, and to produce an annual report on the grace period.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill does three main things. First, it removes and replaces references to the Affordable Care Act. The Washington Health Benefit Exchange (Exchange) has established itself as Washington's Exchange, and it should continue despite any federal changes. Second, it cleans up the Exchange's statutes to remove references to authorities that were only needed to set up the Exchange. Finally, it codifies the current activities of the Exchange, including allowing the assessment on insures to include three months of additional operating costs.

(Opposed) None.

(Other) During the grace period, which is when an enrollee falls behind on their premium payments, the providers may not be reimbursed for care that is provided. Accordingly, the annual report on the grace period produced by the Exchange is helpful to providers, but they understand why the Exchange no longer wants to provide the report as they no longer have this data.

Over half of the businesses in the state are small businesses and the Exchange does not offer any information or products for small businesses. Small businesses need health care insurance and are at competitive disadvantage by not providing it. An amendment that would allow the Exchange to offer information to small businesses about health reimbursement arrangements for small businesses would fill that void.

The Exchange is required to seek input from carriers on a fair funding mechanism, but the bill removes this requirement. The language that requires the Exchange's board to seek input from carriers to develop funding mechanism that fairly apportion among carriers the costs to implement the Exchange should be restored.

**Persons Testifying:** (In support) Pam MacEwan, Washington Health Benefit Exchange.

(Other) Sean Graham, Washington State Medical Association; Meg Jones, Association of Washington Healthcare Plans; and Gary Smith, Independent Business Association.

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