



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-0760/P  
TJD&PJK:cjs:ph  
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In: 8/4/11

Due  
8/12/11

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

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1 **AN ACT to amend** 1.12 (1) (b), 13.172 (1), 13.62 (2), 13.95 (intro.), 16.002 (2),  
2 16.004 (4), 16.004 (5), 16.004 (12) (a), 16.045 (1) (a), 16.15 (1) (ab), 16.41 (4),  
3 16.417 (1) (a), 16.52 (7), 16.528 (1) (a), 16.53 (2), 16.54 (9) (a) 1., 16.70 (2), 16.72  
4 (2) (e) (intro.), 16.72 (2) (f), 16.75 (1m), 16.75 (8) (a) 1., 16.75 (8) (a) 2., 16.75 (9),  
5 16.765 (1), 16.765 (2), 16.765 (4), 16.765 (5), 16.765 (6), 16.765 (7) (intro.),  
6 16.765 (7) (d), 16.765 (8), 16.85 (2), 16.865 (8), 25.50 (1) (d), 71.26 (1) (be), 77.54  
7 (9a) (a), 101.055 (2) (a), 101.177 (1) (d), 230.03 (3), 230.80 (4) and 230.90 (1) (c);  
8 **to repeal and recreate** 16.417 (1) (a); and **to create** 13.94 (1) (dj), 13.94 (1s)  
9 (c) 6., 40.02 (54) (n), 70.11 (41c) and chapter 636 of the statutes; **relating to:**

1 the health benefit plan authority, health benefit exchange operation, and  
2 granting rule-making authority.

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

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

3 **SECTION 1.** 1.12 (1) (b) of the statutes, as affected by 2011 Wisconsin Act 7, is  
4 amended to read:

5 1.12 (1) (b) "State agency" means an office, department, agency, institution of  
6 higher education, the legislature, a legislative service agency, the courts, a judicial  
7 branch agency, an association, society, or other body in state government that is  
8 created or authorized to be created by the constitution or by law, for which  
9 appropriations are made by law, excluding the Health Insurance Risk-Sharing Plan  
10 Authority, the Health Benefit Plan Authority, and the Wisconsin Economic  
11 Development Corporation.

*plain* ←

← *plain*

12 **SECTION 2.** 13.172 (1) of the statutes, as affected by 2011 Wisconsin Act 10, is  
13 amended to read:

14 13.172 (1) In this section, "agency" means an office, department, agency,  
15 institution of higher education, association, society, or other body in state  
16 government created or authorized to be created by the constitution or any law, that  
17 is entitled to expend moneys appropriated by law, including the legislature and the  
18 courts, and any authority created in subch. II of ch. 114 or, subch. III of ch. 149, or  
19 subch. III of ch. 636 or in ch. 231, 233, 234, 238, or 279.

1           **SECTION 3.** 13.62 (2) of the statutes, as affected by 2011 Wisconsin Act 10, is  
2 amended to read:

3           13.62 (2) “Agency” means any board, commission, department, office, society,  
4 institution of higher education, council, or committee in the state government, or any  
5 authority created in subch. II of ch. 114 ~~or~~, subch. III of ch. 149, or subch. III of ch.  
6 636 or in ch. 231, 232, 233, 234, 237, 238, or 279, except that the term does not include  
7 a council or committee of the legislature.

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

9           13.94 (1) (dj) At least once every 2 years, perform a financial audit and  
10 performance evaluation audit of any health benefit plan exchange under subch. II  
11 of ch. 636 and an audit of the Health Benefit Plan Authority’s policies and  
12 management practices and file copies of each audit report under this paragraph with  
13 the distributees specified in par. (b).

14           **SECTION 5.** 13.94 (1s) (c) 6. of the statutes is created to read:

15           13.94 (1s) (c) 6. The Health Benefit Plan Authority for the cost of the audit  
16 under sub. (1) (dj).

