
ENGROSSED SUBSTITUTE HOUSE BILL 1740

State of Washington

62nd Legislature

2011 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Cody, Schmick, Jenkins, and Hinkle; by request of Governor Gregoire)

READ FIRST TIME 02/25/11.

1 AN ACT Relating to the creation of a health benefit exchange;
2 adding new sections to chapter 41.05 RCW; and creating new sections.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that the affordable
5 care act requires the states to establish health benefit exchanges.
6 The legislature intends to establish an exchange, including a
7 governance structure that will be in place no later than July 1, 2012.
8 There are many policy decisions associated with establishing an
9 exchange that need to be made that will take a great deal of effort and
10 expertise. It is therefore the intent of the legislature to establish
11 a process through which these policy decisions can be made by the
12 legislature and the governor by the deadline established in the
13 affordable care act.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.05 RCW
15 to read as follows:

16 The state shall establish, by statute, a health benefit exchange
17 consistent with the federal affordable care act, P.L. 111-148, to begin
18 operations no later than January 1, 2014, and intended to:

- 1 (1) Increase access to quality affordable health care coverage,
2 reduce the number of uninsured persons in Washington state, and
3 increase the availability of health care coverage through the private
4 health insurance market to qualified individuals and small employers;
- 5 (2) Provide consumer choice and portability of health insurance,
6 regardless of employment status;
- 7 (3) Create an organized, transparent, and accountable health
8 insurance marketplace for Washingtonians to purchase affordable,
9 quality health care coverage, to claim available federal refundable
10 premium tax credits and cost-sharing subsidies, and to meet the
11 personal responsibility requirements for minimum essential coverage as
12 provided under the federal affordable care act;
- 13 (4) Promote consumer literacy and empower consumers to compare
14 plans and make informed decisions about their health care and coverage;
- 15 (5) Effectively and efficiently administer health care subsidies
16 and determination of eligibility for participation in publicly
17 subsidized health care programs, including the exchange;
- 18 (6) Create a health insurance market that competes on the basis of
19 price, quality, service, and other innovative efforts;
- 20 (7) Operate in a manner compatible with efforts to improve quality,
21 contain costs, and promote innovation;
- 22 (8) Recognize the need for a private health insurance market to
23 exist outside of the exchange and the need for a regulatory framework
24 that applies both inside and outside of the exchange; and
- 25 (9) Recognize that the regulation of the health insurance market,
26 both inside and outside the exchange, should continue to be performed
27 by the insurance commissioner.

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.05 RCW
29 to read as follows:

- 30 (1) The health benefit exchange board shall be established as a
31 nonprofit, public-private partnership, composed of nine persons with
32 expertise in the Washington state health care system and private and
33 public health care coverage. By July 1, 2012, the governor shall
34 appoint representatives from each of the following groups:
 - 35 (a) Two employee benefits specialists;
 - 36 (b) A health economist or actuary;
 - 37 (c) Small businesses;

1 (d) Health care consumer advocates;

2 (e) The administrator of the health care authority under chapter
3 41.05 RCW;

4 (f) The insurance commissioner or designee as a nonvoting ex
5 officio member; and

6 (g) Two appointments from a list of recommendations submitted by
7 the legislature. Each chamber of the legislature shall forward two
8 recommendations representing mutually agreed on names from each caucus.
9 Each person appointed to the board under this subsection (1)(g) must
10 have demonstrated and acknowledged expertise in at least one of the
11 following areas:

12 (i) Individual health care coverage;

13 (ii) Small employer health care coverage;

14 (iii) Health benefits plan administration;

15 (iv) Health care finance and economics;

16 (v) Actuarial science;

17 (vi) Administering a public or private health care delivery system;

18 or

19 (vii) Purchasing health plan coverage.

20 (2) The board shall elect a chair from among its members.

21 (3) No board member may be employed by, a consultant to, a member
22 of the board of directors of, or otherwise a representative of or a
23 lobbyist for an entity in the business of, or potentially in the
24 business of, selling items or services of significant value to the
25 health benefit exchange.

