

**2011 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB531)**

Received: **02/29/2012**

Received By: **tdodge**

Wanted: **Today**

Companion to LRB:

For: **David Craig (608) 266-3363**

By/Representing: **Amy Lewis**

May Contact:

Drafter: **tdodge**

Subject: **Insurance - health**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Craig@legis.wisconsin.gov**

Carbon copy (CC:) to: **pam.kahler@legis.wisconsin.gov**  
**tamara.dodge@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Prohibitions on implementing PPACA but with exceptions for certain grants and long-term care funding and exceptions for certain activities.

**Instructions:**

See attached.

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	tdodge 02/29/2012		jmurphy 02/29/2012	_____	lparisi 02/29/2012		
/1	tdodge 03/08/2012	mduchek 03/09/2012	phenry 03/09/2012	_____	sbasford 03/09/2012	sbasford 03/09/2012	

FE Sent For:

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#### Instructions:

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/?							
/P1	tdodge 02/29/2012		jmurphy 02/29/2012		lparisi 02/29/2012		

FE Sent For:

<END>

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			<i>2/29</i>	<i>2/29</i>			

FE Sent For:

<END>

**2011 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB531)**

Received: 02/23/2012

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Wanted: 02/28/2012

Companion to LRB:

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By/Representing: **Amy Lewis**

May Contact:

Drafter: **tdodge**

Subject: **Insurance - health**

Addl. Drafters:

Extra Copies:

*New LRB #  
S0369*

Submit via email: **YES**

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**Instructions:**

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/?	tdodge	<i>tdodge</i>	<i>tdodge 2/19</i>	_____	_____		
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FE Sent For:

<END>



State of Wisconsin  
Department of Health Services

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Scott Walker, Governor  
Dennis G. Smith, Secretary

**Memorandum**

**To:** Representative David Craig and Senator Leah Vukmir

**From:** Kevin Moore, Executive Assistant at the Department of Health Services

**Date:** February 21, 2012

**Subject:** Grants and Other Funding Sources in the Patient Protection and Affordable Care Act

---

Thank you for taking the time to meet with me on the potential impact of Assembly Bill 531 on various programs administered by the Department of Health Services. Many provisions within the Patient Protection and Affordable Care Act (PPACA) will be detrimental to Wisconsin taxpayers and their access to affordable private-sector health insurance. Wisconsin has already achieved one of the highest insured rates in the nation without the controversial individual mandate. Other policies linked to federal regulations of the insurance industry will increase costs to many individuals.

As you are aware, earlier this year Governor Walker directed the Department of Health Services and the Office of the Commissioner of Insurance to stop development of the state's health insurance exchange. This entailed disbanding the Office of Free Market Health Care, terminating the Office's web portal and linked exchange prototype, ending any future draw-down of the Early Innovator (EI) grant and stopping any development of Medicaid systems changes tied to the enhanced 90/10 funding split tied to the EI grant. The Department has fulfilled the Governor's directive.

With the health care exchange effectively terminated in Wisconsin, there remain some policy provisions of PPACA that are not tied to the federal take-over of health care. Because your pending legislation does not differentiate between policy items tied to the federal health care mandate and exchanges, and those that allow DHS to continue operating the state's health care programs, it is our belief that further clarification is necessary to specify your overall intent of preventing future implementation of federal health care reform while allowing the Department to find efficiencies within Wisconsin's Medicaid and health care systems that will save state taxpayers millions of dollars.

You should be aware of these non-health care reform items that are important to the Department's public health and Medicaid programs. Here is a small, and not absolute, list of new grants or extensions of grants that are available through the PPACA.<sup>1 2</sup>

- School-Based Health Clinic/Center Grants Title IV
- Continuing Education Support for Health Professionals Serving in Underserved Communities IV
- Demonstration Projects to Address Health Professions Workforce Needs IV
- State Option to Provide Health Homes for Enrollees With Chronic Conditions II 2703
- National Diabetes Prevention Program **X**
- Healthy Aging, Living Well Grant IV
- Demonstration Project to Evaluate Integrated Care Around a Hospitalization II 2704
- Pediatric Accountable Care Organization Demonstration Project II 2706
- State Demonstration Projects for the Purpose of Detecting & Preventing Elder Abuse IV
- Nationwide Program for National and State Background Checks on Direct Patient Access Employees of Long-Term Care Facilities and Providers IV
- Alternative Dental Health Care Providers Demonstration Project V
- Grants to Promote Positive Health Behaviors and Outcomes V
- Reauthorization of Abstinence Education Funding II 2954 42 USC 710
- Extends the Childhood Obesity Demonstration Project through 2014. IV
- Extends the School-Based Sealant Program. IV
  - o The 2011-13 Wisconsin state budget appropriated an additional \$250,000 state match for this program.
- Medicare Rural Hospital Flexibility Program III
- Demonstration Project on Community Health integration Models in Certain Rural Counties III

Section  
of PPACA  
March 23, 2010

PHSA §§ 301,  
307, 310, & 311  
& ARRA 2009

In addition, here is an additional list of current funding streams that you should be aware of that the Department of Health Services receives that are authorized through the Patient Protection and Affordable Care Act:

