



~~2009 SENATE BILL 707~~

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April 22, 2010 – Introduced by Senators VINEHOUT, HOLPERIN and ROBSON. Referred to Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue.

1 AN ACT *to renumber* 635.02 (1); *to amend* 1.12 (1) (b), 13.172 (1), 13.62 (2), 13.95  
2 (intro.), 16.002 (2), 16.004 (4), 16.004 (5), 16.004 (12) (a), 16.045 (1) (a), 16.15  
3 (1) (ab), 16.41 (4), 16.417 (1) (a), 16.52 (7), 16.528 (1) (a), 16.53 (2), 16.54 (9) (a)  
4 1., 16.70 (2), 16.72 (2) (e) (intro.), 16.72 (2) (f), 16.75 (1m), 16.75 (8) (a) 1., 16.75  
5 (8) (a) 2., 16.75 (9), 16.765 (1), 16.765 (2), 16.765 (4), 16.765 (5), 16.765 (6),  
6 16.765 (7) (intro.), 16.765 (7) (d), 16.765 (8), 16.85 (2), 16.865 (8), 25.50 (1) (d),  
7 71.26 (1) (be), 77.54 (9a) (a), 101.055 (2) (a), 101.177 (1) (d), 230.03 (3), 230.80  
8 (4), 230.90 (1) (c) and 635.18 (1); and *to create* 13.94 (1) (dj), 13.94 (1s) (c) 5.,  
9 40.02 (54) (m), 70.11 (41c), subchapter I (title) of chapter 635 [precedes 635.01],  
10 635.02 (1c), 635.02 (1o), subchapter II of chapter 635 [precedes 635.30] and  
11 subchapter III of chapter 635 [precedes 635.70] of the statutes; **relating to:** the  
12 small business health options program authority, health benefit plan exchange

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1 for small employers and certain individuals, and granting rule-making  
2 authority.

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***Analysis by the Legislative Reference Bureau******Small Business Health Options Program Authority***

This bill creates the Small Business Health Options Program Authority (authority) that is a public body corporate and politic that is created by state law but that is not a state agency. The authority is governed by a board of directors consisting of the commissioner of insurance (commissioner), the secretary of employee trust funds, the director of the state Medical Assistance program, the executive director of the Health Insurance Risk-Sharing Plan Authority, and the following members who are nominated by the governor, and with the advice and consent of the senate appointed, for three-year terms: a member in good-standing of the American Academy of Actuaries, a health economist, an employee benefits specialist, a representative of small employers, a representative of an organization that represents consumer interests, and a representative of organized labor. The chairperson of the board is the commissioner, who must appoint an executive director of the authority. The executive director must, among other duties, supervise the administrative affairs and general management and operation of the authority, employ professional and clerical staff, as necessary, and prepare the authority's annual budget.

The authority is not a state agency, so numerous laws that apply to state agencies do not apply to the authority. However, the authority is treated like a state agency in the following ways, among others: it is subject to auditing by the Legislative Audit Bureau; it is subject to open meeting and open records laws; and it is exempt from property tax, income tax, and sales and uses taxes. The authority has powers, including adopting bylaws and policies and procedures for the regulation of its affairs and conduct of its business; hiring employees; incurring debt; suing and being sued in its own name; and executing contracts. The bill establishes a process that the authority must use when it contracts for professional services. Under the bill, the authority is subject to civil liability for its acts or omissions except that the maximum amount recoverable in a civil action against the authority is \$100,000. However, a member of the authority's board of directors, the authority's executive director, or an authority employee is exempt from civil liability unless the member, director, or employee acted with willful misconduct or in intentional violation of the law.

***Health benefit plan exchange***

Under the bill, the authority must establish and, by January 1, 2011, begin operating a health benefit plan exchange (exchange), except that the authority must seek federal grant moneys for the exchange and the exchange may not begin operating unless federal grant moneys are received for that purpose. The commissioner must determine the initial health benefit plan designs, including the minimum benefit levels, and the authority must approve the plans that may be

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offered through the exchange. The authority must rank the plans offered through the exchange and place each one into one of three tiers. Plans that offer full benefits are to be designated as “gold” plans; plans that provide 75 percent of the actuarial value of a “gold” plan are to be designated as “silver” plans; and plans that provide 60 percent of the actuarial value of a “gold” plan are to be designated as “bronze” plans.

Any small employer, defined generally as an employer with at least two but not more than 50 employees, any limited term state employee, and any individual who contracts with the state to perform services for the state are eligible to purchase coverage under a health benefit plan offered through the exchange. Individuals and employees may select coverage under any of the plans offered through the exchange. Although the employees of the same small employer may select coverage under different plans, all employees of the same small employer must select coverage under plans in the same tier.

Any insurer authorized to do business in this state in one or more lines of insurance that includes health insurance may offer coverage through the exchange, and no insurer may offer or issue coverage to a small employer except through the exchange. An insurer that offers coverage through the exchange may offer only the health benefit plans that have been approved for the exchange by the authority and must offer at least one health benefit plan in each tier. An insurer may not impose any annual or lifetime limits on coverage; premiums for coverage through the exchange may be based only on age, sex, geographic location, whether coverage is single or family, and plan design; and all individuals covered under all plans issued by an insurer must be considered one pool. An insurer must pay a commission to an insurance intermediary who enrolls an individual or employees of a small employer in a plan offered by the insurer through the exchange. To pay administrative expenses of the exchange, the authority may impose a surcharge on each insurer offering plans through the exchange.

With regard to administering the exchange, the authority enrolls individuals and employer groups in plans, collects the initial premiums, and remits the premiums and enrollment information to the appropriate insurers. The commissioner must develop a standard application form that all prospective enrollees must use. The authority must establish an independent and binding appeals process for resolving disputes over eligibility and other determinations made by the authority, must establish and operate a service center for providing information about the exchange, may establish risk-adjustment mechanisms, and may audit and require reports from insurers offering coverage through the exchange.

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

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

as affected by 2011 Wisconsin Act 7

score comma

and the Wisconsin Economic Development Corporation

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SECTION 1. 1.12 (1) (b) of the statutes is amended to read:

1.12 (1) (b) "State agency" means an office, department, agency, institution of higher education, the legislature, a legislative service agency, the courts, a judicial branch agency, an association, society, or other body in state government that is created or authorized to be created by the constitution or by law, for which appropriations are made by law, excluding the Health Insurance Risk-Sharing Plan Authority and the Small Business Health Options Program Authority.

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SECTION 2. 13.172 (1) of the statutes, as affected by 2009 Wisconsin Act 28 is amended to read:

13.172 (1) In this section, "agency" means an office, department, agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law, that is entitled to expend moneys appropriated by law, including the legislature and the courts, and any authority created in subch. II of ch. 114 or, subch. III of ch. 149, or subch. III of ch. 635 or in ch. 231, 233, 234, or 279.

SECTION 3. 13.62 (2) of the statutes, as affected by 2009 Wisconsin Act 28 is amended to read:

13.62 (2) "Agency" means any board, commission, department, office, society, institution of higher education, council, or committee in the state government, or any authority created in subch. II of ch. 114 or, subch. III of ch. 149, or subch. III of ch. 635 or in ch. 231, 232, 233, 234, 237, or 279, except that the term does not include a council or committee of the legislature.

SECTION 4. 13.94 (1) (dj) of the statutes is created to read:

13.94 (1) (dj) At least once every 2 years, perform a financial audit and performance evaluation audit of the health benefit plan exchange under subch. II of

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1 ch. 635<sup>66</sup> and an audit of the Small Business Health Options Program Authority's  
2 policies and management practices and file copies of each audit report under this  
3 paragraph with the distributees specified in par. (b). <sup>6.</sup>

4 SECTION 5. 13.94 (1s) (c) <sup>5</sup> of the statutes is created to read:

5 13.94 (1s) (c) <sup>5</sup>. The Small Business Health Options Program Authority for the  
6 cost of the audit under sub. (1) (dj). <sup>Benefit Plan</sup>

7 SECTION 6. 13.95 (intro.) of the statutes, as affected by 2009 Wisconsin Act 28,  
8 is amended to read: <sup>plan</sup> the Wisconsin Economic Development Corporation <sup>10</sup>

9 **13.95 Legislative fiscal bureau.** (intro.) There is created a bureau to be  
10 known as the "Legislative Fiscal Bureau" headed by a director. The fiscal bureau  
11 shall be strictly nonpartisan and shall at all times observe the confidential nature  
12 of the research requests received by it; however, with the prior approval of the  
13 requester in each instance, the bureau may duplicate the results of its research for  
14 distribution. Subject to s. 230.35 (4) (a) and (f), the director or the director's  
15 designated employees shall at all times, with or without notice, have access to all  
16 state agencies, the University of Wisconsin Hospitals and Clinics Authority, the  
17 Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority,  
18 the Small Business Health Options Program Authority, the Lower Fox River  
19 Remediation Authority, ~~the Wisconsin Quality Home Care Authority~~, and the Fox  
20 River Navigational System Authority, and to any books, records, or other documents  
21 maintained by such agencies or authorities and relating to their expenditures,  
22 revenues, operations, and structure. <sup>Benefit Plan</sup>

23 SECTION 7. 16.002 (2) of the statutes, as affected by 2009 Wisconsin Act 28, is  
24 amended to read:

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1 16.002 (2) "Departments" means constitutional offices, departments, and  
 2 independent agencies and includes all societies, associations, and other agencies of  
 3 state government for which appropriations are made by law, but not including  
 4 authorities an authority created in subch. II of ch. 114 <sup>or plain</sup> subch. III of ch. 149 <sup>and</sup>  
 5 or subch. III of ch. 635 <sup>6</sup> or in chs. ch. 52 <sup>231, 232, 233, 234, 235, 237, <sup>and or</sup> 279. <sup>238</sup></sup>

6 SECTION 8. 16.004 (4) of the statutes, as affected by 2009 Wisconsin Act <sup>28</sup>, is  
 7 amended to read: <sup>11 10</sup>

8 16.004 (4) FREEDOM OF ACCESS. The secretary and such employees of the  
 9 department as the secretary designates may enter into the offices of state agencies  
 10 and authorities any authority <sup>PLAIN</sup> created under subch. II of ch. 114 <sup>and</sup> subch. III of ch.  
 11 149 <sup>and</sup> <sup>PLAIN</sup> subch. III of ch. 635 <sup>and</sup> <sup>PLAIN</sup> under chs. <sup>231, 233, 234, 237,</sup> <sup>and or</sup> 279, <sup>238</sup>  
 12 and may examine <sup>6</sup> their books and accounts and any other matter that in the  
 13 secretary's judgment should be examined and may interrogate the agency's  
 14 employees publicly or privately relative thereto.

