



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRBs0098/1  
TJD:wlj

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO ASSEMBLY BILL 365**

June 21, 2017 - Offered by Representatives PETERSEN and SANFELIPPO.

1     **AN ACT to repeal** 632.746 (1) (b), 632.746 (2) (c), (d) and (e), 632.746 (3) (a),  
2             632.746 (3) (d) 2. and 3., 632.746 (5) and 632.76 (2) (ac) 3.; **to renumber** 632.746  
3             (3) (d) 1.; **to renumber and amend** 632.746 (1) (a); **to amend** 40.51 (8), 40.51  
4             (8m), 66.0137 (4), 120.13 (2) (g), 185.983 (1) (intro.), 625.12 (1) (a), 625.12 (1) (e),  
5             625.12 (2), 625.15 (1), 628.34 (3) (a), 632.746 (2) (a), 632.746 (8) (a) (intro.),  
6             632.76 (2) (a) and (ac) 1. and 2., 632.795 (4) (a) and 632.897 (11) (a); and **to**  
7             **create** 609.847 and 632.728 of the statutes; **relating to:** coverage of  
8             individuals with preexisting conditions.

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

This substitute amendment prohibits a group health benefit plan, including a self-insured governmental health plan, from imposing a preexisting condition exclusion. The substitute amendment also prohibits an individual health insurance policy, known in the substitute amendment as a disability insurance policy, from reducing or denying a claim or loss incurred or disability commencing under the policy on the ground that a disease or physical condition existed prior to the effective date of coverage. The substitute amendment also prohibits a group or individual

health insurance policy or a self-insured governmental health plan from considering whether an individual, including a dependent, who has continuous coverage and who would be covered under the plan has a preexisting condition for the purpose of setting any premiums, deductibles, copayments, or coinsurance under the policy or plan. The substitute amendment allows the commissioner of insurance to propose a plan to assist individuals who have preexisting conditions in maintaining or purchasing coverage. The commissioner's plan must include expanded choices of insurance coverage, more affordable options for individuals to purchase coverage, and greater flexibility in portability of coverage. The commissioner shall submit the plan to the Joint Committee on Finance for review under its passive review process. The plan, if implemented, would supersede other state insurance statutes to the extent they are inconsistent.

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

1           **SECTION 1.** 40.51 (8) of the statutes is amended to read:

2           40.51 (8) Every health care coverage plan offered by the state under sub. (6)  
3 shall comply with ss. 631.89, 631.90, 631.93 (2), 631.95, 632.72 (2), 632.728, 632.746  
4 (1) to (8) and (10), 632.747, 632.748, 632.798, 632.83, 632.835, 632.85, 632.853,  
5 632.855, 632.867, 632.87 (3) to (6), 632.885, 632.89, 632.895 (5m) and (8) to (17), and  
6 632.896.

7           **SECTION 2.** 40.51 (8m) of the statutes is amended to read:

8           40.51 (8m) Every health care coverage plan offered by the group insurance  
9 board under sub. (7) shall comply with ss. 631.95, 632.728, 632.746 (1) to (8) and (10),  
10 632.747, 632.748, 632.798, 632.83, 632.835, 632.85, 632.853, 632.855, 632.867,  
11 632.885, 632.89, and 632.895 (11) to (17).

12           **SECTION 3.** 66.0137 (4) of the statutes is amended to read:

13           66.0137 (4) SELF-INSURED HEALTH PLANS. If a city, including a 1st class city, or  
14 a village provides health care benefits under its home rule power, or if a town  
15 provides health care benefits, to its officers and employees on a self-insured basis,

1 the self-insured plan shall comply with ss. 49.493 (3) (d), 631.89, 631.90, 631.93 (2),  
2 632.728, 632.746 (1), 632.746 (10) (a) 2. and (b) 2., 632.747 (3), 632.798, 632.85,  
3 632.853, 632.855, 632.867, 632.87 (4), (5), and (6), 632.885, 632.89, 632.895 (9) to  
4 (17), 632.896, and 767.513 (4).

