

SSB 5445 - H AMD 646

By Representative Cody

ADOPTED AND ENGROSSED 4/11/11

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that the
4 affordable care act requires the establishment of health benefit
5 exchanges. The legislature intends to establish an exchange, including
6 a governance structure. There are many policy decisions associated
7 with establishing an exchange that need to be made that will take a
8 great deal of effort and expertise. It is therefore the intent of the
9 legislature to establish a process through which these policy decisions
10 can be made by the legislature and the governor by the deadline
11 established in the affordable care act.

12 (2) The exchange is intended to:

13 (a) Increase access to quality affordable health care coverage,
14 reduce the number of uninsured persons in Washington state, and
15 increase the availability of health care coverage through the private
16 health insurance market to qualified individuals and small employers;

17 (b) Provide consumer choice and portability of health insurance,
18 regardless of employment status;

19 (c) Create an organized, transparent, and accountable health
20 insurance marketplace for Washingtonians to purchase affordable,
21 quality health care coverage, to claim available federal refundable
22 premium tax credits and cost-sharing subsidies, and to meet the
23 personal responsibility requirements for minimum essential coverage as
24 provided under the federal affordable care act;

25 (d) Promote consumer literacy and empower consumers to compare
26 plans and make informed decisions about their health care and coverage;

27 (e) Effectively and efficiently administer health care subsidies
28 and determination of eligibility for participation in publicly
29 subsidized health care programs, including the exchange;

1 (f) Create a health insurance market that competes on the basis of
2 price, quality, service, and other innovative efforts;

3 (g) Operate in a manner compatible with efforts to improve quality,
4 contain costs, and promote innovation;

5 (h) Recognize the need for a private health insurance market to
6 exist outside of the exchange; and

7 (i) Recognize that the regulation of the health insurance market,
8 both inside and outside the exchange, should continue to be performed
9 by the insurance commissioner.

10 NEW SECTION. **Sec. 2.** The definitions in this section apply
11 throughout this chapter unless the context clearly requires otherwise.
12 Terms and phrases used in this chapter that are not defined in this
13 section must be defined as consistent with implementation of a state
14 health benefit exchange pursuant to the affordable care act.

15 (1) "Affordable care act" means the federal patient protection and
16 affordable care act, P.L. 111-148, as amended by the federal health
17 care and education reconciliation act of 2010, P.L. 111-152, or federal
18 regulations or guidance issued under the affordable care act.

19 (2) "Authority" means the Washington state health care authority,
20 established under chapter 41.05 RCW.

21 (3) "Board" means the governing board established in section 3 of
22 this act.

23 (4) "Commissioner" means the insurance commissioner, established in
24 Title 48 RCW.

25 (5) "Exchange" means the Washington health benefit exchange
26 established in section 3 of this act.

27 NEW SECTION. **Sec. 3.** (1) The Washington health benefit exchange
28 is established and constitutes a public-private partnership separate
29 and distinct from the state, exercising functions delineated in this
30 act. By January 1, 2014, the exchange shall operate consistent with
31 the affordable care act subject to statutory authorization. The
32 exchange shall have a governing board consisting of persons with
33 expertise in the Washington health care system and private and public
34 health care coverage. The initial membership of the board shall be
35 appointed as follows:

1 (a) By October 1, 2011, each of the two largest caucuses in both
2 the house of representatives and the senate shall submit to the
3 governor a list of five nominees who are not legislators or employees
4 of the state or its political subdivisions, with no caucus submitting
5 the same nominee.

6 (i) The nominations from the largest caucus in the house of
7 representatives must include at least one employee benefit specialist;

8 (ii) The nominations from the second largest caucus in the house of
9 representatives must include at least one health economist or actuary;

10 (iii) The nominations from the largest caucus in the senate must
11 include at least one representative of health consumer advocates;

12 (iv) The nominations from the second largest caucus in the senate
13 must include at least one representative of small business;

14 (v) The remaining nominees must have demonstrated and acknowledged
15 expertise in at least one of the following areas: Individual health
16 care coverage, small employer health care coverage, health benefits
17 plan administration, health care finance and economics, actuarial
18 science, or administering a public or private health care delivery
19 system.

