

SENATE FILE NO. SF0108

Obamacare relief.

Sponsored by: Senator(s) Scott, Anderson, J.L. (SD28) and
Craft and Representative(s) Barlow

A BILL

for

1 AN ACT relating to healthcare coverage; protecting the
2 public health from lack of healthcare coverage as
3 specified; providing relief for people deprived of
4 affordable healthcare coverage by the federal law and
5 regulations known as "Obamacare" or as "The Affordable Care
6 Act"; providing for the necessary healthcare support of the
7 poor as specified: providing as specified health coverage
8 for people who cannot otherwise obtain it on an affordable
9 basis; creating the Obamacare temporary relief program and
10 expanding the coverage options under the Wyoming Health
11 Insurance Pool Act; creating the Wyoming temporary medical
12 welfare program; creating the Wyoming small business
13 healthcare relief program and modifying the definition of
14 small business for insurance purposes; modifying the sunset
15 dates for the Wyoming health insurance pool and programs
16 within the pool; providing a sunset date for this act;

1 providing enrollees must be given written notice that the
 2 coverage offered, while legal, does not comply with the
 3 federal law applying to insurance coverage; redirecting
 4 existing appropriations and revenue flows; amending a prior
 5 appropriation; providing appropriations; and providing for
 6 an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 26-18-401 through 26-18-413 are
 11 created to read:

12

13

ARTICLE 4

14

OBAMACARE RELIEF

15

16 **26-18-401. Obamacare Relief Act; short title.**

17

18 This act shall be known and may be cited as the "Obamacare
 19 Relief Act".

20

21 **26-18-402. Definitions.**

22

23 (a) For purposes of this act:

24

1 (i) "Administrator" means the administrator of
2 the Wyoming health insurance pool selected pursuant to W.S.
3 26-43-104;

4
5 (ii) "Agents" means insurance agents, producers
6 and brokers;

7
8 (iii) "Board" means the board of directors of the
9 pool;

10
11 (iv) "Creditable coverage" means health
12 insurance coverage which qualifies as creditable coverage
13 under the federal Health Insurance Portability and
14 Accountability Act of 1996, 42 U.S.C. § 300gg-3;

15
16 (v) "Insurance exchange" or "exchange" means the
17 American health benefit exchange established for residents
18 of Wyoming pursuant to Obamacare;

19
20 (vi) "Obamacare" means the programs created by
21 the Patient Protection and Affordable Care Act, P.L. 111-
22 148, together with the Health Care and Education
23 Reconciliation Act, P.L. 111-152;

24

1 (vii) "Pool" means the Wyoming health insurance
2 pool created by W.S. 26-43-102;

3

4 (viii) "WTMWP" means the Wyoming temporary
5 medical welfare program established by this act;

6

7 (ix) "Using tobacco" means using, including
8 within the year prior to enrollment, any form of combusted
9 tobacco or smokeless tobacco but does not include using
10 electronic cigarettes;

11

12 (x) "This act" means W.S. 26-18-401 through
13 26-18-413.

14

15 **26-18-403. General provision.**

16

17 (a) No person shall be compelled to enroll or
18 penalized for failure to enroll in any program pursuant to
19 this act.

20

21 (b) Except for individuals for whom no coverage is
22 available through the exchange, no individual is eligible
23 to enroll in a program under this act unless the premiums
24 for the least expensive plan available through the exchange

1 exceed eight percent (8%) of the individual's income as
2 defined by 26 U.S.C. § 5000A.

3

4 (c) Premiums collected pursuant to this act and
5 investment income earned may be used to pay claims and
6 expenses including administrative expenses of the programs
7 authorized by this act. The board shall set forth the
8 mechanisms for managing this provision and other needed
9 financial arrangements in the plan of operations for each
10 program authorized by this act.

11

12 (d) The board may increase premiums charged under
13 this act for individuals who use tobacco by up to twenty-
14 five percent (25%) for individuals under the age of forty
15 (40) and by up to fifty percent (50%) for individuals age
16 forty (40) and above.