5 **SECTION 4.** 120.13 (2) (g) of the statutes is amended to read:

6 120.13 (2) (g) Every self-insured plan under par. (b) shall comply with ss.  
7 49.493 (3) (d), 631.89, 631.90, 631.93 (2), 632.728, 632.746 (1), 632.746 (10) (a) 2. and  
8 (b) 2., 632.747 (3), 632.798, 632.85, 632.853, 632.855, 632.867, 632.87 (4), (5), and (6),  
9 632.885, 632.89, 632.895 (9) to (17), 632.896, and 767.513 (4).

10 **SECTION 5.** 185.983 (1) (intro.) of the statutes is amended to read:

11 185.983 (1) (intro.) Every voluntary nonprofit health care plan operated by a  
12 cooperative association organized under s. 185.981 shall be exempt from chs. 600 to  
13 646, with the exception of ss. 601.04, 601.13, 601.31, 601.41, 601.42, 601.43, 601.44,  
14 601.45, 611.26, 611.67, 619.04, 623.11, 623.12, 628.34 (10), 631.17, 631.89, 631.93,  
15 631.95, 632.72 (2), 632.728, 632.745 to 632.749, 632.775, 632.79, 632.795, 632.798,  
16 632.85, 632.853, 632.855, 632.867, 632.87 (2), (2m), (3), (4), (5), and (6), 632.885,  
17 632.89, 632.895 (5) and (8) to (17), 632.896, and 632.897 (10) and chs. 609, 620, 630,  
18 635, 645, and 646, but the sponsoring association shall:

19 **SECTION 6.** 609.847 of the statutes is created to read:

20 **609.847 Preexisting condition discrimination prohibited.** Limited  
21 service health organizations, preferred provider plans, and defined network plans  
22 are subject to s. 632.728.

23 **SECTION 7.** 625.12 (1) (a) of the statutes is amended to read:

24 625.12 (1) (a) Past and prospective loss and expense experience within and  
25 outside of this state, except as provided in s. 632.728.

1           **SECTION 8.** 625.12 (1) (e) of the statutes is amended to read:

2           625.12 (1) (e) Subject to ~~s. ss. 632.365~~ and 632.728, all other relevant factors,  
3 including the judgment of technical personnel.

4           **SECTION 9.** 625.12 (2) of the statutes is amended to read:

5           625.12 (2) CLASSIFICATION. ~~Risks~~ Except as provided in s. 632.728, risks may  
6 be classified in any reasonable way for the establishment of rates and minimum  
7 premiums, except that no classifications may be based on race, color, creed or  
8 national origin, and classifications in automobile insurance may not be based on  
9 physical condition or developmental disability as defined in s. 51.01 (5). Subject to  
10 ~~s. ss. 632.365~~ and 632.728, rates thus produced may be modified for individual risks  
11 in accordance with rating plans or schedules that establish reasonable standards for  
12 measuring probable variations in hazards, expenses, or both. Rates may also be  
13 modified for individual risks under s. 625.13 (2).

14           **SECTION 10.** 625.15 (1) of the statutes is amended to read:

15           625.15 (1) RATE MAKING. ~~An~~ Except as provided in s. 632.728, ~~an~~ insurer may  
16 itself establish rates and supplementary rate information for one or more market  
17 segments based on the factors in s. 625.12 and, if the rates are for motor vehicle  
18 liability insurance, subject to s. 632.365, or the insurer may use rates and  
19 supplementary rate information prepared by a rate service organization, with  
20 average expense factors determined by the rate service organization or with such  
21 modification for its own expense and loss experience as the credibility of that  
22 experience allows.

23           **SECTION 11.** 628.34 (3) (a) of the statutes is amended to read:

24           628.34 (3) (a) No insurer may unfairly discriminate among policyholders by  
25 charging different premiums or by offering different terms of coverage except on the

1 basis of classifications related to the nature and the degree of the risk covered or the  
2 expenses involved, subject to ss. 632.365, 632.728, 632.746 and 632.748. Rates are  
3 not unfairly discriminatory if they are averaged broadly among persons insured  
4 under a group, blanket or franchise policy, and terms are not unfairly discriminatory  
5 merely because they are more favorable than in a similar individual policy.