20 (b) By December 15, 2011, the governor shall appoint two members
21 from each list submitted by the caucuses under (a) of this subsection.
22 The appointments made under this subsection (1)(b) must include at
23 least one employee benefits specialist, one health economist or
24 actuary, one representative of small business, and one representative
25 of health consumer advocates. The remaining four members must have a
26 demonstrated and acknowledged expertise in at least one of the
27 following areas: Individual health care coverage, small employer
28 health care coverage, health benefits plan administration, health care
29 finance and economics, actuarial science, or administering a public or
30 private health care delivery system.

31 (c) By December 15, 2011, the governor shall appoint a ninth member
32 to serve as chair. The chair may not be an employee of the state or
33 its political subdivisions. The chair shall serve as a nonvoting
34 member except in the case of a tie.

35 (d) The following members shall serve as nonvoting, ex officio
36 members of the board:

37 (i) The insurance commissioner or his or her designee; and

1 (ii) The administrator of the health care authority, or his or her
2 designee.

3 (2) Initial members of the board shall serve staggered terms not to
4 exceed four years. Members appointed thereafter shall serve two-year
5 terms.

6 (3) A member of the board whose term has expired or who otherwise
7 leaves the board shall be replaced by gubernatorial appointment. When
8 the person leaving was nominated by one of the caucuses of the house of
9 representatives or the senate, his or her replacement shall be
10 appointed from a list of five nominees submitted by that caucus within
11 thirty days after the person leaves. If the member to be replaced is
12 the chair, the governor shall appoint a new chair within thirty days
13 after the vacancy occurs. A person appointed to replace a member who
14 leaves the board prior to the expiration of his or her term shall serve
15 only the duration of the unexpired term. Members of the board may be
16 reappointed to multiple terms.

17 (4) No board member may be appointed if his or her participation in
18 the decisions of the board could benefit his or her own financial
19 interests or the financial interests of an entity he or she represents.
20 A board member who develops such a conflict of interest shall resign or
21 be removed from the board.

22 (5) Members of the board must be reimbursed for their travel
23 expenses while on official business in accordance with RCW 43.03.050
24 and 43.03.060. The board shall prescribe rules for the conduct of its
25 business. Meetings of the board are at the call of the chair.

26 (6) The exchange and the board are subject only to the provisions
27 of chapter 42.30 RCW, the open public meetings act, and chapter 42.56
28 RCW, the public records act, and not to any other law or regulation
29 generally applicable to state agencies. Consistent with the open
30 public meetings act, the board may hold executive sessions to consider
31 proprietary or confidential nonpublished information.

32 (7)(a) The board shall establish an advisory committee to allow for
33 the views of the health care industry and other stakeholders to be
34 heard in the operation of the health benefit exchange.

35 (b) The board may establish technical advisory committees or seek
36 the advice of technical experts when necessary to execute the powers
37 and duties included in this act.

1 (8) Members of the board are not civilly or criminally liable and
2 may not have any penalty or cause of action of any nature arise against
3 them for any action taken or not taken, including any discretionary
4 decision or failure to make a discretionary decision, when the action
5 or inaction is done in good faith and in the performance of the powers
6 and duties under this act. Nothing in this section prohibits legal
7 actions against the board to enforce the board's statutory or
8 contractual duties or obligations.

9 (9) In recognition of the government-to-government relationship
10 between the state of Washington and the federally recognized tribes in
11 the state of Washington, the board shall consult with the American
12 Indian health commission.

13 NEW SECTION. **Sec. 4.** (1) The exchange may, consistent with the
14 purposes of this chapter: (a) Sue and be sued in its own name; (b)
15 make and execute agreements, contracts, and other instruments, with any
16 public or private person or entity; (c) employ, contract with, or
17 engage personnel; (d) pay administrative costs; and (e) accept grants,
18 donations, loans of funds, and contributions in money, services,
19 materials or otherwise, from the United States or any of its agencies,
20 from the state of Washington and its agencies or from any other source,
21 and use or expend those moneys, services, materials, or other
22 contributions.

