

# SENATE BILL REPORT

## SB 6178

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As of January 18, 2012

**Title:** An act relating to furthering state implementation of the health benefit exchange and related provisions of the affordable care act.

**Brief Description:** Implementing the affordable care act.

**Sponsors:** Senators Keiser, Conway, Shin, Frockt, Kline, Pflug and Chase; by request of Governor Gregoire and Insurance Commissioner.

**Brief History:**

**Committee Activity:** Health & Long-Term Care: 1/16/12.

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### SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

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

**Background:** The federal Affordable Care Act (ACA), passed in 2010, includes a number of modifications that broadly impact medical insurance. These modifications include the introduction of health plans that will be available without health screening in 2014, the requirement for states to establish health insurance exchanges (Exchange) to facilitate the purchase of individual insurance and small group insurance, and new rating and coverage requirements for all products in the individual and small group markets except for those plans that qualify as grandfathered under the ACA. The benefit plans in the individual and small group markets must include the essential benefits package with the ten defined coverage categories, and must align with new actuarial value levels identified as platinum (90 percent), gold (80 percent), silver (70 percent), bronze (60 percent), or a catastrophic health benefit package.

The 2011 Legislature passed SSB 5445, which established a Washington Health Benefit Exchange as one of the steps toward implementing some of the requirements of the ACA. The state established an Exchange as a public-private partnership separate and distinct from the state, with a Governing Board that was recently appointed by the Governor. The Exchange Board is scheduled to take over the development and operations of an Exchange beginning March 15, 2012, with the limited powers and duties outlined in statute. The bill also directed the Health Care Authority to collaborate with the Joint Select Committee on Health Reform Implementation and the Office of Insurance Commissioner (OIC) to complete analysis and submit recommendations to the Legislature on a broad range of policy options

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and design features for the Exchange and other issues impacting the individual and small group markets as well as the state's high risk pool, the Washington State Health Insurance Pool (WSHIP). Joint recommendations of the Governor and the OIC have been packaged as request legislation.

**Summary of Bill:** Insurance market standards are established for health insurance carriers to sell individual and small group products in the Exchange and outside the Exchange. Insurance carriers may not offer any individual or small group products outside the Exchange unless they offer at least a silver level and gold level health plan. Insurance carriers may not offer a bronze level health plan unless they offer the same plan through the Exchange, and, except for grandfathered catastrophic plans, insurance carriers may not offer a catastrophic health plan outside the Exchange unless they offer the same plan through the Exchange. Catastrophic health benefit plans offered outside the Exchange must meet the federal definitions of catastrophic health benefit plans and may not include three primary care visits that are covered prior to satisfying the deductible. The definition of a catastrophic plan is modified in statute to reflect the federal requirements.

The Exchange Board must certify a health plan as a qualified health plan for the Exchange if the OIC determines that the health plan meets requirements established in statute and rule; if the Board determines the plan meets the requirements of the ACA; and if the Board determines the health plan meets any additional criteria adopted in rule by the OIC as requested by the Board. The OIC may adopt additional requirements in rule only as requested by the Board. Any additional requirements for qualified health plans should prioritize the interests of the individuals and small businesses served by the Exchange and should encourage the following: health insurance carriers to offer health plans in the Exchange; enrollment in the Exchange of a diverse population; competition among carriers based on quality, price, and service; and a variety of plan choices among benefit tier levels.

The powers and duties of the Exchange are modified to allow the Exchange and the Exchange Board to operate and administer the program, and specific limitations are removed. The Exchange must report to the Governor and the Legislature on activities at least annually.

The WSHIP statutes are modified to allow the high risk pool to continue to serve enrollees after January 1, 2014. The standard health questionnaire that is used to screen applicants for the individual market is removed effective January 1, 2014, when health plans may no longer deny coverage due to a pre-existing health condition. A number of WSHIP program changes are made January 1, 2014, including a discontinuation of eligibility for new enrollees; the premium discount arrangement with the HCA is removed, pre-existing condition waiting periods are discontinued, and the rating of the plans is modified. For policies renewed beginning January 1, 2014, rates may be no more than the average individual standard rate charged for coverage comparable to the pool coverage by the five largest WSHIP members offering such coverage in the state. In the event that no such coverage is offered, rates may be no more than the standard risk rate established using reasonable actuarial techniques and must reflect anticipated experience and expenses for such coverage in the individual market.

**Appropriation:** None.

**Fiscal Note:** Requested on January 13, 2012.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Sections 8 and 9 take effect immediately. Sections 10, 12, and 14 take effect January 1, 2014.

