
SUBSTITUTE SENATE BILL 6019

State of Washington

61st Legislature

2009 Regular Session

By Senate Health & Long-Term Care (originally sponsored by Senators Keiser, Parlette, Kilmer, Jarrett, Tom, Holmquist, Pflug, Shin, and Schoesler)

READ FIRST TIME 02/25/09.

1 AN ACT Relating to employee wellness programs; and amending RCW
2 48.21.045, 48.44.023, and 48.46.066.

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

4 **Sec. 1.** RCW 48.21.045 and 2008 c 143 s 6 are each amended to read
5 as follows:

6 (1)(a) An insurer offering any health benefit plan to a small
7 employer, either directly or through an association or member-governed
8 group formed specifically for the purpose of purchasing health care,
9 may offer and actively market to the small employer a health benefit
10 plan featuring a limited schedule of covered health care services.
11 Nothing in this subsection shall preclude an insurer from offering, or
12 a small employer from purchasing, other health benefit plans that may
13 have more comprehensive benefits than those included in the product
14 offered under this subsection. An insurer offering a health benefit
15 plan under this subsection shall clearly disclose all covered benefits
16 to the small employer in a brochure filed with the commissioner.

17 (b) A health benefit plan offered under this subsection shall
18 provide coverage for hospital expenses and services rendered by a
19 physician licensed under chapter 18.57 or 18.71 RCW but is not subject

1 to the requirements of RCW 48.21.130, 48.21.140, 48.21.141, 48.21.142,
2 48.21.144, 48.21.146, 48.21.160 through 48.21.197, 48.21.200,
3 48.21.220, 48.21.225, 48.21.230, 48.21.235, 48.21.244, 48.21.250,
4 48.21.300, 48.21.310, or 48.21.320.

5 (2) Nothing in this section shall prohibit an insurer from
6 offering, or a purchaser from seeking, health benefit plans with
7 benefits in excess of the health benefit plan offered under subsection
8 (1) of this section. All forms, policies, and contracts shall be
9 submitted for approval to the commissioner, and the rates of any plan
10 offered under this section shall be reasonable in relation to the
11 benefits thereto.

12 (3) Premium rates for health benefit plans for small employers as
13 defined in this section shall be subject to the following provisions:

14 (a) The insurer shall develop its rates based on an adjusted
15 community rate and may only vary the adjusted community rate for:

- 16 (i) Geographic area;
- 17 (ii) Family size;
- 18 (iii) Age; and
- 19 (iv) Wellness activities.

20 (b) The adjustment for age in (a)(iii) of this subsection may not
21 use age brackets smaller than five-year increments, which shall begin
22 with age twenty and end with age sixty-five. Employees under the age
23 of twenty shall be treated as those age twenty.

24 (c) The insurer shall be permitted to develop separate rates for
25 individuals age sixty-five or older for coverage for which medicare is
26 the primary payer and coverage for which medicare is not the primary
27 payer. Both rates shall be subject to the requirements of this
28 subsection (3).

29 (d) The permitted rates for any age group shall be no more than
30 four hundred twenty-five percent of the lowest rate for all age groups
31 on January 1, 1996, four hundred percent on January 1, 1997, and three
32 hundred seventy-five percent on January 1, 2000, and thereafter.

33 (e) A discount for wellness activities shall be permitted to
34 reflect actuarially justified differences in utilization or cost
35 attributed to such programs. Up to a twenty percent variance may be
36 allowed for small employers that develop and implement a wellness
37 program or activities that directly improve employee wellness.
38 Employers shall document program activities with the carrier and may,

1 after three years of implementation, request a reduction in premiums
2 based on improved employee health and wellness. While carriers may
3 review the employer's claim history when making a determination
4 regarding whether the employer's wellness program has improved employee
5 health, the carrier may not use maternity or prevention services claims
6 to deny the employer's request. Carriers may consider issues such as
7 improved productivity or a reduction in absenteeism due to illness if
8 submitted by the employer for consideration. Interested employers may
9 also work with the carrier to develop a wellness program and a means to
10 track improved employee health.

