

---

**SENATE BILL 5338**

---

**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Cleveland and Muzzall

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

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

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

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

15 (a) Hearing instruments and associated services;

16 (b) Fertility services;

17 (c) Contralateral prophylactic mastectomies; and

18 (d) Magnetic resonance imaging for breast cancer screening.

19 (3) By December 1, 2023, the office shall report the results of  
20 the review to the relevant committees of the legislature, including

1 any findings related to modifying the state's essential health  
2 benefits.

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

5 (1) (~~The~~) Until the effective date of an updated essential  
6 health benefits benchmark plan submitted under section 1 of this act,  
7 the commissioner, in consultation with the board and the health care  
8 authority, shall, by rule, select the largest small group plan in the  
9 state by enrollment as the benchmark plan for the individual and  
10 small group market for purposes of establishing the essential health  
11 benefits in Washington state.

12 (2) If the essential health benefits benchmark plan for the  
13 individual and small group market does not include all of the (~~ten~~)  
14 10 essential health benefits categories, the commissioner, in  
15 consultation with the board and the health care authority, shall, by  
16 rule, supplement the benchmark plan benefits as needed.

17 (3) All individual and small group health plans must cover the  
18 (~~ten~~) 10 essential health benefits categories, other than a health  
19 plan offered through the federal basic health program, a  
20 grandfathered health plan, or medicaid. Such a health plan may not be  
21 offered in the state unless the commissioner finds that it is  
22 substantially equal to the benchmark plan. When making this  
23 determination, the commissioner:

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

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

30 (c) Notwithstanding (a) and (b) of this subsection, for benefit  
31 years beginning January 1, 2015, must establish by rule the review  
32 and approval requirements and procedures for pediatric oral services  
33 when offered in stand-alone dental plans in the nongrandfathered  
34 individual and small group markets outside of the exchange; and

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

38 (4) Beginning December 15, 2012, and every year thereafter, the  
39 commissioner shall submit to the legislature a list of state-mandated

1 health benefits, the enforcement of which will result in federally  
2 imposed costs to the state related to the plans sold through the  
3 exchange because the benefits are not included in the essential  
4 health benefits designated under federal law. The list must include  
5 the anticipated costs to the state of each state-mandated health  
6 benefit on the list and any statutory changes needed if funds are not  
7 appropriated to defray the state costs for the listed mandate. The  
8 commissioner may enforce a mandate on the list for the entire market  
9 only if funds are appropriated in an omnibus appropriations act  
10 specifically to pay the state portion of the identified costs.

11 (5) (~~Upon authorization by the legislature to modify the state's~~  
12 ~~essential health benefits benchmark plan under 45 C.F.R. Sec.~~  
13 ~~156.111, the)) The commissioner shall include coverage for donor  
14 human milk in ((the updated plan)) any update of the state's  
15 essential health benefits benchmark plan submitted to the centers for  
16 medicare and medicaid services under section 1 of this act.~~

--- END ---