26 (4) Initial members of the board shall serve staggered terms not to
27 exceed four years. Initial appointments must be made on or before July
28 1, 2012. Members appointed thereafter shall serve two-year terms.

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

33 (6) The board shall conduct its business consistent with the
34 provisions of chapter 42.30 RCW, the open public meetings act.
35 Consistent with the open public meetings act, the board may hold
36 executive sessions to consider proprietary or confidential nonpublished
37 information.

1 (7)(a) The board shall establish an advisory committee to allow for
2 the views of the health care industry and other stakeholders to be
3 heard in the operation of the health benefit exchange. The advisory
4 committee shall provide expertise and recommendations to the board, but
5 shall have no authority to promulgate rules or enter into contracts on
6 behalf of the health benefit exchange.

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

10 (8) Members of the board are not civilly or criminally liable and
11 may not have any penalty or cause of action of any nature arise against
12 them for any action taken or not taken, including any discretionary
13 decision or failure to make a discretionary decision, when the action
14 or inaction is done in good faith and in the performance of the powers
15 and duties under this act. Nothing in this section prohibits legal
16 actions against the board to enforce the board's statutory or
17 contractual duties or obligations.

18 (9) In recognition of the government to government relationship
19 between the state of Washington and the federally recognized tribes in
20 the state of Washington, the board shall consult with the American
21 Indian health commission on an ongoing basis.

22 NEW SECTION. **Sec. 4.** The definitions in this section apply
23 throughout sections 1 and 4 through 6 of this act, unless the context
24 clearly requires otherwise. Terms and phrases used in sections 1 and
25 4 through 6 of this act that are not defined in this section must be
26 defined as consistent with implementation of a state health benefit
27 exchange pursuant to the affordable care act.

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

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

34 (3) "Commissioner" means the insurance commissioner, established in
35 Title 48 RCW.

36 (4) "Exchange" means a state health benefit exchange pursuant to
37 the affordable care act.

1 NEW SECTION. **Sec. 5.** (1)(a) In collaboration with the joint
2 select committee on health reform implementation, the authority shall
3 apply for planning and establishment grants pursuant to the affordable
4 care act. Whenever possible, planning and establishment grant
5 applications shall allow for the possibility of partially funding the
6 activities of the joint select committee on health reform
7 implementation.

8 (b) The authority, in collaboration with the joint select committee
9 on health reform implementation, shall implement provisions of the
10 planning and establishment grants as approved by the United States
11 secretary of health and human services.

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, shall develop a broad range of options for establishing
16 and implementing a state-administered health benefit exchange. The
17 options must include analysis and recommendations on the following:

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

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

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

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

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

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

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

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

35 (viii) Recognizing the need for expedience in determining the
36 structure of needed information technology, the necessary information
37 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 a competitive purchasing environment for qualified
14 health plans offered through the exchange, including promoting
15 participation in the exchange to a level sufficient to provide
16 sustainable funding for the exchange;

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

20 (f) The role and services provided by producers and navigators;

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

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

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

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

34 (k) Any other areas identified by the joint select committee on
35 health reform implementation.

36 (3)(a) In collaboration with the joint select committee on health
37 reform implementation, the authority shall develop a work plan for the

1 development of options under subsection (2) of this section in
2 discrete, prioritized stages.

3 (b) The joint select committee on health reform implementation may
4 submit to the authority specific questions pertaining to the
5 establishment of a health benefit exchange under section 2 of this act.

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

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

21 (a) Information sharing agreements with federal and state agencies
22 and other state exchanges to carry out the provisions of this act:
23 PROVIDED, That such agreements include adequate protections with
24 respect to the confidentiality of the information to be shared and
25 comply with all state and federal laws and regulations; and

26 (b) Interdepartmental agreements with the office of the insurance
27 commissioner, the department of social and health services, the
28 department of health, and any other state agencies necessary to
29 implement this act.

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

- 31 (a) Provide staff and resources to implement this act;
- 32 (b) Manage and administer the grant and other funds; and
- 33 (c) Expend funds specifically appropriated by the legislature to
34 implement the provisions of this act.

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