6 **SECTION 12.** 632.728 of the statutes is created to read:

7 **632.728 Coverage of individuals with preexisting conditions. (1)** In this  
8 section:

9 (a) “Continuous coverage” means creditable coverage, as defined in 632.745 (4),  
10 in the 12-month period before the date of enrollment in coverage and during which  
11 there is no period longer than 63 continuous days during which the applicant for  
12 coverage did not have creditable coverage.

13 (b) “Disability insurance policy” has the meaning given in s. 632.895 (1) (a).

14 (c) “Self-insured health plan” has the meaning given in s. 632.85 (1) (c).

15 **(2)** (a) For the purpose of setting rates or premiums for coverage under a group  
16 or individual disability insurance policy or a self-insured health plan and for the  
17 purpose of setting any deductibles, copayments, or coinsurance under a group or  
18 individual disability insurance policy or a self-insured health plan, the policy or plan  
19 may not consider whether an individual, including a dependent, who has continuous  
20 coverage and who would be covered under the policy or plan has a preexisting  
21 condition.

22 (b) The commissioner may propose a plan to assist individuals who have not  
23 maintained continuous coverage and who have preexisting conditions in purchasing  
24 coverage. The commissioner’s plan under this paragraph shall include expanded  
25 choices of insurance coverage, more affordable options for individuals to purchase

1 coverage, and greater flexibility in portability of coverage. The commissioner shall  
2 submit the plan under this paragraph to the joint committee on finance for review.  
3 If, within 14 days after the date of the commissioner's submission, the  
4 cochairpersons of the committee do not notify the commissioner that the committee  
5 has scheduled a meeting to review the plan, the commissioner may take actions  
6 necessary to implement the plan. If the cochairpersons notify the commissioner that  
7 the committee has scheduled a meeting to review the plan, the commissioner may  
8 take actions necessary to implement the plan only upon the approval of the  
9 committee. A plan implemented under this paragraph supersedes ss. 632.746 and  
10 632.76 and any other section in chs. 600 to 655 to the extent that the plan is  
11 inconsistent with that section.

12 (3) Nothing in this subchapter shall be construed as permitting health  
13 insurance issuers to limit access to health insurance coverage for individuals with  
14 preexisting conditions.

15 **SECTION 13.** 632.746 (1) (a) of the statutes is renumbered 632.746 (1) and  
16 amended to read:

17 632.746 (1) ~~Subject to subs. (2) and (3), an An insurer that offers a group health~~  
18 ~~benefit plan may, with respect to a participant or beneficiary under the plan, not~~  
19 ~~impose a preexisting condition exclusion only if the exclusion relates to a condition,~~  
20 ~~whether physical or mental, regardless of the cause of the condition, for which~~  
21 ~~medical advice, diagnosis, care or treatment was recommended or received within~~  
22 ~~the 6-month period ending on the participant's or beneficiary's enrollment date~~  
23 ~~under the plan on a participant or beneficiary under the plan.~~

24 **SECTION 14.** 632.746 (1) (b) of the statutes is repealed.

25 **SECTION 15.** 632.746 (2) (a) of the statutes is amended to read:

1           632.746 (2) (a) An insurer offering a group health benefit plan may not treat  
2 genetic information as a preexisting condition under sub. (1) ~~without a diagnosis of~~  
3 ~~a condition related to the information.~~

4           **SECTION 16.** 632.746 (2) (c), (d) and (e) of the statutes are repealed.

5           **SECTION 17.** 632.746 (3) (a) of the statutes is repealed.

6           **SECTION 18.** 632.746 (3) (d) 1. of the statutes is renumbered 632.746 (3) (d).

7           **SECTION 19.** 632.746 (3) (d) 2. and 3. of the statutes are repealed.

8           **SECTION 20.** 632.746 (5) of the statutes is repealed.