- Funding to Improve Health Outcomes through Public Health Infrastructure §4002
- Healthy Communities, Tobacco Control and Diabetes Prevention and Control
- Capacity Building Assistance to Strengthen Public Health Immunization Infrastructure and Performance §4002
- Coordinated Chronic Disease Prevention and Health Promotion Program §4002
- Wisconsin Striving to Quit - MA?
- Medicaid Incentives for Prevention of Chronic Disease §4108?
- Personal and Home Care Aids State Training Program §4002
- ADRC Options Counseling and Assistance Programs §2405

<sup>1</sup> Summary of the State Grant Opportunities in the Patient Protection and Affordable Care Act: H.R. 3590 – Rachel Morgan, Senior Health Policy Specialist at the National Conference of State Legislatures

<sup>2</sup> Shipman and Goodman; Summary of PPACA Grants, Demonstration Projects and Other Funding Opportunities

As you can see, the extent to which the PPACA affects Wisconsin's health program is expansive and complex. Allowing the Department to utilize the appropriate vehicles to implement changes to our state's Medicaid program is vital to the development of cost-savings initiatives required in the biennial budget. It is important for you to understand that the proposed legislative language creates additional logistical obstacles which may hinder the Department and the Legislature's efforts to identify and implement budget savings required in the 2011-13 state budget. This prohibition may also place the state at a competitive disadvantage with other states in efforts to reform its Medicaid program.

For instance, you have probably read and reviewed the Department's proposals aimed at creating a sustainable platform for Family Care and other long-term care programs. One of the policy provisions in this plan is maximizing federal financial participation in the program by identifying individuals who are eligible for the federal Money Follows the Person (MFP) program. This initiative allows for 100% federal funding for MFP administrative costs and 80% federal match for MFP benefits. As you may remember, the MFP program was originally authorized in 2006 as part of the Deficit Reduction Act (DRA), passed by a Republican Congress and signed by President George W. Bush.

In 2009, the PPACA extended the MFP program that was established in the DRA and appropriated \$2.25 billion for states to participate in this extended demonstration project.<sup>3</sup> It is important for you to understand the importance of extending the program through 2016. First, more states are now taking greater advantage of increased federal match dollars. Second, the costs for individuals, especially seniors, within the program have proven to be much less compared to our legacy waiver programs and the state's Family Care program. Finally, states have been required, through the Americans with Disabilities Act, to place individuals with disabilities and seniors in the least-restrictive residential setting possible. The MFP program is centered around moving individuals from institutionalized settings to community based residential settings.

The legacy CIP and COP enrollees monthly cost averages \$4,159 per enrollee. Family Care enrollees monthly cost average is \$3,188 per enrollee. On a national average, Senior citizen enrollees in the MFP program as part of CIP, COP, and Family Care waivers cost about \$2,130 per member per month. Taking into consideration Wisconsin's standard FMAP rate and potential difference from enhanced FMAP established under DRA and now PPACA, you will see an even greater difference.

Standard CIP and COP enrollees cost state taxpayers in Wisconsin, on average, \$1,663 per month. Family Care enrollees cost state taxpayers about \$1,257 per month. Individuals who participate in the MFP program extended under PPACA, cost Wisconsin taxpayers about \$426 per month.

Only 349 individuals participated in the program in 2008 on a national level. As states begin to understand effective ways to implement the program in a cost-effective manner, identification of MFP eligible Medicaid participants has increased dramatically. In 2011, nearly 16,639

<sup>3</sup> Kaiser Commission on Medicaid and the Uninsured – Money Follows the Person: A 2011 Survey of Transitions, Services and Costs – December 2011

\$ 240-

Specific  
exception  
for  
family  
care

individuals participated in the program mostly from Ohio, Texas, and Washington. These states have taken advantage of enhanced federal match dollars in a timely manner; something that Wisconsin is looking to do as well.

To date, the state of Wisconsin has already received almost \$400,000 from the PPACA to motivate the expedient implementation of the MFP program.

In addition to the MFP program, the PPACA creates a number of new opportunities for states to improve program integrity in Medicaid by bolstering waste, fraud and abuse detection. With the creation of the Office of the Inspector General within DHS, and your support in adding 19 new FTE positions to combat fraud and abuse, the Department is well positioned to take advantage of these new tools to reduce fraud within the state's public assistance programs. There is concern that the creation of new logistical obstacles may hinder the Department's ability to effectively implement these anti-fraud provisions in a timely manner.

While these examples are intended to provide you with an understanding of how the PPACA affects our states current Medicaid program, the Department is concerned and unsure of how Assembly Bill 531 would affect the administrative aspects of our program. The potential loss of enhanced federal match funds from AB 531 for Medicaid and other programs at the Department has not been measured.

The Department would be happy to work with you to identify ways that Assembly Bill 531 might be amended to accomplish the goal of protecting Wisconsin from the detrimental provisions of the PPACA while also protecting Wisconsin taxpayers.

