

HOUSE BILL REPORT

ESHB 2222

As Passed Legislature

Title: An act relating to protection of information obtained to develop or implement an individual health insurance market stability program.

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

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Cody and Manweller; by request of Insurance Commissioner).

Brief History:

Committee Activity:

Health Care & Wellness: 6/19/17 [DPS].

Third Special Session

Floor Activity:

Passed House: 6/27/17, 94-0.

Senate Amended.

Passed Senate: 6/30/17, 48-1.

Brief Summary of Engrossed Substitute Bill

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

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Caldier, Clibborn, Jinkins, MacEwen, Riccelli, Robinson, Slatter, Stonier and Tharinger.

Staff: Alexa Silver (786-7190).

Background:

Disclosure of Public Records.

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.

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.

Premium Stabilization Programs under the Affordable Care Act.

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

- **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 Engrossed Substitute 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 (HHS) as part of a risk adjustment or reinsurance program, or that the Washington State Health Insurance Pool (WSHIP) 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.

The provisions of the bill do not authorize the Commissioner to submit a complete application to the federal government for a waiver of any provision of federal law, including the Affordable Care Act. In addition, the Commissioner must provide the Joint Select Committee on Health Care Oversight with a progress report prior to submitting a draft waiver

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.

Staff Summary of Public Testimony:

(In support) The Commissioner is working to evaluate options to stabilize the individual market. The timelines are very tight, because the intent is to give health plans more assurance about the market as they file for the 2019 plan year. The market stabilization study must be performed using uniform, consistent data. Carriers already submit this data to the federal government. The data identify claims and may contain actuarial and proprietary information, which could be used in an anticompetitive manner. The Office of the Insurance Commissioner (OIC) would be unlikely to meet the tight timeframes for the study if staff are not able to look at the data before a consultant is hired. This bill will protect the confidentiality of the data and ensure that enrollees' health care information is not available for public disclosure. There is support for clarifying legislative oversight over a section 1332 waiver.

(Opposed) None.

(Other) Stakeholders support the goals of market stability, access to care in rural areas, and access to federal funding. It is crucial to improve access to care and coverage. When patients lack coverage, they use emergency departments more often. Rural populations tend to be poorer and less healthy. The best way to keep down costs is to address the causes of poor outcomes.

Previously it was believed that WSHIP was shrinking, but now 1,000 new people are eligible. There are ongoing concerns about the WSHIP funding mechanism, because the burden disproportionately falls on individuals and small businesses.

The bill should allow for data aggregations or extracts so taxpayers understand why this market stability work is being undertaken. The OIC should include a greater number of stakeholders in the section 1332 waiver application process. Issues such as rate setting, carriers' excess reserves, essential health benefits, state mandated benefits, network adequacy, association health plans, and plan designs should be revisited.

Persons Testifying: (In support) Lonnie Johns-Brown, Office of the Insurance Commissioner; Meg Jones, Association of Washington Healthcare Plans; Sheela Tallman, Premera Blue Cross; and Carrie Tellefson, Regence Blue Shield.

(Other) Tom Kwieciak, Building Industry Association of America; Zosia Stanley, Washington State Hospital Association; and Patrick Connor, National Federation of Independent Business.

Persons Signed In To Testify But Not Testifying: None.