17

18 **26-18-404. Obamacare temporary relief program.**

19

20 (a) The Obamacare temporary relief program is created
21 for:

22

1 (i) Individuals not eligible for Medicare whose
2 cost of insurance exceeds the limit set forth in W.S.
3 26-18-403(b) except that:

4
5 (A) For individuals forty (40) years old
6 but less than fifty (50) years old using tobacco, the
7 applicable percentage shall be ten percent (10%) of the
8 individual's income;

9
10 (B) For individuals fifty (50) years old or
11 older using tobacco, the applicable percentage shall be
12 twelve percent (12%) of the individual's income.

13
14 **26-18-405. Closed exchange enrollment temporary**
15 **relief program.**

16
17 (a) The closed exchange enrollment temporary relief
18 program is created for those individuals who wish to
19 purchase health coverage but cannot purchase private health
20 insurance either directly or through the exchange due to
21 the federal regulations relating to open and closed
22 enrollment periods. Individuals who are eligible by
23 federal law and regulation to purchase coverage during a
24 federal closed enrollment period are not eligible to

1 purchase through the program provided by this section. The
2 program provided by this section shall be available only if
3 the insurance commissioner certifies that policies to meet
4 this need are not available in the private market.

5

6 (b) Coverage under the program created by this
7 section may be purchased only during a federal closed
8 enrollment period and shall terminate at the end of the
9 next federal open enrollment period. This coverage shall
10 exclude all preexisting conditions unless the individual
11 has had creditable coverage within the past one hundred
12 twenty (120) days before enrolling.

13

14 (c) For coverage issued under this section during
15 2014 only, creditable coverage shall include coverage in
16 effect at any time between September 1, 2013 and November
17 1, 2013.

18

19 **26-18-406. Wyoming temporary medical welfare program.**

20

21 The Wyoming temporary medical welfare program is created
22 for individuals who are not eligible for subsidies through
23 the Obamacare exchange due to poverty and are not eligible
24 for coverage under the Medicaid or child health insurance

1 program. Adults capable of working in a single or double
2 person household or two (2) adults capable of working plus
3 a single dependent in a household are not eligible to
4 participate in this program. The disability standard for
5 supplemental securing income shall be used to determine
6 whether an adult is capable of working. The administrator
7 shall report to the joint labor, health and social services
8 interim committee if the households made unable to
9 participate in this program pursuant to this section are no
10 longer able to qualify for subsidies through the exchange
11 by working approximately forty (40) hours per week.

12

13 **26-18-407. Obamacare temporary relief program;**
14 **coverages.**

15

16 (a) To the extent feasible and consistent with this
17 act, coverages provided under this act shall be as provided
18 in the Wyoming Health Insurance Pool Act using the benefit
19 design for a program with a higher deductible option or a
20 health savings account option as provided in W.S.
21 26-43-106(b)(ii). Specific provisions shall include:

22

1 (i) Annual limits as used as of March 1, 2010,
2 either as annual or lifetime limits for products under the
3 Wyoming Health Insurance Pool Act;

4
5 (ii) Wellness benefits only as mandated by
6 Wyoming law;

7
8 (iii) A premium structure designed to recover
9 the costs of the program plus a reasonable allowance for
10 adverse selection, assuming a normal population and without
11 regard to regulations on insurance pricing under Obamacare.
12 Until the board can price the product consistent with this
13 section, the price shall be twenty percent (20%) less than
14 the average silver plan available through the exchange;

15
16 (iv) A preexisting condition exclusion for ten
17 (10) months if an insured has not had creditable coverage
18 within one hundred twenty (120) days of enrolling. For
19 2014 only, creditable coverage between September 1, 2013,
20 and October 1, 2013, shall be deemed adequate to avoid a
21 preexisting condition period;

22
23 (v) Deductibles, copayments and out of pocket
24 annual maximums consistent with a catastrophic coverage

1 program assuming covered individuals will be able to pay
2 noncatastrophic medical expenses from earnings plus a
3 prudent cash emergency fund.