9           **SECTION 21.** 632.746 (8) (a) (intro.) of the statutes is amended to read:

10           632.746 (8) (a) (intro.) A health maintenance organization that offers a group  
11 health benefit plan ~~and that does not impose any preexisting condition exclusion~~  
12 ~~under sub. (1)~~ with respect to a particular coverage option may impose an affiliation  
13 period for that coverage option, but only if all of the following apply:

14           **SECTION 22.** 632.76 (2) (a) and (ac) 1. and 2. of the statutes are amended to read:

15           632.76 (2) (a) No claim for loss incurred or disability commencing after 2 years  
16 from the date of issue of the policy may be reduced or denied on the ground that a  
17 disease or physical condition existed prior to the effective date of coverage, unless the  
18 condition was excluded from coverage by name or specific description by a provision  
19 effective on the date of loss. This paragraph does not apply to a group health benefit  
20 plan, as defined in s. 632.745 (9), which is subject to s. 632.746, a disability insurance  
21 policy, as defined in s. 632.895 (1) (a), or a self-insured health plan, as defined in s.  
22 632.85 (1) (c).

23           (ac) 1. ~~Notwithstanding par. (a), no~~ No claim or loss incurred or disability  
24 commencing ~~after 12 months from the date of issue of~~ under an individual disability  
25 insurance policy, as defined in s. 632.895 (1) (a), may be reduced or denied on the

1 ground that a disease or physical condition existed prior to the effective date of  
2 coverage, ~~unless the condition was excluded from coverage by name or specific~~  
3 ~~description by a provision effective on the date of the loss.~~

4 2. ~~Except as provided in subd. 3., an An individual disability insurance policy,~~  
5 ~~as defined in s. 632.895 (1) (a), other than a short-term policy subject to s. 632.7495~~  
6 ~~(4) and (5), may not define a preexisting condition more restrictively than a condition,~~  
7 ~~whether physical or mental, regardless of the cause of the condition, for which~~  
8 ~~medical advice, diagnosis, care, or treatment was recommended or received within~~  
9 ~~12 months before the effective date of coverage.~~

10 **SECTION 23.** 632.76 (2) (ac) 3. of the statutes is repealed.

11 **SECTION 24.** 632.795 (4) (a) of the statutes is amended to read:

12 632.795 (4) (a) An insurer subject to sub. (2) shall provide coverage under the  
13 same policy form and for the same premium as it originally offered in the most recent  
14 enrollment period, subject only to the medical underwriting used in that enrollment  
15 period. Unless otherwise prescribed by rule, the insurer may apply deductibles,  
16 ~~preexisting condition limitations,~~ waiting periods, or other limits only to the extent  
17 that they would have been applicable had coverage been extended at the time of the  
18 most recent enrollment period and with credit for the satisfaction or partial  
19 satisfaction of similar provisions under the liquidated insurer's policy or plan. The  
20 insurer may exclude coverage of claims that are payable by a solvent insurer under  
21 insolvency coverage required by the commissioner or by the insurance regulator of  
22 another jurisdiction. Coverage shall be effective on the date that the liquidated  
23 insurer's coverage terminates.

24 **SECTION 25.** 632.897 (11) (a) of the statutes is amended to read:



1           632.897 (11) (a) Notwithstanding subs. (2) to (10), the commissioner may  
2 promulgate rules establishing standards requiring insurers to provide continuation  
3 of coverage for any individual covered at any time under a group policy who is a  
4 terminated insured or an eligible individual under any federal program that  
5 provides for a federal premium subsidy for individuals covered under continuation  
6 of coverage under a group policy, including rules governing election or extension of  
7 election periods, notice, rates, premiums, premium payment, ~~application of~~  
8 ~~preexisting condition exclusions~~, election of alternative coverage, and status as an  
9 eligible individual, as defined in s. 149.10 (2t), 2011 stats.

10           **SECTION 26. Initial applicability.**

11           (1) PREEXISTING CONDITIONS.

12           (a) For policies and plans containing provisions inconsistent with this act, the  
13 act first applies to policy or plan years beginning on January 1 of the year following  
14 the year in which this paragraph takes effect, except as provided in paragraph (b).

15           (b) For policies or plans that are affected by a collective bargaining agreement  
16 containing provisions inconsistent with this act, this act first applies to policy or plan  
17 years beginning on the effective date of this paragraph or on the day on which the  
18 collective bargaining agreement is newly established, extended, modified, or  
19 renewed, whichever is later.

20           **SECTION 27. Effective date.**

21           (1) This act takes effect on the first day of the 4th month beginning after  
22 publication.

23           (END)