

# SENATE BILL REPORT

## SB 6488

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As Reported by Senate Committee On:  
Health Care, February 4, 2016  
Ways & Means, February 9, 2016

**Title:** An act relating to seeking a federal innovation waiver to expand an employer-based coverage option with a portable health care account.

**Brief Description:** Directing the health care authority to apply for a federal innovation waiver to expand an employer-based coverage option with a portable health care account.

**Sponsors:** Senators Becker, Parlette, Dammeier, Schoesler, Brown, Bailey, Honeyford and King.

**Brief History:**

**Committee Activity:** Health Care: 1/28/16, 2/04/16 [DP-WM].  
Ways & Means: 2/08/16, 2/09/16 [DP, w/oRec].

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### SENATE COMMITTEE ON HEALTH CARE

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

Signed by Senators Becker, Chair; Dammeier, Vice Chair; Cleveland, Ranking Minority Member; Angel, Bailey, Baumgartner, Brown, Conway, Frockt, Jayapal, Keiser, Parlette and Rivers.

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

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Billig, Brown, Conway, Darneille, Hewitt, Nelson, O'Ban, Padden, Parlette, Pedersen, Rolfes, Schoesler and Warnick.

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

Signed by Senator Hasegawa.

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*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.*

**Staff:** Sandy Stith (786-7710)

**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. The departments jointly issued guidance for the application of a 1332 waiver in December, 2015.

A waiver may be granted if the state proposal will provide coverage to at least a comparable number of people as would be provided absent the waiver; the proposal will provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable for people as would be provided absent the waiver; the proposal will provide coverage that is at least as comprehensive as would be provided absent a waiver; and the proposal will not increase the federal deficit. The application must include a detailed description of the state proposal, with actuarial analysis, economic analysis, data and assumptions, targets, an implementation timeline, a 10-year budget that demonstrates fiscal neutrality for the federal budget, and other documentation to support the estimates included in the waiver.

The United States Department of Labor, HHS, and Treasury jointly prepared responses to frequently asked questions (FAQ) on implementation of the ACA. The guidance indicates that employers that provide cash reimbursement for the purchase of an individual market policy cause the employer's payment arrangement, whether pre-tax or post-tax, to become a group health plan within the meaning of the federal law which is subject to the market reform provisions of the ACA applicable to group health plans. Such employer health care arrangements cannot be integrated with individual market policies to satisfy the market reforms and therefore would violate ACA Sections 2711 and 2713, among other provisions, which can trigger penalties such as excise taxes under the Internal Revenue Code Section 4980D. Multiple guidance documents published by the departments conclude that the cash arrangements fail to comply with the market reforms because the cash payments cannot be integrated with an individual market policy.

**Summary of Bill:** The Health Care Authority (HCA), in consultation with the Office of Insurance Commissioner, shall apply to the federal government for a waiver to permit employers in this state to integrate certain employer health care arrangements with individual market policies.

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

- requires transfer of employer and employee contributions to an account owned or controlled by the employee with the account being portable from employer to employer;
- ensures the accounts are maintained or operated in a way that account funds are used to pay only qualified medical expenses allowed under the Internal Revenue Code, to the extent account funds are tax deductible;
- authorizes any funds in the account to be used to pay any share of the premium for a policy purchased through a Health Benefit Exchange for which a refundable credit is paid, or any individual market policy available outside the Exchange;
- provides that all employees and employee family members for whom an employer is not providing coverage are eligible to make tax deductible contributions and receive

- employer contributions to the account, including all part-time and seasonal employees;
- authorizes the account to be combined with other accounts established on behalf of a family to make premium payments and other health care expenditures;
  - requires the electronic payment process to include an audit trail to track and verify premium payments and is reconciled monthly to ensure that funds received from employers and employees are properly credited to accounts; and
  - requires payments made from the accounts be considered second-party payments as established in insurance law last year.

The HCA must provide actuarial analyses and actuarial certifications, economic analyses, data and assumptions, targets, an implementation timeline, a 10-year budget, and other documentation necessary to support the estimates included in the waiver. The federal requirements for the application and supporting analyses are enumerated in the bill.

HCA must provide status reports to the Joint Select Committee on Health Care Oversight as requested. Upon receipt of the waiver, HCA must promptly notify the Governor and the appropriate committees of the Legislature.

The bill contains a null and void clause if there is no specific funding appropriated by July 1, 2016.

**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 (Health Care):** PRO: We have a program with Lyfebank that can allow people that have multiple employers to contribute to a fund to help pay premiums for the individual market. In 2014 we met with the Department of Labor, Treasury, and the White House to hear that they decided the approach was not legal under the ACA. Full-time employees can receive dollars toward health care but part-time employees that work for multiple employers, such as our part-time seasonal farm workers, are locked in between Medicaid and large group employer plans. Our proposal would allow employees to get money, own the money, as a portable resource to pay premiums. The change to federal ERISA law is not going to get passed by Congress but this waiver may offer an option. Some employer could contribute to the plan but are not allowed to under federal law or they trigger the requirements related to the employer penalty when an employee enrolls in the Exchange. We think this might be another option for the sector of the workforce that has multiple employers and it might provide an option for coverage outside the dysfunctional small group market.

**Persons Testifying (Health Care):** PRO: Patrick Connor, NFIB/Washington; R.E. Ray, LyfeBank.

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

**Staff Summary of Public Testimony (Ways & Means):** PRO: Previously, people were only able to get healthcare insurance if they were employed full time. If they were employed part time, they were ineligible under ERISA . Under Presidents Bush and Obama, this was changed. Reluctantly, under the Affordable Care Act, this was removed. Under state law, to change this would require a 1332 waiver, do actuarial studies, and determine budget neutrality. If Health Care Authority determines they can't obtain this waiver, they will stop pursuing it. Also, you see in hospitals and clinics that more bad debt is piling up under the ACA. This will allow employers to put more money back in to help employees.

**Persons Testifying (Ways & Means):** PRO: R.E. Ray, LyfeBank.

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