4

5 **26-18-408. Wyoming closed enrollment temporary relief**
6 **program; coverages.**

7

8 (a) For policies sold in 2014, coverage under the
9 Wyoming closed enrollment temporary relief program shall be
10 as provided in the benefit design developed pursuant to W.S.
11 26-43-203 with the following exceptions:

12

13 (i) There shall be no provision for
14 contributions to or use of a personal health account;

15

16 (ii) Wellness benefits shall be limited to those
17 required by Wyoming law; and

18

19 (iii) All preexisting conditions shall be
20 excluded from coverage except for primary care visits and
21 medications authorized for chronic conditions and
22 recommended by the primary care physician unless the
23 individual had creditable health insurance coverage within

1 one hundred twenty (120) days of enrollment or, for 2014
2 only, between September 1, 2013, and October 1, 2013.

3

4 (b) Premiums shall reflect the full cost of the
5 policies to the extent that cost can be rapidly estimated.

6

7 (c) Benefits for the duration of a policy under this
8 section shall be limited to a cumulative amount of one
9 hundred thousand dollars (\$100,000.00).

10

11 (d) For policies sold after 2014, the Wyoming health
12 insurance pool board may modify the coverage to better meet
13 the needs of the customers, but may not change the limit
14 under subsection (c) of this section, the mandatory
15 expiration date of the policy or the preexisting condition
16 limitations without prior legislative approval.

17

18 **26-18-409. Wyoming temporary medical welfare program;**
19 **coverages.**

20

21 (a) Coverage under the WTMWP shall be as provided in
22 the benefit design developed pursuant to W.S. 26-43-201
23 through 26-43-204 and in effect on January 1, 2012, with
24 the following exceptions:

1

2 (i) Wellness benefits shall be limited to those
3 required by Wyoming law or recommended by the primary care
4 medical home physician;

5

6 (ii) Mental health coverage shall be limited to
7 services provided by the primary care medical home
8 physician and prescription drugs as provided in the benefit
9 design.

10

11 (b) If an individual participating in the Wyoming
12 temporary medical welfare program becomes eligible for
13 Medicaid, the administrator may in its discretion either:

14

15 (i) Counsel the individual to enroll in Medicaid
16 if the administrator believes that is in the individual's
17 best interest; or

18

19 (ii) Transfer the individual to Medicaid if the
20 administrator believes that is in the financial interest of
21 the state, provided the individual is given the option to
22 withdraw from the program and not enroll in Medicaid.

23

1 (c) If the individual participating in the WTMWP
2 becomes eligible for subsidized coverage through the
3 exchange, the state may counsel the individual to obtain
4 coverage through the exchange if it is in his interest to
5 do so and leave the program. The decision to leave the
6 program shall be in the participating individual's sole
7 discretion unless the individual's income has reached two
8 hundred fifty percent (250%) of the federal poverty level,
9 in which case continued participation in the program shall
10 be pursuant to W.S. 26-43-204(e).

11

12 (d) The administrator of the WTMWP shall seek to
13 review continued eligibility of participants during the
14 sixty (60) days prior to the expected open enrollment
15 period for the exchange.

16

17 **26-18-410. Premiums.**

18

19 (a) Participants in the Obamacare temporary relief
20 program shall pay the full actuarial cost of the coverage
21 once it has been determined. Until it has been determined,
22 participants shall pay a premium that is twenty percent
23 (20%) less than the average silver plan premium offered on
24 the exchange.

1

2 (b) Participants in the WTMWP shall contribute toward
3 the cost of coverage through the Wyoming health insurance
4 pool an amount equal to one-half of one percent (.5%) of
5 income from wages subject to social security taxes. This
6 contribution shall be deposited in the individuals personal
7 health account.

8

9 **26-18-411. Administration.**

10

11 (a) Except as provided by subsection (e) of this
12 section, the administration and management of all programs
13 under this act shall be the responsibility of the pool
14 administrator selected pursuant to W.S. 26-43-104.

15

16 (b) If the administrator is also an insurance company
17 selling health insurance policies in this state, the
18 apparent conflict of interest between the roles shall not
19 be an obstacle to the employment of the administrator
20 because the state is seeking to utilize that conflict to
21 see that the coverage sold pursuant to this act does not
22 sabotage the federal program by causing material adverse
23 selection for Obamacare compliant policies sold through the
24 exchange or in the private market.