15 SECTION 9. 16.004 (5) of the statutes, as affected by 2009 Wisconsin Act <sup>28</sup>, is  
 16 amended to read: <sup>10</sup>

17 16.004 (5) AGENCIES AND EMPLOYEES TO COOPERATE. All state agencies and  
 18 authorities each authority <sup>PLAIN</sup> created under subch. II of ch. 114 <sup>and</sup> <sup>PLAIN</sup> subch. III of ch. 149  
 19 <sup>and</sup> <sup>PLAIN</sup> subch. III of ch. 635 <sup>and</sup> <sup>PLAIN</sup> under chs. <sup>231, 233, 234, 237,</sup> <sup>and or</sup> 279, and  
 20 their officers and employees, shall cooperate with the secretary and shall comply  
 21 with every request of the secretary relating to his or her functions.

22 SECTION 10. 16.004 (12) (a) of the statutes, as affected by 2009 Wisconsin Act  
 23 <sup>28</sup>, is amended to read: <sup>10</sup>

24 16.004 (12) (a) In this subsection, "state agency" means an association,  
 25 authority, board, department, commission, independent agency, institution, office,

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1 society, or other body in state government created or authorized to be created by the  
 2 constitution or any law, including the legislature, the office of the governor, and the  
 3 courts, but excluding the University of Wisconsin Hospitals and Clinics Authority,  
 4 the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan  
 5 Authority, the Lower Fox River Remediation Authority, ~~the Wisconsin Quality Home~~  
 6 ~~Care Authority~~, ~~the Small Business Health Options Program~~ Authority, and the Fox  
 7 River Navigational System Authority.

8 SECTION 11. 16.045 (1) (a) of the statutes, as affected by 2009 Wisconsin Act 28,  
 9 is amended to read:

10 16.045 (1) (a) "Agency" means an office, department, independent agency,  
 11 institution of higher education, association, society, or other body in state  
 12 government created or authorized to be created by the constitution or any law, that  
 13 is entitled to expend moneys appropriated by law, including the legislature and the  
 14 courts, but not including an authority created in subch. II of ch. 114 or, subch. III of  
 15 ch. 149, or subch. III of ch. 635 or in ch. 231, 232, 233, 234, 235, 237, or 279.

16 SECTION 12. 16.15 (1) (ab) of the statutes, as affected by 2009 Wisconsin Act 28,  
 17 is amended to read:

18 16.15 (1) (ab) "Authority" has the meaning given under s. 16.70 (2), but  
 19 excludes the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox  
 20 River Remediation Authority, ~~the Wisconsin Quality Home Care Authority~~, the  
 21 ~~Small Business Health Options Program~~ Authority, and the Health Insurance  
 22 Risk-Sharing Plan Authority.

23 SECTION 13. 16.41 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is  
 24 amended to read:

the Wisconsin Economic Development Corporation,

Care Authority, the Small Business Health Options Program

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1 16.41 (4) In this section, "authority" means a body created under subch. II of  
2 ch. 114 ~~or~~, subch. III of ch. 149, or subch. III of ch. 635 or under ch. ~~62~~ 231, 233, 234,  
3 237, <sup>or 279.</sup> ~~238~~ <sup>238A</sup>

as affected by 2011 Wisconsin Act 7, section 195

4 SECTION 14. 16.417 (1) (a) of the statutes is amended to read:

5 16.417 (1) (a) "Agency" means an office, department, independent agency,  
6 institution of higher education, association, society, or other body in state  
7 government created or authorized to be created by the constitution or any law, that  
8 is entitled to expend moneys appropriated by law, including the legislature and the  
9 courts, but not including an authority or the body created under subch. III of ch. 149  
10 or subch. III of ch. 635 <sup>or 6</sup> or under ch. 238 PLAIN

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11 SECTION 15. 16.52 (7) of the statutes, as affected by 2009 Wisconsin Act 28, is  
12 amended to read:

13 16.52 (7) PETTY CASH ACCOUNT. With the approval of the secretary, each agency  
14 that is authorized to maintain a contingent fund under s. 20.920 may establish a  
15 petty cash account from its contingent fund. The procedure for operation and  
16 maintenance of petty cash accounts and the character of expenditures therefrom  
17 shall be prescribed by the secretary. In this subsection, "agency" means an office,  
18 department, independent agency, institution of higher education, association,  
19 society, or other body in state government created or authorized to be created by the  
20 constitution or any law, that is entitled to expend moneys appropriated by law,  
21 including the legislature and the courts, but not including an authority created in  
22 subch. II of ch. 114 ~~or~~, subch. III of ch. 149, or subch. III of ch. 635 or in ch. ~~52~~ 231,  
23 233, 234, 237, <sup>or 279.</sup> ~~238~~ <sup>238A</sup>

24 SECTION 16. 16.528 (1) (a) of the statutes, as affected by 2009 Wisconsin Act 28,  
25 is amended to read:

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1 16.528 (1) (a) "Agency" means an office, department, independent agency,  
2 institution of higher education, association, society, or other body in state  
3 government created or authorized to be created by the constitution or any law, that  
4 is entitled to expend moneys appropriated by law, including the legislature and the  
5 courts, but not including an authority created in subch. II of ch. 114 or, subch. III of  
6 ch. 149, or subch. III of ch. 635 or in ch. 52, 231, 233, 234, 237, or 279. 238,1

7 SECTION 17. 16.53 (2) of the statutes, as affected by 2009 Wisconsin Act 28, is  
8 amended to read: 11 10

9 16.53 (2) IMPROPER INVOICES. If an agency receives an improperly completed  
10 invoice, the agency shall notify the sender of the invoice within 10 working days after  
11 it receives the invoice of the reason it is improperly completed. In this subsection,  
12 "agency" means an office, department, independent agency, institution of higher  
13 education, association, society, or other body in state government created or  
14 authorized to be created by the constitution or any law, that is entitled to expend  
15 moneys appropriated by law, including the legislature and the courts, but not  
16 including an authority created in subch. II of ch. 114 or, subch. III of ch. 149, or subch.  
17 III of ch. 635 or in ch. 52, 231, 233, 234, 237, or 279. 238,1

18 SECTION 18. 16.54 (9) (a) 1. of the statutes, as affected by 2009 Wisconsin Act  
19 28, is amended to read: 11

20 16.54 (9) (a) 1. "Agency" means an office, department, independent agency,  
21 institution of higher education, association, society or other body in state  
22 government created or authorized to be created by the constitution or any law, which  
23 is entitled to expend moneys appropriated by law, including the legislature and the  
24 courts, but not including an authority created in subch. II of ch. 114 or, subch. III of  
25 ch. 149, or subch. III of ch. 635 or in ch. 52, 231, 233, 234, 237, or 279. 238,1

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SECTION 19

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1 SECTION 19. 16.70 (2) of the statutes, as affected by 2009 Wisconsin Act 28, is  
2 amended to read:

3 16.70 (2) "Authority" means a body created under subch. II of ch. 114 or, subch.  
4 III of ch. 149, or subch. III of ch. 636 or under ch. 52, 231, 232, 233, 234, 235, 237, or  
5 279.

6 SECTION 20. 16.72 (2) (e) (intro.) of the statutes is amended to read:

7 16.72 (2) (e) (intro.) In writing the specifications under this subsection, the  
8 department and any other designated purchasing agent under s. 16.71 (1) shall  
9 incorporate requirements for the purchase of products made from recycled materials  
10 and recovered materials if their use is technically and economically feasible. Each  
11 authority other than the University of Wisconsin Hospitals and Clinics Authority,  
12 the Lower Fox River Remediation Authority, the Small Business Health Options  
13 Program Authority, and the Health Insurance Risk-Sharing Plan Authority, in  
14 writing specifications for purchasing by the authority, shall incorporate  
15 requirements for the purchase of products made from recycled materials and  
16 recovered materials if their use is technically and economically feasible. The  
17 specifications shall include requirements for the purchase of the following materials:

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18 SECTION 21. 16.72 (2) (f) of the statutes is amended to read:

19 16.72 (2) (f) In writing specifications under this subsection, the department,  
20 any other designated purchasing agent under s. 16.71 (1), and each authority other  
21 than the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox  
22 River Remediation Authority, the Small Business Health Options Program  
23 Authority, and the Health Insurance Risk-Sharing Plan Authority shall incorporate  
24 requirements relating to the recyclability and ultimate disposition of products and,  
25 wherever possible, shall write the specifications so as to minimize the amount of solid

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1 waste generated by the state, consistent with the priorities established under s.  
2 287.05 (12). All specifications under this subsection shall discourage the purchase  
3 of single-use, disposable products and require, whenever practical, the purchase of  
4 multiple-use, durable products.

