
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5540

State of Washington

63rd Legislature

2014 Regular Session

By Senate Ways & Means (originally sponsored by Senators Parlette, Schlicher, Becker, Bailey, Dammeier, Keiser, Rolfes, and Frockt)

READ FIRST TIME 03/01/13.

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 a new chapter to Title 48 RCW; and creating a new
4 section.

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

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires otherwise:

8 (1) "Qualifying reciprocal insurer" means a foreign insurer that:

9 (a) Meets the definition of "issuer" pursuant to P.L. 111-148 of
10 2010, as amended;

11 (b) Is authorized in a state that is a member of the consortium
12 authorized in section 4 of this act;

13 (c) Proposes to sell in Washington only a qualifying reciprocal
14 plan;

15 (d) Has and maintains total adjusted capital that is greater than
16 three times its authorized control level risk-based capital; and

17 (e) To the extent required by the reciprocity agreement between the
18 primary state of issue and the commissioner, complies with state laws
19 applicable to issuers in the state of Washington.

1 (2) "Qualifying reciprocal plan" means a plan that:

2 (a) Contains an essential health benefits package that is
3 substantially equal to the essential health benefit benchmark plan
4 designated pursuant to RCW 48.43.715 and provides minimum essential
5 coverage as required by P.L. 111-148 of 2010, as amended;

6 (b) Has been approved by a state regulator for a state with which
7 the commissioner has a reciprocity agreement;

8 (c) Is not a health savings account or qualified high deductible
9 health plan; and

10 (d) Complies with the market rules established in RCW 48.43.700 and
11 48.43.705.

12 NEW SECTION. **Sec. 2.** (1) Each qualifying reciprocal plan issued
13 or renewed must contain the following declaration in bold face type at
14 the beginning of the document:

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

24 (2) Each qualifying reciprocal insurer offering a qualifying
25 reciprocal plan must provide applicants with a written side by side
26 comparison of health benefits under the plan, including differences in
27 definition of each benefit between Washington law and the law of the
28 approving state, whether the benefit is required under Washington law,
29 and the difference in the premium rate due to the difference in state
30 laws. Where a producer is offering the plan to an applicant, the
31 producer must provide the written comparison.

32 (3) A qualifying reciprocal insurer offering qualifying reciprocal
33 plans must offer the plan through producers licensed under chapter
34 48.17 RCW. Electronic marketing and sales of out-of-state policies are
35 permitted under this section.

1 NEW SECTION. **Sec. 3.** (1) A qualifying reciprocal plan must use a
2 premium rate schedule approved by its state of issue for the plan, and
3 apply the standards for calculating the premium required by the United
4 States department of health and human services for out-of-state
5 coverage.

6 (2) The premium rate schedule for a qualifying reciprocal plan may
7 not be adjusted more frequently than once a year.

8 (3) A qualifying reciprocal plan may only be offered in the small
9 group market in Washington.

10 (4) A qualifying reciprocal plan is not required to include health
11 benefit mandates required under this title that are not included in the
12 qualifying reciprocal plan.

13 (5) A qualifying reciprocal plan must be filed with the
14 commissioner for approval prior to use pursuant to RCW 48.18.100. The
15 commissioner shall approve the plan for use in Washington state if the
16 plan meets the requirements of this chapter and shall disapprove it if
17 it does not. When determining whether the qualifying reciprocal plan
18 contains an essential health benefits package that is substantially
19 equal to the essential health benefit benchmark plan designated
20 pursuant to RCW 48.43.715, the commissioner shall utilize the same
21 standards and procedures applicable to carriers licensed in Washington.
22 The commissioner may not rely upon the determination of a member
23 consortium state as to whether the qualifying reciprocal plan contains
24 an essential health benefits package substantially equal to the
25 essential health benefit benchmark plan designated pursuant to RCW
26 48.43.715.

27 (6) Except as provided in this section, RCW 48.18.110 may not be
28 grounds for disapproval of a qualifying reciprocal plan.

29 (7) To the extent consistent with federal law, and except as
30 provided in this chapter, the requirements of chapter 48.43 RCW do not
31 apply to a qualifying reciprocal plan.

32 NEW SECTION. **Sec. 4.** (1) Beginning July 1, 2015, the commissioner
33 is authorized to contract with other states to establish and operate a
34 consortium formed through written agreement governing the sale to small
35 groups of a qualifying reciprocal plan, by qualifying reciprocal
36 insurers admitted in one of the states in the consortium. A
37 reciprocity agreement must be executed between the commissioner and the

1 appropriate entity in a participating state prior to the offer and
2 issue of a qualifying reciprocal plan under this chapter. The
3 consortium is not intended to operate as a compact.

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

11 (3) A state may not join the consortium if it has admitted two or
12 more issuers domiciled in Washington that offer health benefit plans,
13 unless five or more other states have joined the consortium.

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

20 (5) Consortium member states must agree to provide the commissioner
21 with a list of approved qualifying reciprocal plans that meet the
22 standards under this chapter, and their premium rate schedules as they
23 are approved. If a qualifying reciprocity plan is disapproved or
24 otherwise removed from the market pursuant to regulatory action or
25 order, the primary state of issue must notify the commissioner of this
26 action.

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

32 (7) Qualifying reciprocal insurers must inform each consortium
33 state in writing of the intent to offer a qualifying reciprocal policy
34 in a state not less than sixty days prior to the first date of offer.
35 Reciprocity consortium member states may establish additional
36 requirements for notification and offer applicable to that state.

37 (8) The commissioner may enter into one or more personal services

1 contracts with third-party contractors to provide services necessary to
2 accomplish the commissioner's responsibilities under this act.

3 NEW SECTION. **Sec. 5.** A qualifying reciprocal plan may be
4 certified as a qualified health plan through the exchange only if it,
5 and its qualifying reciprocal insurer, meet the requirements of the
6 exchange for certification as a qualified health plan, and if the plan
7 follows the market rules established in RCW 48.43.700.

8 NEW SECTION. **Sec. 6.** (1) By January 1, 2015, the commissioner
9 must report to the legislature which states have been identified under
10 section 4(2) of this act, and include a plan for seeking a reciprocity
11 agreement with at least one state.

12 (2) The commissioner must report to the legislature by December 1,
13 2016, and December 1st of each year following, the status of the
14 reciprocity consortium's formation, membership, the number of
15 qualifying reciprocal plans offered in Washington through the
16 consortium, the effect on the marketplace in Washington, including the
17 health benefits exchange, and must recommend whether continuing
18 reciprocity sales serves the public health and welfare.

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

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

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

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

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

26 (c) Additional information as the commissioner may reasonably
27 require.

28 (2) File with the commissioner:

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

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

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

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

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

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

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

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

15 (3) A qualifying reciprocal insurer, as defined in section 1 of
16 this act, is not required to comply with subsection (2)(a), (b), (c),
17 (e), or (g) of this section.

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

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

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

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

29 (3) A qualifying reciprocal plan as defined in section 1 of this
30 act, is not subject to RCW 48.21.045.

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

33 ((+4)) (5) For purposes of this section, "census date" has the
34 same meaning as defined in RCW 48.44.010.

35 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act constitute
36 a new chapter in Title 48 RCW.

1 NEW SECTION. **Sec. 10.** If specific funding for the purposes of
2 section 6 of this act, referencing section 6 of this act by bill or
3 chapter number and section number, is not provided by June 30, 2014, in
4 the omnibus appropriations act, section 6 of this act is null and void.

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