1

2 (c) The administrator shall develop a plan of
3 operations for each of the programs under this act. To the
4 extent possible, the plans shall use the existing plan of
5 operation of the pool. The plan for any program shall be
6 approved by the board before implementation of the program.

7

8 (d) Primary responsibility for enrollment of
9 individuals in the WTMWP shall be with the department of
10 family services using the same staff who enroll individuals
11 in other means tested programs. The plan of operations may
12 allow enrollment by pool staff and by Wyoming insurance
13 agents and producers.

14

15 (e) For the Obamacare temporary relief program and
16 the Wyoming closed enrollment temporary relief program,
17 enrollment shall be as currently done for the pool and, in
18 addition, the board shall:

19

20 (i) Appoint Wyoming insurance agents to sell or
21 refer the program products using appropriate commissions or
22 referral fees;

23

1 (ii) Set the agents' commissions and referral
2 fees authorized under W.S. 26-43-102(d)(iv) to ensure the
3 fees provide the agents with sufficient compensation to
4 cover expenses they may reasonably incur, including time
5 spent counseling potential enrollees except that, where
6 relevant, the commissions or referral fees shall be less
7 than the agent would earn selling an obamacare compliant
8 policy; and

9

10 (iii) Advise agents offering products authorized
11 in this act that:

12

13 (A) These policies are inferior to
14 Obamacare compliant policies in that they offer reduced
15 benefits;

16

17 (B) It is the policy of the state to
18 encourage individuals who can afford it to buy Obamacare
19 compliant policies because they offer better coverage;

20

21 (C) It is the policy of the state to avoid
22 causing adverse selection for Obamacare compliant policies,
23 so the state does not want to sell less expensive policies

1 to people who would otherwise buy Obamacare compliant
2 policies; and

3

4 (D) The state is seeking to sell these
5 policies to people who cannot afford or will not buy an
6 Obamacare compliant policy. The state is seeking to avoid
7 an increase in the number of people without health coverage
8 and to provide people who would otherwise be without
9 coverage, with coverage they can afford and will buy.

10

11 (f) If the board discovers under certain
12 circumstances an Obamacare compliant policy legally offered
13 outside the exchange has lower premiums than the least
14 expensive policy offered through the exchange, the board
15 may substitute that premium for the one otherwise used for
16 the determination under W.S. 26-18-403(b).

17

18 (g) The board may negotiate an addition to its
19 existing contract with the pool administrator or may obtain
20 a different administrator for the programs created by this
21 act. If the board selects a different administrator, the
22 board shall make a public solicitation on a short time
23 frame including, in its sole discretion, invitation to bid
24 to known potential administrators and the current pool

1 administrator. The board in selecting an administrator
2 shall not be bound by state procurement rules adopted
3 pursuant to W.S. 9-2-1016.

4

5 (h) It shall be the duty of the board to manage the
6 programs under this act so that expenses do not exceed
7 available appropriations, premiums received and any other
8 state funds received. The board shall attempt to avoid
9 using the resources of the pool, but may use these
10 resources including the assessments provided by W.S.
11 26-43-105 if expenses exceed estimates.

12

13 (j) The commissioner shall organize a marketing
14 committee of not more than seven (7) voting members to
15 advise the board, its administrator and the commissioner
16 concerning the marketing of policies offered pursuant to
17 this act. The two (2) companies offering medical policies
18 on the Wyoming exchange as of January 1, 2014, shall both
19 be invited to name a member and not more than four (4)
20 additional companies shall be invited to name a member of
21 the committee. The commissioner may invite the regional
22 administrator of the United States department of health and
23 human services to name a member of the committee. The
24 commissioner or his designee from the insurance department

1 shall serve as an ex officio nonvoting member of the
2 committee. The commissioner or his designee shall serve as
3 chairman of the committee unless the commissioner appoints
4 a voting member of the committee to serve as chairman.