11 (f) The rate charged for a health benefit plan offered under this
12 section may not be adjusted more frequently than annually except that
13 the premium may be changed to reflect:

- 14 (i) Changes to the enrollment of the small employer;
- 15 (ii) Changes to the family composition of the employee;
- 16 (iii) Changes to the health benefit plan requested by the small
17 employer; or
- 18 (iv) Changes in government requirements affecting the health
19 benefit plan.

20 (g) Rating factors shall produce premiums for identical groups that
21 differ only by the amounts attributable to plan design, with the
22 exception of discounts for health improvement programs.

23 (h) For the purposes of this section, a health benefit plan that
24 contains a restricted network provision shall not be considered similar
25 coverage to a health benefit plan that does not contain such a
26 provision, provided that the restrictions of benefits to network
27 providers result in substantial differences in claims costs. A carrier
28 may develop its rates based on claims costs due to network provider
29 reimbursement schedules or type of network. This subsection does not
30 restrict or enhance the portability of benefits as provided in RCW
31 48.43.015.

32 (i) Adjusted community rates established under this section shall
33 pool the medical experience of all small groups purchasing coverage,
34 including the small group participants in the health insurance
35 partnership established in RCW 70.47A.030. However, annual rate
36 adjustments for each small group health benefit plan may vary by up to
37 plus or minus four percentage points from the overall adjustment of a
38 carrier's entire small group pool, such overall adjustment to be

1 approved by the commissioner, upon a showing by the carrier, certified
2 by a member of the American academy of actuaries that: (i) The
3 variation is a result of deductible leverage, benefit design, or
4 provider network characteristics; and (ii) for a rate renewal period,
5 the projected weighted average of all small group benefit plans will
6 have a revenue neutral effect on the carrier's small group pool.
7 Variations of greater than four percentage points are subject to review
8 by the commissioner, and must be approved or denied within sixty days
9 of submittal. A variation that is not denied within sixty days shall
10 be deemed approved. The commissioner must provide to the carrier a
11 detailed actuarial justification for any denial within thirty days of
12 the denial.

13 (j) For health benefit plans purchased through the health insurance
14 partnership established in chapter 70.47A RCW:

15 (i) Any surcharge established pursuant to RCW 70.47A.030(2)(e)
16 shall be applied only to health benefit plans purchased through the
17 health insurance partnership; and

18 (ii) Risk adjustment or reinsurance mechanisms may be used by the
19 health insurance partnership program to redistribute funds to carriers
20 participating in the health insurance partnership based on differences
21 in risk attributable to individual choice of health plans or other
22 factors unique to health insurance partnership participation. Use of
23 such mechanisms shall be limited to the partnership program and will
24 not affect small group health plans offered outside the partnership.

25 (4) Nothing in this section shall restrict the right of employees
26 to collectively bargain for insurance providing benefits in excess of
27 those provided herein.

28 (5)(a) Except as provided in this subsection, requirements used by
29 an insurer in determining whether to provide coverage to a small
30 employer shall be applied uniformly among all small employers applying
31 for coverage or receiving coverage from the carrier.

32 (b) An insurer shall not require a minimum participation level
33 greater than:

34 (i) One hundred percent of eligible employees working for groups
35 with three or less employees; and

36 (ii) Seventy-five percent of eligible employees working for groups
37 with more than three employees.

1 (c) In applying minimum participation requirements with respect to
2 a small employer, a small employer shall not consider employees or
3 dependents who have similar existing coverage in determining whether
4 the applicable percentage of participation is met.

5 (d) An insurer may not increase any requirement for minimum
6 employee participation or modify any requirement for minimum employer
7 contribution applicable to a small employer at any time after the small
8 employer has been accepted for coverage.

9 (e) Minimum participation requirements and employer premium
10 contribution requirements adopted by the health insurance partnership
11 board under RCW 70.47A.110 shall apply only to the employers and
12 employees who purchase health benefit plans through the health
13 insurance partnership.

