

## **Establishing a Health Benefit Exchange**

*Powerful state insurance board would operate without legislative oversight*

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The massive new federal health care reform law, the Patient Protection and Affordable Care Act (PPACA), mandates that states create health insurance exchanges, or that states join together to create regional exchanges. The exchanges will function as an insurance broker, or clearing house, for individual and small-group purchase of health insurance. The new law requires every American to buy government-approved health coverage or pay a penalty. Federal taxpayer subsidies will be available in the exchange for people earning between 133 percent to 400 percent of the federal poverty level (FPL).

The PPACA greatly expands the Medicaid program to include people earning less than 133 percent of the federal poverty level. States have the option of administering their Medicaid programs through that state's exchange. The federal government is requiring states to have exchanges in place and ready to accept applicants by 2014.

Two bills introduced in Olympia, SB 5445 and HB 1740, would establish a health insurance exchange in Washington state. Both bills, with amendments, are now working their way through the legislative process.

As amended, both bills require the governor to appoint a nine-member board to establish and manage the exchange. This board must be in place by September 1, 2011, and is required to be a non-profit, public/private entity. The nine members would be selected from the following groups:

- Two employee benefit specialists
- A health economist or actuary
- A small business representative
- A health care consumer advocate
- The Administrator of the Health Care Authority
- The Insurance Commissioner
- Two appointees from the legislature – one from each political caucus

The board would consult with the Joint Select Committee on health care reform. Board members must excuse themselves from any decisions that would present a conflict of interest. Except for the two legislative appointees, there would be no legislative oversight. The board must have the basics of the exchange established by December 1, 2011, only three months after its members are appointed.

## Policy Analysis

SB 5445 and HB 1740 would align Washington state with the PPACA federal legislation. However, the constitutionality of the PPACA is undergoing a strong legal challenge, and has already been struck down by two federal judges. This ruling is on appeal and will likely be decided by the United States Supreme Court in the next two years. In addition, polls show PPACA continues to be unpopular and Republicans in Congress have vowed to repeal it. Repeal of PPACA will be a major issue in the 2012 presidential election.

If the PPACA is found to be unconstitutional or if it is entirely repealed by Congress, Washington state will have spent a substantial amount of time, effort and taxpayer money to establish an unnecessary health insurance exchange. If PPACA is not repealed or is found to be constitutional, Washington state would still have enough time to meet the deadline of 2013 to have the exchange established.

If the PPACA does remain the law of the land, SB 5445 and HB 1740 would establish the mandatory health insurance exchange under the direction of an unelected board. Hundreds of thousands of individuals and employees in small groups would potentially purchase subsidized health insurance in the exchange. The lives of nearly every person in the state could be affected by the decisions of the insurance exchange board. Yet its decisions are not subject to review or appeal by the legislature or by the people. Also, once board members are appointed they cannot be recalled by popular vote. The proposed insurance exchange board represents exactly what many citizens find so frustrating about the national health care reform law – important decisions about their health coverage would be made by distant and unaccountable state officials.

Consequently, the administration and management of the exchange is too important to put in the hands of a governor-appointed board. The exchange should be controlled by legislative oversight and law. Washington state residents deserve to have their elected officials manage this important entity, not political appointees with special-interest agendas.

Thoughtful deliberation in establishing the exchange should be mandatory. There should not be a rush to get an exchange in place. Instead, it should be formed with adequate time for input from all stakeholders.

*Dr. Roger Stark is a retired surgeon and a Health Care Policy Analyst with Washington Policy Center, a non-partisan independent policy research organization in Washington state. Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body. For more information, visit [washingtonpolicy.org](http://washingtonpolicy.org).*