23 (2) The powers and duties of the exchange and the board are limited
24 to those necessary to apply for and administer grants, establish
25 information technology infrastructure, and undertake additional
26 administrative functions necessary to begin operation of the exchange
27 by January 1, 2014. Any actions relating to substantive issues
28 included in section 5 of this act must be consistent with statutory
29 direction on those issues.

30 NEW SECTION. **Sec. 5.** (1) In collaboration with the joint select
31 committee on health reform implementation, the authority shall:

32 (a) Apply for and implement grants under the affordable care act.
33 Whenever possible, grant applications shall allow for the possibility
34 of partially funding the activities of the joint select committee on
35 health reform implementation;

1 (b) Develop and submit to the federal department of health and
2 human services:

3 (i) A complete budget for the development and operation of an
4 exchange through 2014;

5 (ii) An initial plan discussing the means to achieve financial
6 sustainability of the exchange by 2015;

7 (iii) A plan outlining steps to prevent fraud, waste, and abuse;
8 and

9 (iv) A plan describing how capacity for providing assistance to
10 individuals and small businesses in the state will be created,
11 continued, or expanded, including provision for a call center.

12 (2) Consistent with the work plan developed in subsection (3) of
13 this section, but in no case later than January 1, 2012, the authority,
14 in collaboration with the joint select committee on health reform
15 implementation and the board, shall develop a broad range of options
16 for operating the exchange and report the options to the governor and
17 the legislature on an ongoing basis. The report must include analysis
18 and recommendations on the following:

19 (a) The operations and administration of the exchange, including:

20 (i) The goals and principles of the exchange;

21 (ii) The creation and implementation of a single state-administered
22 exchange for all geographic areas in the state that operates as the
23 exchange for both the individual and small employer markets by January
24 1, 2014;

25 (iii) Whether and under what circumstances the state should
26 consider establishment of, or participation in, a regionally
27 administered multistate exchange;

28 (iv) Whether the role of an exchange includes serving as an
29 aggregator of funds that comprise the premium for a health plan offered
30 through the exchange;

31 (v) The administrative, fiduciary, accounting, contracting, and
32 other services to be provided by the exchange;

33 (vi) Coordination of the exchange with other state programs;

34 (vii) Development of sustainable funding for administration of the
35 exchange as of January 1, 2015; and

36 (viii) Recognizing the need for expedience in determining the
37 structure of needed information technology, the necessary information
38 technology to support implementation of exchange activities;

1 (b) Whether to adopt and implement a federal basic health plan
2 option as authorized in the affordable care act, whether the federal
3 basic health plan option should be administered by the entity that
4 administers the exchange or by a state agency, and whether the federal
5 basic health plan option should merge risk pools for rating with any
6 portion of the state's medicaid program;

7 (c) Individual and small group market impacts, including whether
8 to:

9 (i) Merge the risk pools for rating the individual and small group
10 markets in the exchange and the private health insurance markets; and

11 (ii) Increase the small group market to firms with up to one
12 hundred employees;

13 (d) Creation of uniform requirements, standards, and criteria for
14 the creation of qualified health plans offered through the exchange,
15 including promoting participation by carriers and enrollees in the
16 exchange to a level sufficient to provide sustainable funding for the
17 exchange;

18 (e) Certifying, selecting, and facilitating the offer of individual
19 and small group plans through an exchange, to include designation of
20 qualified health plans and the levels of coverage for the plans;

21 (f) The role and services provided by producers and navigators,
22 including the option to use private insurance market brokers as
23 navigators;

24 (g) Effective implementation of risk management methods, including:
25 Reinsurance, risk corridors, risk adjustment, to include the entity
26 designated to operate reinsurance and risk adjustment, and the
27 continuing role of the Washington state health insurance pool;

28 (h) Participation in innovative efforts to contain costs in
29 Washington's markets for public and private health care coverage;