Please let me know if you have any further questions.

meeting w/ Rep Craig on 2/23

Address issues in DHS memo

- Exempt From bill list of grants & funding  
From memo
- Exempt family care funding

exempt  
parts of  
PPACA

OCI

2718

Look at MLR & rebate findings - allow detection of insurers w/ financial problems but do not allow enforcement of PPACA MLR

Allow OCI to exchange of information re PPACA w/ agencies and insurers

Allow communication & discussion & research

Allow OCI to address consumer complaints

Allow OCI to serve on Group Insurance Board (ETF)

Combine 530 & 531

Write analysis

Do Preliminary amendment



State of Wisconsin  
2011 - 2012 LEGISLATURE

In. 2/28/12 Due Wed 2/29



LRBs03600-0-P1  
TJD: [unclear]  
RMNR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**ASSEMBLY SUBSTITUTE AMENDMENT,**  
**TO 2011 ASSEMBLY BILL 531**

jld med  
D-note

Gen

1 AN ACT ... relating to: ??? Insert relating

***Analysis by the Legislative Reference Bureau***

The substitute amendment specifies that an agency is not prohibited from exchanging or providing information about, communicating or advising about, or discussing PPACA with any person or agency; reviewing, analyzing, or researching PPACA, or addressing consumer complaints about PPACA. A secretary or commissioner of an agency is not prohibited from serving on a board that discusses and considers the effects of PPACA. The substitute amendment also specifies that \* if the office of the commissioner of insurance (OCI) receives a report of an insurer's medical loss ratio, OCI may review that medical loss ratio to determine if the insurer is experiencing financial problems and may work with the insurer to resolve those \* financial problems. As an exception to the requirements under the substitute amendment, the substitute amendment allows the Department of Health Services (DHS) to request grants or other moneys for certain purposes specified under Title \* I or II or subtitle A or B of Title X of PPACA and to implement the project or program \* for which that grant or other moneys are received. e is

Insert Analysis A (from 3495) 10911

Insert Analysis B (from 3462) 11

e exception

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

Insert + 3462 - 1

Insert 3495 - 1

1 (d) 1. This subsection does not prohibit an agency from taking any of the  
2 following actions in the absence of legislation allowing the agency to take the action:

3 a. Exchanging or providing information about, communicating or advising  
4 about, or discussing the Patient Protection and Affordable Care Act with any person  
5 or agency.

6 b. Reviewing, analyzing, or researching the Patient Protection and Affordable  
7 Care Act.

8 c. Addressing consumer complaints regarding the Patient Protection and  
9 Affordable Care Act.

10 2. If the office of the commissioner of insurance receives a report of a medical  
11 loss ratio from an insurer, the office of the commissioner of insurance may review the  
12 medical loss ratio to determine if the insurer is experiencing financial problems and  
13 may work with the insurer to resolve those financial problems.

14 3. This subsection does not prohibit a secretary or commissioner of an agency  
15 from serving on any board that discusses and considers the effects of the Patient  
16 Protection and Affordable Care Act.

17 (e) Notwithstanding <sup>2 pars.</sup> (a) to (c), the department may request any grant or  
18 other moneys from the federal government under the Patient and Protection and  
19 Affordable Care Act for the purposes under sections 2403, 2405, 2703, 2704, 2706,  
20 or 2954 of the Patient Protection and Affordable Care Act; for aging and disability  
21 options counseling and assistance programs; for smoking cessation programs for  
22 Medical Assistance program recipients; for the Family Care program as described in  
23 ss. 46.2805 to 46.2895 or any other long-term care program operated under the  
24 Medical Assistance program; and for any purpose for which the grant or other  
25 moneys were available from the federal government before March 24, 2010. If the

1 department receives the grant or other moneys under this paragraph, the  
2 department may implement the project or program for which the grant or other  
3 moneys are received.

4

(END)

Insert  
3462-2

D-note



# 2011 ASSEMBLY BILL 531

February 7, 2012 - Introduced by Representatives CRAIG, WYNN, AUGUST, KNUDSON, KNILANS, BERNIER, FARROW, HONADEL, JACONE, KAPENGA, KOOYENGA, KRAMER, KUGLITSCH, LEMANIEU, T. LARSON, NASS, STEINEKE, STROEBEL, THIESFELDT and WEININGER, cosponsored by Senators VUKMIR, GALLOWAY, GROTHMAN, LASEE and LAZICH. Referred to Committee on Insurance.

and reports on implementation of federal health reform

Insert relating

- 1 AN ACT to amend 49.45 (2m) (c) (intro.); and to create 49.45 (2m) (dm) and
- 2 146.965 of the statutes, relating to: requiring legislation for agencies to take
- 3 an action to, request federal moneys to, and use state moneys to assist the
- 4 federal government to implement federal health reform.

(End insert relating)

## Insert Analysis A

### Analysis by the Legislative Reference Bureau

On March 23, 2010, the federal government enacted the Patient Protection and Affordable Care Act (PPACA), which, among other things, imposes requirements and limitations on health insurance policies and health plans, requires the creation of state-based health insurance exchanges through which individuals and small employers can purchase insurance, changes the income eligibility criteria for Medicaid (known as Medical Assistance in this state), and creates incentives for improving access to health care. This bill requires that, before a state agency takes any action to implement PPACA for which the agency would typically promulgate a rule, the agency must request the Legislative Reference Bureau to prepare legislation that allows the agency to take the action. The agency must then submit the proposed legislation to each standing committee of each house of the legislature that has jurisdiction over health or insurance matters. The bill prohibits the agency from taking the action to implement PPACA until the legislation allowing the agency to take the action takes effect. The bill also prohibits an agency from requesting a grant or other moneys from the federal government to implement PPACA and from expending any state moneys, or federal moneys passing through the state treasury, to assist the federal government in implementing PPACA.

