



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRBs0258/1  
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**SENATE SUBSTITUTE AMENDMENT 1,  
TO ASSEMBLY BILL 365**

February 20, 2018 - Offered by Senator ERPENBACH.

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:** prohibiting  
8           preexisting condition exclusion and setting rates or cost sharing based on  
9           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 would be covered under the plan has a preexisting condition for the purpose of setting any deductibles, copayments, or coinsurance under the policy or plan.

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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, as affected by 2017 Wisconsin Act 30,  
13 is amended to read:

14           66.0137 **(4)** SELF-INSURED HEALTH PLANS. If a city, including a 1st class city, or  
15 a village provides health care benefits under its home rule power, or if a town  
16 provides health care benefits, to its officers and employees on a self-insured basis,  
17 the self-insured plan shall comply with ss. 49.493 (3) (d), 631.89, 631.90, 631.93 (2),  
18 632.728, 632.746 (1), 632.746 (10) (a) 2. and (b) 2., 632.747 (3), 632.798, 632.85,

1 632.853, 632.855, 632.867, 632.87 (4) to (6), 632.885, 632.89, 632.895 (9) to (17),  
2 632.896, and 767.513 (4).

3 **SECTION 4.** 120.13 (2) (g) of the statutes, as affected by 2017 Wisconsin Act 30,  
4 is amended to read:

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

9 **SECTION 5.** 185.983 (1) (intro.) of the statutes, as affected by 2017 Wisconsin  
10 Act 30, 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) to (6), 632.885, 632.89, 632.895 (5) and  
17 (8) to (17), 632.896, and 632.897 (10) and chs. 609, 620, 630, 635, 645, and 646, but  
18 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 Premiums and cost-sharing discrimination prohibited for**  
8 **preexisting conditions. (1) DEFINITION.** In this section:

9 (a) "Disability insurance policy" has the meaning given in s. 632.895 (1) (a).

10 (b) "Self-insured health plan" has the meaning given in s. 632.85 (1) (c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17          632.76 (2) (a) No claim for loss incurred or disability commencing after 2 years  
18 from the date of issue of the policy may be reduced or denied on the ground that a  
19 disease or physical condition existed prior to the effective date of coverage, unless the  
20 condition was excluded from coverage by name or specific description by a provision  
21 effective on the date of loss. This paragraph does not apply to a group health benefit  
22 plan, as defined in s. 632.745 (9), which is subject to s. 632.746, a disability insurance  
23 policy, as defined in s. 632.895 (1) (a), or a self-insured health plan, as defined in s.  
24 632.85 (1) (c).

1           (ac) 1. ~~Notwithstanding par. (a), no~~ No claim or loss incurred or disability  
2 commencing after ~~12 months from the date of issue of~~ under an individual disability  
3 insurance policy, as defined in s. 632.895 (1) (a), may be reduced or denied on the  
4 ground that a disease or physical condition existed prior to the effective date of  
5 coverage, ~~unless the condition was excluded from coverage by name or specific~~  
6 ~~description by a provision effective on the date of the loss.~~

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

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

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

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

1 another jurisdiction. Coverage shall be effective on the date that the liquidated  
2 insurer's coverage terminates.

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

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

13 **SECTION 26. Initial applicability.**

14 (1) PREEXISTING CONDITIONS.

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

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

23 **SECTION 27. Effective date.**



