

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5777

Chapter 555, Laws of 2009

61st Legislature
2009 Regular Session

STATE HEALTH INSURANCE POOL

EFFECTIVE DATE: 07/26/09 - Except sections 3 and 4 which are contingent.

Passed by the Senate April 25, 2009
YEAS 49 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 23, 2009
YEAS 95 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 19, 2009, 10:53 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5777** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 20, 2009

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5777

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington **61st Legislature** **2009 Regular Session**

By Senate Health & Long-Term Care (originally sponsored by Senators Murray and Parlette)

READ FIRST TIME 02/24/09.

1 AN ACT Relating to the Washington state health insurance pool;
2 amending RCW 48.41.060, 48.41.100, and 48.41.100; adding a new section
3 to chapter 48.66 RCW; creating a new section; and providing contingent
4 effective dates.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.66 RCW
7 to read as follows:

8 Any medicare eligible person who is rejected for medical reasons,
9 is required to accept restrictive riders, an up-rated premium, or
10 preexisting conditions limitations, the effect of which is to
11 substantially reduce coverage from that received by a person considered
12 a standard risk by at least one member as defined in RCW 48.41.030(14)
13 shall be provided written notice from the issuer of medicare supplement
14 coverage to whom application was made of the decision not to accept the
15 person's application for enrollment, or to require such restrictions.
16 The notice shall further state that the person is eligible for medicare
17 part C coverage offered in the person's geographic area or coverage
18 provided by the Washington state health insurance pool for Washington
19 residents, and shall include information about medicare part C plans

1 offered in the person's geographic area, about the Washington state
2 health insurance pool, and about available resources to assist the
3 person in choosing appropriate coverage.

4 **Sec. 2.** RCW 48.41.060 and 2008 c 217 s 47 are each amended to read
5 as follows:

6 (1) The board shall have the general powers and authority granted
7 under the laws of this state to insurance companies, health care
8 service contractors, and health maintenance organizations, licensed or
9 registered to offer or provide the kinds of health coverage defined
10 under this title. In addition thereto, the board shall:

11 (a) Designate or establish the standard health questionnaire to be
12 used under RCW 48.41.100 and 48.43.018, including the form and content
13 of the standard health questionnaire and the method of its application.
14 The questionnaire must provide for an objective evaluation of an
15 individual's health status by assigning a discreet measure, such as a
16 system of point scoring to each individual. The questionnaire must not
17 contain any questions related to pregnancy, and pregnancy shall not be
18 a basis for coverage by the pool. The questionnaire shall be designed
19 such that it is reasonably expected to identify the eight percent of
20 persons who are the most costly to treat who are under individual
21 coverage in health benefit plans, as defined in RCW 48.43.005, in
22 Washington state or are covered by the pool, if applied to all such
23 persons;

24 (b) Obtain from a member of the American academy of actuaries, who
25 is independent of the board, a certification that the standard health
26 questionnaire meets the requirements of (a) of this subsection;

27 (c) Approve the standard health questionnaire and any modifications
28 needed to comply with this chapter. The standard health questionnaire
29 shall be submitted to an actuary for certification, modified as
30 necessary, and approved at least every (~~eighteen~~) thirty-six months.
31 The designation and approval of the standard health questionnaire by
32 the board shall not be subject to review and approval by the
33 commissioner. The standard health questionnaire or any modification
34 thereto shall not be used until ninety days after public notice of the
35 approval of the questionnaire or any modification thereto, except that
36 the initial standard health questionnaire approved for use by the board

1 after March 23, 2000, may be used immediately following public notice
2 of such approval;

3 (d) Establish appropriate rates, rate schedules, rate adjustments,
4 expense allowances, claim reserve formulas and any other actuarial
5 functions appropriate to the operation of the pool. Rates shall not be
6 unreasonable in relation to the coverage provided, the risk experience,
7 and expenses of providing the coverage. Rates and rate schedules may
8 be adjusted for appropriate risk factors such as age and area variation
9 in claim costs and shall take into consideration appropriate risk
10 factors in accordance with established actuarial underwriting practices
11 consistent with Washington state individual plan rating requirements
12 under RCW 48.44.022 and 48.46.064;

13 (e)(i) Assess members of the pool in accordance with the provisions
14 of this chapter, and make advance interim assessments as may be
15 reasonable and necessary for the organizational or interim operating
16 expenses. Any interim assessments will be credited as offsets against
17 any regular assessments due following the close of the year.

