



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2011 Assembly Bill 210

**Assembly Substitute
Amendment 1 and Assembly
Amendment 5 to Assembly
Substitute Amendment 1**

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2011 ASSEMBLY BILL 210

2011 Assembly Bill 210 adopts a number of provisions from the federal Patient Protection and Affordable Care Act (PPACA), as amended, that have already gone into effect or are scheduled to go into effect in the near future.

This includes rate reporting requirements, internal grievance procedures and external review procedures, medical loss ratio reporting, standards for lifetime and annual limits, prohibition on rescissions, prohibition on pre-existing condition exclusions for minors, coverage of preventive health services, extension of dependent coverage to age 26, and choice of health care professional.

Additional specific provisions of the bill are described below.

EMERGENCY RULE-MAKING

Assembly Bill 210 provides the Commissioner of Insurance (commissioner) with the authority to promulgate rules under newly created ch. 636, adopting certain provisions of PPACA (or s. 625.03 (1m) (e) and 625.13 (3), relating to rate reviews) as emergency rules. The rules may remain in effect for one year, and may be extended under s. 227.24 (2), Stats. Further, the bill provides that these emergency rules may be promulgated without the usual finding of emergency required under current law.

Assembly Substitute Amendment 1 maintains the commissioner's authority to promulgate emergency rules that may remain in effect for one year and that may be extended under s. 227.24 (2), Stats., but requires that the emergency rules be promulgated with the usual finding of emergency required under current law.

EMPLOYER SIZE SELECTION

Assembly Bill 210 defines “small employer” as it is defined in PPACA and not as it is defined in ch. 635, Stats., relating to medical loss ratio reporting for small employer health insurance. Therefore, “small employer” is defined as employers of one to 100 employees, rather than two to 50 employees as under ch. 635, Stats. However, the bill reserves the right, as granted under PPACA, to use one to 50 employees as the measure of a small employer.

Assembly Substitute Amendment 1 clarifies that the reservation of this option may be elected only through future legislation.

APPLICABILITY TO GRANDFATHERED HEALTH PLANS

Assembly Bill 210 requires grandfathered health plans to comply with the PPACA provisions for nongrandfathered plans relating to reporting requirements ensuring the quality of care and coverage of preventive health services. The bill also requires grandfathered health plans to comply with PPACA requirements that specifically apply to grandfathered health plans, including coverage of dependent students on a medically necessary leave of absence, coverage of emergency services, and others.

Assembly Substitute Amendment 1 removes the requirement for grandfathered health plans to comply with the PPACA provisions for nongrandfathered plans relating to requirements for coverage of preventive health services. The substitute amendment maintains the other PPACA provisions that apply to grandfathered health plans, and the reporting requirements ensuring the quality of care.

APPLICABILITY IF FEDERAL LAW FOUND UNCONSTITUTIONAL

Assembly Bill 210 provides that if PPACA is found to be unconstitutional in its entirety, and unenforceable in this state, by a final decision of a federal court of competent jurisdiction, and all appeals are exhausted or the time for appeals elapsed, insurers and self-insured governmental health plans are exempt from the following provisions, three months after the date when the appeals are exhausted or the time for appeal has elapsed:

- Chapter 625, Stats., relating to small employer health insurance.
- Section 625.13 (3), relating to rate filings for individual health insurance.
- Section 636.18, relating to rebates for premiums used for administrative costs.
- Section 636.25, relating to incorporating PPACA’s federal insurance law changes into state law (except for the provision regarding coverage of adult children).

However, self-insured governmental health plans and insurers would still be subject to current state law requirements for coverage of emergency services, breast reconstruction after mastectomy, coverage of students on medically necessary leave, and colorectal cancer screening.

Assembly Substitute Amendment 1 clarifies that if PPACA is found to be unconstitutional in any part, and unenforceable in this state, then insurers and self-insured governmental health plans are exempt

from any affected corresponding provision in ss. 636.18 and 636.25 that are found to be unconstitutional, except for the provision requiring extension of coverage of dependents through age 26.

The substitute amendment provides that if any provision of the Public Health Services Act (PHSA) is repealed, insurers and self-insured governmental health plans are exempt from the PHSA provision in ch. 636 that is repealed, except for the provision requiring extension of coverage of dependents through age 26.

The substitute amendment clarifies that if PPACA is found to be unconstitutional or repealed, in its entirety or in any part, then any rules or requirements established by the commissioner with respect to each provision are void and unenforceable.

The substitute amendment also adds a sunset provision to the automatic exemptions. If any adopted provisions of the PPACA or PHSA are found unconstitutional or are repealed after January 1, 2020, those provisions would continue to apply unless modified by future state legislation.

Assembly Amendment 5 to Assembly Substitute Amendment 1 specifies that if *either* the PPACA is found unconstitutional *or* unenforceable in this state, whether in its entirety or in part, then insurers and self-insured governmental health plans are exempt from the specified or affected corresponding provision. The amendment removes the requirement that it be found *both* unconstitutional *and* unenforceable in order to exempt the provisions.

ESTABLISHMENT OF HEALTH BENEFIT EXCHANGE

Assembly Bill 210 does not address provisions of PPACA relating to establishment of a health benefit exchange.

Assembly Substitute Amendment 1 specifies that any health benefit exchange to be established in Wisconsin pursuant to PPACA may only be established by future legislation.

LEGISLATIVE HISTORY

2011 Assembly Bill 210 was introduced on July 29, 2011, by Representative Petersen. On October 11, 2011, the Assembly Committee on Insurance introduced Assembly Substitute Amendment 1 by unanimous vote, adopted the substitute amendment on a vote of Ayes, 15; Noes, 1; and recommended passage of the bill, as amended, on a vote of Ayes, 12; Noes, 4.

On October 18, 2011, Representative Nygren introduced Assembly Amendment 5 to Assembly Substitute Amendment 1, which was adopted by the Assembly that day on a vote of Ayes, 59; Noes, 37; and Not Voting, 2.

On October 18, 2011, the Assembly passed Assembly Bill 210, as amended, on a vote of Ayes, 57; Noes, 39; and Paired, 2.

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