

April 27, 2021

The Honorable Jay Inslee
Governor, State of Washington
PO Box 40002
Olympia, WA 98504

RE: E2SSB 5377 – Standardized Plans, Partial Veto Request

Dear Governor Inslee,

On behalf of our members, the Washington State Hospital Association (WSHA) asks that **you veto section 5 of E2SSB 5377**, increasing affordability of standardized plans on the individual market. Our concern is that the colloquy offered in the Senate on April 19, 2021, indicates an intent that contradicts the plain language and meaning of the section.

Section 5 clearly requires that, upon the triggering event in subsection (1) – when a public option health plan is not available in each county in plan year 2022 or later, then a hospital would be required to contract with **at least one** public option health plan. The colloquy erroneously states that a hospital is required to contract with **any** public option health plan that makes an offer to a hospital. This contradiction creates troubling uncertainty regarding the bill.

The Colloquy in the Senate

As you know, a colloquy on the Senate or House floor may be used to create a record of legislative intent or interpretation of a bill. With respect to section 5 of the public option bill, the colloquy in the Senate was,

*...[i]f the Health Care Authority chooses to contract with more than one carrier in a given year in a particular county to offer public option plans in any county under that section or sections 5(1)(b), the hospital also should—must contract with **any** [emphasis added] public option plans that makes an offer to that hospital...*

This contradicts the plain meaning of section 5 and WSHA's understanding of the section, as noted below.

The Plain Meaning of the Bill as Passed in the House

The public option bill was significantly amended from the time it was originally introduced in the Senate to how it was amended and passed in the House. This is a testament to the complex nature of the contracting relationship between hospitals and health carriers. Throughout negotiations regarding this bill, WSHA has been consistent with our position – hospitals should only be mandated to contract with a single public option plan in each county.

In the House, an initial Floor striker was posted that expanded the hospital mandate to participate in public option plans from only large hospital systems to all hospitals, regardless of size. It also included language regarding how many public option plans a hospital must contract with,

*...must contract with **the** [emphasis added] public option health plan to provide in-network services to enrollees of that plan...*

Since the hospital mandate in section 5 would now apply to all hospitals, WSHA advocated that hospitals should only be required to contract with at least one public option health plan rather than any public option health plan. On April 8, 2021, this was captured in remarks in the House regarding the amendment,

The hospital association wanted to make clear that ... they [hospitals] would contract with at least one public option plan rather than the public option plan.

The House **adopted** this language in a subsequent striker,

*...must contract with **at least one** [emphasis added] public option plan to provide in-network services to enrollees of that plan...*

The plain meaning of this section is clear – if in plan year 2022 or later, a public option plan is not available in every county, then a hospital is mandated to participate in a public option plan by contracting with at least one health plan, not all of them. Further, there is no tie between a hospital’s obligations established in section 5(1)(a) and the Health Care Authority’s obligations in section 5(1)(b).

It is important to note that the House passed this language in section 5(1)(a) and the Senate concurred with it. Nonetheless, the colloquy in the Senate does not reflect this language. The public option bill does not state that hospitals must contract with **any** health plan that makes an offer to that hospital. WSHA is concerned that there is now a record in the Senate that conflicts with the plain meaning of E2SSB 5377.

Hospitals have expressed their commitment to ensuring that public option plans are available in counties across the state. They remain committed to this as we look ahead to the implementation of this bill. However, the uncertainty created by the disconnect between the legislative language and the legislative intent expressed in the Senate colloquy leads us to respectfully request that you veto Section 5 of the bill. Your veto will remove this uncertainty and still maintain hospitals commitment to contract with at least one public option plan in each county.

Sincerely,



Chelene Whiteaker
SVP, Government Affairs



Shirley Prasad
Senior Director, Government Affairs

cc: Senator David Frockt
Representative Eileen Cody
Senator Annette Cleveland

Senator Ron Muzzall
Representative Joe Schmick