17           **SECTION 6.** 13.95 (intro.) of the statutes, as affected by 2011 Wisconsin Act 10,  
18 is amended to read:

19           **13.95 Legislative fiscal bureau.** (intro.) There is created a bureau to be  
20 known as the “Legislative Fiscal Bureau” headed by a director. The fiscal bureau  
21 shall be strictly nonpartisan and shall at all times observe the confidential nature  
22 of the research requests received by it; however, with the prior approval of the  
23 requester in each instance, the bureau may duplicate the results of its research for  
24 distribution. Subject to s. 230.35 (4) (a) and (f), the director or the director’s  
25 designated employees shall at all times, with or without notice, have access to all

1 state agencies, the University of Wisconsin Hospitals and Clinics Authority, the  
2 Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority,  
3 the Health Benefit Plan Authority, the Lower Fox River Remediation Authority, the  
4 Wisconsin Economic Development Corporation, and the Fox River Navigational  
5 System Authority, and to any books, records, or other documents maintained by such  
6 agencies or authorities and relating to their expenditures, revenues, operations, and  
7 structure.

8 **SECTION 7.** 16.002 (2) of the statutes, as affected by 2011 Wisconsin Act 10, is  
9 amended to read:

10 16.002 (2) "Departments" means constitutional offices, departments, and  
11 independent agencies and includes all societies, associations, and other agencies of  
12 state government for which appropriations are made by law, but not including  
13 authorities an authority created in subch. II of ch. 114 or subch. III of ch. 149 or  
14 subch. III of ch. 636 or in ch. 231, 232, 233, 234, 235, 237, 238, or 279.

15 **SECTION 8.** 16.004 (4) of the statutes, as affected by 2011 Wisconsin Act 10, is  
16 amended to read:

17 16.004 (4) FREEDOM OF ACCESS. The secretary and such employees of the  
18 department as the secretary designates may enter into the offices of state agencies  
19 and authorities created under subch. II of ch. 114 and subch. III of ch. 149 and subch.  
20 III of ch. 636 and under chs. 231, 233, 234, 237, 238, and 279, and may examine their  
21 books and accounts and any other matter that in the secretary's judgment should be  
22 examined and may interrogate the agency's employees publicly or privately relative  
23 thereto.

24 **SECTION 9.** 16.004 (5) of the statutes, as affected by 2011 Wisconsin Act 10, is  
25 amended to read:

1           16.004 (5) AGENCIES AND EMPLOYEES TO COOPERATE. All state agencies and  
2 authorities created under subch. II of ch. 114 and subch. III of ch. 149 and subch. III  
3 of ch. 636 and under chs. 231, 233, 234, 237, 238, and 279, and their officers and  
4 employees, shall cooperate with the secretary and shall comply with every request  
5 of the secretary relating to his or her functions.

6           **SECTION 10.** 16.004 (12) (a) of the statutes, as affected by 2011 Wisconsin Act  
7 10, is amended to read:

8           16.004 (12) (a) In this subsection, “state agency” means an association,  
9 authority, board, department, commission, independent agency, institution, office,  
10 society, or other body in state government created or authorized to be created by the  
11 constitution or any law, including the legislature, the office of the governor, and the  
12 courts, but excluding the University of Wisconsin Hospitals and Clinics Authority,  
13 the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan  
14 Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic  
15 Development Corporation, the Health Benefit Plan Authority, and the Fox River  
16 Navigational System Authority.

17           **SECTION 11.** 16.045 (1) (a) of the statutes, as affected by 2011 Wisconsin Act 10,  
18 is amended to read:

19           16.045 (1) (a) “Agency” means an office, department, independent agency,  
20 institution of higher education, association, society, or other body in state  
21 government created or authorized to be created by the constitution or any law, that  
22 is entitled to expend moneys appropriated by law, including the legislature and the  
23 courts, but not including an authority created in subch. II of ch. 114 ~~or~~, subch. III of  
24 ch. 149, or subch. III of ch. 636 or in ch. 231, 232, 233, 234, 235, 237, 238, or 279.

1           **SECTION 12.** 16.15 (1) (ab) of the statutes, as affected by 2011 Wisconsin Act 10,  
2 is amended to read:

3           16.15 (1) (ab) “Authority” has the meaning given under s. 16.70 (2), but  
4 excludes the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox  
5 River Remediation Authority, the Wisconsin Economic Development Corporation,  
6 the Health Benefit Plan Authority, and the Health Insurance Risk-Sharing Plan  
7 Authority.

