
SUBSTITUTE SENATE BILL 5338

AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By Senate Health & Long Term Care (originally sponsored by Senators Cleveland, Muzzall, Conway, and Randall)

READ FIRST TIME 01/25/23.

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

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

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

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

16 (a) Donor human milk as provided in RCW 48.43.815 and directed by
17 RCW 48.43.715;

18 (b) Hearing instruments and associated services as described in
19 section 1, chapter . . . (House Bill No. 1222), Laws of 2023 and
20 directed by RCW 48.43.715;

21 (c) Fertility services;

1 (d) Biomarker testing;

2 (e) Contralateral prophylactic mastectomies;

3 (f) Treatment for pediatric acute-onset neuropsychiatric syndrome
4 and pediatric autoimmune neuropsychiatric disorders associated with
5 streptococcal infections; and

6 (g) Magnetic resonance imaging for breast cancer screening.

7 (3) By December 31, 2023, the office shall report the results of
8 the review to the relevant committees of the legislature, including
9 any findings related to modifying the state's essential health
10 benefits.

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

13 (1) ~~((The))~~ Until the effective date of an updated essential
14 health benefits benchmark plan submitted under section 1 of this act,
15 the commissioner, in consultation with the board and the health care
16 authority, shall, by rule, select the largest small group plan in the
17 state by enrollment as the benchmark plan for the individual and
18 small group market for purposes of establishing the essential health
19 benefits in Washington state.

20 (2) If the essential health benefits benchmark plan for the
21 individual and small group market does not include all of the ~~((ten))~~
22 10 essential health benefits categories, the commissioner, in
23 consultation with the board and the health care authority, shall, by
24 rule, supplement the benchmark plan benefits as needed.

25 (3) All individual and small group health plans must cover the
26 ~~((ten))~~ 10 essential health benefits categories, other than a health
27 plan offered through the federal basic health program, a
28 grandfathered health plan, or medicaid. Such a health plan may not be
29 offered in the state unless the commissioner finds that it is
30 substantially equal to the benchmark plan. When making this
31 determination, the commissioner:

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

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

38 (c) Notwithstanding (a) and (b) of this subsection, for benefit
39 years beginning January 1, 2015, must establish by rule the review

1 and approval requirements and procedures for pediatric oral services
2 when offered in stand-alone dental plans in the nongrandfathered
3 individual and small group markets outside of the exchange; and

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

7 (4) Beginning December 15, 2012, and every year thereafter, the
8 commissioner shall submit to the legislature a list of state-mandated
9 health benefits, the enforcement of which will result in federally
10 imposed costs to the state related to the plans sold through the
11 exchange because the benefits are not included in the essential
12 health benefits designated under federal law. The list must include
13 the anticipated costs to the state of each state-mandated health
14 benefit on the list and any statutory changes needed if funds are not
15 appropriated to defray the state costs for the listed mandate. The
16 commissioner may enforce a mandate on the list for the entire market
17 only if funds are appropriated in an omnibus appropriations act
18 specifically to pay the state portion of the identified costs.

19 (~~Upon authorization by the legislature to modify the state's~~
20 ~~essential health benefits benchmark plan under 45 C.F.R. Sec.~~
21 ~~156.111, the)) The commissioner shall include coverage for donor
22 human milk as provided in RCW 48.43.815 and hearing instruments and
23 associated services as described in section 1, chapter . . . (House
24 Bill No. 1222), Laws of 2023, in ((the updated plan)) any update of
25 the state's essential health benefits benchmark plan submitted to the
26 centers for medicare and medicaid services under section 1 of this
27 act.~~

28 NEW SECTION. Sec. 3. This act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of
30 the state government and its existing public institutions, and takes
31 effect immediately.

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