18 (ii) Self-funded multiple employer welfare arrangements are subject
19 to assessment under this subsection only in the event that assessments
20 are not preempted by the employee retirement income security act of
21 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the
22 commissioner shall initially request an advisory opinion from the
23 United States department of labor or obtain a declaratory ruling from
24 a federal court on the legality of imposing assessments on these
25 arrangements before imposing the assessment. Once the legality of the
26 assessments has been determined, the multiple employer welfare
27 arrangement certified by the insurance commissioner must begin payment
28 of these assessments.

29 (iii) If there has not been a final determination of the legality
30 of these assessments, then beginning on the earlier of (A) the date the
31 fourth multiple employer welfare arrangement has been certified by the
32 insurance commissioner, or (B) April 1, 2006, the arrangement shall
33 deposit the assessments imposed by this subsection into an interest
34 bearing escrow account maintained by the arrangement. Upon a final
35 determination that the assessments are not preempted by the employee
36 retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001
37 et seq., all funds in the interest bearing escrow account shall be
38 transferred to the board;

1 (f) Issue policies of health coverage in accordance with the
2 requirements of this chapter;

3 (g) Establish procedures for the administration of the premium
4 discount provided under RCW 48.41.200(3)(a)(iii);

5 (h) Contract with the Washington state health care authority for
6 the administration of the premium discounts provided under RCW
7 48.41.200(3)(a) (i) and (ii);

8 (i) Set a reasonable fee to be paid to an insurance producer
9 licensed in Washington state for submitting an acceptable application
10 for enrollment in the pool; and

11 (j) Provide certification to the commissioner when assessments will
12 exceed the threshold level established in RCW 48.41.037.

13 (2) In addition thereto, the board may:

14 (a) Enter into contracts as are necessary or proper to carry out
15 the provisions and purposes of this chapter including the authority,
16 with the approval of the commissioner, to enter into contracts with
17 similar pools of other states for the joint performance of common
18 administrative functions, or with persons or other organizations for
19 the performance of administrative functions;

20 (b) Sue or be sued, including taking any legal action as necessary
21 to avoid the payment of improper claims against the pool or the
22 coverage provided by or through the pool;

23 (c) Appoint appropriate legal, actuarial, and other committees as
24 necessary to provide technical assistance in the operation of the pool,
25 policy, and other contract design, and any other function within the
26 authority of the pool; and

27 (d) Conduct periodic audits to assure the general accuracy of the
28 financial data submitted to the pool, and the board shall cause the
29 pool to have an annual audit of its operations by an independent
30 certified public accountant.

31 (3) Nothing in this section shall be construed to require or
32 authorize the adoption of rules under chapter 34.05 RCW.

33 **Sec. 3.** RCW 48.41.100 and 2007 c 259 s 30 are each amended to read
34 as follows:

35 (1)(a) The following persons who are residents of this state are
36 eligible for pool coverage:

1 ~~((a))~~ (i) Any person who provides evidence of a carrier's
2 decision not to accept him or her for enrollment in an individual
3 health benefit plan as defined in RCW 48.43.005 based upon, and within
4 ninety days of the receipt of, the results of the standard health
5 questionnaire designated by the board and administered by health
6 carriers under RCW 48.43.018;

7 ~~((b))~~ (ii) Any person who continues to be eligible for pool
8 coverage based upon the results of the standard health questionnaire
9 designated by the board and administered by the pool administrator
10 pursuant to subsection (3) of this section;

11 ~~((c))~~ (iii) Any person who resides in a county of the state where
12 no carrier or insurer eligible under chapter 48.15 RCW offers to the
13 public an individual health benefit plan other than a catastrophic
14 health plan as defined in RCW 48.43.005 at the time of application to
15 the pool, and who makes direct application to the pool; ~~(and~~

16 ~~(d))~~ (iv) Any ~~((medicare-eligible))~~ person ~~((upon-providing))~~
17 becoming eligible for medicare before August 1, 2009, who provides
18 evidence of (A) a rejection for medical reasons, (B) a requirement of
19 restrictive riders, (C) an up-rated premium, ~~((or))~~ (D) a preexisting
20 conditions limitation ~~((on-a)), or (E) lack of access to or for a~~
21 comprehensive medicare supplemental insurance policy under chapter
22 48.66 RCW, the effect of any of which is to substantially reduce
23 coverage from that received by a person considered a standard risk by
24 at least one member within six months of the date of application; and

