

CERTIFICATION OF ENROLLMENT  
**SUBSTITUTE SENATE BILL 5445**

62nd Legislature  
2011 Regular Session

Passed by the Senate April 18, 2011  
YEAS 32 NAYS 16

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**President of the Senate**

Passed by the House April 11, 2011  
YEAS 75 NAYS 22

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5445** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5445**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2011 Regular Session

**State of Washington                      62nd Legislature                      2011 Regular Session**

**By** Senate Health & Long-Term Care (originally sponsored by Senators Keiser, Pflug, White, Conway, and Kline; by request of Governor Gregoire)

READ FIRST TIME 02/21/11.

1            AN ACT Relating to the creation of a health benefit exchange;  
2 adding a new chapter to Title 43 RCW; and creating new sections.

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

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

13            (2) The exchange is intended to:

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

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

1 (c) Create an organized, transparent, and accountable health  
2 insurance marketplace for Washingtonians to purchase affordable,  
3 quality health care coverage, to claim available federal refundable  
4 premium tax credits and cost-sharing subsidies, and to meet the  
5 personal responsibility requirements for minimum essential coverage as  
6 provided under the federal affordable care act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23        (v) The remaining nominees must have demonstrated and acknowledged  
24 expertise in at least one of the following areas: Individual health  
25 care coverage, small employer health care coverage, health benefits  
26 plan administration, health care finance and economics, actuarial  
27 science, or administering a public or private health care delivery  
28 system.

29        (b) By December 15, 2011, the governor shall appoint two members  
30 from each list submitted by the caucuses under (a) of this subsection.  
31 The appointments made under this subsection (1)(b) must include at  
32 least one employee benefits specialist, one health economist or  
33 actuary, one representative of small business, and one representative  
34 of health consumer advocates. The remaining four members must have a  
35 demonstrated and acknowledged expertise in at least one of the  
36 following areas: Individual health care coverage, small employer  
37 health care coverage, health benefits plan administration, health care

1 finance and economics, actuarial science, or administering a public or  
2 private health care delivery system.

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

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

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

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

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

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

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

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

35 (6) The exchange and the board are subject only to the provisions  
36 of chapter 42.30 RCW, the open public meetings act, and chapter 42.56  
37 RCW, the public records act, and not to any other law or regulation

1 generally applicable to state agencies. Consistent with the open  
2 public meetings act, the board may hold executive sessions to consider  
3 proprietary or confidential nonpublished information.

4 (7)(a) The board shall establish an advisory committee to allow for  
5 the views of the health care industry and other stakeholders to be  
6 heard in the operation 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.

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

32 (2) The powers and duties of the exchange and the board are limited  
33 to those necessary to apply for and administer grants, establish  
34 information technology infrastructure, and undertake additional  
35 administrative functions necessary to begin operation of the exchange  
36 by January 1, 2014. Any actions relating to substantive issues

1 included in section 5 of this act must be consistent with statutory  
2 direction on those issues.

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

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

9 (b) Develop and submit to the federal department of health and  
10 human services:

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

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

15 (iii) A plan outlining steps to prevent fraud, waste, and abuse;  
16 and

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

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

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

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

29 (ii) The creation and implementation of a single state-administered  
30 exchange for all geographic areas in the state that operates as the  
31 exchange for both the individual and small employer markets by January  
32 1, 2014;

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

36 (iv) Whether the role of an exchange includes serving as an

1 aggregator of funds that comprise the premium for a health plan offered  
2 through the exchange;

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

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

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

8 (viii) Recognizing the need for expedience in determining the  
9 structure of needed information technology, the necessary information  
10 technology to support implementation of exchange activities;

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

17 (c) Individual and small group market impacts, including whether  
18 to:

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

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

23 (d) Creation of uniform requirements, standards, and criteria for  
24 the creation of qualified health plans offered through the exchange,  
25 including promoting participation by carriers and enrollees in the  
26 exchange to a level sufficient to provide sustainable funding for the  
27 exchange;

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

31 (f) The role and services provided by producers and navigators,  
32 including the option to use private insurance market brokers as  
33 navigators;

34 (g) Effective implementation of risk management methods, including:  
35 Reinsurance, risk corridors, risk adjustment, to include the entity  
36 designated to operate reinsurance and risk adjustment, and the  
37 continuing role of the Washington state health insurance pool;

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

3 (i) Providing federal refundable premium tax credits and reduced  
4 cost-sharing subsidies through the exchange, including the processes  
5 and entity responsible for determining eligibility to participate in  
6 the exchange and the cost-sharing subsidies provided through the  
7 exchange;

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

10 (k) The extent and circumstances under which benefits for spiritual  
11 care services that are deductible under section 213(d) of the internal  
12 revenue code as of January 1, 2010, will be made available under the  
13 exchange; and

14 (l) Any other areas identified by the joint select committee on  
15 health reform implementation.

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

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

34 (5) Beginning March 15, 2012, the exchange shall be responsible for  
35 the duties of the authority under this section. Prior to March 15,  
36 2012, the board may make independent recommendations regarding the  
37 options developed under subsection (2) of this section to the governor  
38 and the legislature.

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

2            (a) Information sharing agreements with federal and state agencies  
3 and other state exchanges to carry out the provisions of this act:  
4 PROVIDED, That such agreements include adequate protections with  
5 respect to the confidentiality of the information to be shared and  
6 comply with all state and federal laws and regulations; and

7            (b) Interdepartmental agreements with the office of the insurance  
8 commissioner, the department of social and health services, the  
9 department of health, and any other state agencies necessary to  
10 implement this act.

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

12            (a) Provide staff and resources to implement this act;

13            (b) Manage and administer the grant and other funds; and

14            (c) Expend funds specifically appropriated by the legislature to  
15 implement the provisions of this act.

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

17            (a) Be responsible for the duties imposed on the authority under  
18 this section; and

19            (b) Have the powers granted to the authority under this section.

20        NEW SECTION.    **Sec. 7.**    The health benefit exchange account is  
21 created in the custody of the state treasurer. All receipts from  
22 federal grants received under the affordable care act shall be  
23 deposited into the account. Expenditures from the account may be used  
24 only for purposes consistent with the grants. Until March 15, 2012,  
25 only the administrator of the health care authority, or his or her  
26 designee, may authorize expenditures from the account. Beginning March  
27 15, 2012, only the board of the Washington health benefit exchange may  
28 authorize expenditures from the account. The account is subject to  
29 allotment procedures under chapter 43.88 RCW, but an appropriation is  
30 not required for expenditures.

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

33        NEW SECTION.    **Sec. 9.**    If any part of this act is found to be in  
34 conflict with federal requirements that are a prescribed condition to  
35 the allocation of federal funds to the state, the conflicting part of

1 this act is inoperative solely to the extent of the conflict and with  
2 respect to the agencies directly affected, and this finding does not  
3 affect the operation of the remainder of this act in its application to  
4 the agencies concerned. Rules adopted under this act must meet federal  
5 requirements that are a necessary condition to the receipt of federal  
6 funds by the state.

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