30 (i) Providing federal refundable premium tax credits and reduced
31 cost-sharing subsidies through the exchange, including the processes
32 and entity responsible for determining eligibility to participate in
33 the exchange and the cost-sharing subsidies provided through the
34 exchange;

35 (j) The staff, resources, and revenues necessary to operate and
36 administer an exchange for the first two years of operation;

37 (k) The extent and circumstances under which benefits for spiritual

1 care services that are deductible under section 213(d) of the internal
2 revenue code as of January 1, 2010, will be made available under the
3 exchange; and

4 (1) Any other areas identified by the joint select committee on
5 health reform implementation.

6 (3) In collaboration with the joint select committee on health
7 reform implementation, the authority shall develop a work plan for the
8 development of options under subsection (2) of this section in
9 discrete, prioritized stages.

10 (4) The authority and the board shall consult with the
11 commissioner, the joint select committee on health reform
12 implementation, and stakeholders relevant to carrying out the
13 activities required under this section, including: (a) Educated health
14 care consumers who are enrolled in commercial health insurance coverage
15 and publicly subsidized health care programs; (b) individuals and
16 entities with experience in facilitating enrollment in health insurance
17 coverage, including health carriers, producers, and navigators; (c)
18 representatives of small businesses, employees of small businesses, and
19 self-employed individuals; (d) advocates for enrolling hard to reach
20 populations and populations enrolled in publicly subsidized health care
21 programs; (e) facilities and providers of health care; (f)
22 representatives of publicly subsidized health care programs; and (g)
23 members in good standing of the American academy of actuaries.

24 (5) Beginning March 15, 2012, the exchange shall be responsible for
25 the duties of the authority under this section. Prior to March 15,
26 2012, the board may make independent recommendations regarding the
27 options developed under subsection (2) of this section to the governor
28 and the legislature.

29 NEW SECTION. **Sec. 6.** (1) The authority may enter into:

30 (a) Information sharing agreements with federal and state agencies
31 and other state exchanges to carry out the provisions of this act:
32 PROVIDED, That such agreements include adequate protections with
33 respect to the confidentiality of the information to be shared and
34 comply with all state and federal laws and regulations; and

35 (b) Interdepartmental agreements with the office of the insurance
36 commissioner, the department of social and health services, the

1 department of health, and any other state agencies necessary to
2 implement this act.

3 (2) To the extent funding is available, the authority shall:

- 4 (a) Provide staff and resources to implement this act;
- 5 (b) Manage and administer the grant and other funds; and
- 6 (c) Expend funds specifically appropriated by the legislature to
7 implement the provisions of this act.

8 (3) Beginning March 15, 2012, the board shall:

- 9 (a) Be responsible for the duties imposed on the authority under
10 this section; and
- 11 (b) Have the powers granted to the authority under this section.

12 NEW SECTION. **Sec. 7.** The health benefit exchange account is
13 created in the custody of the state treasurer. All receipts from
14 federal grants received under the affordable care act shall be
15 deposited into the account. Expenditures from the account may be used
16 only for purposes consistent with the grants. Until March 15, 2012,
17 only the administrator of the health care authority, or his or her
18 designee, may authorize expenditures from the account. Beginning March
19 15, 2012, only the board of the Washington health benefit exchange may
20 authorize expenditures from the account. The account is subject to
21 allotment procedures under chapter 43.88 RCW, but an appropriation is
22 not required for expenditures.

23 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act constitute
24 a new chapter in Title 43 RCW.

25 NEW SECTION. **Sec. 9.** If any part of this act is found to be in
26 conflict with federal requirements that are a prescribed condition to
27 the allocation of federal funds to the state, the conflicting part of
28 this act is inoperative solely to the extent of the conflict and with
29 respect to the agencies directly affected, and this finding does not
30 affect the operation of the remainder of this act in its application to
31 the agencies concerned. Rules adopted under this act must meet federal
32 requirements that are a necessary condition to the receipt of federal
33 funds by the state."

34 Correct the title.