
SENATE BILL 5712

State of Washington

60th Legislature

2007 Regular Session

By Senator Parlette

Read first time 01/29/2007. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to the Washington state health insurance pool;
2 amending RCW 48.41.110, 48.41.160, 48.41.200, 48.41.037, 48.41.100, and
3 48.41.190; creating a new section; and making an appropriation.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the Washington
6 state health insurance pool is a critically important insurance option
7 for people in this state and must reflect health care provisions based
8 on the best available evidence and be financially sustainable over
9 time. The laws governing the Washington state health insurance pool
10 have been read to preclude the program from modifying contracts, and
11 yet coverage needs and options change with time. Everyone in this
12 state benefits when the Washington state health insurance pool is more
13 affordable and higher performing. Changes are needed to the Washington
14 state health insurance pool to increase affordability, offer quality
15 and cost-effective benefits, and enhance the governance and operation
16 of the pool.

17 **Sec. 2.** RCW 48.41.110 and 2001 c 196 s 4 are each amended to read
18 as follows:

1 (1) The pool shall offer one or more care management plans of
2 coverage. Such plans may, but are not required to, include point of
3 service features that permit participants to receive in-network
4 benefits or out-of-network benefits subject to differential cost
5 shares. (~~Covered persons enrolled in the pool on January 1, 2001, may~~
6 ~~continue coverage under the pool plan in which they are enrolled on~~
7 ~~that date. However,~~) The pool may incorporate managed care features
8 and requirements to participate in chronic care and disease management
9 and evidence-based protocols into ((such)) existing plans.

10 (2) The administrator shall prepare a brochure outlining the
11 benefits and exclusions of ((the)) pool ((policy)) policies in plain
12 language. After approval by the board, such brochure shall be made
13 reasonably available to participants or potential participants.

14 (3) The health insurance ((policy)) policies issued by the pool
15 shall pay only reasonable amounts for medically necessary eligible
16 health care services rendered or furnished for the diagnosis or
17 treatment of covered illnesses, injuries, and conditions (~~which are~~
18 ~~not otherwise limited or excluded~~). Eligible expenses are the
19 reasonable amounts for the health care services and items for which
20 benefits are extended under ((the)) a pool policy. (~~Such benefits~~
21 ~~shall at minimum include, but not be limited to, the following services~~
22 ~~or related items:~~)

23 (4) The pool shall offer at least one policy which at a minimum
24 includes, but is not limited to, the following services or related
25 items:

26 (a) Hospital services, including charges for the most common
27 semiprivate room, for the most common private room if semiprivate rooms
28 do not exist in the health care facility, or for the private room if
29 medically necessary, but limited to a total of one hundred eighty
30 inpatient days in a calendar year, and limited to thirty days inpatient
31 care for mental and nervous conditions, or alcohol, drug, or chemical
32 dependency or abuse per calendar year;

33 (b) Professional services including surgery for the treatment of
34 injuries, illnesses, or conditions, other than dental, which are
35 rendered by a health care provider, or at the direction of a health
36 care provider, by a staff of registered or licensed practical nurses,
37 or other health care providers;

- 1 (c) The first twenty outpatient professional visits for the
2 diagnosis or treatment of one or more mental or nervous conditions or
3 alcohol, drug, or chemical dependency or abuse rendered during a
4 calendar year by one or more physicians, psychologists, or community
5 mental health professionals, or, at the direction of a physician, by
6 other qualified licensed health care practitioners, in the case of
7 mental or nervous conditions, and rendered by a state certified
8 chemical dependency program approved under chapter 70.96A RCW, in the
9 case of alcohol, drug, or chemical dependency or abuse;
- 10 (d) Drugs and contraceptive devices requiring a prescription;
- 11 (e) Services of a skilled nursing facility, excluding custodial and
12 convalescent care, for not more than one hundred days in a calendar
13 year as prescribed by a physician;
- 14 (f) Services of a home health agency;
- 15 (g) Chemotherapy, radioisotope, radiation, and nuclear medicine
16 therapy;
- 17 (h) Oxygen;
- 18 (i) Anesthesia services;
- 19 (j) Prostheses, other than dental;
- 20 (k) Durable medical equipment which has no personal use in the
21 absence of the condition for which prescribed;
- 22 (l) Diagnostic x-rays and laboratory tests;
- 23 (m) Oral surgery limited to the following: Fractures of facial
24 bones; excisions of mandibular joints, lesions of the mouth, lip, or
25 tongue, tumors, or cysts excluding treatment for temporomandibular
26 joints; incision of accessory sinuses, mouth salivary glands or ducts;
27 dislocations of the jaw; plastic reconstruction or repair of traumatic
28 injuries occurring while covered under the pool; and excision of
29 impacted wisdom teeth;
- 30 (n) Maternity care services;
- 31 (o) Services of a physical therapist and services of a speech
32 therapist;
- 33 (p) Hospice services;
- 34 (q) Professional ambulance service to the nearest health care
35 facility qualified to treat the illness or injury; and
- 36 (r) Other medical equipment, services, or supplies required by
37 physician's orders and medically necessary and consistent with the
38 diagnosis, treatment, and condition.