**Staff Summary of Public Testimony:** PRO: The bill you passed last year provided a good start on the Exchange and has allowed the appointment of an Exchange Board that is well qualified and ready to begin work. This bill takes the next steps in moving the state toward development and the ability to meet critical milestones in 2013, such as federal certification of a program, and having a program and benefit design ready before 2013 to allow carriers to develop products and be ready for 2013 open enrollment and coverage in 2014. There are some topics not yet in the bill while further work is done to prepare options for the decision making on essential health benefits, further discussion of administration of reinsurance and risk adjustment, and further discussion on the federal Basic Health option. ACA allows state flexibility to address many areas, including provisions that may safeguard the insurance market and ensure a level playing field for all carriers offering products in the Exchange and outside the Exchange, in the individual and small group markets. The recommendations for product offerings provide a framework to protect carriers from cherry picking or adverse risk that may result without additional protections that are not included in ACA. The protections for adverse risk provided in ACA with risk adjustment and reinsurance are not strong enough and require good solid data that does not exist for the thousands of uninsured lives that are expected to enroll in the Exchange.

This bill is a good next step to building the Exchange. It is reasonable that one gold and one silver plan be available in and out of the Exchange. We would like the market requirements to be applied on a company-wide approach so the company can offer in and outside the Exchange by their line of business with different networks. WSHIP assessment is a concern, as it continues to hit regulated carriers with a disproportionate burden on the individual and small group plans, and we suggest plans be allowed to take a credit on WSHIP assessment paid against the new reinsurance assessment. The tribes support this bill and believe it will provide an opportunity to cover the many uninsured tribal members, and we hope there may be opportunity for the tribes to sponsor coverage in the Exchange and to require the Exchange plans to use tribal providers as essential community providers.

These changes will create a viable, sustainable, and consumer friendly Exchange that promotes competition and helps with the complexity of purchasing insurance today. The uniformity of the approach will help provide a level playing field. We support changing the small group definition to 100 now, rather than waiting to 2016. There are important safeguards for people with pre-existing conditions, and we suggest that the essential health (EHB) decisions will also be important in that discussion. We will need to look deeper into EHB designs for limitations in areas like the prescription benefits to ensure coverage of emerging new drugs that target cancer and other illnesses. The criteria for the qualified health plans are some of the most important elements, since the state provides the stamp of approval for consumers and the stamp should indicate that the plan has met quality standards and ensures consumer protections.

The Exchange provides opportunity for seamless coverage, and the federal Basic Health option would provide the best opportunity to ensure seamless coverage and appears to reduce

the churn between coverage options as families experience income changes. It is important for families to have the same coverage, and a Basic Health option may afford the best linkage with plans for children and their parents. We need discussion of special pediatric services that need to be added to EHB to ensure they are robust and that the process for developing the benefits is transparent and inclusive. The federal Basic Health option may provide the most cost-effective care for enrollees and allow more take-up of insurance. If the premiums in the Exchange are too high, then people will remain uninsured. The Basic Health option allows the best opportunity to create an integrated bridge with Medicaid. Please leave the option to develop the Basic Health option open and add it to the bill.

CON: There was opportunity to develop the Exchange as a true market organizer, but this bill goes in the opposite direction and manipulates markets and health plans. The risk adjustment mechanisms in ACA provide protection. The Legislature should retain oversight of the Exchange and the criteria for the qualified health plans and not add to the federal requirements. Association products fill an important niche for many. We have concerns with the requirements for the products to be offered in and outside of the Exchange, and negative impacts on competition. This will limit choice for small businesses, and we are concerned that small businesses will be confused and drop coverage. We do support development of an Exchange, but we believe ACA provisions for adverse selection are enough to ensure a vibrant marketplace. We support the development of a health Exchange and the continuation of WSHIP, and believe the WSHIP Board should coordinate all the risk mechanisms called for in ACA. We have concern this bill provides the Board and OIC too much authority to make broad based policy decisions that should be in the hands of the Legislature. The federal requirements in ACA are enough, and the state should not exceed those standards.

OTHER: The WSHIP Board asks that if you make it the administrator of the risk adjustment and reinsurance mechanisms, you do it this year to allow us time to develop the program or else it will be a recipe for failure.

**Persons Testifying:** PRO: Jonathan Seib, Governor's Office; Barbara Flye, OIC; Molly Voris, HCA; Scott Plack, Group Health Cooperative; Ed Fox, American Indian Health Commission; Teresa Mosqueda, WA State Labor Council, Healthy WA Coalition; Erin Deziedzic, American Cancer Society; Misha Wershkul, Service Employees International Union 775, 1199 NW; Kate White Tudor, WA State Nurses Assn.; Jen Estroff, Children's Alliance; Janet Varon, NW Health Law Advocates.

CON: Donna Steward, Assn. of WA Business; John Stuhlmiller, WA Farm Bureau; Gary Smith, Independent Business Assn.; Chris Bandoli, Regence Blue Shield; Len Sorrin, Premera Blue Cross; Mel Sorenson, WA Health Insurance Underwriters, National Assn. of Insurance and Financial Advisors.

OTHER: Karen Larsen, WSHIP.