8           **SECTION 13.** 16.41 (4) of the statutes, as affected by 2011 Wisconsin Act 10, is  
9 amended to read:

10           16.41 (4) In this section, “authority” means a body created under subch. II of  
11 ch. 114 ~~or~~, subch. III of ch. 149, or subch. III of ch. 636 or under ch. 231, 233, 234, 237,  
12 238, or 279.

13           **SECTION 14.** 16.417 (1) (a) of the statutes, as affected by 2011 Wisconsin Act 7,  
14 section 19, is amended to read:

15           16.417 (1) (a) “Agency” means an office, department, independent agency,  
16 institution of higher education, association, society, or other body in state  
17 government created or authorized to be created by the constitution or any law, that  
18 is entitled to expend moneys appropriated by law, including the legislature and the  
19 courts, but not including an authority or the body created under subch. III of ch. 149  
20 or subch. III of ch. 636 or under ch. 238.

21           **SECTION 15.** 16.417 (1) (a) of the statutes, as affected by 2011 Wisconsin Act 7,  
22 section 20, and 2011 Wisconsin Act <sup>s 32 and</sup> ~~...~~ (this act), is repealed and recreated to read:

23           16.417 (1) (a) “Agency” means an office, department, independent agency,  
24 institution of higher education, association, society, or other body in state  
25 government created or authorized to be created by the constitution or any law, that

1 is entitled to expend moneys appropriated by law, including the legislature and the  
2 courts, but not including an authority or the body created under subch. III of ch. 149  
3 or subch. III of ch. 636.

4 **SECTION 16.** 16.52 (7) of the statutes, as affected by 2011 Wisconsin Act 10, is  
5 amended to read:

6 16.52 (7) PETTY CASH ACCOUNT. With the approval of the secretary, each agency  
7 that is authorized to maintain a contingent fund under s. 20.920 may establish a  
8 petty cash account from its contingent fund. The procedure for operation and  
9 maintenance of petty cash accounts and the character of expenditures therefrom  
10 shall be prescribed by the secretary. In this subsection, "agency" means an office,  
11 department, independent agency, institution of higher education, association,  
12 society, or other body in state government created or authorized to be created by the  
13 constitution or any law, that is entitled to expend moneys appropriated by law,  
14 including the legislature and the courts, but not including an authority created in  
15 subch. II of ch. 114 ~~or~~, subch. III of ch. 149, or subch. III of ch. 636 or in ch. 231, 233,  
16 234, 237, 238, or 279.

17 **SECTION 17.** 16.528 (1) (a) of the statutes, as affected by 2011 Wisconsin Act 10,  
18 is amended to read:

19 16.528 (1) (a) "Agency" means an office, department, independent agency,  
20 institution of higher education, association, society, or other body in state  
21 government created or authorized to be created by the constitution or any law, that  
22 is entitled to expend moneys appropriated by law, including the legislature and the  
23 courts, but not including an authority created in subch. II of ch. 114 ~~or~~, subch. III of  
24 ch. 149, or subch. III of ch. 636 or in ch. 231, 233, 234, 237, 238, or 279.

1           **SECTION 18.** 16.53 (2) of the statutes, as affected by 2011 Wisconsin Act 10, is  
2 amended to read:

3           16.53 (2) IMPROPER INVOICES. If an agency receives an improperly completed  
4 invoice, the agency shall notify the sender of the invoice within 10 working days after  
5 it receives the invoice of the reason it is improperly completed. In this subsection,  
6 “agency” means an office, department, independent agency, institution of higher  
7 education, association, society, or other body in state government created or  
8 authorized to be created by the constitution or any law, that is entitled to expend  
9 moneys appropriated by law, including the legislature and the courts, but not  
10 including an authority created in subch. II of ch. 114 ~~or~~, subch. III of ch. 149, or subch.  
11 III of ch. 636 or in ch. 231, 233, 234, 237, 238, or 279.

