



2019 SENATE BILL 2

January 23, 2019 - Introduced by Senators JACQUE, L. TAYLOR, DARLING, MARKLEIN, OLSEN and WANGGAARD, cosponsored by Representatives PETERSEN, ROHRKASTE, MAGNAFICI, OLDENBURG, AUGUST, BALLWEG, BORN, BRANDTJEN, BROOKS, DITTRICH, DUCHOW, EDMING, FELZKOWSKI, GUNDRUM, HORLACHER, JAGLER, JAMES, KATSMAN, KERKMAN, KITCHENS, KRUG, KUGLITSCH, KULP, KURTZ, LOUDENBECK, MACCO, MURPHY, MURSAU, NOVAK, OTT, PETRYK, PLUMER, PRONSHINSKE, QUINN, RAMTHUN, RODRIGUEZ, SANFELIPPO, SCHRAA, SKOWRONSKI, SNYDER, SPIROS, STAFSHOLT, STEFFEN, STEINEKE, SUMMERFIELD, SWEARINGEN, TAUCHEN, THIESFELDT, TITTL, TRANEL, TUSLER, VANDERMEER, VORPAGEL, VOS, WITTKER and ZIMMERMAN. Referred to Committee on Health and Human Services.

- 1 **AN ACT** *to amend* 40.51 (8), 40.51 (8m), 66.0137 (4), 120.13 (2) (g) and 185.983
2 (1) (intro.); and *to create* 609.847 and 632.728 of the statutes; **relating to:**
3 coverage of individuals with preexisting conditions.

Analysis by the Legislative Reference Bureau

Currently, the federal Patient Protection and Affordable Care Act generally allows premium rates to be based only on individual or family coverage, rating area, age, and tobacco use; requires group and individual health insurance policies to accept every employer and individual that applies for coverage, known as guaranteed issue, and renew health insurance coverage at the option of the sponsor or individual; and prohibits health insurance policies from imposing preexisting condition exclusions. If those requirements and prohibitions of the Affordable Care Act are no longer enforceable or no longer preempt state law, all of the following apply under this bill: every individual health benefit plan must accept every individual in this state who applies for coverage and every group health benefit plan must accept every employer in this state that applies for coverage, regardless of whether any individual or employee has a preexisting condition; a health benefit plan may restrict enrollment in coverage to open or special enrollment periods; the commissioner of insurance must ensure a statewide open enrollment period allowing individuals, including individuals who do not have coverage, to enroll in coverage; health benefit plans must provide special enrollment periods for certain qualifying events described in federal law; a health benefit plan offered on the individual or small employer market or a self-insured health plan may not vary premium rates for a

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specific policy or plan except on the basis of whether the policy or plan covers an individual or a family, area in the state, age, and tobacco use; a group health benefit plan, including a self-insured governmental health plan, may not impose a preexisting condition exclusion; and an individual health benefit plan may not reduce or deny 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. Certain grandfathered and transitional health insurance policies that are exempt from some requirements of the Affordable Care Act, including the premium rate requirements, are exempt from the premium rate requirements under the bill.

This proposal may contain a health insurance mandate requiring a social and financial impact report under s. 601.423, stats.

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,
16 the self-insured plan shall comply with ss. 49.493 (3) (d), 631.89, 631.90, 631.93 (2),

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1 632.728, 632.746 (10) (a) 2. and (b) 2., 632.747 (3), 632.798, 632.85, 632.853, 632.855,
2 632.867, 632.87 (4) to (6), 632.885, 632.89, 632.895 (9) to (17), 632.896, and 767.513
3 (4).

4 **SECTION 4.** 120.13 (2) (g) of the statutes 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 (10) (a) 2. and (b) 2.,
7 632.747 (3), 632.798, 632.85, 632.853, 632.855, 632.867, 632.87 (4) to (6), 632.885,
8 632.89, 632.895 (9) to (17), 632.896, and 767.513 (4).

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

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

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

19 **609.847 Preexisting condition discrimination prohibited.** Limited
20 service health organizations, preferred provider plans, and defined network plans
21 are subject to s. 632.728.

22 **SECTION 7.** 632.728 of the statutes is created to read:

23 **632.728 Coverage of individuals with preexisting conditions; rating.**

24 (1) DEFINITIONS. In this section:

25 (a) "Health benefit plan" has the meaning given in s. 632.745 (11).

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

2 (c) "Small employer" has the meaning given in s. 635.02 (7).

3 **(2) ACCESS TO COVERAGE.** Every individual health benefit plan shall accept
4 every individual in this state who applies for coverage and every group health benefit
5 plan shall accept every employer in this state that applies for coverage, regardless
6 of whether any individual or employee has a preexisting condition. A health benefit
7 plan may restrict enrollment in coverage described in this subsection to open or
8 special enrollment periods under sub. (4).

9 **(3) PREMIUM RATE VARIATION.** (a) A health benefit plan offered on the individual
10 or small employer market or a self-insured health plan may vary premium rates for
11 a specific policy or plan based only on the following considerations:

12 1. Whether the policy or plan covers an individual or a family.

13 2. Rating area in the state, as established by the commissioner.

14 3. Age, except that the rate may not vary by more than 3 to 1 for adults over
15 the age groups and the age bands shall be consistent with recommendations of the
16 National Association of Insurance Commissioners.

17 4. Tobacco use, except that the rate may not vary by more than 1.5 to 1.

18 (b) A health benefit plan that is considered a grandfathered health plan under
19 42 USC 18011 or has transitional status granted by the federal department of health
20 and human services and the commissioner is not required to comply with par. (a).

21 **(4) ENROLLMENT PERIODS.** (a) The commissioner shall ensure that every
22 individual health benefit plan has open enrollment during a statewide open
23 enrollment period to allow individuals, including individuals who do not have
24 coverage, to enroll in coverage.

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1 (b) Every health benefit plan shall provide special enrollment periods for
2 qualifying events under 26 USC 9801 (f) and 29 USC 1163.

3 **(5) PREEXISTING CONDITION EXCLUSION.** (a) A group health benefit plan or a
4 self-insured health plan may not impose a preexisting condition exclusion for any
5 time on a participant or beneficiary under the policy or plan.

6 (b) No claim or loss incurred or disability under an individual health benefit
7 plan may be reduced or denied on the ground that a disease or physical condition
8 existed prior to the effective date of coverage. An individual health benefit plan may
9 not define a preexisting condition more restrictively than a condition, whether
10 physical or mental, regardless of the cause of the condition, for which medical advice,
11 diagnosis, care, or treatment was recommended or received.

12 **(6) APPLICABILITY.** This section applies only if provisions of the federal Patient
13 Protection and Affordable Care Act, P.L. 111-148, as amended, under 42 USC
14 300gg-1 to 300gg-4 are no longer enforceable or no longer preempt state law relating
15 to individual or group health insurance policies. If this section applies, this section
16 supersedes any conflicting provision of ss. 625.12 (1) or (2), 625.15 (1), 628.34 (3),
17 632.746, 632.76, 632.795 (4) (a), 632.896 (4), or 632.897 (11) (a) or any other
18 conflicting provision in chs. 600 to 655 to the extent this section conflicts with that
19 provision.

20 **(END)**