25 (v) Any person becoming eligible for medicare on or after August 1,
26 2009, who does not have access to a reasonable choice of comprehensive
27 medicare part C plans, as defined in (b) of this subsection, and who
28 provides evidence of (A) a rejection for medical reasons, (B) a
29 requirement of restrictive riders, (C) an up-rated premium, (D) a
30 preexisting conditions limitation, or (E) lack of access to or for a
31 comprehensive medicare supplemental insurance policy under chapter
32 48.66 RCW, the effect of any of which is to substantially reduce
33 coverage from that received by a person considered a standard risk by
34 at least one member within six months of the date of application.

35 (b) For purposes of (a)(v) of this subsection (1), a person does
36 not have access to a reasonable choice of plans unless the person has
37 a choice of health maintenance organization or preferred provider
38 organization medicare part C plans offered by at least three different

1 carriers that have had provider networks in the person's county of
2 residence for at least five years. The plan options must include
3 coverage at least as comprehensive as a plan F medicare supplement plan
4 combined with medicare parts A and B. The plan options must also
5 provide access to adequate and stable provider networks that make up-
6 to-date provider directories easily accessible on the carrier web site,
7 and will provide them in hard copy, if requested. In addition, if no
8 health maintenance organization or preferred provider organization plan
9 includes the health care provider with whom the person has an
10 established care relationship and from whom he or she has received
11 treatment within the past twelve months, the person does not have
12 reasonable access.

13 (2) The following persons are not eligible for coverage by the
14 pool:

15 (a) Any person having terminated coverage in the pool unless (i)
16 twelve months have lapsed since termination, or (ii) that person can
17 show continuous other coverage which has been involuntarily terminated
18 for any reason other than nonpayment of premiums. However, these
19 exclusions do not apply to eligible individuals as defined in section
20 2741(b) of the federal health insurance portability and accountability
21 act of 1996 (42 U.S.C. Sec. 300gg-41(b));

22 (b) Any person on whose behalf the pool has paid out two million
23 dollars in benefits;

24 (c) Inmates of public institutions and those persons (~~whose~~
25 ~~benefits are duplicated under public programs~~) who become eligible for
26 medical assistance after June 30, 2008, as defined in RCW 74.09.010.
27 However, these exclusions do not apply to eligible individuals as
28 defined in section 2741(b) of the federal health insurance portability
29 and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

30 (d) Any person who resides in a county of the state where any
31 carrier or insurer regulated under chapter 48.15 RCW offers to the
32 public an individual health benefit plan other than a catastrophic
33 health plan as defined in RCW 48.43.005 at the time of application to
34 the pool and who does not qualify for pool coverage based upon the
35 results of the standard health questionnaire, or pursuant to subsection
36 (1)(~~(d)~~) (a)(iv) of this section.

37 (3) When a carrier or insurer regulated under chapter 48.15 RCW

1 begins to offer an individual health benefit plan in a county where no
2 carrier had been offering an individual health benefit plan:

3 (a) If the health benefit plan offered is other than a catastrophic
4 health plan as defined in RCW 48.43.005, any person enrolled in a pool
5 plan pursuant to subsection (1)((~~e~~)) (a)(iii) of this section in that
6 county shall no longer be eligible for coverage under that plan
7 pursuant to subsection (1)((~~e~~)) (a)(iii) of this section, but may
8 continue to be eligible for pool coverage based upon the results of the
9 standard health questionnaire designated by the board and administered
10 by the pool administrator. The pool administrator shall offer to
11 administer the questionnaire to each person no longer eligible for
12 coverage under subsection (1)((~~e~~)) (a)(iii) of this section within
13 thirty days of determining that he or she is no longer eligible;

14 (b) Losing eligibility for pool coverage under this subsection (3)
15 does not affect a person's eligibility for pool coverage under
16 subsection (1)(a)(i), (~~(b)~~) (ii), or (~~(d)~~) (iv) of this section;
17 and

18 (c) The pool administrator shall provide written notice to any
19 person who is no longer eligible for coverage under a pool plan under
20 this subsection (3) within thirty days of the administrator's
21 determination that the person is no longer eligible. The notice shall:
22 (i) Indicate that coverage under the plan will cease ninety days from
23 the date that the notice is dated; (ii) describe any other coverage
24 options, either in or outside of the pool, available to the person;
25 (iii) describe the procedures for the administration of the standard
26 health questionnaire to determine the person's continued eligibility
27 for coverage under subsection (1)((~~b~~)) (a)(ii) of this section; and
28 (iv) describe the enrollment process for the available options outside
29 of the pool.