12           **SECTION 19.** 16.54 (9) (a) 1. of the statutes, as affected by 2011 Wisconsin Act  
13 10, is amended to read:

14           16.54 (9) (a) 1. “Agency” means an office, department, independent agency,  
15 institution of higher education, association, society or other body in state  
16 government created or authorized to be created by the constitution or any law, which  
17 is entitled to expend moneys appropriated by law, including the legislature and the  
18 courts, but not including an authority created in subch. II of ch. 114 ~~or~~, subch. III of  
19 ch. 149, or subch. III of ch. 636 or in ch. 231, 233, 234, 237, 238, or 279.

20           **SECTION 20.** 16.70 (2) of the statutes, as affected by 2011 Wisconsin Act 10, is  
21 amended to read:

22           16.70 (2) “Authority” means a body created under subch. II of ch. 114 ~~or~~, subch.  
23 III of ch. 149, or subch. III of ch. 636 or under ch. 231, 232, 233, 234, 235, 237, or 279.

24           **SECTION 21.** 16.72 (2) (e) (intro.) of the statutes is amended to read:



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

12           **SECTION 22.** 16.72 (2) (f) of the statutes is amended to read:

13           16.72 (2) (f) In writing specifications under this subsection, the department,  
14 any other designated purchasing agent under s. 16.71 (1), and each authority other  
15 than the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox  
16 River Remediation Authority, the Health Benefit Plan Authority, and the Health  
17 Insurance Risk-Sharing Plan Authority shall incorporate requirements relating to  
18 the recyclability and ultimate disposition of products and, wherever possible, shall  
19 write the specifications so as to minimize the amount of solid waste generated by the  
20 state, consistent with the priorities established under s. 287.05 (12). All  
21 specifications under this subsection shall discourage the purchase of single-use,  
22 disposable products and require, whenever practical, the purchase of multiple-use,  
23 durable products.

24           **SECTION 23.** 16.75 (1m) of the statutes is amended to read:

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

15           **SECTION 24.** 16.75 (8) (a) 1. of the statutes is amended to read:

16           16.75 (8) (a) 1. The department, any other designated purchasing agent under  
17 s. 16.71 (1), any agency making purchases under s. 16.74, and each authority other  
18 than the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox  
19 River Remediation Authority, the Health Benefit Plan Authority, and the Health  
20 Insurance Risk-Sharing Plan Authority shall, to the extent practicable, make  
21 purchasing selections using specifications developed under s. 16.72 (2) (e) to  
22 maximize the purchase of materials utilizing recycled materials and recovered  
23 materials.

24           **SECTION 25.** 16.75 (8) (a) 2. of the statutes is amended to read:

1           16.75 (8) (a) 2. Each agency and authority other than the University of  
2           Wisconsin Hospitals and Clinics Authority, the Lower Fox River Remediation  
3           Authority, the Health Benefit Plan Authority, and the Health Insurance  
4           Risk-Sharing Plan Authority shall ensure that the average recycled or recovered  
5           content of all paper purchased by the agency or authority measured as a proportion,  
6           by weight, of the fiber content of paper products purchased in a fiscal year, is not less  
7           than 40% of all purchased paper.

8           **SECTION 26.** 16.75 (9) of the statutes is amended to read:

9           16.75 (9) The department, any other designated purchasing agent under s.  
10          16.71 (1), any agency making purchases under s. 16.74, and any authority other than  
11          the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox River  
12          Remediation Authority, the Health Benefit Plan Authority, and the Health  
13          Insurance Risk-Sharing Plan Authority shall, to the extent practicable, make  
14          purchasing selections using specifications prepared under s. 16.72 (2) (f).

15          **SECTION 27.** 16.765 (1) of the statutes, as affected by 2011 Wisconsin Act 10,  
16          is amended to read:

17          16.765 (1) Contracting agencies, the University of Wisconsin Hospitals and  
18          Clinics Authority, the Fox River Navigational System Authority, the Wisconsin  
19          Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the  
20          Health Benefit Plan Authority, the Lower Fox River Remediation Authority, the  
21          Wisconsin Economic Development Corporation, and the Bradley Center Sports and  
22          Entertainment Corporation shall include in all contracts executed by them a  
23          provision obligating the contractor not to discriminate against any employee or  
24          applicant for employment because of age, race, religion, color, handicap, sex, physical  
25          condition, developmental disability as defined in s. 51.01 (5), sexual orientation as

1 defined in s. 111.32 (13m), or national origin and, except with respect to sexual  
2 orientation, obligating the contractor to take affirmative action to ensure equal  
3 employment opportunities.

