

SENATE BILL REPORT

SHB 1967

As Reported by Senate Committee On:
Health Care, March 31, 2015

Title: An act relating to creating flexibility in health care coverage by seeking federal waivers.

Brief Description: Directing the health care authority to apply for federal waivers concerning health care coverage.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Cody, Schmick and Jinkins).

Brief History: Passed House: 3/09/15, 60-38.

Committee Activity: Health Care: 3/30/15, 3/31/15 [DPA-WM, w/oRec].

SENATE COMMITTEE ON HEALTH CARE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Becker, Chair; Frockt, Ranking Minority Member; Bailey, Cleveland, Conway, Jayapal, Keiser and Parlette.

Minority Report: That it be referred without recommendation.

Signed by Senators Dammeier, Vice Chair; Angel and Brown.

Staff: Mich'l Needham (786-7442)

Background: Section 1332 of the Affordable Care Act (ACA) authorizes states to apply to the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury for a waiver from certain provisions of the ACA for plan years beginning in 2017. A waiver may be granted if the state plan will provide coverage that is at least as comprehensive and affordable as coverage under the ACA to at least a comparable number of people, without increasing the federal deficit. The application must include a description of the state legislation and program to implement a plan meeting the requirements for a waiver, as well as a ten-year budget plan that is budget neutral for the federal government.

In addition, under section 1115 of the Social Security Act, the Secretary of HHS has authority to grant waivers from certain Medicaid requirements to allow states to demonstrate innovative approaches in their Medicaid programs. The purpose of section 1115 demonstration projects is to demonstrate and evaluate policy approaches such as expanding

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eligibility, providing services not typically covered, and using innovative service delivery systems.

An employer payment plan, which is a type of employer health care arrangement, involves an employer reimbursing employees for their purchase of individual market policies. Guidance issued by several federal agencies indicates that employer health care arrangements are considered to be group-health plans and are therefore subject to market reforms under the ACA, including the prohibition on annual limits for essential health benefits and the requirement to provide preventive services without cost-sharing. These arrangements may satisfy the market reforms if they are integrated with a group-health plan, but they may not be integrated with individual market policies to satisfy the market reforms. In addition, an employee who participates in this type of arrangement would be ineligible for premium tax credits, because the employee would be covered by a group health plan.

Summary of Bill (Recommended Amendments): By January 1, 2016, the Health Benefit Exchange (Exchange), in coordination with the Health Care Authority (HCA), must apply to the federal government for a waiver to permit employers to integrate certain employer health care arrangements with individual market policies.

The employer health care arrangement must be an account-based plan that does the following:

- requires transfer of employer and employee contributions to an account owned or controlled by the employee with such account being portable from employer to employer;
- ensures such accounts to be maintained or operated in a way that account funds are used to pay only qualified medical expenses under the Internal Revenue Code, to the extent account funds are tax deductible under federal law;
- any tax-deductible funds in the account may not be used to pay any share of the premium for an Exchange policy where a refundable credit is paid;
- all employees and employee family members not subject to the employer mandate are eligible to make tax-deductible contributions and receive employer contributions to the account, including all part-time and seasonal employees, or employees whose employer does not offer their employees group health plan coverage;
- such account may be combined with other accounts established on behalf of a family to make premium payments and other health care expenditures;
- such account is structured to receive funds electronically, including funds from multiple employers on behalf of individuals or family and to aggregate funds for paying premiums and other health care expenses;
- the electronic payment process includes an audit trail to track and verify premium payments and is reconciled at least monthly to ensure that funds received from employers and employees are properly credited to accounts; and
- payments made from such accounts are considered second-party payments consistent with requirements established in EHB 1890 – chapter 30, laws of 2015.

The Exchange and HCA must provide a process for public notice and comment, notify the Governor and the Legislature upon receipt of a waiver, and provide status reports, as requested, to the Joint Select Committee on Health Care Oversight.

The act is null and void unless funded in the budget.

EFFECT OF CHANGES MADE BY HEALTH CARE COMMITTEE (Recommended Amendments):

- Removes the reference to the 1115 Medicaid waiver in the intent section and the body of the waiver proposal;
- Inserts the Exchange to develop the waiver in coordination with HCA; and
- Inserts a more-detailed description of the employer health care arrangement that is the sole focus of the proposed waiver.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill: None.

Persons Testifying: No one.

Persons Signed in to Testify But Not Testifying: No one.