14 (6) An insurer must offer coverage to all eligible employees of a
15 small employer and their dependents. An insurer may not offer coverage
16 to only certain individuals or dependents in a small employer group or
17 to only part of the group. An insurer may not modify a health plan
18 with respect to a small employer or any eligible employee or dependent,
19 through riders, endorsements or otherwise, to restrict or exclude
20 coverage or benefits for specific diseases, medical conditions, or
21 services otherwise covered by the plan.

22 (7) As used in this section, "health benefit plan," "small
23 employer," "adjusted community rate," and "wellness activities" mean
24 the same as defined in RCW 48.43.005.

25 **Sec. 2.** RCW 48.44.023 and 2008 c 143 s 7 are each amended to read
26 as follows:

27 (1)(a) A health care services contractor offering any health
28 benefit plan to a small employer, either directly or through an
29 association or member-governed group formed specifically for the
30 purpose of purchasing health care, may offer and actively market to the
31 small employer a health benefit plan featuring a limited schedule of
32 covered health care services. Nothing in this subsection shall
33 preclude a contractor from offering, or a small employer from
34 purchasing, other health benefit plans that may have more comprehensive
35 benefits than those included in the product offered under this
36 subsection. A contractor offering a health benefit plan under this

1 subsection shall clearly disclose all covered benefits to the small
2 employer in a brochure filed with the commissioner.

3 (b) A health benefit plan offered under this subsection shall
4 provide coverage for hospital expenses and services rendered by a
5 physician licensed under chapter 18.57 or 18.71 RCW but is not subject
6 to the requirements of RCW 48.44.225, 48.44.240, 48.44.245, 48.44.290,
7 48.44.300, 48.44.310, 48.44.320, 48.44.325, 48.44.330, 48.44.335,
8 48.44.344, 48.44.360, 48.44.400, 48.44.440, 48.44.450, and 48.44.460.

9 (2) Nothing in this section shall prohibit a health care service
10 contractor from offering, or a purchaser from seeking, health benefit
11 plans with benefits in excess of the health benefit plan offered under
12 subsection (1) of this section. All forms, policies, and contracts
13 shall be submitted for approval to the commissioner, and the rates of
14 any plan offered under this section shall be reasonable in relation to
15 the benefits thereto.

16 (3) Premium rates for health benefit plans for small employers as
17 defined in this section shall be subject to the following provisions:

18 (a) The contractor shall develop its rates based on an adjusted
19 community rate and may only vary the adjusted community rate for:

- 20 (i) Geographic area;
- 21 (ii) Family size;
- 22 (iii) Age; and
- 23 (iv) Wellness activities.

24 (b) The adjustment for age in (a)(iii) of this subsection may not
25 use age brackets smaller than five-year increments, which shall begin
26 with age twenty and end with age sixty-five. Employees under the age
27 of twenty shall be treated as those age twenty.

28 (c) The contractor shall be permitted to develop separate rates for
29 individuals age sixty-five or older for coverage for which medicare is
30 the primary payer and coverage for which medicare is not the primary
31 payer. Both rates shall be subject to the requirements of this
32 subsection (3).

33 (d) The permitted rates for any age group shall be no more than
34 four hundred twenty-five percent of the lowest rate for all age groups
35 on January 1, 1996, four hundred percent on January 1, 1997, and three
36 hundred seventy-five percent on January 1, 2000, and thereafter.

37 (e) A discount for wellness activities shall be permitted to
38 reflect actuarially justified differences in utilization or cost

1 attributed to such programs. Up to a twenty percent variance may be
2 allowed for small employers that develop and implement a wellness
3 program or activities that directly improve employee wellness.
4 Employers shall document program activities with the carrier and may,
5 after three years of implementation, request a reduction in premiums
6 based on improved employee health and wellness. While carriers may
7 review the employer's claim history when making a determination
8 regarding whether the employer's wellness program has improved employee
9 health, the carrier may not use maternity or prevention services claims
10 to deny the employer's request. Carriers may consider issues such as
11 improved productivity or a reduction in absenteeism due to illness if
12 submitted by the employer for consideration. Interested employers may
13 also work with the carrier to develop a wellness program and a means to
14 track improved employee health.

