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**Health Care & Wellness Committee**

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**HB 2222**

**Brief Description:** Protecting information obtained to develop or implement an individual health insurance market stability program.

**Sponsors:** Representatives Cody and Manweller; by request of Insurance Commissioner.

**Brief Summary of Bill**

- Provides that certain materials related to risk adjustment and reinsurance programs are confidential and not subject to public disclosure.

**Hearing Date:** 6/19/17

**Staff:** Alexa Silver (786-7190).

**Background:**

Disclosure of Public Records.

The Public Records Act (PRA) requires state and local agencies to make all public records available for public inspection and copying, unless a record falls within an exemption in the PRA or another statute that exempts or prohibits disclosure of specific information or records. The PRA provides exemptions for certain information related to insurance and financial institutions. For example, materials related to a financial or market conduct examination and materials related to an insurer's internal risk assessment are exempt. The PRA is liberally construed and its exemptions narrowly construed. If the PRA conflicts with any other law, the provisions of the PRA govern.

Risk Leveling under the Affordable Care Act.

The federal Affordable Care Act created three risk leveling programs to address adverse selection inside and outside of the Health Benefit Exchange (Exchange)—risk adjustment, reinsurance, and risk corridors.

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- **Risk Adjustment:** The risk adjustment program, which is a permanent program, assesses plans with lower-risk enrollees and makes disbursements to plans with higher-risk enrollees.
- **Reinsurance:** The reinsurance program, which expired in 2016, required most health plans (both inside and outside the Exchange) to contribute funds for disbursement to individual market plans with high-cost enrollees.
- **Risk Corridors:** The risk corridor program, which expired in 2016, was designed to compensate for the difficulty of establishing initial rates in the Exchange. Plans that had lower than expected costs made payments to the federal government, which then disbursed those funds to plans with higher than expected costs.

To operate the risk adjustment and reinsurance programs, insurers are required to provide the federal government with de-identified data through a dedicated distributed data environment.

#### Washington State Health Insurance Pool.

The Washington State Health Insurance Pool (WSHIP), Washington's high risk pool, provides coverage for:

- individuals ineligible for Medicare who were enrolled in WSHIP health plans prior to January 1, 2014, or who live in a county where individual health coverage is unavailable; and
- Medicare-eligible individuals who do not have access to a reasonable choice of Medicare Advantage plans and provide evidence of rejection for medical reasons, restrictive riders, an up-rated premium, preexisting condition limitations, or lack of access to a comprehensive Medicare supplemental plan.

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

For purposes of developing or implementing an individual health insurance market stability program, reports, data, documents, or other materials that health carriers submit to or receive from the United States Department of Health and Human Services as part of a risk adjustment or reinsurance program, or that the Washington State Health Insurance Pool prepares, are confidential and not subject to disclosure under the Public Records Act when they are in the custody of the Insurance Commissioner (Commissioner).

The Commissioner may not disclose these materials except in furtherance of developing and implementing an individual health insurance market stability program. The Commissioner may share such materials with contractors conducting actuarial, economic, or other analyses necessary to develop or implement an individual health insurance market stability program. In addition, the Commissioner may enter into agreements governing the sharing and use of such information. A waiver of a claim of confidentiality or privilege does not occur as a result of disclosure to the Commissioner or as a result of the Commissioner sharing such information.

These provisions apply to materials obtained by the Commissioner as of December 31, 2019.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.