5 SECTION 22. 16.75 (1m) of the statutes is amended to read:

6 16.75 (1m) The department shall award each order or contract for materials,  
7 supplies or equipment on the basis of life cycle cost estimates, whenever such action  
8 is appropriate. Each authority other than the University of Wisconsin Hospitals and  
9 Clinics Authority, the Lower Fox River Remediation Authority, the Wisconsin  
10 Aerospace Authority, the Small Business Health Options Program Authority, and  
11 the Health Insurance Risk-Sharing Plan Authority shall award each order or  
12 contract for materials, supplies or equipment on the basis of life cycle cost estimates,  
13 whenever such action is appropriate. The terms, conditions and evaluation criteria  
14 to be applied shall be incorporated in the solicitation of bids or proposals. The life  
15 cycle cost formula may include, but is not limited to, the applicable costs of energy  
16 efficiency, acquisition and conversion, money, transportation, warehousing and  
17 distribution, training, operation and maintenance and disposition or resale. The  
18 department shall prepare documents containing technical guidance for the  
19 development and use of life cycle cost estimates, and shall make the documents  
20 available to local governmental units.

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21 SECTION 23. 16.75 (8) (a) 1. of the statutes is amended to read:

22 16.75 (8) (a) 1. The department, any other designated purchasing agent under  
23 s. 16.71 (1), any agency making purchases under s. 16.74, and each authority other  
24 than the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox  
25 River Remediation Authority, the Small Business Health Options Program

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1 Authority, and the Health Insurance Risk-Sharing Plan Authority shall, to the  
2 extent practicable, make purchasing selections using specifications developed under  
3 s. 16.72 (2) (e) to maximize the purchase of materials utilizing recycled materials and  
4 recovered materials.

5 SECTION 24. 16.75 (8) (a) 2. of the statutes is amended to read:

6 16.75 (8) (a) 2. Each agency and authority other than the University of  
7 Wisconsin Hospitals and Clinics Authority, the Lower Fox River Remediation  
8 Authority, the Small Business Health Options Program Authority, and the Health  
9 Insurance Risk-Sharing Plan Authority shall ensure that the average recycled or  
10 recovered content of all paper purchased by the agency or authority measured as a  
11 proportion, by weight, of the fiber content of paper products purchased in a fiscal  
12 year, is not less than 40% of all purchased paper.

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13 SECTION 25. 16.75 (9) of the statutes is amended to read:

14 16.75 (9) The department, any other designated purchasing agent under s.  
15 16.71 (1), any agency making purchases under s. 16.74, and any authority other than  
16 the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox River  
17 Remediation Authority, the Small Business Health Options Program Authority, and  
18 the Health Insurance Risk-Sharing Plan Authority shall, to the extent practicable,  
19 make purchasing selections using specifications prepared under s. 16.72 (2) (f).

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20 SECTION 26. 16.765 (1) of the statutes, as affected by 2009 Wisconsin Act 28,  
21 is amended to read:

22 16.765 (1) Contracting agencies, the University of Wisconsin Hospitals and  
23 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin  
24 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Small  
25 Business Health Options Program Authority, the Lower Fox River Remediation

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The Wisconsin Economic Development Corporation

SECTION 26

1 Authority, ~~the Wisconsin Quality Home Care Authority~~ and the Bradley Center  
 2 Sports and Entertainment Corporation shall include in all contracts executed by  
 3 them a provision obligating the contractor not to discriminate against any employee  
 4 or applicant for employment because of age, race, religion, color, handicap, sex,  
 5 physical condition, developmental disability as defined in s. 51.01 (5), sexual  
 6 orientation as defined in s. 111.32 (13m), or national origin and, except with respect  
 7 to sexual orientation, obligating the contractor to take affirmative action to ensure  
 8 equal employment opportunities.

SECTION 27. 16.765 (2) of the statutes, as affected by 2009 Wisconsin Act 28,

is amended to read:

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11 16.765 (2) Contracting agencies, the University of Wisconsin Hospitals and  
 12 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin  
 13 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Small  
 14 Business Health Options Program Authority, the Lower Fox River Remediation  
 15 Authority, ~~the Wisconsin Quality Home Care Authority~~ and the Bradley Center  
 16 Sports and Entertainment Corporation shall include the following provision in every  
 17 contract executed by them: "In connection with the performance of work under this  
 18 contract, the contractor agrees not to discriminate against any employee or applicant  
 19 for employment because of age, race, religion, color, handicap, sex, physical  
 20 condition, developmental disability as defined in s. 51.01 (5), sexual orientation or  
 21 national origin. This provision shall include, but not be limited to, the following:  
 22 employment, upgrading, demotion or transfer; recruitment or recruitment  
 23 advertising; layoff or termination; rates of pay or other forms of compensation; and  
 24 selection for training, including apprenticeship. Except with respect to sexual  
 25 orientation, the contractor further agrees to take affirmative action to ensure equal

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SECTION 27

1 employment opportunities. The contractor agrees to post in conspicuous places,  
2 available for employees and applicants for employment, notices to be provided by the  
3 contracting officer setting forth the provisions of the nondiscrimination clause”.

4 SECTION 28. 16.765 (4) of the statutes, as affected by 2009 Wisconsin Act 28,  
5 is amended to read: Benefit Plan 11 10

6 16.765 (4) Contracting agencies, the University of Wisconsin Hospitals and  
7 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin  
8 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Small  
9 Business Health Options Program Authority, the Lower Fox River Remediation  
10 Authority, the Wisconsin Quality Home Care Authority, and the Bradley Center  
11 Sports and Entertainment Corporation shall take appropriate action to revise the  
12 standard government contract forms under this section.

13 SECTION 29. 16.765 (5) of the statutes, as affected by 2011 Wisconsin Act 10,  
14 is amended to read: the Wisconsin Economic Development Corporation,<sup>1</sup>

15 16.765 (5) The head of each contracting agency and the boards of directors of  
16 the University of Wisconsin Hospitals and Clinics Authority, the Fox River  
17 Navigational System Authority, the Wisconsin Aerospace Authority, the Health  
18 Insurance Risk-Sharing Plan Authority, the Small Business Health Options  
19 Program Authority, the Lower Fox River Remediation Authority, the Wisconsin  
20 Quality Home Care Authority, and the Bradley Center Sports and Entertainment  
21 Corporation shall be primarily responsible for obtaining compliance by any  
22 contractor with the nondiscrimination and affirmative action provisions prescribed  
23 by this section, according to procedures recommended by the department. The  
24 department shall make recommendations to the contracting agencies and the boards  
25 of directors of the University of Wisconsin Hospitals and Clinics Authority, the Fox

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the Wisconsin Economic Development Corporation;

1 River Navigational System Authority, the Wisconsin Aerospace Authority, the  
2 Health Insurance Risk-Sharing Plan Authority, the Small Business Health Options  
3 Program Authority, the Lower Fox River Remediation Authority, the Wisconsin  
4 Quality Home Care Authority, and the Bradley Center Sports and Entertainment  
5 Corporation for improving and making more effective the nondiscrimination and  
6 affirmative action provisions of contracts. The department shall promulgate such  
7 rules as may be necessary for the performance of its functions under this section.

8 SECTION 30. 16.765 (6) of the statutes, as affected by 2009 Wisconsin Act 28  
9 is amended to read:

the Wisconsin Economic Development Corporation;

10 16.765 (6) The department may receive complaints of alleged violations of the  
11 nondiscrimination provisions of such contracts. The department shall investigate  
12 and determine whether a violation of this section has occurred. The department may  
13 delegate this authority to the contracting agency, the University of Wisconsin  
14 Hospitals and Clinics Authority, the Fox River Navigational System Authority, the  
15 Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority,  
16 the Small Business Health Options Program Authority, the Lower Fox River  
17 Remediation Authority, the Wisconsin Quality Home Care Authority, or the Bradley  
18 Center Sports and Entertainment Corporation for processing in accordance with the  
19 department's procedures.