30 (4) The board shall ensure that an independent analysis of the
31 eligibility standards for the pool coverage is conducted, including
32 examining the eight percent eligibility threshold, eligibility for
33 medicaid enrollees and other publicly sponsored enrollees, and the
34 impacts on the pool and the state budget. The board shall report the
35 findings to the legislature by December 1, 2007.

36 **Sec. 4.** RCW 48.41.100 and 2008 c 317 s 4 are each amended to read
37 as follows:

1 (1)(a) The following persons who are residents of this state are
2 eligible for pool coverage:

3 ~~((a))~~ (i) Any person who provides evidence of a carrier's
4 decision not to accept him or her for enrollment in an individual
5 health benefit plan as defined in RCW 48.43.005 based upon, and within
6 ninety days of the receipt of, the results of the standard health
7 questionnaire designated by the board and administered by health
8 carriers under RCW 48.43.018;

9 ~~((b))~~ (ii) Any person who continues to be eligible for pool
10 coverage based upon the results of the standard health questionnaire
11 designated by the board and administered by the pool administrator
12 pursuant to subsection (3) of this section;

13 ~~((c))~~ (iii) Any person who resides in a county of the state where
14 no carrier or insurer eligible under chapter 48.15 RCW offers to the
15 public an individual health benefit plan other than a catastrophic
16 health plan as defined in RCW 48.43.005 at the time of application to
17 the pool, and who makes direct application to the pool; ~~(and~~

18 ~~(d) Any medicare eligible person upon providing~~) (iv) Any person
19 becoming eligible for medicare before August 1, 2009, who provides
20 evidence of (A) a rejection for medical reasons, (B) a requirement of
21 restrictive riders, (C) an up-rated premium, ~~((e))~~ (D) a preexisting
22 conditions limitation ~~((en-a)), or (E) lack of access to or for a~~
23 comprehensive medicare supplemental insurance policy under chapter
24 48.66 RCW, the effect of any of which is to substantially reduce
25 coverage from that received by a person considered a standard risk by
26 at least one member within six months of the date of application; and

27 (v) Any person becoming eligible for medicare on or after August 1,
28 2009, who does not have access to a reasonable choice of comprehensive
29 medicare part C plans, as defined in (b) of this subsection, and who
30 provides evidence of (A) a rejection for medical reasons, (B) a
31 requirement of restrictive riders, (C) an up-rated premium, (D) a
32 preexisting conditions limitation, or (E) lack of access to or for a
33 comprehensive medicare supplemental insurance policy under chapter
34 48.66 RCW, the effect of any of which is to substantially reduce
35 coverage from that received by a person considered a standard risk by
36 at least one member within six months of the date of application.

37 (b) For purposes of (a)(v) of this subsection (1), a person does
38 not have access to a reasonable choice of plans unless the person has

1 a choice of health maintenance organization or preferred provider
2 organization medicare part C plans offered by at least three different
3 carriers that have had provider networks in the person's county of
4 residence for at least five years. The plan options must include
5 coverage at least as comprehensive as a plan F medicare supplement plan
6 combined with medicare parts A and B. The plan options must also
7 provide access to adequate and stable provider networks that make up-
8 to-date provider directories easily accessible on the carrier web site,
9 and will provide them in hard copy, if requested. In addition, if no
10 health maintenance organization or preferred provider organization plan
11 includes the health care provider with whom the person has an
12 established care relationship and from whom he or she has received
13 treatment within the past twelve months, the person does not have
14 reasonable access.