Substitute amendment use 3x

The insurance reform in PPACA changes to Medicaid and Subtitles A and B of Title X of PPACA

Title I or II or Subtitle A or B of Title X of

use 4x

(END INSERT ANALYSIS A)

**ASSEMBLY BILL 531**

~~For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.~~

~~The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:~~

Insert 3495-1

1 SECTION 1. 49.45 (2m) (c) (intro.) of the statutes, as affected by 2011 Wisconsin  
2 Act 32, section 1423k, is amended to read:

3 49.45 (2m) (c) (intro.) Subject to ~~par.~~ pars. (d) and (dm), if the department  
4 determines, as a result of the study under par. (b), that revision of existing statutes  
5 or rules would be necessary to advance a purpose described in par. (b) 1. to 7., the  
6 department may propose a policy that makes any of the following changes related to  
7 Medical Assistance programs:

8 SECTION 2. 49.45 (2m) (dm) of the statutes is created to read:

9 49.45 (2m) (dm) The department may not follow the procedures under this  
10 section to implement a policy that involves an action to implement the Patient  
11 Protection and Affordable Care Act, as defined in s. 146.965 (1) (b). If the department  
12 proposes a policy under par. (c) that involves an action to implement the Patient  
13 Protection and Affordable Care Act, the department shall comply with the procedure  
14 under s. 146.965 (2) before taking the action.

15 SECTION 3. 146.965 of the statutes is created to read:

16 **146.965 Implementation of federal health reform. (1) DEFINITIONS.** In  
17 this section:

18 (a) "Agency" means a board, commission, committee, department, or officer in  
19 the state government, except the governor, a district attorney, or a military or judicial  
20 officer.

-3/CS

EXCEPTIONS

Use 3y

Titles I or II or  
Subtitles A or B of  
Title X  
of

1 (b) "Patient Protection and Affordable Care Act" means the federal Patient  
2 Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health  
3 Care and Education Reconciliation Act of 2010, P.L. 111-152.

4 (2) LEGISLATION REQUIRED. (a) Notwithstanding s. 227.11 (2), before an agency  
5 takes any action to implement any portion of the Patient Protection and Affordable  
6 Care Act for which the agency would typically promulgate a rule, the agency shall  
7 request that the legislative reference bureau prepare legislation that allows the  
8 agency to take the action. The agency shall submit the proposed legislation to each  
9 standing committee of each house of the legislature that has jurisdiction over health  
10 or insurance matters under s. 13.172 (3). The agency may not take the action until  
11 the legislation allowing the agency to take the action takes effect.

12 (b) No agency may request a grant or other moneys from the federal  
13 government to implement the Patient Protection and Affordable Care Act, unless the  
14 state legislature has enacted legislation to allow the request for the grant or other  
15 moneys and the legislation is in effect.

16 (c) No agency may expend any moneys of this state, or of any subdivision or  
17 agency of this state, or any federal moneys passing through the state treasury to  
18 assist the federal government in implementing any portion of the Patient Protection  
19 and Affordable Care Act unless the state legislature has enacted legislation to allow  
20 the agency to expend those moneys and the legislation is in effect.

(END Insert 3495-1)



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-3462/2  
TJD:jld:jf

**2011 ASSEMBLY BILL 530**

February 7, 2012 - Introduced by Representatives CRAIG, KNILANS, WYNN, AUGUST, KNUDSON, BERNIER, FARROW, JACQUE, KAPENGA, KLEEFISCH, KOOYENGA, KRAMER, KUGLITSCH, T. LARSON, LEMAHIEU, LITJENS, NASS, SPANBAUER, STROEBEL and THIESFELDT, cosponsored by Senators VUKMIR, KEDZIE, LASEE, LAZICH and GALLOWAY. Referred to Committee on Insurance.

1 AN ACT to create 20.9265 and 601.46 (3) (k) of the statutes; relating to: reports  
2 on implementation of federal health reform.

**Analysis by the Legislative Reference Bureau**

On March 23, 2010, the federal government enacted the Patient Protection and Affordable Care Act (PPACA), which, among other things, imposes requirements and limitations on health insurance policies and health plans, requires the creation of state-based health insurance exchanges through which individuals and small employers can purchase insurance, changes the income eligibility criteria for Medicaid (known as Medical Assistance in this state), and creates incentives for improving access to health care. This bill requires agencies of the state to submit annually to the legislature a report that describes the cost, since March 23, 2010, to that agency of implementing PPACA and any federal moneys received after March 23, 2010, related to implementing PPACA, with the first report due by September 1, 2012. In addition, certain agencies must include certain information in their annual reports for that year and in an analysis of any change in the information after March 23, 2010. The Department of Health Services must include the average spending per recipient for Medical Assistance programs and the spending for Medical Assistance programs as a percentage of the state budget. The Department of Safety and Professional Services shall include the number of physicians practicing in the state. The Office of the Commissioner of Insurance must include the number of insurance companies that offer health care plans in the state. The (bill) also requires the commissioner of insurance to include in his or her annual report to the legislature a review of the effect the implementation of PPACA has on rates of health care plans