Benefit Plan

20 SECTION 31. 16.765 (7) (intro.) of the statutes, as affected by 2009 Wisconsin  
21 Act 28 is amended to read:

22 16.765 (7) (intro.) When a violation of this section has been determined by the  
23 department, the contracting agency, the University of Wisconsin Hospitals and  
24 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin  
25 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Small

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SECTION 31

the Wisconsin Economic Development Corporation;

Benefit Plan

1 ~~Business~~ Health Options Program Authority, the Lower Fox River Remediation  
 2 Authority, ~~the Wisconsin Quality Home Care Authority,~~ or the Bradley Center Sports  
 3 and Entertainment Corporation, the contracting agency, the University of Wisconsin  
 4 Hospitals and Clinics Authority, the Fox River Navigational System Authority, the  
 5 Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority,  
 6 the Small Business Health Options Program Authority, Benefit Plan the Lower Fox River  
 7 Remediation Authority, ~~the Wisconsin Quality Home Care Authority,~~ or the Bradley  
 8 Center Sports and Entertainment Corporation shall:

9 SECTION 32. 16.765 (7) (d) of the statutes, as affected by 2009 Wisconsin Act 28,  
 10 is amended to read: 11 10

11 16.765 (7) (d) Direct the violating party to take immediate steps to prevent  
 12 further violations of this section and to report its corrective action to the contracting  
 13 agency, the University of Wisconsin Hospitals and Clinics Authority, the Fox River  
 14 Navigational System Authority, the Wisconsin Aerospace Authority, the Health  
 15 Insurance Risk-Sharing Plan Authority, the Small Business Health Options  
 16 Program Authority, the Lower Fox River Remediation Authority, ~~the Wisconsin~~  
 17 ~~Quality Home Care Authority,~~ or the Bradley Center Sports and Entertainment  
 18 Corporation. the Wisconsin Economic Development Corporation;

Benefit Plan

19 SECTION 33. 16.765 (8) of the statutes, as affected by 2009 Wisconsin Act 28,  
 20 is amended to read: 11 10

21 16.765 (8) If further violations of this section are committed during the term  
 22 of the contract, the contracting agency, the Fox River Navigational System Authority,  
 23 the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan  
 24 Authority, the Small Business Health Options Program Authority, the Lower Fox  
 25 River Remediation Authority, ~~the Wisconsin Quality Home Care Authority,~~ or the

Benefit Plan

the Wisconsin Economic Development Corporation;



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The Wisconsin Economic Development Corporation,

1 Bradley Center Sports and Entertainment Corporation may permit the violating  
 2 party to complete the contract, after complying with this section, but thereafter the  
 3 contracting agency, the Fox River Navigational System Authority, the Wisconsin  
 4 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Small  
 5 Business Health Options Program Authority, the Lower Fox River Remediation  
 6 Authority, the Wisconsin Quality Home Care Authority, or the Bradley Center Sports  
 7 and Entertainment Corporation shall request the department to place the name of  
 8 the party on the ineligible list for state contracts, or the contracting agency, the Fox  
 9 River Navigational System Authority, the Wisconsin Aerospace Authority, the  
 10 Health Insurance Risk-Sharing Plan Authority, the Small Business Health Options  
 11 Program Authority, the Lower Fox River Remediation Authority, the Wisconsin  
 12 Quality Home Care Authority, or the Bradley Center Sports and Entertainment  
 13 Corporation may terminate the contract without liability for the uncompleted  
 14 portion or any materials or services purchased or paid for by the contracting party  
 15 for use in completing the contract.

use 2x  
Benefit Plan

16 SECTION 34. 16.85 (2) of the statutes, as affected by 2009 Wisconsin Act 28, is  
 17 amended to read:

18 16.85 (2) To furnish engineering, architectural, project management, and other  
 19 building construction services whenever requisitions therefor are presented to the  
 20 department by any agency. The department may deposit moneys received from the  
 21 provision of these services in the account under s. 20.505 (1) (kc) or in the general  
 22 fund as general purpose revenue — earned. In this subsection, “agency” means an  
 23 office, department, independent agency, institution of higher education, association,  
 24 society, or other body in state government created or authorized to be created by the  
 25 constitution or any law, which is entitled to expend moneys appropriated by law,

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**SECTION 34**

1 including the legislature and the courts, but not including an authority created in  
2 subch. II of ch. 114 ~~or~~, subch. III of ch. 149, or subch. III of ch. 635 or in ch. ~~52~~ 231,  
3 233, 234, 237, <sup>238</sup> or 279.

4 **SECTION 35.** 16.865 (8) of the statutes, as affected by 2009 Wisconsin Act ~~28~~  
5 is amended to read:

6 16.865 (8) Annually in each fiscal year, allocate as a charge to each agency a  
7 proportionate share of the estimated costs attributable to programs administered by  
8 the agency to be paid from the appropriation under s. 20.505 (2) (k). The department  
9 may charge premiums to agencies to finance costs under this subsection and pay the  
10 costs from the appropriation on an actual basis. The department shall deposit all  
11 collections under this subsection in the appropriation account under s. 20.505 (2) (k).  
12 Costs assessed under this subsection may include judgments, investigative and  
13 adjustment fees, data processing and staff support costs, program administration  
14 costs, litigation costs, and the cost of insurance contracts under sub. (5). In this  
15 subsection, "agency" means an office, department, independent agency, institution  
16 of higher education, association, society, or other body in state government created  
17 or authorized to be created by the constitution or any law, that is entitled to expend  
18 moneys appropriated by law, including the legislature and the courts, but not  
19 including an authority created in subch. II of ch. 114 ~~or~~, subch. III of ch. 149, or subch.  
20 III of ch. 635 or in ch. ~~52~~ 231, 232, 233, 234, 235, 237, <sup>238</sup> or 279.

21 **SECTION 36.** 25.50 (1) (d) of the statutes is amended to read:

22 25.50 (1) (d) "Local government" means any county, town, village, city, power  
23 district, sewerage district, drainage district, town sanitary district, public inland  
24 lake protection and rehabilitation district, local professional baseball park district  
25 created under subch. III of ch. 229, long-term care district under s. 46.2895, local

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1 professional football stadium district created under subch. IV of ch. 229, local  
2 cultural arts district created under subch. V of ch. 229, public library system, school  
3 district or technical college district in this state, any commission, committee, board  
4 or officer of any governmental subdivision of this state, any court of this state, other  
5 than the court of appeals or the supreme court, or any authority created under s.  
6 114.61, 149.41, 231.02, 233.02 ~~or~~ 234.02, or 635.70. <sup>6</sup>

7 SECTION 37. 40.02 (54) ~~(b)~~ of the statutes is created to read:

8 40.02 (54) ~~(b)~~ The Small Business Health Options Program Authority. <sup>Benefit Plan</sup>

9 SECTION 38. 70.11 (41c) of the statutes is created to read:

10 70.11 (41c) SMALL BUSINESS HEALTH OPTIONS PROGRAM AUTHORITY. All property <sup>Benefit Plan</sup>

11 owned by the Small Business Health Options Program Authority, provided that the  
12 use of the property is primarily related to the purposes of the authority. <sup>Benefit Plan</sup>

13 SECTION 39. 71.26 (1) (be) of the statutes, as affected by 2009 Wisconsin Act ~~28~~ <sup>28</sup>

14 is amended to read:

15 71.26 (1) (be) *Certain authorities.* Income of the University of Wisconsin <sup>Benefit Plan</sup>

16 Hospitals and Clinics Authority, of the Health Insurance Risk-Sharing Plan

17 Authority, of the Small Business Health Options Program Authority, <sup>Benefit Plan</sup>

18 Wisconsin Quality Home Care Authority, of the Fox River Navigational System

19 Authority, and of the Wisconsin Aerospace Authority, <sup>Benefit Plan</sup>

20 SECTION 40. 77.54 (9a) (a) of the statutes, as affected by 2009 Wisconsin Act ~~28~~ <sup>28</sup>

21 is amended to read:

22 77.54 (9a) (a) This state or any agency thereof, the University of Wisconsin

23 Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health

24 Insurance Risk-Sharing Plan Authority, the Small Business Health Options

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the Wisconsin Economic Development Corporation;

SECTION 40

1 Program Authority, (the Wisconsin Quality Home Care Authority) and the Fox River  
2 Navigational System Authority. Benefit Plan

3 SECTION 41. 101.055 (2) (a) of the statutes is amended to read:

4 101.055 (2) (a) "Agency" means an office, department, independent agency,  
5 authority, institution, association, society, or other body in state government created  
6 or authorized to be created by the constitution or any law, and includes the  
7 legislature and the courts, but excludes the Health Insurance Risk-Sharing Plan  
8 Authority and the Small Business Health Options Program Authority. Benefit Plan

9 10 SECTION 42. 101.177 (1) (d) of the statutes, as affected by 2009 Wisconsin Act

10 28 is amended to read:

the Wisconsin Economic Development Corporation;

11 101.177 (1) (d) "State agency" means any office, department, agency,  
12 institution of higher education, association, society, or other body in state  
13 government created or authorized to be created by the constitution or any law, that  
14 is entitled to expend moneys appropriated by law, including the legislature and the  
15 courts, the Wisconsin Housing and Economic Development Authority, the Bradley  
16 Center Sports and Entertainment Corporation, the University of Wisconsin  
17 Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Wisconsin  
18 Quality Home Care Authority, and the Wisconsin Health and Educational Facilities  
19 Authority, but excluding the Health Insurance Risk-Sharing Plan Authority, the  
20 Small Business Health Options Program Authority, and the Lower Fox River  
21 Remediation Authority. Benefit Plan

22 SECTION 43. 230.03 (3) of the statutes, as affected by 2009 Wisconsin Act 28

23 is amended to read:

24 230.03 (3) "Agency" means any board, commission, committee, council, or  
25 department in state government or a unit thereof created by the constitution or

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1 statutes if such board, commission, committee, council, department, unit, or the  
2 head thereof, is authorized to appoint subordinate staff by the constitution or  
3 statute, except a legislative or judicial board, commission, committee, council,  
4 department, or unit thereof or an authority created under subch. II of ch. 114 or,  
5 subch. III of ch. 149, or subch. III of ch. 630 or under ch. 231, 232, 233, 234, 235,  
6 237, or 279. "Agency" does not mean any local unit of government or body within one  
7 or more local units of government that is created by law or by action of one or more  
8 local units of government.