15 (2) The following persons are not eligible for coverage by the
16 pool:

17 (a) Any person having terminated coverage in the pool unless (i)
18 twelve months have lapsed since termination, or (ii) that person can
19 show continuous other coverage which has been involuntarily terminated
20 for any reason other than nonpayment of premiums. However, these
21 exclusions do not apply to eligible individuals as defined in section
22 2741(b) of the federal health insurance portability and accountability
23 act of 1996 (42 U.S.C. Sec. 300gg-41(b));

24 (b) Any person on whose behalf the pool has paid out two million
25 dollars in benefits;

26 (c) Inmates of public institutions, and those persons who become
27 eligible for medical assistance after June 30, 2008, as defined in RCW
28 74.09.010. However, these exclusions do not apply to eligible
29 individuals as defined in section 2741(b) of the federal health
30 insurance portability and accountability act of 1996 (42 U.S.C. Sec.
31 300gg-41(b));

32 (d) Any person who resides in a county of the state where any
33 carrier or insurer regulated under chapter 48.15 RCW offers to the
34 public an individual health benefit plan other than a catastrophic
35 health plan as defined in RCW 48.43.005 at the time of application to
36 the pool and who does not qualify for pool coverage based upon the
37 results of the standard health questionnaire, or pursuant to subsection
38 (1)((~~d~~)) (a)(iv) of this section.

1 (3) When a carrier or insurer regulated under chapter 48.15 RCW
2 begins to offer an individual health benefit plan in a county where no
3 carrier had been offering an individual health benefit plan:

4 (a) If the health benefit plan offered is other than a catastrophic
5 health plan as defined in RCW 48.43.005, any person enrolled in a pool
6 plan pursuant to subsection (1)(~~(e)~~) (a)(iii) of this section in that
7 county shall no longer be eligible for coverage under that plan
8 pursuant to subsection (1)(~~(e)~~) (a)(iii) of this section, but may
9 continue to be eligible for pool coverage based upon the results of the
10 standard health questionnaire designated by the board and administered
11 by the pool administrator. The pool administrator shall offer to
12 administer the questionnaire to each person no longer eligible for
13 coverage under subsection (1)(~~(e)~~) (a)(iii) of this section within
14 thirty days of determining that he or she is no longer eligible;

15 (b) Losing eligibility for pool coverage under this subsection (3)
16 does not affect a person's eligibility for pool coverage under
17 subsection (1)(a)(i), (~~(b)~~) (ii), or (~~(d)~~) (iv) of this section;
18 and

19 (c) The pool administrator shall provide written notice to any
20 person who is no longer eligible for coverage under a pool plan under
21 this subsection (3) within thirty days of the administrator's
22 determination that the person is no longer eligible. The notice shall:
23 (i) Indicate that coverage under the plan will cease ninety days from
24 the date that the notice is dated; (ii) describe any other coverage
25 options, either in or outside of the pool, available to the person;
26 (iii) describe the procedures for the administration of the standard
27 health questionnaire to determine the person's continued eligibility
28 for coverage under subsection (1)(~~(b)~~) (a)(ii) of this section; and
29 (iv) describe the enrollment process for the available options outside
30 of the pool.

31 (4) The board shall ensure that an independent analysis of the
32 eligibility standards for the pool coverage is conducted, including
33 examining the eight percent eligibility threshold, eligibility for
34 medicaid enrollees and other publicly sponsored enrollees, and the
35 impacts on the pool and the state budget. The board shall report the
36 findings to the legislature by December 1, 2007.

1 NEW_SECTION. **Sec. 5.** The board of the Washington state health
2 insurance pool shall conduct a study of options for equitable, stable,
3 and broad-based funding sources for the operation of the pool. The
4 board is authorized to solicit funds to conduct the study. The board
5 shall report its findings and recommendations to the appropriate
6 committees of the senate and house of representatives by December 15,
7 2009.

8 NEW_SECTION. **Sec. 6.** Section 3 of this act takes effect if
9 section 4, chapter 317, Laws of 2008 is null and void on the effective
10 date of this act; otherwise section 3 of this act is null and void.

11 NEW_SECTION. **Sec. 7.** Section 4 of this act takes effect if
12 section 4, chapter 317, Laws of 2008 is in effect on the effective date
13 of this act; otherwise section 4 of this act is null and void.

Passed by the Senate April 25, 2009.

Passed by the House April 23, 2009.

Approved by the Governor May 19, 2009.

Filed in Office of Secretary of State May 20, 2009.