4 **SECTION 28.** 16.765 (2) of the statutes, as affected by 2011 Wisconsin Act 10,  
5 is amended to read:

6 16.765 (2) 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  
9 Health Benefit Plan Authority, the Lower Fox River Remediation Authority, the  
10 Wisconsin Economic Development Corporation, and the Bradley Center Sports and  
11 Entertainment Corporation shall include the following provision in every contract  
12 executed by them: "In connection with the performance of work under this contract,  
13 the contractor agrees not to discriminate against any employee or applicant for  
14 employment because of age, race, religion, color, handicap, sex, physical condition,  
15 developmental disability as defined in s. 51.01 (5), sexual orientation or national  
16 origin. This provision shall include, but not be limited to, the following: employment,  
17 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or  
18 termination; rates of pay or other forms of compensation; and selection for training,  
19 including apprenticeship. Except with respect to sexual orientation, the contractor  
20 further agrees to take affirmative action to ensure equal employment opportunities.  
21 The contractor agrees to post in conspicuous places, available for employees and  
22 applicants for employment, notices to be provided by the contracting officer setting  
23 forth the provisions of the nondiscrimination clause".

24 **SECTION 29.** 16.765 (4) of the statutes, as affected by 2011 Wisconsin Act 10,  
25 is amended to read:

1           16.765 (4) Contracting agencies, the University of Wisconsin Hospitals and  
2 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin  
3 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the  
4 Health Benefit Plan Authority, the Lower Fox River Remediation Authority, and the  
5 Bradley Center Sports and Entertainment Corporation shall take appropriate action  
6 to revise the standard government contract forms under this section.

7           **SECTION 30.** 16.765 (5) of the statutes, as affected by 2011 Wisconsin Act 10,  
8 is amended to read:

9           16.765 (5) The head of each contracting agency and the boards of directors of  
10 the University of Wisconsin Hospitals and Clinics Authority, the Fox River  
11 Navigational System Authority, the Wisconsin Aerospace Authority, the Health  
12 Insurance Risk-Sharing Plan Authority, the Health Benefit Plan Authority, the  
13 Lower Fox River Remediation Authority, the Wisconsin Economic Development  
14 Corporation, and the Bradley Center Sports and Entertainment Corporation shall  
15 be primarily responsible for obtaining compliance by any contractor with the  
16 nondiscrimination and affirmative action provisions prescribed by this section,  
17 according to procedures recommended by the department. The department shall  
18 make recommendations to the contracting agencies and the boards of directors of the  
19 University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational  
20 System Authority, the Wisconsin Aerospace Authority, the Health Insurance  
21 Risk-Sharing Plan Authority, the Health Benefit Plan Authority, the Lower Fox  
22 River Remediation Authority, the Wisconsin Economic Development Corporation,  
23 and the Bradley Center Sports and Entertainment Corporation for improving and  
24 making more effective the nondiscrimination and affirmative action provisions of

1 contracts. The department shall promulgate such rules as may be necessary for the  
2 performance of its functions under this section.

3 **SECTION 31.** 16.765 (6) of the statutes, as affected by 2011 Wisconsin Act 10,  
4 is amended to read:

5 16.765 (6) The department may receive complaints of alleged violations of the  
6 nondiscrimination provisions of such contracts. The department shall investigate  
7 and determine whether a violation of this section has occurred. The department may  
8 delegate this authority to the contracting agency, the University of Wisconsin  
9 Hospitals and Clinics Authority, the Fox River Navigational System Authority, the  
10 Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority,  
11 the Health Benefit Plan Authority, the Lower Fox River Remediation Authority, the  
12 Wisconsin Economic Development Corporation, or the Bradley Center Sports and  
13 Entertainment Corporation for processing in accordance with the department's  
14 procedures.

