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**SUBSTITUTE SENATE BILL 5540**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** Senate Health Care (originally sponsored by Senators Parlette, Schlicher, Becker, Bailey, Dammeier, Keiser, Rolfes, and Frockt)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to expanding opportunities to purchase health care  
2 coverage from out-of-state carriers; amending RCW 48.05.070 and  
3 48.21.047; adding new sections to chapter 48.21 RCW; and adding a new  
4 section to chapter 43.71 RCW.

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

6 **Sec. 1.** RCW 48.05.070 and 1947 c 79 s .05.07 are each amended to  
7 read as follows:

8 To apply for an original certificate of authority an insurer shall:

9 (1) File with the commissioner its request therefor showing:

10 (a) Its name, home office location, type of insurer, organization  
11 date, and state or country of its domicile.

12 (b) The kinds of insurance it proposes to transact.

13 (c) Additional information as the commissioner may reasonably  
14 require.

15 (2) File with the commissioner:

16 (a) A copy of its charter as amended, certified, if a foreign or  
17 alien insurer, by the proper public officer of the state or country of  
18 domicile.

19 (b) A copy of its bylaws, certified by its proper officer.

1 (c) A statement of its financial condition, management, and affairs  
2 on a form satisfactory to or furnished by the commissioner.

3 (d) If a foreign or alien insurer, or a domestic reciprocal  
4 insurer, an appointment of the commissioner as its attorney to receive  
5 service of legal process.

6 (e) If an alien insurer, a copy of the appointment and authority of  
7 its United States manager, certified by its proper officer.

8 (f) If a foreign or alien insurer, a certificate from the proper  
9 public official of its state or country of domicile showing that it is  
10 duly organized and is authorized to transact the kinds of insurance  
11 proposed to be transacted.

12 (g) If a domestic reciprocal insurer, the declaration required by  
13 RCW 48.10.090 of this code.

14 (h) Other documents or stipulations as the commissioner may  
15 reasonably require to evidence compliance with the provisions of this  
16 code.

17 (3) A foreign insurer is not required to comply with subsection  
18 (2)(a), (b), (c), (e), or (g) of this section if it is a qualifying  
19 reciprocal plan. A qualifying reciprocal plan is a foreign insurer  
20 that:

21 (a) Is authorized in a state that is a member of the consortium  
22 authorized in section 5 of this act;

23 (b) Proposes to sell in Washington only a health benefit plan that:

24 (i) Has benefits substantially equivalent to the essential health  
25 benefits designated in Washington under P.L. 111-148 of 2010, as  
26 amended;

27 (ii) Has been approved by a state with which the commissioner has  
28 a reciprocity agreement;

29 (iii) Is not a health savings account or qualified high deductible  
30 health plan; and

31 (iv) Follows the market rules established in RCW 48.43.700 and  
32 48.43.705; and

33 (c) Has and maintains total adjusted capital that is greater than  
34 three times its authorized control level risk-based capital.

35 (4) Deposit with the commissioner the fees required by this code to  
36 be paid for filing the accompanying documents, and for the certificate  
37 of authority, if granted.

1       **Sec. 2.** RCW 48.21.047 and 2010 c 292 s 8 are each amended to read  
2 as follows:

3       (1) An insurer may not offer any health benefit plan to any small  
4 employer without complying with RCW 48.21.045(3).

5       (2) Employers purchasing health plans provided through associations  
6 or through member-governed groups formed specifically for the purpose  
7 of purchasing health care are not small employers and the plans are not  
8 subject to RCW 48.21.045(3).

9       (3) A health benefit plan identified in RCW 48.05.070(3)(b) is not  
10 subject to RCW 48.21.045.

11       (4) For purposes of this section, "health benefit plan," "health  
12 plan," and "small employer" mean the same as defined in RCW 48.43.005.

13       ~~((+4))~~ (5) For purposes of this section, "census date" has the  
14 same meaning as defined in RCW 48.44.010.

15       NEW SECTION. **Sec. 3.** A new section is added to chapter 48.21 RCW  
16 to read as follows:

17       (1) Each health benefit plan identified in RCW 48.05.070(3)(b)  
18 issued or renewed pursuant to RCW 48.21.047, this section, and sections  
19 4 through 6 of this act must contain the following declaration in bold  
20 face type at the beginning of the document:

21       "The benefits in this policy do not include each of the benefits  
22 required by the state of Washington. (Name of state) initially  
23 approved this policy for sale, and the benefit requirements of that  
24 state are reflected in the policy. The rates applied to calculate  
25 premium were not approved by the state of Washington, but by (Name of  
26 State). Those requirements may be different from the requirements for  
27 policies approved by Washington. Please consult your insurance agent  
28 or insurer to determine which health benefits are covered under the  
29 policy."

30       (2) Each insurer and producer offering a health benefit plan  
31 identified in RCW 48.05.070(3)(b) pursuant to RCW 48.21.047, this  
32 section, and sections 4 through 6 of this act must provide applicants  
33 with a written side-by-side comparison of health benefits under the  
34 plan, including differences in definition of each benefit between  
35 Washington law and the law of the approving state, whether the benefit  
36 is required under Washington law, and the difference in the premium  
37 rate due to the difference in state laws.