Insert  
Analysis B

DHS

OCI

The substitute amendment

Substitute amendment

## ASSEMBLY BILL 530

that are not issued through a governmental body. That review must include the average rate for each health care plan. (End Insert analysis B)

~~For further information see the state fiscal estimate, which will be printed as an appendix to this bill.~~

~~The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:~~

Insert 3462-1

1 SECTION 1. 20.9265 of the statutes is created to read:

2 **20.9265 Federal health reform cost reports. (1) DEFINITIONS.** In this  
3 section:

4 (a) "Agency" means an office, department, agency, institution of higher  
5 education, association, society, or other body in state government created or  
6 authorized to be created by the constitution or any law, which is entitled to expend  
7 moneys appropriated by law, including the legislature, the courts, and any authority  
8 created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 231, 233, 234, 238, or  
9 279.

10 (b) "Medical Assistance program" includes any program operated under subch.  
11 IV of ch. 49, demonstration program operated under 42 USC 1315, and program  
12 operated under a waiver of federal law relating to medical assistance that is granted  
13 by the federal department of health and human services.

14 (c) "Patient Protection and Affordable Care Act" means the federal Patient  
15 Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health  
16 Care and Education Reconciliation Act of 2010, P.L. 111-152.

17 (2) REPORT REQUIRED. By September 1, 2012, and annually thereafter, subject  
18 to sub. (3), each agency shall submit to the legislature in the manner provided under  
19 s. 13.172 (2) a report that describes the cost, since March 23, 2010, to that agency of  
20 implementing the Patient Protection and Affordable Care Act and any moneys

## ASSEMBLY BILL 530

1 received from the federal government after March 23, 2010, that are related to  
2 implementing the Patient Protection and Affordable Care Act.

3 (3) SPECIFIC AGENCY REQUIREMENTS. (a) In the report under sub. (2), the  
4 department of health services shall include the average spending per recipient for  
5 Medical Assistance programs, and the spending for Medical Assistance programs as  
6 a percentage of the state budget, for that year and in an analysis of any change in  
7 spending after March 23, 2010.

8 (b) In the report under sub. (2), the department of safety and professional  
9 services shall include the number of physicians practicing in the state in that year  
10 and in an analysis of any change in the number of physicians practicing after March  
11 23, 2010.

12 (c) In the report under sub. (2), the office of the commissioner of insurance shall  
13 include the number of insurance companies that offer health care plans, as defined  
14 in s. 628.36 (2) (a) 1., in the state for that year and in an analysis of any change in  
15 the number of insurers after March 23, 2010. (End Insert 3462-1)

16 SECTION 2. 601.46 (3) (k) of the statutes is created to read:

17 601.46 (3) (k) A review of the effect the implementation of the Patient  
18 Protection and Affordable Care Act, as defined in s. 20.9265 (1) (c), has on rates of  
19 health care plans, as defined in s. 628.36 (2) (a) 1., whether offered inside or outside  
20 of any health insurance exchange, that are not issued through a governmental body.  
21 The review shall include the average rate for each health care plan.

22

(END)

(END Insert 3462-2)

Insert  
3462-2

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

9  
LRBs0360/P1dn  
TJD:f:...

*med*

Date

To Representative Craig:

Please review this preliminary substitute amendment to ensure it complies with your intent. This substitute amendment incorporates 2011 Assembly Bills 530 and 531 along with the changes we discussed in our meeting last week. This substitute amendment retains the general definition of Patient Protection and Affordable Care Act (PPACA), but for the created s. 146.965 (2), the requirements only apply to implementation of Title I and II of PPACA and the corresponding amendments to those titles in Title X of PPACA. Title I contains the insurance reforms and insurance exchange provisions, including the individual mandate. Title II contains the changes to the Medicaid program. This means, for the substitute amendment, that legislation would not be required for an agency to implement items in Titles III through IX of PPACA, and I can provide a table of contents for those titles if you would like. Most of the grant and funding programs listed in the February 21, 2012, memorandum from the Department of Health Services (DHS) are outside of Titles I and II, so this change would allow DHS to request funding and implement those programs without explicit authorization. For the grant programs listed by DHS related to Medical Assistance and Family Care funding (Title II), this substitute amendment contains an explicit exemption from the requirements for those programs. That exemption also allows DHS to renew grants that were in existence before PPACA became law.

To address the issues brought to you by the Office of the Commissioner of Insurance, the substitute amendment includes s. 146.965 (2) (d), which specifies those actions that do not violate the prohibitions in the substitute amendment. Please review these provisions to confirm they are not too broad or narrow, especially the medical loss ratio provision.

→ Should you have questions or redraft instructions or to request an <sup>e</sup>introducible amendment, please contact me.