238

SECTION 44. 230.80 (4) of the statutes is amended to read:

10 230.80 (4) "Governmental unit" means any association, authority, board,  
11 commission, department, independent agency, institution, office, society, or other  
12 body in state government created or authorized to be created by the constitution or  
13 any law, including the legislature, the office of the governor, and the courts, but  
14 excluding the Health Insurance Risk-Sharing Plan Authority and the Small  
15 Business Health Options Program Authority. "Governmental unit" does not mean  
16 any political subdivision of the state or body within one or more political subdivisions  
17 that is created by law or by action of one or more political subdivisions.

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SECTION 45. 230.90 (1) (c) of the statutes is amended to read:

19 230.90 (1) (c) "Governmental unit" means any association, authority, board,  
20 commission, department, independent agency, institution, office, society or other  
21 body in state government created or authorized to be created by the constitution or  
22 any law, including the legislature, the office of the governor and the courts.

23 "Governmental unit" does not mean the University of Wisconsin Hospitals and  
24 Clinics Authority, the Health Insurance Risk-Sharing Plan Authority, the Small  
25 Business Health Options Program Authority, or any political subdivision of the state

Benefit Plan

SENATE BILL 707

1 or body within one or more political subdivisions which is created by law or by action  
2 of one or more political subdivisions.

End Insert 1-2-TD

3 ~~SECTION 46.~~ Subchapter I (title) of chapter 635 [precedes 635.01] of the statutes  
4 is created to read:

~~CHAPTER 635  
SUBCHAPTER I  
GENERAL PROVISIONS~~

5  
6  
7  
8 ~~SECTION 47.~~ 635.02 (l) of the statutes is renumbered 635.02 (lg).

9 ~~SECTION 48.~~ 635.02 (lc) of the statutes is created to read:

10 635.02 (lc) "Authority" means the Small Business Health Options Program  
11 Authority.

12 ~~SECTION 49.~~ 635.02 (lo) of the statutes is created to read:

13 635.02 (lo) "Board" means the board of directors of the authority.

14 ~~SECTION 50.~~ 635.18 (1) of the statutes is amended to read:

15 635.18 (1) ~~Every Any~~ small employer insurer shall ~~may~~ actively market health  
16 benefit plan coverage to small employers in the state.

17 ~~SECTION 51.~~ Subchapter II of chapter 635 [precedes 635.30] of the statutes is  
18 created to read:

~~CHAPTER 635  
SUBCHAPTER II  
HEALTH BENEFIT PLAN EXCHANGE~~

19  
20  
21  
22 ~~635.30 Establishment of exchange; plans.~~ (1) Subject to s. 635.45 (4), the  
23 authority shall establish and, by January 1, 2011, begin operating a health benefit  
24 plan exchange under which the authority shall enroll eligible groups and individuals  
25 in health benefit plans offered through the exchange.

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

LRB-0760/P1dn

PJK:/:....

g's

Date

In this draft, we retained from 2009 SB 707 the creation of the Small Business Health Options Program Authority and its duties and powers, but substituted the NAIC model language for the remainder of 2009 SB 707.

The main problem with incorporating the model language into SB 707 is the terminology. In SB 707, we created a small business exchange and an entity to operate it (the authority). The NAIC model leaves the establishment of the exchange up to the state, but what is being established appears to be the entity that operates the exchange. The model seems to use the term "exchange" to refer to both the exchange and the entity that operates the exchange. In addition, the form of the exchange is not entirely clear. The model provides that the "exchange" must "make qualified health plans available to qualified individuals *and* qualified employers," but the "exchange" also must "provide for the establishment of a SHOP Exchange." A drafting note provides that a state "may elect to operate a unified exchange by merging the SHOP Exchange and the Exchange for individual coverage." So it is unclear whether the "exchange" that the model continually refers to <sup>is</sup> an exchange for individual coverage that may be merged with the SHOP Exchange, after the "exchange" establishes the SHOP Exchange.

Since in SB 707 the entity that operates the exchange is the authority, in this draft we substituted the word "authority" for most of the references to "exchange." In some cases, it seems appropriate because the reference in the model seems to be to the entity that operates the exchange, but in other cases it does not seem appropriate because the reference in the model seems to be to the exchange, itself. Would you like some of the references to "authority" to be changed to "exchange" and, if so, would you like us to determine which ones should be changed, or would you like to specify which ones?

Do we need to rename the authority since it apparently is not a SHOP Exchange and is not, at least initially, operating a SHOP Exchange?

⑨ We renamed the authority since it apparently is not exclusively operating a SHOP Exchange.

Let us know how you would like to proceed, and if you want to retain any more of SB 707 than what is now included in this draft.

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Draft: 11/15/10

A new model

As adopted by the Exchanges (B) Subgroup, Nov. 15, 2010

Underlining and overstrikes show changes from the previous Nov. 11 draft. Comments are being requested on this draft on or before Nov. 19, 2010. Comments should be sent only by email to Jolie Matthews at jmatthew@naic.org.

## AMERICAN HEALTH BENEFIT EXCHANGE MODEL ACT

### Table of Contents

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### Section 1. Title

This Act shall be known and may be cited as the American Health Benefit Exchange Act.

### Section 2. Purpose and Intent

The purpose of this Act is to provide for the establishment of an American Health Benefit Exchange to facilitate the purchase and sale of qualified health plans in the individual market in this State and to provide for the establishment of a Small Business Health Options Program (SHOP Exchange) to assist qualified small employers in this State in facilitating the enrollment of their employees in qualified health plans offered in the small group market. The intent of the Exchange is to reduce the number of uninsured, provide a transparent marketplace and consumer education and assist individuals with access to programs, premium assistance tax credits and cost-sharing reductions.

**Drafting Note:** States expanding the definition of "qualified employer" to include large employers, as permitted beginning in 2017 under the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) (Federal Act), should remove the references to "small" employers and the "small" group market.

### Section 3. Definitions

For purposes of this Act:

- A. "Commissioner" means the Commissioner of Insurance.

**Drafting Note:** Use the title of the chief insurance regulatory official wherever the term "commissioner" appears. If the jurisdiction of certain health carriers, such as health maintenance organizations, lies with some state agency other than the insurance department, or if there is dual regulation, a state should add language referencing that agency to ensure the appropriate coordination of responsibilities.

(2) ~~B~~ "Educated health care consumer" means an individual who is knowledgeable about the health care system, and has background or experience in making informed decisions regarding health, medical and scientific matters.

~~"Exchange" means the [insert name of State Exchange] established pursuant to section 4 of this Act.~~

(3) ~~z~~ "Federal Act" means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any amendments thereto, or regulations or guidance issued under, those Acts.

(4) ~~z~~ <sup>as g)</sup> "Health benefit plan" means a policy, contract, certificate or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services.

Drafting Note: The Federal Act uses the terms "health plan" and "health insurance coverage." "Health benefit plan," as defined above, is intended to be consistent with the definition of "health insurance coverage" contained in Title XXVII of the Public Health Service Act, as enacted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and amended by the Federal Act.

b ~~g)~~ "Health benefit plan" does not include: *any of the following*

1. (a) Coverage only for accident, or disability income insurance, or any combination thereof;
2. (b) Coverage issued as a supplement to liability insurance;
3. (c) Liability insurance, including general liability insurance and automobile liability insurance;
4. (d) Workers' compensation or similar insurance;
5. (e) Automobile medical payment insurance;
6. (f) Credit-only insurance;
7. (g) Coverage for on-site medical clinics; or
8. (h) Other similar insurance coverage, specified in federal regulations issued pursuant to Pub. L. No. 104-191, under which benefits for health care services are secondary or incidental to other insurance benefits.

c ~~g)~~ "Health benefit plan" does not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

1. (a) Limited scope dental or vision benefits;
2. (b) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or
3. (c) Other similar, limited benefits specified in federal regulations issued pursuant to Pub. L. No. 104-191.

d ~~g)~~ "Health benefit plan" does not include the following benefits if the benefits are provided under a separate policy, certificate or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor:

1. (a) Coverage only for a specified disease or illness; or
2. (b) Hospital indemnity or other fixed indemnity insurance.

e ~~g)~~ "Health benefit plan" does not include the following if offered as a separate policy, certificate or contract of insurance:

1. (a) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;
2. (b) Coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)); or
3. (c) Similar supplemental coverage provided to coverage under a group health plan.

(5) f. "Health carrier" or "carrier" means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services.

(6) g. "Qualified dental plan" means a limited scope dental plan that has been certified in accordance with section 7E of this Act.

(7) h. "Qualified employer" means a small employer that elects to make its full-time employees eligible for one or more qualified health plans offered through the SHOP Exchange, and at the option of the employer, some or all of its part-time employees, provided that the employer:

a. (i) Has its principal place of business in this State and elects to provide coverage through the SHOP Exchange to all of its eligible employees, wherever employed; or

b. (ii) Elects to provide coverage through the SHOP Exchange to all of its eligible employees who are principally employed in this State.

**Drafting Note:** Beginning in 2017, the Federal Act permits States to expand eligibility for Exchange participation beyond small employers. States that do so should amend subsection H accordingly.

(8) i. "Qualified health plan" means a health benefit plan that has in effect a certification that the plan meets the criteria for certification described in section 1311(c) of the Federal Act and section 7 of this Act.