5

6 **26-18-412. Notice to enrollees.**

7

8 (a) All persons enrolling in a program under this act
9 shall be notified in writing that:

10

11 (i) The health coverage offered through the
12 program does not meet the standards set forth in the
13 federal law and regulations for health insurance and that
14 coverage through the federal exchanges or in the private
15 insurance market will be more comprehensive;

16

17 (ii) The coverage offered through the program
18 can avoid meeting the federal standards because it is
19 provided by a Wyoming state program which is immune from
20 the federal regulations by both federal law and by the
21 United States Constitution;

22

23 (iii) The coverage offered by the program is
24 intended to be a temporary stop gap offered because too

1 many people cannot obtain coverage meeting the federal
2 standards or cannot afford coverage compliant with federal
3 law. Once the problems with the federal law are fixed, the
4 state of Wyoming intends to discontinue this program and
5 return those with coverage through it to the normal
6 insurance market; and

7

8 (iv) The state of Wyoming believes that, due to
9 the income limitations on who may purchase coverage through
10 this program, that anyone who purchases coverage through
11 this act is exempt from any penalty under federal law for
12 not having insurance coverage, and would be exempt
13 regardless of whether they purchase this coverage through
14 this state of Wyoming program;

15

16 (v) For those enrolled in the Wyoming temporary
17 medical welfare program, mental health coverage is limited
18 because individuals eligible for this program can obtain
19 mental healthcare through state funded local community
20 mental health centers for no fee or a nominal fee.

21

22 (b) The board may add to or amend the disclaimers
23 provided in subsection (a) of this section, except that it

1 shall not eliminate or amend the disclaimer in paragraph
2 (a)(iii) of this section.

3

4 **26-18-413. Sunset.**

5

6 W.S. 26-18-401 through 26-18-412 are repealed effective
7 December 31, 2018.

8

9 **Section 2.** W.S. 26-19-302(a)(xxii), 26-19-304 by
10 creating a new subsection (f), 26-19-311, 26-19-312(a),
11 26-43-103(b)(i), 26-43-113 and 26-43-207 are amended to
12 read:

13

14 **26-19-302. Definitions.**

15

16 (a) As used in this act:

17

18 (xxii) "Small employer" means any person, firm,
19 corporation, partnership or association who is actively
20 engaged in business who, on at least fifty percent (50%) of
21 its working days during the preceding calendar quarter,
22 employed at least two (2) but no more than ~~fifty (50)~~ one
23 hundred (100) eligible employees, the majority of whom were
24 employed within this state or were residents of Wyoming. In

1 determining the number of eligible employees, companies
2 which are affiliated companies, or which are eligible to
3 file a combined tax return for purposes of any state
4 taxation, shall be considered one (1) employer;

5

6 **26-19-304. Restrictions relating to premium rates.**

7

8 (f) Commencing January 1, 2015, employees of small
9 employers who are charged a premium for their coverage and
10 who earn less than fourteen dollars and fifty cents
11 (\$14.50) per hour shall receive a subsidy of five dollars
12 (\$5.00) per month, not to exceed their premium, to
13 compensate in part for the cost increase caused by
14 Obamacare. The subsidy provided by this subsection shall
15 be paid by the small employer to the employer's carrier,
16 and the employer shall quarterly submit an application for
17 reimbursement to the Wyoming business council. The council
18 shall adopt regulations and an application procedure to
19 administer the reimbursement program under this subsection.

20

21 **26-19-311. Small employer carrier reinsurance account**
22 **created.**

23

1 There is created an account in which all money received or
2 collected to support the small employer carrier reinsurance
3 program created pursuant to this act shall be credited and
4 continuously appropriated for the purposes of this act and
5 W.S. 26-18-401 through 26-18-413. All claims, insurer
6 reimbursements, cost of administration and other necessary
7 expenses incurred pursuant to this act shall be paid from
8 the account. All money in the account not immediately
9 necessary for the purposes of this act, which amount is
10 certified by the board to the state treasurer, shall be
11 invested and any interest earned shall be credited to the
12 account. In allocating funds within the account, the needs
13 of the small employer carrier reinsurance account shall
14 take priority over the needs of the programs under W.S.
15 26-18-401 through 26-18-413.