Tamara J. Dodge  
Legislative Attorney  
Phone: (608) 267-7380  
E-mail: tamara.dodge@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0369/P1dn  
TJD:med:jm

February 29, 2012

To Representative Craig:

Please review this preliminary substitute amendment to ensure it complies with your intent. This substitute amendment incorporates 2011 Assembly Bills 530 and 531 along with the changes we discussed in our meeting last week. This substitute amendment retains the general definition of Patient Protection and Affordable Care Act (PPACA), but for the created s. 146.965 (2), the requirements only apply to implementation of Title I and II of PPACA and the corresponding amendments to those titles in Title X of PPACA. Title I contains the insurance reforms and insurance exchange provisions, including the individual mandate. Title II contains the changes to the Medicaid program. This means, for the substitute amendment, that legislation would not be required for an agency to implement items in Titles III through IX of PPACA, and I can provide a table of contents for those titles if you would like. Most of the grant and funding programs listed in the February 21, 2012, memorandum from the Department of Health Services (DHS) are outside of Titles I and II, so this change would allow DHS to request funding for and implement those programs without explicit authorization. For the grant programs listed by DHS related to Medical Assistance and Family Care funding (Title II), this substitute amendment contains an explicit exemption from the requirements for those programs. That exemption also allows DHS to renew grants that were in existence before PPACA became law.

To address the issues brought to you by the Office of the Commissioner of Insurance, the substitute amendment includes s. 146.965 (2) (d), which specifies those actions that do not violate the prohibitions in the substitute amendment. Please review these provisions to confirm they are not too broad or narrow, especially the medical loss ratio provision.

Should you have questions or redraft instructions or to request an introducible amendment, please contact me.

Tamara J. Dodge  
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State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, Governor  
Theodore K. Nickel, Commissioner

Wisconsin.gov

March 2, 2012

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REPRESENTATIVE DAVID CRAIG  
ROOM 15 WEST  
STATE CAPITOL  
MADISON WI 53708

Re: Assembly Substitute Amendment to AB 531

Dear Representative Craig:

We appreciate having the opportunity to provide you with the Office's thoughts on the Assembly Substitute Amendment to AB 531. The proposed amendment effectively takes into consideration most of the concerns we shared with you in our letter dated February 22, 2012. As mentioned in the conversation earlier today, the Office has a lingering reservation and will speak with the drafting attorney, Ms. Dodge, on Monday. After the conversation the Office will be in a position to finalize our thoughts on the proposal. We will contact you again following our discussion with Ms. Dodge.

A second purpose of this letter is to request that the Assembly Substitute Amendment to AB 531 additionally include one modification (attached). We are requesting this change, so that Wisconsin may continue to operate its effective rate review program in the individual and small group markets.

Benefits to Wisconsin in having an effective rate review include:

- Wisconsin state law and market-competition forces continue to determine whether an insurer's proposed rate increase is "unreasonable" (excessive, unjustified, unfairly discriminatory). This includes standards set forth in state law and regulations, such as ch. 625, 635, 628 and 601, Wis. Stats.
- HHS will adopt Wisconsin's rate review determination and thereby allow market-competition to continue to regulate whether rates are reasonable. Federal standards for evaluating and reviewing insurer rates, which involve case-by-case scrutiny of the reasonableness of insurer profits and expenses, would not apply.
- Insurers are less likely to experience in the short term, unwarranted reputational injury, and in the longer term (2014), limitations in their ability to participate in insurance markets.

In order to preserve Wisconsin's effective rate review program and in order to prepare the annual rate review reports for the legislature the Office will require dedicated resources (state, federal monies, actuarial consultants), and therefore we request the attached change.

REPRESENTATIVE DAVID CRAIG

March 5, 2012

Page 2

If you have any questions, please call me on my cell phone (608) 843-9642 or e-mail me at [jp.wieske@wisconsin.gov](mailto:jp.wieske@wisconsin.gov) or Julie Walsh, OCI Attorney, at 264-8101 or e-mail [Julie.Walsh@wisconsin.gov](mailto:Julie.Walsh@wisconsin.gov).

Sincerely,

Julie E. Walsh  
Attorney on behalf of,

J.P. Wieske  
Legislative Liaison

CC: Daniel Schwartzer

JPW:lmb

**Section 4.** 146.965 of the statutes is created to read:

20 (e) Notwithstanding pars. (a) to (c), the ~~department~~ agency may request any  
21 grant or other moneys from the federal government under the Patient and  
22 ~~Protections~~Protection and Affordable Care Act for the purposes under section  
23 1003, 2403, 2405, 2703, 2704, 2706, or 2954 of the Patient Protection and  
24 Affordable Care Act; for aging and disability options counseling and assistance  
25 programs; for smoking cessation programs for Medical Assistance program  
26 recipients; for the Family Care program as described in ss. 46.2805 to 46.2895,  
27 or any other long-term care program operated under the Medical Assistance  
28 program; and for any purpose for which the grant or other moneys were available  
29 from the federal government before March 24, 2010. If the ~~department~~-agency  
30 receives the grant or other moneys under this paragraph, the ~~department~~-agency  
31 may implement the project or program and expend the grant or moneys for which  
32 the grant or other moneys are received.

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State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBs0369/P1

TJD:jld&med:jm

In: 3/8/12

Due Friday  
3/9

stays RMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

**ASSEMBLY SUBSTITUTE AMENDMENT,**

**TO 2011 ASSEMBLY BILL 531**

Reger

1 **AN ACT to amend** 49.45 (2m) (c) (intro.); and **to create** 20.9265, 49.45 (2m) (dm),  
2 146.965 and 601.46 (3) (k) of the statutes; **relating to:** requiring legislation for  
3 agencies to take an action to, request federal moneys to, and use state moneys  
4 to assist the federal government to implement federal health reform and  
5 reports on implementation of federal health reform.