(9) j. "Qualified individual" means an individual, including a minor, who:

a. (i) Is seeking to enroll in a qualified health plan offered to individuals through the Exchange;

b. (ii) Resides in this State;

c. (iii) At the time of enrollment, is not incarcerated, other than incarceration pending the disposition of charges; and

d. (iv) Is, and is reasonably expected to be, for the entire period for which enrollment is sought, a citizen or national of the United States or an alien lawfully present in the United States.

(10) k. "Secretary" means the Secretary of the federal Department of Health and Human Services.

(11) l. "SHOP Exchange" means the Small Business Health Options Program established under section 6 of this Act.

(12) m. a. (i) "Small employer" means an employer that employed an average of not more than 100 employees during the preceding calendar year.

**Drafting Note:** The Federal Act permits States to define "small employers" as employers with one to 50 employees for plan years beginning before Jan. 1, 2016.

b. (ii) For purposes of this subsection:

1. (a) All persons treated as a single employer under subsection (b), (c), (m) or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer;
2. (b) An employer and any predecessor employer shall be treated as a single employer;
3. (c) All employees shall be counted, including part-time employees and employees who are not eligible for coverage through the employer;

**Drafting Note:** This issue is discussed in HHS Bulletin 99-03 (Group Size Issues Under Title XXVII of the Public Health Service Act). States with different legal standards for counting employer size should review their definitions for consistency with federal law and substitute their existing definitions when appropriate. States should also consider the adverse selection issues that arise if different definitions of "small employer" are used within the Exchange and outside the Exchange.

4. (d) If an employer was not in existence throughout the preceding calendar year, the determination of whether that employer is a small employer shall be based on the average number of employees that is reasonably expected that employer will employ on business days in the current calendar year; and
5. (e) An employer that makes enrollment in qualified health plans available to its employees through the SHOP Exchange, and would cease to be a small employer by reason of an increase in the number of its employees, shall continue to be treated as a small employer for purposes of this Act as long as it continuously makes enrollment through the SHOP Exchange available to its employees.

#### Section 4. Establishment of Exchange

- A. The [insert official title of the Exchange] is hereby established as a [insert description and governance provisions here, either establishing the Exchange as a governmental agency or establishing the Exchange as a nonprofit entity].

**Drafting Note:** States have different options to consider when establishing the Exchange. This Act does not include any specific option for governance. Section 1311(d) of the Federal Act, requires that any Exchange established must be a governmental agency or nonprofit entity. As such, the Exchange could be located at a new or existing State agency. Some possible advantages to having the Exchange within a State agency include having a direct link to the State administration and a more direct ability to coordinate with other key State agencies, such as the State Medicaid agency and the State insurance department. Some possible disadvantages include the risk of the Exchange's decision-making and operations being politicized and the possible difficulty for the Exchange to be nimble in hiring and contracting practices, given most States' personnel and procurement rules. The Exchange could also be established as an independent public agency, or a quasi-governmental agency, with an appointed board or commission responsible for decision-making and day-to-day operations. Some possible advantages to establishing the Exchange as an independent public agency, or a quasi-governmental agency, include possible exemption from State personnel and procurement laws and more independence from existing State agencies, which could result in less of a possibility of the Exchange being politicized. The Exchange's enabling legislation would specify how the Board members would be appointed, including its size, composition and terms. The Board would also select the Exchange's Executive Director. Some possible disadvantages include the possible difficulty for the Exchange to coordinate health care purchasing strategies and initiatives with key State agencies, such as the State Medicaid agency and the State insurance department and their employees because the Exchange would not be located at a State agency (unless those decisions are subject to the approval of a State official, such as the State insurance commissioner or the Governor). The Exchange also could be established by creating a non-profit entity. This means that most likely it would not be directly accountable to State government or subject to State government oversight nor would it most likely be subject to State personnel and procurement laws. Some possible advantages of establishing the Exchange as a non-profit include flexibility in decision making and less of a chance for those decisions being politicized and some possible disadvantages include isolation from State policymakers and key State agency staff and the potential for decreased public accountability. In addition, States can establish an Exchange using a combination of the options described above. The NAIC, through the Exchanges (B) Subgroup, intends to review the options for governance above and others related to establishing Exchanges and develop an issues paper on the topic to assist States in this area.

**Drafting Note:** States should be aware that when establishing the Exchange they will have to include additional sections in this Act relating to governance and operations, including sections that set out:

(B)

636.25. General matters. (1) The authority shall do all of the following:

- The appointment process, powers, duties and other responsibilities of any board, committee or other entity that will have day-to-day responsibility for carrying out the duties and responsibilities of the Exchange, as provided in this Act;
- Authority and procedures for hiring staff and procurement resources; and
- Responsibilities of State agencies coordinating activities with the Exchange.

**Drafting Note:** States should be aware that section 1311(f) of the Federal Act permits States, with the approval of the Secretary of the federal Department of Health and Human Services, to establish regional or interstate Exchanges. This Act does not specify how to establish these Exchanges or how they would operate. The NAIC, through the Exchanges (B) Subgroup, intends to review those issues and others related to establishing regional or interstate exchanges and develop an issues paper on the topic to assist those states that wish to establish such exchanges. States participating in interstate Exchanges or establishing regional Exchanges should modify the relevant portions of this Act accordingly.

**Drafting Note:** Depending on how a State establishes its Exchange, a State may need to consider whether the Exchange should be exempt from the State's insurance producer or consultant licensing requirements or whether the Exchange or its employees need to obtain such a license.

B. The Exchange shall:

- a ~~(f)~~ Facilitate the purchase and sale of qualified health plans;
- b ~~(f)~~ Provide for the establishment of a SHOP Exchange to assist qualified small employers in this State in facilitating the enrollment of their employees in qualified health plans; and
- c ~~(f)~~ Meet the requirements of this Act and any regulations implemented under this Act.

(2) ~~(f)~~ The Exchange may contract with an eligible <sup>department of health services</sup> entity for any of its functions described in this Act. An eligible entity includes, but is not limited to, the ~~(insert name of State Medicaid agency)~~ or an entity that has experience in individual and small group health insurance, benefit administration or other experience relevant to the responsibilities to be assumed by the entity, but a health carrier or an affiliate of a health carrier is not an eligible entity.

**Drafting Note:** States should be aware that the Federal Act does not refer to "affiliate" as referenced in subsection C above. Section 1311(f)(3)(B) of the Federal Act, as related to a health insurance issuer, defines "eligible entity" as a person: 1) incorporated under, and subject to the laws of, one or more States; 2) has demonstrated experience on a State or regional basis in the individual and small group health insurance markets and in benefits coverage; and 3) that is not a health insurance issuer or that is treated under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 as a member of the same controlled group of corporations (or under common control with) as a health insurance issuer.

(3) ~~(f)~~ The Exchange may enter into information-sharing agreements with federal and State agencies and other State Exchanges to carry out its responsibilities under this Act provided such agreements include adequate protections with respect to the confidentiality of the information to be shared and comply with all State and federal laws and regulations.

**Section 5. General Requirements**

(4) ~~(f)~~ The Exchange shall make qualified health plans available to qualified individuals and qualified employers beginning with effective dates on or before January 1, 2014.

(5) ~~(f)~~ a ~~(f)~~ The Exchange shall not make available any health benefit plan that is not a qualified health plan.

b ~~(f)~~ The Exchange shall allow a health carrier to offer a plan that provides limited scope dental benefits meeting the requirements of section 9832(c)(2)(A) of the Internal Revenue Code of 1986 through the Exchange, either separately or in conjunction with a qualified health plan, if the plan provides pediatric dental benefits meeting the requirements of section 1302(b)(1)(J) of the Federal Act.

(6) ~~(f)~~ Neither the Exchange nor a carrier offering health benefit plans through the Exchange may charge an individual a fee or penalty for termination of coverage if the individual enrolls in another type of minimum essential coverage because the individual has become newly eligible for that coverage or because the

(B)

636.30 Duties. In addition to all other duties imposed under this chapter, the authority shall do all of the following:

→ keep → (individual's employer-sponsored coverage has become affordable under the standards of section 36B(c)(2)(C) of the Internal Revenue Code of 1986.

## Section 6. Duties of Exchange

**Drafting Note:** The provisions in this section are the minimum requirements of the Federal Act. States are encouraged to consider assigning additional duties, consistent with the Federal Act, to the extent appropriate to the State's market conditions and policy goals. The NAIC, through the Exchanges (B) Subgroup, intends to develop an issues paper on the topic to assist States in evaluating options in this area.