16
17 **26-19-312. Small employer carrier reinsurance program**
18 **assessments; premium tax credit.**

19
20 (a) After each calendar year, the board shall
21 determine the amount of assessment needed to support the
22 small carrier reinsurance program and the programs
23 authorized by W.S. 26-18-401 through 26-18-413 considering

1 all payments made, costs incurred, premiums received and
2 other income received.

3

4 **26-43-103. Eligibility.**

5

6 (b) The following persons are not eligible for pool
7 coverage:

8

9 (i) Persons who have coverage under health
10 insurance or an insurance arrangement on the issue date of
11 pool coverage unless the cost of coverage has increased
12 since March 1, 2010, to exceed the applicable cost of
13 coverage applied for under the pool or the deductible has
14 risen to exceed the deductible for the coverage applied for
15 under the pool;

16

17 **26-43-113. Termination of provisions.**

18

19 This act is not effective after June 30, ~~2015~~2018.

20

21 **26-43-207. Sunset.**

22

23 W.S. 26-43-201 through 26-43-206 are repealed effective
24 December 31, ~~2015~~2018. ~~and all participants shall be~~

1 ~~disenrolled effective July 1, 2015. The board shall use~~
2 ~~the period from April 1, 2015 to December 31, 2015 to fully~~
3 ~~discharge the affairs of the demonstration project.~~

4
5 **Section 3.** 2011 Wyoming Session Laws, Chapter 134,
6 Section 3(a) is amended to read:

7
8 **Section 3.**

9
10 (a) There is appropriated one million five hundred
11 thousand dollars (\$1,500,000.00) from the general fund to
12 the insurance department. This appropriation shall be for
13 the period beginning with the effective date of this act
14 and ending December 31, ~~2015~~2018. This appropriation
15 shall only be expended for the purposes of establishing a
16 reserve account to pay claims in excess of amounts
17 available in the appropriation in subsection (b) of this
18 section if such claims are approved by the board and the
19 governor approves use of funds in the reserve account. In
20 addition, with the approval of the board, the funds in the
21 reserve account may be expended to pay claims in excess of
22 the appropriation to support the Wyoming temporary medical
23 welfare program authorized by W.S. 26-18-409.

24 Notwithstanding any other provision of law, this

1 appropriation shall not be transferred or expended for any
2 other purpose and any unexpended, unobligated funds
3 remaining from this appropriation shall revert as provided
4 by law on January 1, ~~2016~~2018. This appropriation shall
5 not be included in the department's 2013-2014 or 2015-2016
6 standard biennial budget request.

7

8 **Section 4.**

9

10 (a) There is appropriated fifty thousand dollars
11 (\$50,000.00) from the general fund to the insurance
12 department. This appropriation shall be for the period
13 beginning with the effective date of this act and ending
14 December 31, 2018. This appropriation shall only be
15 expended for the purpose of the department contracting with
16 the Wyoming health insurance pool to support the initial
17 organization and management of the programs authorized by
18 this act. Notwithstanding any other provision of law, this
19 appropriation shall not be transferred or expended for any
20 other purpose and any unexpended, unobligated funds
21 remaining from this appropriation shall revert as provided
22 by law on December 31, 2018. This appropriation shall not
23 be included in the insurance department's standard biennial
24 budget requests.

1

2 (b) There is appropriated two million dollars
3 (\$2,000,000.00) from the general fund to the insurance
4 department. This appropriation shall be for the period
5 beginning with the effective date of this act and ending
6 December 31, 2018. This appropriation shall only be
7 expended for the purpose of the department contracting with
8 the Wyoming health insurance pool for claims and ongoing
9 management of the Wyoming temporary medical welfare program
10 authorized by W.S. 26-18-409. Notwithstanding any other
11 provision of law, this appropriation shall not be
12 transferred or expended for any other purpose and any
13 unexpended, unobligated funds remaining from this
14 appropriation shall revert as provided by law on December
15 31, 2018. This appropriation shall not be included in the
16 insurance department's standard biennial budget requests.

17

18 **Section 5.** This act is effective immediately upon
19 completion of all acts necessary for a bill to become law
20 as provided by Article 4, Section 8 of the Wyoming
21 Constitution.

22

23

(END)