1 (3) An insurer offering health benefit plans identified in RCW  
2 48.05.070(3)(b) under RCW 48.21.047, this section, and sections 4  
3 through 6 of this act must offer the plan through producers who comply  
4 with the requirements of chapter 48.17 RCW. Electronic marketing and  
5 sales of out-of-state policies are permitted if a producer is available  
6 in Washington with whom the applicant can discuss the health benefit  
7 plan.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 48.21 RCW  
9 to read as follows:

10 (1) A health benefit plan identified in RCW 48.05.070(3)(b) offered  
11 by a foreign insurer is not required to include health benefit mandates  
12 required under this title that are not included in the health benefit  
13 plan as defined in RCW 48.05.070(3)(b).

14 (2) A health benefit plan identified in RCW 48.05.070(3)(b) must be  
15 filed with the commissioner for approval pursuant to RCW 48.18.100.  
16 The commissioner must approve the plan for use in this state if the  
17 plan meets the requirements in RCW 48.05.070(3)(b), and must disapprove  
18 it if it does not. The commissioner may, but is not required to,  
19 accept the determination of a member consortium state as to whether or  
20 not the health benefit plan is substantially equivalent to the  
21 essential health benefits in Washington.

22 (3) Other than as provided in this section, RCW 48.18.110 may not  
23 be grounds for disapproval of a health benefit plan identified in RCW  
24 48.05.070(3)(b).

25 (4) To the extent consistent with federal law, the requirements of  
26 chapter 48.43 RCW do not apply to a health benefit plan identified in  
27 RCW 48.05.070(3)(b).

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 48.21 RCW  
29 to read as follows:

30 (1) Beginning July 1, 2014, the commissioner is authorized to  
31 contract with other states to establish and operate a consortium  
32 governing the sale to small groups of a health benefit plan, identified  
33 in RCW 48.05.070(3)(b), by insurers admitted to one of the states in  
34 the consortium.

35 (2) By January 1, 2014, the commissioner must report to the  
36 legislature which states have been identified, and include a plan for

1 seeking a reciprocity agreement with at least one state. The  
2 commissioner may not enter into such an agreement until the  
3 commissioner has identified a minimum of five states whose regulatory  
4 requirements for the offer and issue of health benefit plans meets or  
5 exceeds those of Washington in the areas of network adequacy, consumer  
6 protection, marketing requirements, and claims adjudication and  
7 processing. The reciprocity consortium may commence with an agreement  
8 with just one of the states.

9 (3) A state may not join the consortium if it authorizes two or  
10 more carriers domiciled in Washington that offer health benefit plans,  
11 unless five or more other states have joined the consortium.

12 (4) The commissioner may enter into separate reciprocity  
13 agreements, or one uniform agreement. Any reciprocity agreement must  
14 establish rules for the management of consumer questions and complaints  
15 related to health benefit plans approved by one member state but sold  
16 in another. The commissioner may adopt rules to implement consortium  
17 rules as necessary to comply with the consortium agreement.

18 (5) Reciprocity consortium states must agree to provide the  
19 commissioner with a list of approved health benefit plans that meet the  
20 standard under RCW 48.05.070(3)(b), 48.21.047, and sections 3 through  
21 6 of this act, and their premium rate schedules as they are approved.  
22 If a health benefit plan is disapproved or otherwise removed from the  
23 market pursuant to regulatory action or order, a reciprocity consortium  
24 state must notify the commissioner of this action.

25 (6) The reciprocity consortium agreement must establish a mechanism  
26 for payment of premium tax pursuant to chapter 48.14 RCW, payment of  
27 regulatory surcharge pursuant to RCW 48.02.190, and collection of any  
28 reinsurance or risk adjustment assessments that would otherwise be  
29 applicable but for the domicile of the selling insurer.

30 (7) Insurers must inform the consortium states in writing of their  
31 intent to offer a health benefit plan identified in RCW 48.05.070(3)(b)  
32 in consortium states not less than sixty days prior to the first date  
33 of offer. Reciprocity consortium member states may establish their own  
34 requirements for notification and offer.

35 (8) The commissioner must report to the legislature by December 1st  
36 of each year after the effective date of this section on the  
37 reciprocity consortium's formation, membership, the number of health  
38 benefit plans offered in Washington through the consortium, effect on

1 the marketplace in Washington, including the health benefits exchange,  
2 and must recommend whether continuing reciprocity sales serves the  
3 public health and welfare.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.71 RCW  
5 to read as follows:

6 A health benefit plan identified in RCW 48.05.070(3)(b) offered by  
7 a foreign insurer may be certified as a qualified health plan through  
8 the exchange only if it, and its issuer, meet the requirements of the  
9 exchange for certification as a qualified health plan, and if the plan  
10 follows the market rules established in RCW 48.43.700.

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