The Exchange shall:

- (1) ~~A~~ Implement procedures for the certification, recertification and decertification, consistent with guidelines developed by the Secretary under section 1311(c) of the Federal Act and section 7 of this Act, of health benefit plans as qualified health plans;
- (2) ~~B~~ Provide for the operation of a toll-free telephone hotline to respond to requests for assistance;
- (3) ~~C~~ Provide for enrollment periods, as provided under section 1311(c)(6) of the Federal Act;
- (4) ~~D~~ Maintain an Internet website through which enrollees and prospective enrollees of qualified health plans may obtain standardized comparative information on such plans;
- (5) ~~E~~ Assign a rating to each qualified health plan offered through the Exchange in accordance with the criteria developed by the Secretary under section 1311(c)(3) of the Federal Act, and determine each qualified health plan's level of coverage in accordance with regulations issued by the Secretary under section 1302(d)(2)(A) of the Federal Act;
- (6) ~~F~~ Use a standardized format for presenting health benefit options in the Exchange, including the use of the uniform outline of coverage established under section 2715 of the PHSA;
- (7) ~~G~~ In accordance with section 1413 of the Federal Act, inform individuals of eligibility requirements for the Medicaid program under title XIX of the Social Security Act, the Children's Health Insurance Program (CHIP) under title XXI of the Social Security Act or any applicable State or local public program and if through screening of the application by the Exchange, the Exchange determines that any individual is eligible for any such program, enroll that individual in that program;
- (8) ~~H~~ Establish and make available by electronic means a calculator to determine the actual cost of coverage after application of any premium tax credit under section 36B of the Internal Revenue Code of 1986 and any cost-sharing reduction under section 1402 of the Federal Act;
- (9) ~~I~~ Establish a SHOP Exchange through which qualified employers may access coverage for their employees, which shall enable any qualified employer to specify a level of coverage so that any of its employees may enroll in any qualified health plan offered through the SHOP Exchange at the specified level of coverage;

**Drafting Note:** Section 1312(a)(2) of the Federal Act requires the SHOP Exchange to provide an "employee choice" option as described in subsection I above. At this time, the question remains open whether a State may allow traditional small group coverage to be offered in the Exchange.

**Drafting Note:** States may elect to operate a unified Exchange by merging the SHOP Exchange and the Exchange for individual coverage, but only if the Exchange has adequate resources to assist these individuals and employers. States that do so will need to reconcile the eligibility rules for participation, which are currently based on residence for individual coverage and based on employment for coverage through the SHOP Exchange.

- (10) ~~J~~ Subject to section 1411 of the Federal Act, grant a certification attesting that, for purposes of the individual responsibility penalty under section 5000A of the Internal Revenue Code of 1986, an individual is exempt from the individual responsibility requirement or from the penalty imposed by that section because:

a ← (X) There is no affordable qualified health plan available through the Exchange, or the individual's employer, covering the individual; or

b ← (X) The individual meets the requirements for any other such exemption from the individual responsibility requirement or penalty;

(11) \* Transfer to the federal Secretary of the Treasury the following:

a ← (X) A list of the individuals who are issued a certification under subsection J, including the name and taxpayer identification number of each individual;

b ← (X) The name and taxpayer identification number of each individual who was an employee of an employer but who was determined to be eligible for the premium tax credit under section 36B of the Internal Revenue Code of 1986 because:

1. (a) The employer did not provide minimum essential coverage; or

2. (b) The employer provided the minimum essential coverage, but it was determined under section 36B(c)(2)(C) of the Internal Revenue Code to either be unaffordable to the employee or not provide the required minimum actuarial value; and

c ← (X) The name and taxpayer identification number of:

1. (a) Each individual who notifies the Exchange under section 1411(b)(4) of the Federal Act that he or she has changed employers; and

2. (b) Each individual who ceases coverage under a qualified health plan during a plan year and the effective date of that cessation;

(12) L Provide to each employer the name of each employee of the employer described in subsection K(2) who ceases coverage under a qualified health plan during a plan year and the effective date of the cessation;

(13) M Perform duties required of the Exchange by the Secretary or the Secretary of the Treasury related to determining eligibility for premium tax credits, reduced cost-sharing or individual responsibility requirement exemptions;

(14) N Select entities qualified to serve as Navigators in accordance with section 1311(i) of the Federal Act, and standards developed by the Secretary, and award grants to enable Navigators to:

a ← (X) Conduct public education activities to raise awareness of the availability of qualified health plans;

b ← (X) Distribute fair and impartial information concerning enrollment in qualified health plans, and the availability of premium tax credits under section 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under section 1402 of the Federal Act;

c ← (X) Facilitate enrollment in qualified health plans;

d ← (X) Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the Public Health Service Act (PHSA), or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint or question regarding their health benefit plan, coverage or a determination under that plan or coverage; and

e ← (X) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange;

(15) O Review the rate of premium growth within the Exchange and outside the Exchange, and consider the information in developing recommendations on whether to continue limiting qualified employer status to small employers;

(16) ~~7~~ Credit the amount of any free choice voucher to the monthly premium of the plan in which a qualified employee is enrolled, in accordance with section 10108 of the Federal Act, and collect the amount credited from the offering employer;

(17) ~~8~~ Consult with stakeholders relevant to carrying out the activities required under this Act, including, but not limited to:

- a ~~(9)~~ Educated health care consumers who are enrollees in qualified health plans;
- b ~~(9)~~ Individuals and entities with experience in facilitating enrollment in qualified health plans;
- c ~~(9)~~ Representatives of small businesses and self-employed individuals;
- d ~~(9)~~ The <sup>Department of Health Services</sup> [insert name of State Medicaid office]; and
- e ~~(9)~~ Advocates for enrolling hard to reach populations; and

(18) ~~R~~ Meet the following financial integrity requirements:

a ~~(9)~~ Keep an accurate accounting of all activities, receipts and expenditures and annually submit to the Secretary, the Governor, the commissioner and the Legislature a report concerning such accountings;

b ~~(9)~~ Fully cooperate with any investigation conducted by the Secretary pursuant to the Secretary's authority under the Federal Act and allow the Secretary, in coordination with the Inspector General of the U.S. Department of Health and Human Services, to:

1. ~~(9)~~ Investigate the affairs of the Exchange;
2. ~~(9)~~ Examine the properties and records of the Exchange; and
3. ~~(9)~~ Require periodic reports in relation to the activities undertaken by the Exchange; and

c ~~(9)~~ In carrying out its activities under this Act, not use any funds intended for the administrative and operational expenses of the Exchange for staff retreats, promotional giveaways, excessive executive compensation or promotion of federal or State legislative and regulatory modifications.

**Drafting Note:** States should consider revising the language above to ensure that the commissioner, consistent with the provisions of the State insurance code and regulations, is given specific authority to investigate the affairs of the Exchange, examine the properties and records of the Exchange and require the Exchange to provide periodic reporting to the commissioner in relation to the activities undertaken by the Exchange under this Act, as may be appropriate given the structure and governance of the Exchange.

**Section 7. Health Benefit Plan Certification**

(1) ~~4~~ The Exchange may certify a health benefit plan as a qualified health plan if:

a ~~(9)~~ The plan provides the essential health benefits package described in section 1302(a) of the Federal Act, except that the plan is not required to provide essential benefits that duplicate the minimum benefits of qualified dental plans, as provided in subsection E, if:

1. ~~(9)~~ The Exchange has determined that at least one qualified dental plan is available to supplement the plan's coverage; and
2. ~~(9)~~ The carrier makes prominent disclosure at the time it offers the plan, in a form approved by the Exchange, that the plan does not provide the full range of essential pediatric benefits, and that qualified dental plans providing those benefits and other dental benefits not covered by the plan are offered through the Exchange;

636.42 Health benefit plan certification.



b ← (1) The premium rates and contract language have been approved by the commissioner;

**Drafting Note:** States should modify the language in paragraph (2) above for consistency with their State law and regulations governing rate and form review and approval.

c ← (1) The plan provides at least a bronze level of coverage, as determined pursuant to section 6E of this Act unless the plan is certified as a qualified catastrophic plan, meets the requirements of the Federal Act for catastrophic plans, and will only be offered to individuals eligible for catastrophic coverage;

d ← (1) The plan's cost-sharing requirements do not exceed the limits established under section 1302(c)(1) of the Federal Act, and if the plan is offered through the SHOP Exchange, the plan's deductible does not exceed the limits established under section 1302(c)(2) of the Federal Act;

e ← (1) The health carrier offering the plan:

1. (1) Is licensed and in good standing to offer health insurance coverage in this State;
2. (1) Offers at least one qualified health plan in the silver level and at least one plan in the gold level through each component of the Exchange in which the carrier participates, where "component" refers to the SHOP Exchange and the Exchange for individual coverage;
3. (1) Charges the same premium rate for each qualified health plan without regard to whether the plan is offered through the Exchange and without regard to whether the plan is offered directly from the carrier or through an insurance producer;

**Drafting Note:** States whose licensing laws do not use the term "producer" should substitute the appropriate terminology.

4. (1) Does not charge any cancellation fees or penalties in violation of section 5C of this Act; and
5. (1) Complies with the regulations developed by the Secretary under section 1311(d) of the Federal Act and such other requirements as the Exchange may establish;

f ← (1) The plan meets the requirements of certification as promulgated by regulation pursuant to section 9 of this Act and by the Secretary under section 1311(c) of the Federal Act, which include, but are not limited to, minimum standards in the areas of marketing practices, network adequacy, essential community providers in underserved areas, accreditation, quality improvement, uniform enrollment forms and descriptions of coverage and information on quality measures for health benefit plan performance; and

**Drafting Note:** As states consider certification standards, they should consider factors such as consumer choice and additional costs, in light of the value to enrollees provided by the proposed standards, when evaluating whether or not to include requirements above the minimum standards under section 1311(c)(1).

g ← (1) The Exchange determines that making the plan available through the Exchange is in the interest of qualified individuals and qualified employers in this State.

**Drafting Note:** States should consider whether the Exchange should delegate all or part of plan certification function to the commissioner pursuant to the commissioner's rate and form review responsibilities.

(2) (1) The Exchange shall not exclude a health benefit plan:

a ← (1) On the basis that the plan is a fee-for-service plan;

b ← (1) Through the imposition of premium price controls by the Exchange; or

c (1) On the basis that the health benefit plan provides treatments necessary to prevent patients' deaths in circumstances the Exchange determines are inappropriate or too costly.