1 ~~((4))~~ (5) The pool shall offer at least one policy which closely
2 adheres to benefits available in the private, individual market.

3 (6) The board shall design and employ cost containment measures and
4 requirements such as, but not limited to, care coordination, provider
5 network limitations, preadmission certification, and concurrent
6 inpatient review which may make the pool more cost-effective.

7 ~~((5))~~ (7) The pool benefit policy may contain benefit
8 limitations, exceptions, and cost shares such as copayments,
9 coinsurance, and deductibles that are consistent with managed care
10 products, except that differential cost shares may be adopted by the
11 board for nonnetwork providers under point of service plans. ~~((The~~
12 ~~pool benefit policy cost shares and limitations must be consistent with~~
13 ~~those that are generally included in health plans approved by the~~
14 ~~insurance commissioner; however, no limitation, exception, or reduction~~
15 ~~may be used that would exclude coverage for any disease, illness, or~~
16 ~~injury.~~

17 ~~(6))~~ (8) The pool may not reject an individual for health plan
18 coverage based upon preexisting conditions of the individual or deny,
19 exclude, or otherwise limit coverage for an individual's preexisting
20 health conditions; except that it shall impose a six-month benefit
21 waiting period for preexisting conditions for which medical advice was
22 given, for which a health care provider recommended or provided
23 treatment, or for which a prudent layperson would have sought advice or
24 treatment, within six months before the effective date of coverage.
25 The preexisting condition waiting period shall not apply to prenatal
26 care services. The pool may not avoid the requirements of this section
27 through the creation of a new rate classification or the modification
28 of an existing rate classification. Credit against the waiting period
29 shall be as provided in subsection ~~((7))~~ (9) of this section.

30 ~~((7))~~ (9)(a) Except as provided in (b) of this subsection, the
31 pool shall credit any preexisting condition waiting period in its plans
32 for a person who was enrolled at any time during the sixty-three day
33 period immediately preceding the date of application for the new pool
34 plan. For the person previously enrolled in a group health benefit
35 plan, the pool must credit the aggregate of all periods of preceding
36 coverage not separated by more than sixty-three days toward the waiting
37 period of the new health plan. For the person previously enrolled in
38 an individual health benefit plan other than a catastrophic health

1 plan, the pool must credit the period of coverage the person was
2 continuously covered under the immediately preceding health plan toward
3 the waiting period of the new health plan. For the purposes of this
4 subsection, a preceding health plan includes an employer-provided self-
5 funded health plan.

6 (b) The pool shall waive any preexisting condition waiting period
7 for a person who is an eligible individual as defined in section
8 2741(b) of the federal health insurance portability and accountability
9 act of 1996 (42 U.S.C. 300gg-41(b)).

10 ~~((+8))~~ (10) If an application is made for the pool policy as a
11 result of rejection by a carrier, then the date of application to the
12 carrier, rather than to the pool, should govern for purposes of
13 determining preexisting condition credit.

14 (11) The pool shall contract with organizations that provide care
15 management that has been demonstrated to be effective and shall require
16 that enrollees who are eligible for care management services
17 participate in such programs on a continuous basis as a condition of
18 receiving pool coverage.