***Analysis by the Legislative Reference Bureau***

On March 23, 2010, the federal government enacted the Patient Protection and Affordable Care Act (PPACA), which, among other things, imposes requirements and limitations on health insurance policies and health plans, requires the creation of state-based health insurance exchanges through which individuals and small employers can purchase insurance, changes the income eligibility criteria for Medicaid (known as Medical Assistance in this state), and creates incentives for improving access to health care. The insurance reforms, insurance exchange requirements, and changes to Medicaid are located in Titles I and II and Subtitles A and B of Title X of PPACA. This substitute amendment requires that, before a state agency takes any action to implement Title I or II or Subtitle A or B of Title X of

PPACA for which the agency would typically promulgate a rule, the agency must request the Legislative Reference Bureau to prepare legislation that allows the agency to take the action. The agency must then submit the proposed legislation to each standing committee of each house of the legislature that has jurisdiction over health or insurance matters. The substitute amendment prohibits the agency from taking the action to implement Title I or II or Subtitle A or B of Title X of PPACA until the legislation allowing the agency to take the action takes effect. The substitute amendment also prohibits an agency from requesting a grant or other moneys from the federal government to implement Title I or II or Subtitle A or B of Title X of PPACA and from expending any state moneys, or federal moneys passing through the state treasury, to assist the federal government in implementing Title I or II or Subtitle A or B of Title X of PPACA. The substitute amendment specifies that an agency is not prohibited from exchanging or providing information about, communicating or advising about, or discussing PPACA with any person or agency; reviewing, analyzing, or researching PPACA, or addressing consumer complaints about PPACA. A secretary or commissioner of an agency is not prohibited from serving on a board that discusses and considers the effects of PPACA. The substitute amendment also specifies that if the Office of the Commissioner of Insurance (OCI) receives a report of an insurer's medical loss ratio, OCI may review that medical loss ratio to determine if the insurer is experiencing financial problems and may work with the insurer to resolve those financial problems. As an exception to the requirements under the substitute amendment, the substitute amendment allows the Department of Health Services (DHS) to request <sup>and grant</sup> grants for other moneys for certain purposes specified under Title I or II or Subtitle A or B of Title X of PPACA and to implement the project or program <sup>of the</sup> for which <sup>that</sup> grant or other moneys <sup>are</sup> received, <sup>and expend that grant or other moneys</sup>

The substitute amendment requires agencies of the state to submit annually to the legislature a report that describes the cost, since March 23, 2010, to that agency of implementing PPACA and any federal moneys received after March 23, 2010, related to implementing PPACA, with the first report due by September 1, 2012. In addition, certain agencies must include certain information in their annual reports for that year and in an analysis of any change in the information after March 23, 2010. DHS must include the average spending per recipient for Medical Assistance programs and the spending for Medical Assistance programs as a percentage of the state budget. The Department of Safety and Professional Services shall include the number of physicians practicing in the state. OCI must include the number of insurance companies that offer health care plans in the state. The substitute amendment also requires the commissioner of insurance to include in his or her annual report to the legislature a review of the effect the implementation of PPACA has on rates of health care plans that are not issued through a governmental body. That review must include the average rate for each health care plan.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 20.9265 of the statutes is created to read:

2           **20.9265 Federal health reform cost reports. (1) DEFINITIONS.** In this  
3 section:

4           (a) "Agency" means an office, department, agency, institution of higher  
5 education, association, society, or other body in state government created or  
6 authorized to be created by the constitution or any law, which is entitled to expend  
7 moneys appropriated by law, including the legislature, the courts, and any authority  
8 created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 231, 233, 234, 238, or  
9 279.

10           (b) "Medical Assistance program" includes any program operated under subch.  
11 IV of ch. 49, demonstration program operated under 42 USC 1315, and program  
12 operated under a waiver of federal law relating to medical assistance that is granted  
13 by the federal department of health and human services.

14           (c) "Patient Protection and Affordable Care Act" means the federal Patient  
15 Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health  
16 Care and Education Reconciliation Act of 2010, P.L. 111-152.

17           **(2) REPORT REQUIRED.** By September 1, 2012, and annually thereafter, subject  
18 to sub. (3), each agency shall submit to the legislature in the manner provided under  
19 s. 13.172 (2) a report that describes the cost, since March 23, 2010, to that agency of  
20 implementing the Patient Protection and Affordable Care Act and any moneys  
21 received from the federal government after March 23, 2010, that are related to  
22 implementing the Patient Protection and Affordable Care Act.

23           **(3) SPECIFIC AGENCY REQUIREMENTS.** (a) In the report under sub. (2), the  
24 department of health services shall include the average spending per recipient for  
25 Medical Assistance programs, and the spending for Medical Assistance programs as

1 a percentage of the state budget, for that year and in an analysis of any change in  
2 spending after March 23, 2010.

3 (b) In the report under sub. (2), the department of safety and professional  
4 services shall include the number of physicians practicing in the state in that year  
5 and in an analysis of any change in the number of physicians practicing after March  
6 23, 2010.

7 (c) In the report under sub. (2), the office of the commissioner of insurance shall  
8 include the number of insurance companies that offer health care plans, as defined  
9 in s. 628.36 (2) (a) 1., in the state for that year and in an analysis of any change in  
10 the number of insurers after March 23, 2010.