15 (f) The rate charged for a health benefit plan offered under this
16 section may not be adjusted more frequently than annually except that
17 the premium may be changed to reflect:

18 (i) Changes to the enrollment of the small employer;

19 (ii) Changes to the family composition of the employee;

20 (iii) Changes to the health benefit plan requested by the small
21 employer; or

22 (iv) Changes in government requirements affecting the health
23 benefit plan.

24 (g) Rating factors shall produce premiums for identical groups that
25 differ only by the amounts attributable to plan design, with the
26 exception of discounts for health improvement programs.

27 (h) For the purposes of this section, a health benefit plan that
28 contains a restricted network provision shall not be considered similar
29 coverage to a health benefit plan that does not contain such a
30 provision, provided that the restrictions of benefits to network
31 providers result in substantial differences in claims costs. A carrier
32 may develop its rates based on claims costs due to network provider
33 reimbursement schedules or type of network. This subsection does not
34 restrict or enhance the portability of benefits as provided in RCW
35 48.43.015.

36 (i) Adjusted community rates established under this section shall
37 pool the medical experience of all groups purchasing coverage,
38 including the small group participants in the health insurance

1 partnership established in RCW 70.47A.030. However, annual rate
2 adjustments for each small group health benefit plan may vary by up to
3 plus or minus four percentage points from the overall adjustment of a
4 carrier's entire small group pool, such overall adjustment to be
5 approved by the commissioner, upon a showing by the carrier, certified
6 by a member of the American academy of actuaries that: (i) The
7 variation is a result of deductible leverage, benefit design, or
8 provider network characteristics; and (ii) for a rate renewal period,
9 the projected weighted average of all small group benefit plans will
10 have a revenue neutral effect on the carrier's small group pool.
11 Variations of greater than four percentage points are subject to review
12 by the commissioner, and must be approved or denied within sixty days
13 of submittal. A variation that is not denied within sixty days shall
14 be deemed approved. The commissioner must provide to the carrier a
15 detailed actuarial justification for any denial within thirty days of
16 the denial.

17 (j) For health benefit plans purchased through the health insurance
18 partnership established in chapter 70.47A RCW:

19 (i) Any surcharge established pursuant to RCW 70.47A.030(2)(e)
20 shall be applied only to health benefit plans purchased through the
21 health insurance partnership; and

22 (ii) Risk adjustment or reinsurance mechanisms may be used by the
23 health insurance partnership program to redistribute funds to carriers
24 participating in the health insurance partnership based on differences
25 in risk attributable to individual choice of health plans or other
26 factors unique to health insurance partnership participation. Use of
27 such mechanisms shall be limited to the partnership program and will
28 not affect small group health plans offered outside the partnership.

29 (4) Nothing in this section shall restrict the right of employees
30 to collectively bargain for insurance providing benefits in excess of
31 those provided herein.

32 (5)(a) Except as provided in this subsection, requirements used by
33 a contractor in determining whether to provide coverage to a small
34 employer shall be applied uniformly among all small employers applying
35 for coverage or receiving coverage from the carrier.

36 (b) A contractor shall not require a minimum participation level
37 greater than:

1 (i) One hundred percent of eligible employees working for groups
2 with three or less employees; and

3 (ii) Seventy-five percent of eligible employees working for groups
4 with more than three employees.

5 (c) In applying minimum participation requirements with respect to
6 a small employer, a small employer shall not consider employees or
7 dependents who have similar existing coverage in determining whether
8 the applicable percentage of participation is met.

9 (d) A contractor may not increase any requirement for minimum
10 employee participation or modify any requirement for minimum employer
11 contribution applicable to a small employer at any time after the small
12 employer has been accepted for coverage.

13 (e) Minimum participation requirements and employer premium
14 contribution requirements adopted by the health insurance partnership
15 board under RCW 70.47A.110 shall apply only to the employers and
16 employees who purchase health benefit plans through the health
17 insurance partnership.

18 (6) A contractor must offer coverage to all eligible employees of
19 a small employer and their dependents. A contractor may not offer
20 coverage to only certain individuals or dependents in a small employer
21 group or to only part of the group. A contractor may not modify a
22 health plan with respect to a small employer or any eligible employee
23 or dependent, through riders, endorsements or otherwise, to restrict or
24 exclude coverage or benefits for specific diseases, medical conditions,
25 or services otherwise covered by the plan.