(3) The Exchange shall require each health carrier seeking certification of a plan as a qualified health plan to:

a (1) Submit a justification for any premium increase before implementation of that increase. The carrier shall prominently post the information on its Internet website. The Exchange shall take this information, along with the information and the recommendations provided to the Exchange by the commissioner under section 2794(b) of the PHSA, into consideration when determining whether to allow the carrier to make plans available through the Exchange;

~~Drafting Note: States with additional rate filing requirements should review the language in paragraph (1) above to ensure that it does not conflict with other applicable State law.~~

b (1) 1. (1) Make available to the public, in the format described in subparagraph (b) of this paragraph, and submit to the Exchange, the Secretary, and the commissioner, accurate and timely disclosure of the following:

- a. (1) Claims payment policies and practices;
- b. (ii) Periodic financial disclosures;
- c. (iii) Data on enrollment;
- d. (iv) Data on disenrollment;
- e. (v) Data on the number of claims that are denied;
- f. (vi) Data on rating practices;
- g. (vii) Information on cost-sharing and payments with respect to any out-of-network coverage;
- h. (viii) Information on enrollee and participant rights under title I of the Federal Act; and
- i. (ix) Other information as determined appropriate by the Secretary; and

2. (1) The information required in subparagraph (a) of this paragraph shall be provided in plain language, as that term is defined in section 1311(e)(3)(B) of the Federal Act; and

c (1) Permit individuals to learn, in a timely manner upon the request of the individual, the amount of cost-sharing, including deductibles, copayments, and coinsurance, under the individual's plan or coverage that the individual would be responsible for paying with respect to the furnishing of a specific item or service by a participating provider. At a minimum, this information shall be made available to the individual through an Internet website and through other means for individuals without access to the Internet.

(4) The Exchange shall not exempt any health carrier seeking certification of a qualified health plan, regardless of the type or size of the carrier, from State licensure or solvency requirements and shall apply the criteria of this section in a manner that assures a level playing field between or among health carriers participating in the Exchange.

(5) a (1) The provisions of this Act that are applicable to qualified health plans shall also apply to the extent relevant to qualified dental plans except as modified in accordance with the provisions of paragraphs (2), (3) and (4) of this subsection or by regulations adopted by the Exchange;

b (1) The carrier shall be licensed to offer dental coverage, but need not be licensed to offer other health benefits;

**Drafting Note:** States that do not provide for a limited scope license should review the language above and either not include it or modify it for consistency with applicable State law and regulations.

C ← (9) The plan shall be limited to dental and oral health benefits, without substantially duplicating the benefits typically offered by health benefit plans without dental coverage and shall include, at a minimum, the essential pediatric dental benefits prescribed by the Secretary pursuant to section 1302(b)(1)(I) of the Federal Act, and such other dental benefits as the Exchange or the Secretary may specify by regulation; and

d ← (8) Carriers may jointly offer a comprehensive plan through the Exchange in which the dental benefits are provided by a carrier through a qualified dental plan and the other benefits are provided by a carrier through a qualified health plan, provided that the plans are priced separately and are also made available for purchase separately at the same price.

636.44  
**Section 8. Funding; Publication of Costs.**

(1) \* The Exchange may charge assessments or user fees to health carriers or otherwise may generate funding necessary to support its operations provided under this Act.

**Drafting Note:** As provided in section 1311(d)(5)(A) of the Federal Act, in establishing an Exchange under this Act, the State must ensure that the Exchange is self-sustaining by January 1, 2015.

(2) R The Exchange shall publish the average costs of licensing, regulatory fees and any other payments required by the Exchange, and the administrative costs of the Exchange, on an Internet website to educate consumers on such costs. This information shall include information on monies lost to waste, fraud and abuse.

636.46  
**Section 9. Regulations.**

The Exchange may promulgate regulations to implement the provisions of this Act. Regulations promulgated under this section shall not conflict with or prevent the application of regulations promulgated by the Secretary under the Federal Act.

**Drafting Note:** States that do not establish the Exchange in a governmental agency with rulemaking authority should substitute the agency responsible for the administration or oversight of the Exchange. As appropriate, the commissioner should be granted rulemaking authority to promulgate regulations to implement the provisions of this Act within the scope of the commissioner's authority, as provided under State law or regulations.

636.48  
**Section 10. Relation to Other Laws.**

Nothing in this Act, and no action taken by the Exchange pursuant to this Act, shall be construed to preempt or supersede the authority of the commissioner to regulate the business of insurance within this State. Except as expressly provided to the contrary in this Act, all health carriers offering qualified health plans in this State shall comply fully with all applicable health insurance laws of this State and regulations adopted and orders issued by the commissioner.

**Drafting Note:** States should be aware that section 1311(d)(3) of the Federal Act states that the Exchange "may make available a qualified health plan notwithstanding any provision of law that may require benefits other than the essential health benefits specified under section 1302(b)" of the Federal Act unless the State elects, pursuant to Section 1311(d)(3)(B) of the Federal Act, to require additional benefits and to make payments to or on behalf of enrollees to defray the cost of the additional benefits. Therefore, States should either: 1) enact legislation that will repeal or supersede any requirements for coverage offered in the State (inside or outside the Exchange) to provide benefits in addition to the federally designated essential benefits; 2) enact legislation that will repeal or supersede any requirements for qualified health plans offered through the Exchange to provide benefits in addition to the federally designated essential benefits; or 3) enact legislation establishing a mechanism for evaluating and defraying the costs of any additional benefits. For States choosing to require additional benefits and defray the costs, it is recommended that the costs of the additional benefits be measured on a "net cost" basis to the extent permitted by federal law or regulations or guidance, considering both the costs of the service and any associated savings, based on an evidence-based methodology to determine the net cost, if any, of each additional benefit, and the value of the benefit to the State's residents. States also should be aware of the potential conflicts and opportunities for adverse selection created by have inconsistent benefits inside an Exchange and outside an Exchange.

**Section 11. Effective Date**

This Act shall be effective [insert date].

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(END)

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

LRB-0760/P1dn  
PJK&TJD:cjs:ph

April 7, 2011

In this draft, we retained from 2009 SB 707 the creation of the Small Business Health Options Program Authority and its duties and powers, but substituted the NAIC model language for the remainder of 2009 SB 707.

The main problem with incorporating the model language into SB 707 is the terminology. In SB 707, we created a small business exchange and an entity to operate it (the authority). The NAIC model leaves the establishment of the exchange up to the state, but what is being established appears to be the entity that operates the exchange. The model seems to use the term "exchange" to refer to both the exchange and the entity that operates the exchange. In addition, the form of the exchange is not entirely clear. The model provides that the "exchange" must "make qualified health plans available to qualified individuals *and* qualified employers," but the "exchange" also must "provide for the establishment of a SHOP Exchange." A drafting note provides that a state "may elect to operate a unified exchange by merging the SHOP Exchange and the Exchange for individual coverage." So it is unclear whether the "exchange" that the model continually refers to is an exchange for individual coverage that may be merged with the SHOP Exchange after the "exchange" establishes the SHOP Exchange.

Since in SB 707 the entity that operates the exchange is the authority, in this draft we substituted the word "authority" for most of the references to "exchange." In some cases, it seems appropriate because the reference in the model seems to be to the entity that operates the exchange, but in other cases it does not seem appropriate because the reference in the model seems to be to the exchange, itself. Would you like some of the references to "authority" to be changed to "exchange" and, if so, would you like us to determine which ones should be changed, or would you like to specify which ones?

We renamed the authority since it apparently is not exclusively operating a SHOP exchange.

Let us know how you would like to proceed, and if you want to retain any more of SB 707 than what is now included in this draft.

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7-28                      Sec V, Linda, Tami, me

name may change  
2 separate entities

authority S) have ability to have separate risk pools  
for individuals + small employers

need to put some stuff from SB 707 into new bill

any individual not covered by a plan can get into X  
(if not eligible for MA)

small employer → 100 or fewer  
all must go thru X  
+ all individuals must also get in thru X

\* (no separate coverage outside X for group or ind)

\* add 635.37 to new draft

\* bring over p 27 1-24 + p 28 1-6

require auth to disclose all contracts (laws affecting  
state agencies)

\* remove p 28, line 3 to p 29, line 7  
(will have to come back in at end)

✓ specify that a navigator may be an agent if they qualify for navigator

✓ add p 26, l 16-19 to p 35 lines 18 to 20  
(replace language)

✓ SB 707 p 24 l 17-20 add this to new draft

(do, tho., that not offer = every tier)

✓ add hotline for insurers (4)

✓ add sub (5)

~~to be added to the bill~~

on bd WIS Collaborative for <sup>Health Care Quality</sup> ~~excellence~~ <sup>excellence</sup> or design  
WIS Health Plan Org " "  
a rep w/ exp = health care admin

(look for context of interest language)



STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

(reconciling needs to be done yet)  
2 2635 609?

\* rating

appeals, open records

\* conflict of interest

shoot for the end of august

to be incorporated from SB 707:

✓ p 24 insur can only offer thru exchange to  
ind + on drug

✓ pp 25+26 ins may pool  
(4) + (5)

✓ p 26 replace p 35 w/ 635.45(1)

✓ pp 27+28 add all of 27 + 28 to l 6

✓ navigator maybe  
agent on p 29 of 760