19 **Sec. 3.** RCW 48.41.160 and 1987 c 431 s 16 are each amended to read
20 as follows:

21 ~~(1) ((A pool policy offered under this chapter shall contain~~
22 ~~provisions under which the pool is obligated to renew the policy until~~
23 ~~the day on which the individual in whose name the policy is issued~~
24 ~~first becomes eligible for medicare coverage. At that time, coverage~~
25 ~~of dependents shall terminate if such dependents are eligible for~~
26 ~~coverage under a different health plan. Dependents who become eligible~~
27 ~~for medicare prior to the individual in whose name the policy is~~
28 ~~issued, shall receive benefits in accordance with RCW 48.41.150.~~

29 ~~(2))~~ (2)) Any pool plan shall contain or incorporate by endorsement a
30 guarantee of the continuity of coverage of the plan until the day on
31 which the individual in whose name the policy is issued first becomes
32 eligible for medicare coverage. For the purposes of this section, a
33 plan is "renewed" when it is continued beyond the earliest date upon
34 which, at the pool's sole option, the plan could have been terminated
35 for other than nonpayment of premium. The pool may consider the
36 individual's anniversary date as the renewal date for purposes of
37 complying with the provisions of this section.

1 (2) The guarantee of continuity of coverage required in health
2 plans shall not prevent the pool from canceling or nonrenewing a health
3 plan for:

4 (a) Nonpayment of premium;

5 (b) Violation of published policies of the pool;

6 (c) Covered persons entitled to become eligible for medicare
7 benefits by reason of age who fail to apply for a medicare supplement
8 plan or medicare cost, risk, or other plan offered by the pool pursuant
9 to federal laws and regulations;

10 (d) Covered persons who fail to pay any deductible or copayment
11 amount owed to the pool and not the provider of health care services;

12 (e) Covered persons committing fraudulent acts as to the pool;

13 (f) Change or implementation of federal or state laws that no
14 longer permit the continued offering of such coverage.

15 (3) The provisions of this section do not apply in the following
16 cases:

17 (a) The pool has zero enrollment on a product;

18 (b) The pool replaces a product and the replacement product is
19 provided to all covered persons within that class or line of business,
20 includes all of the services covered under the replaced product, and
21 does not significantly limit access to the kind of services covered
22 under the replaced product. The pool may also allow unrestricted
23 conversion to a fully comparable product;

24 (c) The pool discontinues offering a particular type of health
25 benefit plan and: (i) The pool provides notice to each individual of
26 the discontinuation at least ninety days prior to the date of the
27 discontinuation; (ii) the pool offers to each individual provided
28 coverage of this type the option to enroll in any other individual
29 product for which the individual is otherwise eligible and which is
30 currently being offered by the pool; and (iii) in exercising the option
31 to discontinue coverage of this type and in offering the option of
32 coverage under (c)(ii) of this subsection, the pool acts uniformly
33 without regard to any health status-related factor of enrolled
34 individuals or individuals who may become eligible for this coverage.

35 (4) The pool may not change the rates for pool policies except on
36 a class basis, with a clear disclosure in the policy of the pool's
37 right to do so.

1 (~~(3)~~) (5) A pool policy offered under this chapter shall provide
2 that, upon the death of the individual in whose name the policy is
3 issued, every other individual then covered under the policy may elect,
4 within a period specified in the policy, to continue coverage under the
5 same or a different policy.

6 **Sec. 4.** RCW 48.41.200 and 2000 c 79 s 17 are each amended to read
7 as follows:

8 (1) The pool shall determine the standard risk rate by calculating
9 the average individual standard rate charged for coverage comparable to
10 pool coverage by the five largest members, measured in terms of
11 individual market enrollment, offering such coverages in the state. In
12 the event five members do not offer comparable coverage, the standard
13 risk rate shall be established using reasonable actuarial techniques
14 and shall reflect anticipated experience and expenses for such coverage
15 in the individual market.

16 (2) Subject to subsection (3) of this section, maximum rates for
17 pool coverage shall be as follows:

18 (a) Maximum rates for a pool indemnity health plan shall be one
19 hundred fifty percent of the rate calculated under subsection (1) of
20 this section;

21 (b) Maximum rates for a pool care management plan shall be one
22 hundred twenty-five percent of the rate calculated under subsection (1)
23 of this section; and

24 (c) Maximum rates for a person eligible for pool coverage pursuant
25 to RCW 48.41.100(1)(a) who was enrolled at any time during the sixty-
26 three day period immediately prior to the date of application for pool
27 coverage in a group health benefit plan or an individual health benefit
28 plan other than a catastrophic health plan as defined in RCW 48.43.005,
29 where such coverage was continuous for at least eighteen months, shall
30 be:

31 (i) For a pool indemnity health plan, one hundred twenty-five
32 percent of the rate calculated under subsection (1) of this section;
33 and

34 (ii) For a pool care management plan, one hundred ten percent of
35 the rate calculated under subsection (1) of this section.