26 **Sec. 3.** RCW 48.46.066 and 2008 c 143 s 8 are each amended to read
27 as follows:

28 (1)(a) A health maintenance organization offering any health
29 benefit plan to a small employer, either directly or through an
30 association or member-governed group formed specifically for the
31 purpose of purchasing health care, may offer and actively market to the
32 small employer a health benefit plan featuring a limited schedule of
33 covered health care services. Nothing in this subsection shall
34 preclude a health maintenance organization from offering, or a small
35 employer from purchasing, other health benefit plans that may have more
36 comprehensive benefits than those included in the product offered under
37 this subsection. A health maintenance organization offering a health

1 benefit plan under this subsection shall clearly disclose all the
2 covered benefits to the small employer in a brochure filed with the
3 commissioner.

4 (b) A health benefit plan offered under this subsection shall
5 provide coverage for hospital expenses and services rendered by a
6 physician licensed under chapter 18.57 or 18.71 RCW but is not subject
7 to the requirements of RCW 48.46.275, 48.46.280, 48.46.285, 48.46.350,
8 48.46.355, 48.46.375, 48.46.440, 48.46.480, 48.46.510, 48.46.520, and
9 48.46.530.

10 (2) Nothing in this section shall prohibit a health maintenance
11 organization from offering, or a purchaser from seeking, health benefit
12 plans with benefits in excess of the health benefit plan offered under
13 subsection (1) of this section. All forms, policies, and contracts
14 shall be submitted for approval to the commissioner, and the rates of
15 any plan offered under this section shall be reasonable in relation to
16 the benefits thereto.

17 (3) Premium rates for health benefit plans for small employers as
18 defined in this section shall be subject to the following provisions:

19 (a) The health maintenance organization shall develop its rates
20 based on an adjusted community rate and may only vary the adjusted
21 community rate for:

- 22 (i) Geographic area;
- 23 (ii) Family size;
- 24 (iii) Age; and
- 25 (iv) Wellness activities.

26 (b) The adjustment for age in (a)(iii) of this subsection may not
27 use age brackets smaller than five-year increments, which shall begin
28 with age twenty and end with age sixty-five. Employees under the age
29 of twenty shall be treated as those age twenty.

30 (c) The health maintenance organization shall be permitted to
31 develop separate rates for individuals age sixty-five or older for
32 coverage for which medicare is the primary payer and coverage for which
33 medicare is not the primary payer. Both rates shall be subject to the
34 requirements of this subsection (3).

35 (d) The permitted rates for any age group shall be no more than
36 four hundred twenty-five percent of the lowest rate for all age groups
37 on January 1, 1996, four hundred percent on January 1, 1997, and three
38 hundred seventy-five percent on January 1, 2000, and thereafter.

1 (e) A discount for wellness activities shall be permitted to
2 reflect actuarially justified differences in utilization or cost
3 attributed to such programs. Up to a twenty percent variance may be
4 allowed for small employers that develop and implement a wellness
5 program or activities that directly improve employee wellness.
6 Employers shall document program activities with the carrier and may,
7 after three years of implementation, request a reduction in premiums
8 based on improved employee health and wellness. While carriers may
9 review the employer's claim history when making a determination
10 regarding whether the employer's wellness program has improved employee
11 health, the carrier may not use maternity or prevention services claims
12 to deny the employer's request. Carriers may consider issues such as
13 improved productivity or a reduction in absenteeism due to illness if
14 submitted by the employer for consideration. Interested employers may
15 also work with the carrier to develop a wellness program and a means to
16 track improved employee health.

17 (f) The rate charged for a health benefit plan offered under this
18 section may not be adjusted more frequently than annually except that
19 the premium may be changed to reflect:

- 20 (i) Changes to the enrollment of the small employer;
- 21 (ii) Changes to the family composition of the employee;
- 22 (iii) Changes to the health benefit plan requested by the small
23 employer; or
- 24 (iv) Changes in government requirements affecting the health
25 benefit plan.

