

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5338**

Chapter 87, Laws of 2023

68th Legislature  
2023 Regular Session

ESSENTIAL HEALTH BENEFITS—REVIEW

EFFECTIVE DATE: April 13, 2023

Passed by the Senate April 5, 2023  
Yeas 49 Nays 0

DENNY HECK

**President of the Senate**

Passed by the House March 20, 2023  
Yeas 96 Nays 0

LAURIE JINKINS

**Speaker of the House of  
Representatives**

Approved April 13, 2023 10:06 AM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5338** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

**Secretary**

FILED

April 13, 2023

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5338**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

**State of Washington                      68th Legislature                      2023 Regular Session**

**By** Senate Health & Long Term Care (originally sponsored by Senators Cleveland, Muzzall, Conway, and Randall)

READ FIRST TIME 01/25/23.

1            AN ACT Relating to a review of the state's essential health  
2 benefits; amending RCW 48.43.715; creating a new section; and  
3 declaring an emergency.

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

5            NEW SECTION.            **Sec. 1.**            (1) The office of the insurance  
6 commissioner, in consultation with relevant interested persons and  
7 entities, shall review Washington's benchmark plan establishing the  
8 state's essential health benefits to determine whether to request  
9 approval from the centers for medicare and medicaid services under 45  
10 C.F.R. Sec. 156.111 to modify the state's essential health benefits  
11 benchmark plan.

12            (2) As part of its review, the office shall determine the  
13 potential impacts on individual and small group health plan design,  
14 actuarial values, and premium rates if coverage for each of the  
15 following was included as an essential health benefit:

16            (a) Donor human milk as provided in RCW 48.43.815 and directed by  
17 RCW 48.43.715;

18            (b) Hearing instruments and associated services as described in  
19 section 1, chapter . . . (House Bill No. 1222), Laws of 2023 and  
20 directed by RCW 48.43.715;

21            (c) Fertility services;

1 (d) Biomarker testing;

2 (e) Contralateral prophylactic mastectomies;

3 (f) Treatment for pediatric acute-onset neuropsychiatric syndrome  
4 and pediatric autoimmune neuropsychiatric disorders associated with  
5 streptococcal infections; and

6 (g) Magnetic resonance imaging for breast cancer screening.

7 (3) By December 31, 2023, the office shall report the results of  
8 the review to the relevant committees of the legislature, including  
9 any findings related to modifying the state's essential health  
10 benefits.

11 **Sec. 2.** RCW 48.43.715 and 2022 c 236 s 2 are each amended to  
12 read as follows:

13 (1) ~~((The))~~ Until the effective date of an updated essential  
14 health benefits benchmark plan submitted under section 1 of this act,  
15 the commissioner, in consultation with the board and the health care  
16 authority, shall, by rule, select the largest small group plan in the  
17 state by enrollment as the benchmark plan for the individual and  
18 small group market for purposes of establishing the essential health  
19 benefits in Washington state.

20 (2) If the essential health benefits benchmark plan for the  
21 individual and small group market does not include all of the ~~((ten))~~  
22 10 essential health benefits categories, the commissioner, in  
23 consultation with the board and the health care authority, shall, by  
24 rule, supplement the benchmark plan benefits as needed.

25 (3) All individual and small group health plans must cover the  
26 ~~((ten))~~ 10 essential health benefits categories, other than a health  
27 plan offered through the federal basic health program, a  
28 grandfathered health plan, or medicaid. Such a health plan may not be  
29 offered in the state unless the commissioner finds that it is  
30 substantially equal to the benchmark plan. When making this  
31 determination, the commissioner:

32 (a) Must ensure that the plan covers the ~~((ten))~~ 10 essential  
33 health benefits categories;

34 (b) May consider whether the health plan has a benefit design  
35 that would create a risk of biased selection based on health status  
36 and whether the health plan contains meaningful scope and level of  
37 benefits in each of the ten essential health benefits categories;

38 (c) Notwithstanding (a) and (b) of this subsection, for benefit  
39 years beginning January 1, 2015, must establish by rule the review

1 and approval requirements and procedures for pediatric oral services  
2 when offered in stand-alone dental plans in the nongrandfathered  
3 individual and small group markets outside of the exchange; and

4 (d) Must allow health carriers to also offer pediatric oral  
5 services within the health benefit plan in the nongrandfathered  
6 individual and small group markets outside of the exchange.

7 (4) Beginning December 15, 2012, and every year thereafter, the  
8 commissioner shall submit to the legislature a list of state-mandated  
9 health benefits, the enforcement of which will result in federally  
10 imposed costs to the state related to the plans sold through the  
11 exchange because the benefits are not included in the essential  
12 health benefits designated under federal law. The list must include  
13 the anticipated costs to the state of each state-mandated health  
14 benefit on the list and any statutory changes needed if funds are not  
15 appropriated to defray the state costs for the listed mandate. The  
16 commissioner may enforce a mandate on the list for the entire market  
17 only if funds are appropriated in an omnibus appropriations act  
18 specifically to pay the state portion of the identified costs.

19 (~~Upon authorization by the legislature to modify the state's~~  
20 ~~essential health benefits benchmark plan under 45 C.F.R. Sec.~~  
21 ~~156.111, the)) The commissioner shall include coverage for donor  
22 human milk as provided in RCW 48.43.815 and hearing instruments and  
23 associated services as described in section 1, chapter . . . (House  
24 Bill No. 1222), Laws of 2023, in ((the updated plan)) any update of  
25 the state's essential health benefits benchmark plan submitted to the  
26 centers for medicare and medicaid services under section 1 of this  
27 act.~~

28 NEW SECTION. Sec. 3. This act is necessary for the immediate  
29 preservation of the public peace, health, or safety, or support of  
30 the state government and its existing public institutions, and takes  
31 effect immediately.

Passed by the Senate April 5, 2023.  
Passed by the House March 20, 2023.  
Approved by the Governor April 13, 2023.  
Filed in Office of Secretary of State April 13, 2023.

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