S-3842.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 6488**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 64th Legislature 2016 Regular Session**

**By** Senators Becker, Parlette, Dammeier, Schoesler, Brown, Bailey, Honeyford, and King

AN ACT Relating to seeking a federal innovation waiver to expand an employer-based coverage option with a portable health care account; adding a new section to chapter 41.05 RCW; and creating new sections.

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

NEW SECTION. **Sec.**  (1) The legislature finds that section 1332 of the patient protection and affordable care act provides the secretary of health and human services and the secretary of the treasury with the discretion to approve a state's proposal to waive specific provisions of the federal law, provided the proposal meets certain requirements. The agencies may exercise their discretion to approve a request for a state innovation waiver only if they determine the proposal meets the following four requirements: (a) The proposal will provide coverage to at least a comparable number of the state's residents as would be provided absent the waiver; (b) the proposal will provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable for the state's residents as would be provided absent the waiver; (c) the proposal will provide coverage that is at least as comprehensive for the state's residents as would be provided absent the waiver; and (d) the proposal will not increase the federal deficit.

(2) The legislature therefore intends to apply for a waiver to permit the state to innovatively expand health care coverage for individuals with employer-provided portable health care accounts and seek opportunities to expand financing of the innovative coverage approach and integrate the arrangements with the health benefit exchange coverage and financing options.

NEW SECTION. **Sec.**  A new section is added to chapter 41.05 RCW to read as follows:

(1)(a) The authority, in consultation with the office of the insurance commissioner, shall apply to the federal government for a waiver to permit employers in this state to integrate certain employer health care arrangements with individual market policies. For purposes of this section, an employer health care arrangement must be an account-based plan that:

(i) Requires transfer of employer and employee contributions to an account owned or controlled by the employee with the account being portable from employer to employer;

(ii) Ensures the accounts are maintained or operated in a way that account funds are used to pay only qualified medical expenses under section 213(d) of the internal revenue code, to the extent account funds are tax deductible pursuant to federal law;

(iii) Authorizes any funds in the account to be used to pay any share of the premium for a policy purchased through a health benefit exchange for which a refundable credit is paid pursuant to the affordable care act, or any individual market policy available outside the health benefit exchange;

(iv) Provides that all employees and employee family members for whom an employer is not providing coverage are eligible to make tax deductible contributions and receive employer contributions to the account, including all part-time and seasonal employees;

(v) Authorizes the account to be combined with other accounts established on behalf of a family to make premium payments and other health care expenditures;

(vi) Requires the account to be structured to receive funds electronically, including funds from multiple employers on behalf of an individual or family and to aggregate funds for paying premiums and other health care expenses;

(vii) Requires the electronic payment process to include an audit trail to track and verify premium payments and is reconciled no less frequently than monthly to ensure that funds received from employers and employees are properly credited to accounts; and

(viii) Requires payments made from the accounts be considered second-party payments consistent with requirements established in RCW 48.43.059.

(b) In preparing the application, the authority must provide actuarial analyses and actuarial certifications, economic analyses, data and assumptions, targets, an implementation timeline, a ten-year budget, and other documentation necessary to support the estimates included in the waiver. Documentation requirements include the following:

(i) The proposal must assess whether a comparable number of individuals will have coverage, including low-income individuals, elderly individuals, and those with serious health issues. The analysis and supporting data must include information on the number of individuals covered by income, health status, and age groups, under current law and under the waiver, including year-by-year estimates;

(ii) The affordability of coverage for state residents must compare residents' net out-of-pocket expenses including premium contributions and any cost sharing, such as deductibles, copays, and coinsurance. Spending on health care services that are not covered by a plan may also be taken into account if they are affected by the waiver proposal. The assessment of the affordability must also take into account the effects across different groups of state residents, including vulnerable residents, low-income individuals, elderly individuals, and those with serious health issues. The information must include estimated individual out-of-pocket costs by income, health status, and age groups, absent the waiver and with the waiver;

(iii) To meet the requirement for comprehensiveness under the waiver, the application must compare coverage under the waiver to the state's essential health benefits benchmark plan, and the application must demonstrate the number of individuals with coverage that satisfies the essential health benefit requirements is not reduced; and

(iv) To meet the requirement for deficit neutrality for the federal spending, the application must demonstrate the net federal spending under the waiver is equal to or lower than projected federal spending in the absence of the waiver. Estimated impacts may include changes in the premium tax credit and health coverage tax credit, individual shared responsibility payments, employer shared responsibility payments, the excise tax on high-cost employer sponsored plans, the credit for small businesses offering health insurance, and changes in income and payroll taxes. Waivers must not increase the federal deficit over the five-year period of the waiver or in total over the ten-year budget plan that is required to be submitted with the waiver application.

(c) In preparing the application, the authority must provide public notice and a comment period prior to submitting the application. As required by federal regulation, the process must include a separate process for meaningful consultation with the federally recognized tribes.

(2) Upon receipt of the waiver, the authority shall promptly notify in writing the governor and the appropriate committees of the legislature.

(3) The authority shall provide status reports to the joint select committee on health care oversight, as requested by the committee.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by July 1, 2016, in the omnibus operating appropriations act, this act is null and void.

**--- END ---**