26 (g) Rating factors shall produce premiums for identical groups that
27 differ only by the amounts attributable to plan design, with the
28 exception of discounts for health improvement programs.

29 (h) For the purposes of this section, a health benefit plan that
30 contains a restricted network provision shall not be considered similar
31 coverage to a health benefit plan that does not contain such a
32 provision, provided that the restrictions of benefits to network
33 providers result in substantial differences in claims costs. A carrier
34 may develop its rates based on claims costs due to network provider
35 reimbursement schedules or type of network. This subsection does not
36 restrict or enhance the portability of benefits as provided in RCW
37 48.43.015.

1 (i) Adjusted community rates established under this section shall
2 pool the medical experience of all groups purchasing coverage,
3 including the small group participants in the health insurance
4 partnership established in RCW 70.47A.030. However, annual rate
5 adjustments for each small group health benefit plan may vary by up to
6 plus or minus four percentage points from the overall adjustment of a
7 carrier's entire small group pool, such overall adjustment to be
8 approved by the commissioner, upon a showing by the carrier, certified
9 by a member of the American academy of actuaries that: (i) The
10 variation is a result of deductible leverage, benefit design, or
11 provider network characteristics; and (ii) for a rate renewal period,
12 the projected weighted average of all small group benefit plans will
13 have a revenue neutral effect on the carrier's small group pool.
14 Variations of greater than four percentage points are subject to review
15 by the commissioner, and must be approved or denied within sixty days
16 of submittal. A variation that is not denied within sixty days shall
17 be deemed approved. The commissioner must provide to the carrier a
18 detailed actuarial justification for any denial within thirty days of
19 the denial.

20 (j) For health benefit plans purchased through the health insurance
21 partnership established in chapter 70.47A RCW:

22 (i) Any surcharge established pursuant to RCW 70.47A.030(2)(e)
23 shall be applied only to health benefit plans purchased through the
24 health insurance partnership; and

25 (ii) Risk adjustment or reinsurance mechanisms may be used by the
26 health insurance partnership program to redistribute funds to carriers
27 participating in the health insurance partnership based on differences
28 in risk attributable to individual choice of health plans or other
29 factors unique to health insurance partnership participation. Use of
30 such mechanisms shall be limited to the partnership program and will
31 not affect small group health plans offered outside the partnership.

32 (4) Nothing in this section shall restrict the right of employees
33 to collectively bargain for insurance providing benefits in excess of
34 those provided herein.

35 (5)(a) Except as provided in this subsection, requirements used by
36 a health maintenance organization in determining whether to provide
37 coverage to a small employer shall be applied uniformly among all small
38 employers applying for coverage or receiving coverage from the carrier.

1 (b) A health maintenance organization shall not require a minimum
2 participation level greater than:

3 (i) One hundred percent of eligible employees working for groups
4 with three or less employees; and

5 (ii) Seventy-five percent of eligible employees working for groups
6 with more than three employees.

7 (c) In applying minimum participation requirements with respect to
8 a small employer, a small employer shall not consider employees or
9 dependents who have similar existing coverage in determining whether
10 the applicable percentage of participation is met.

11 (d) A health maintenance organization may not increase any
12 requirement for minimum employee participation or modify any
13 requirement for minimum employer contribution applicable to a small
14 employer at any time after the small employer has been accepted for
15 coverage.

16 (e) Minimum participation requirements and employer premium
17 contribution requirements adopted by the health insurance partnership
18 board under RCW 70.47A.110 shall apply only to the employers and
19 employees who purchase health benefit plans through the health
20 insurance partnership.

21 (6) A health maintenance organization must offer coverage to all
22 eligible employees of a small employer and their dependents. A health
23 maintenance organization may not offer coverage to only certain
24 individuals or dependents in a small employer group or to only part of
25 the group. A health maintenance organization may not modify a health
26 plan with respect to a small employer or any eligible employee or
27 dependent, through riders, endorsements or otherwise, to restrict or
28 exclude coverage or benefits for specific diseases, medical conditions,
29 or services otherwise covered by the plan.

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