

# SENATE BILL REPORT

## ESHB 2222

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As Reported by Senate Committee On:  
Health Care, June 30, 2017

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

**Committee Activity:** Health Care: 6/30/17, 6/30/17 [DP, w/oRec].

### Brief Summary of Bill

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

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### SENATE COMMITTEE ON HEALTH CARE

**Majority Report:** Do pass.

Signed by Senators Rivers, Chair; Cleveland, Ranking Minority Member; Kuderer, Assistant Ranking Minority Member; Conway, Keiser, Miloscia, Mullet and Walsh.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Becker, Vice Chair; Bailey and O'Ban.

**Staff:** Mich'l Needham (786-7442)

**Background:** Disclosure of Public Records. The Public Records Act requires state and local agencies to make all public records available for public inspection and copying, unless a record falls within a specified exemption in the public records act or another statute that exempts or prohibits disclosure of specific information or records. The public records act provides exemptions for certain information related to insurance and financial institutions.

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For example, materials related to a financial or market conduct examination and materials related to an insurer's internal risk assessment are exempt.

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.

**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.

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.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony (Third Special Session 2017):** PRO: We have been working with the issuers to explore options to stabilize the individual market. The timelines are very tight to explore options that would help impact the 2018 plan filings in May so we are hoping to examine the data that the issuers submit to HHS for the risk adjustment programs over the interim. This bill allows us to protect the data and ensure it remains confidential. The emergency clause is needed to ensure the work can happen quickly and ensure we have information for next session. The issuers submit data to HHS now with economic, actuarial and health data is it has anticompetitive potential if it is exposed. The OIC will work with a third party actuarial consultant to evaluate market stabilization options that could impact the premiums. The data is different than the data submitted to the All Payer Claims Database and includes risk scores for the risk programs. It is consistent and uniform data that will allow an actuary to do complete analysis.

**Persons Testifying:** PRO: Lonnie Johns-Brown, Washington State Office of the Insurance Commissioner; Dave Knutson, Association of Washington Healthcare Plans; Sheela Tallman, Premera Blue Cross; Zach Snyder, Regence BlueShield.

**Persons Signed In To Testify But Not Testifying:** No one.