36 (3)(a) Subject to (b) and (c) of this subsection:

1 (i) The rate for any person (~~aged fifty to sixty four~~) whose
2 current gross family income is less than two hundred fifty-one percent
3 of the federal poverty level shall be reduced by thirty percent from
4 what it would otherwise be;

5 (ii) The rate for any person (~~aged fifty to sixty four~~) whose
6 current gross family income is more than two hundred fifty but less
7 than three hundred one percent of the federal poverty level shall be
8 reduced by fifteen percent from what it would otherwise be;

9 (iii) The rate for any person who has been enrolled in the pool for
10 more than thirty-six months shall be reduced by five percent from what
11 it would otherwise be.

12 (b) In no event shall the rate for any person be less than one
13 hundred ten percent of the rate calculated under subsection (1) of this
14 section.

15 (c) Rate reductions under (a)(i) and (ii) of this subsection shall
16 be available only to the extent that funds are specifically
17 appropriated for this purpose in the omnibus appropriations act.

18 **Sec. 5.** RCW 48.41.037 and 2000 c 79 s 36 are each amended to read
19 as follows:

20 The Washington state health insurance pool account is created in
21 the custody of the state treasurer. All receipts from moneys
22 specifically appropriated to the account must be deposited in the
23 account. Expenditures from this account shall be used to cover
24 deficits incurred by the Washington state health insurance pool under
25 this chapter in excess of the threshold established in this section.
26 To the extent funds are available in the account, funds shall be
27 expended from the account to offset that portion of the deficit that
28 would otherwise have to be recovered by imposing an assessment on
29 members in excess of a threshold of seventy cents per insured person
30 per month. The commissioner shall authorize expenditures from the
31 account, to the extent that funds are available in the account, upon
32 certification by the pool board that assessments will exceed the
33 threshold level established in this section. The account is subject to
34 the allotment procedures under chapter 43.88 RCW, but an appropriation
35 is not required for expenditures.

36 Whether the assessment has reached the threshold of seventy cents
37 per insured person per month shall be determined by dividing the total

1 aggregate amount of assessment by the proportion of total assessed
2 members. Thus, stop loss members shall be counted as one-tenth of a
3 whole member in the denominator given that is the amount they are
4 assessed proportionately relative to a fully insured medical member.

5 **Sec. 6.** RCW 48.41.100 and 2001 c 196 s 3 are each amended to read
6 as follows:

7 (1) The following persons who are residents of this state are
8 eligible for pool coverage:

9 (a) Any person who provides evidence of a carrier's decision not to
10 accept him or her for enrollment in an individual health benefit plan
11 as defined in RCW 48.43.005 based upon, and within ninety days of the
12 receipt of, the results of the standard health questionnaire designated
13 by the board and administered by health carriers under RCW 48.43.018;

14 (b) Any person who continues to be eligible for pool coverage based
15 upon the results of the standard health questionnaire designated by the
16 board and administered by the pool administrator pursuant to subsection
17 (3) of this section;

18 (c) Any person who resides in a county of the state where no
19 carrier or insurer eligible under chapter 48.15 RCW offers to the
20 public an individual health benefit plan other than a catastrophic
21 health plan as defined in RCW 48.43.005 at the time of application to
22 the pool, and who makes direct application to the pool; and

23 (d) Any medicare eligible person upon providing evidence of
24 rejection for medical reasons, a requirement of restrictive riders, an
25 up-rated premium, or a preexisting conditions limitation on a medicare
26 supplemental insurance policy under chapter 48.66 RCW, the effect of
27 which is to substantially reduce coverage from that received by a
28 person considered a standard risk by at least one member within six
29 months of the date of application.