11 **SECTION 2.** 49.45 (2m) (c) (intro.) of the statutes, as affected by 2011 Wisconsin  
12 Act 32, section 1423k, is amended to read:

13 49.45 (2m) (c) (intro.) Subject to ~~par.~~ pars. (d) and (dm), if the department  
14 determines, as a result of the study under par. (b), that revision of existing statutes  
15 or rules would be necessary to advance a purpose described in par. (b) 1. to 7., the  
16 department may propose a policy that makes any of the following changes related to  
17 Medical Assistance programs:

18 **SECTION 3.** 49.45 (2m) (dm) of the statutes is created to read:

19 49.45 (2m) (dm) The department may not follow the procedures under this  
20 section to implement a policy that involves an action to implement the Patient  
21 Protection and Affordable Care Act, as defined in s. 146.965 (1) (b). If the department  
22 proposes a policy under par. (c) that involves an action to implement the Patient  
23 Protection and Affordable Care Act, the department shall comply with the procedure  
24 under s. 146.965 (2) before taking the action.

25 **SECTION 4.** 146.965 of the statutes is created to read:

1           **146.965 Implementation of federal health reform.** (1) DEFINITIONS. In  
2 this section:

3           (a) "Agency" means a board, commission, committee, department, or officer in  
4 the state government, except the governor, a district attorney, or a military or judicial  
5 officer.

6           (b) "Patient Protection and Affordable Care Act" means the federal Patient  
7 Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health  
8 Care and Education Reconciliation Act of 2010, P.L. 111-152.

9           (2) LEGISLATION REQUIRED; EXCEPTIONS. (a) Notwithstanding s. 227.11 (2), before  
10 an agency takes any action to implement any portion of title I or II or subtitle A or  
11 B of title X of the Patient Protection and Affordable Care Act for which the agency  
12 would typically promulgate a rule, the agency shall request that the legislative  
13 reference bureau prepare legislation that allows the agency to take the action. The  
14 agency shall submit the proposed legislation to each standing committee of each  
15 house of the legislature that has jurisdiction over health or insurance matters under  
16 s. 13.172 (3). The agency may not take the action until the legislation allowing the  
17 agency to take the action takes effect.

18           (b) No agency may request a grant or other moneys from the federal  
19 government to implement title I or II or subtitle A or B of title X of the Patient  
20 Protection and Affordable Care Act, unless the state legislature has enacted  
21 legislation to allow the request for the grant or other moneys and the legislation is  
22 in effect.

23           (c) No agency may expend any moneys of this state, or of any subdivision or  
24 agency of this state, or any federal moneys passing through the state treasury to  
25 assist the federal government in implementing any portion of title I or II or subtitle

1 A or B of title X of the Patient Protection and Affordable Care Act unless the state  
2 legislature has enacted legislation to allow the agency to expend those moneys and  
3 the legislation is in effect.

4 (d) 1. This subsection does not prohibit an agency from taking any of the  
5 following actions in the absence of legislation allowing the agency to take the action:

6 a. Exchanging or providing information about, communicating or advising  
7 about, or discussing the Patient Protection and Affordable Care Act with any person  
8 or agency.

9 b. Reviewing, analyzing, or researching the Patient Protection and Affordable  
10 Care Act.

11 c. Addressing consumer complaints regarding the Patient Protection and  
12 Affordable Care Act.

13 2. If the office of the commissioner of insurance receives a report of a medical  
14 loss ratio from an insurer, the office of the commissioner of insurance may review the  
15 medical loss ratio to determine if the insurer is experiencing financial problems and  
16 may work with the insurer to resolve those financial problems.

17 3. This subsection does not prohibit a secretary or commissioner of an agency  
18 from serving on any board that discusses and considers the effects of the Patient  
19 Protection and Affordable Care Act.

20 (e) Notwithstanding pars. (a) to (c), the department <sup>an agency</sup> may request any grant or  
21 other moneys from the federal government under the Patient and Protection and  
22 Affordable Care Act for the purposes under section <sup>^</sup>2403, 2405, 2703, 2704, 2706, or  
23 2954 of the Patient Protection and Affordable Care Act; for aging and disability  
24 options counseling and assistance programs; for smoking cessation programs for  
25 Medical Assistance program recipients; for the Family Care program as described in

10031

1 ss. 46.2805 to 46.2895 or any other long-term care program operated under the  
 2 Medical Assistance program; and for any purpose for which the grant or other  
 3 moneys were available from the federal government before March 24, 2010. If the  
 4 department receives the grant or other moneys under this paragraph, the  
 5 department may implement the project or program for which the grant or other  
 6 moneys are received. *and may expend that grant or other moneys to the*

*agency*  
*agency*

7 **SECTION 5.** 601.46 (3) (k) of the statutes is created to read:

8 601.46 (3) (k) A review of the effect the implementation of the Patient  
 9 Protection and Affordable Care Act, as defined in s. 20.9265 (1) (c), has on rates of  
 10 health care plans, as defined in s. 628.36 (2) (a) 1., whether offered inside or outside  
 11 of any health insurance exchange, that are not issued through a governmental body.  
 12 The review shall include the average rate for each health care plan.

13 (END)