30 (2) The following persons are not eligible for coverage by the
31 pool:

32 (a) Any person having terminated coverage in the pool unless (i)
33 twelve months have lapsed since termination, or (ii) that person can
34 show continuous other coverage which has been involuntarily terminated
35 for any reason other than nonpayment of premiums. However, these
36 exclusions do not apply to eligible individuals as defined in section

1 2741(b) of the federal health insurance portability and accountability
2 act of 1996 (42 U.S.C. Sec. 300gg-41(b));

3 (b) Any person on whose behalf the pool has paid out one million
4 dollars in benefits;

5 (c) Inmates of public institutions and persons (~~whose benefits are~~
6 ~~duplicated under public~~) enrolled in publicly funded medical
7 assistance programs. However, these exclusions do not apply to
8 eligible individuals as defined in section 2741(b) of the federal
9 health insurance portability and accountability act of 1996 (42 U.S.C.
10 Sec. 300gg-41(b));

11 (d) Any person who resides in a county of the state where any
12 carrier or insurer regulated under chapter 48.15 RCW offers to the
13 public an individual health benefit plan other than a catastrophic
14 health plan as defined in RCW 48.43.005 at the time of application to
15 the pool and who does not qualify for pool coverage based upon the
16 results of the standard health questionnaire, or pursuant to subsection
17 (1)(d) of this section.

18 (3) When a carrier or insurer regulated under chapter 48.15 RCW
19 begins to offer an individual health benefit plan in a county where no
20 carrier had been offering an individual health benefit plan:

21 (a) If the health benefit plan offered is other than a catastrophic
22 health plan as defined in RCW 48.43.005, any person enrolled in a pool
23 plan pursuant to subsection (1)(c) of this section in that county shall
24 no longer be eligible for coverage under that plan pursuant to
25 subsection (1)(c) of this section, but may continue to be eligible for
26 pool coverage based upon the results of the standard health
27 questionnaire designated by the board and administered by the pool
28 administrator. The pool administrator shall offer to administer the
29 questionnaire to each person no longer eligible for coverage under
30 subsection (1)(c) of this section within thirty days of determining
31 that he or she is no longer eligible;

32 (b) Losing eligibility for pool coverage under this subsection (3)
33 does not affect a person's eligibility for pool coverage under
34 subsection (1)(a), (b), or (d) of this section; and

35 (c) The pool administrator shall provide written notice to any
36 person who is no longer eligible for coverage under a pool plan under
37 this subsection (3) within thirty days of the administrator's
38 determination that the person is no longer eligible. The notice shall:

1 (i) Indicate that coverage under the plan will cease ninety days from
2 the date that the notice is dated; (ii) describe any other coverage
3 options, either in or outside of the pool, available to the person;
4 (iii) describe the procedures for the administration of the standard
5 health questionnaire to determine the person's continued eligibility
6 for coverage under subsection (1)(b) of this section; and (iv) describe
7 the enrollment process for the available options outside of the pool.

8 (4) The board shall ensure an independent analysis of the
9 eligibility standards is conducted, with emphasis on those populations
10 identified in subsection (2) of this section and the impacts on the
11 pool and the state budget. The board shall report the findings to the
12 legislature by December 1, 2007.

13 **Sec. 7.** RCW 48.41.190 and 1989 c 121 s 10 are each amended to read
14 as follows:

15 Neither the participation by members, the establishment of rates,
16 forms, or procedures for coverages issued by the pool, nor any other
17 joint or collective action required by this chapter or the state of
18 Washington shall be the basis of any legal action, civil or criminal
19 liability or penalty against the pool, any member of the board of
20 directors, or members of the pool either jointly or separately. The
21 pool, members of the pool, board directors of the pool, officers of the
22 pool, employees of the pool, the commissioner, the commissioner's
23 representatives, and the commissioner's employees shall not be civilly
24 or criminally liable and shall not have any penalty or cause of action
25 of any nature arise against them for any action taken or not taken,
26 including any discretionary decision or failure to make a discretionary
27 decision, when the action or inaction is done in good faith and in the
28 performance of the powers and duties under this chapter. Nothing in
29 this section prohibits legal actions against the pool to enforce the
30 pool's statutory or contractual duties or obligations.

31 NEW SECTION. **Sec. 8.** The sum of five million dollars, or as much
32 thereof as may be necessary, is appropriated for the fiscal year ending
33 June 30, 2008, from the general fund to the Washington state health
34 insurance pool account to be used to cover deficits incurred by the

1 pool in excess of the threshold established in RCW 48.41.037.

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