15 **SECTION 32.** 16.765 (7) (intro.) of the statutes, as affected by 2011 Wisconsin  
16 Act 10, is amended to read:

17 16.765 (7) (intro.) When a violation of this section has been determined by the  
18 department, the contracting agency, the University of Wisconsin Hospitals and  
19 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin  
20 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the  
21 Health Benefit Plan Authority, the Lower Fox River Remediation Authority, the  
22 Wisconsin Economic Development Corporation, or the Bradley Center Sports and  
23 Entertainment Corporation, the contracting agency, the University of Wisconsin  
24 Hospitals and Clinics Authority, the Fox River Navigational System Authority, the  
25 Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority,

1 the Health Benefit Plan Authority, the Lower Fox River Remediation Authority, the  
2 Wisconsin Economic Development Corporation, or the Bradley Center Sports and  
3 Entertainment Corporation shall:

4 **SECTION 33.** 16.765 (7) (d) of the statutes, as affected by 2011 Wisconsin Act 10,  
5 is amended to read:

6 16.765 (7) (d) Direct the violating party to take immediate steps to prevent  
7 further violations of this section and to report its corrective action to the contracting  
8 agency, the University of Wisconsin Hospitals and Clinics Authority, the Fox River  
9 Navigational System Authority, the Wisconsin Aerospace Authority, the Health  
10 Insurance Risk-Sharing Plan Authority, the Health Benefit Plan Authority, the  
11 Lower Fox River Remediation Authority, the Wisconsin Economic Development  
12 Corporation, or the Bradley Center Sports and Entertainment Corporation.

13 **SECTION 34.** 16.765 (8) of the statutes, as affected by 2011 Wisconsin Act 10,  
14 is amended to read:

15 16.765 (8) If further violations of this section are committed during the term  
16 of the contract, the contracting agency, the Fox River Navigational System Authority,  
17 the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan  
18 Authority, the Health Benefit Plan Authority, the Lower Fox River Remediation  
19 Authority, the Wisconsin Economic Development Corporation, or the Bradley Center  
20 Sports and Entertainment Corporation may permit the violating party to complete  
21 the contract, after complying with this section, but thereafter the contracting agency,  
22 the Fox River Navigational System Authority, the Wisconsin Aerospace Authority,  
23 the Health Insurance Risk-Sharing Plan Authority, the Health Benefit Plan  
24 Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic  
25 Development Corporation, or the Bradley Center Sports and Entertainment

1 Corporation shall request the department to place the name of the party on the  
2 ineligible list for state contracts, or the contracting agency, the Fox River  
3 Navigational System Authority, the Wisconsin Aerospace Authority, the Health  
4 Insurance Risk-Sharing Plan Authority, the Health Benefit Plan Authority, the  
5 Lower Fox River Remediation Authority, the Wisconsin Economic Development  
6 Corporation, or the Bradley Center Sports and Entertainment Corporation may  
7 terminate the contract without liability for the uncompleted portion or any materials  
8 or services purchased or paid for by the contracting party for use in completing the  
9 contract.

10 **SECTION 35.** 16.85 (2) of the statutes, as affected by 2011 Wisconsin Act 10, is  
11 amended to read:

12 16.85 (2) To furnish engineering, architectural, project management, and other  
13 building construction services whenever requisitions therefor are presented to the  
14 department by any agency. The department may deposit moneys received from the  
15 provision of these services in the account under s. 20.505 (1) (kc) or in the general  
16 fund as general purpose revenue — earned. In this subsection, “agency” means an  
17 office, department, independent agency, institution of higher education, association,  
18 society, or other body in state government created or authorized to be created by the  
19 constitution or any law, which is entitled to expend moneys appropriated by law,  
20 including the legislature and the courts, but not including an authority created in  
21 subch. II of ch. 114 or, subch. III of ch. 149, or subch. III of ch. 636 or in ch. 231, 233,  
22 234, 237, 238, or 279.

23 **SECTION 36.** 16.865 (8) of the statutes, as affected by 2011 Wisconsin Act 10,  
24 is amended to read:



1           16.865 (8) Annually in each fiscal year, allocate as a charge to each agency a  
2           proportionate share of the estimated costs attributable to programs administered by  
3           the agency to be paid from the appropriation under s. 20.505 (2) (k). The department  
4           may charge premiums to agencies to finance costs under this subsection and pay the  
5           costs from the appropriation on an actual basis. The department shall deposit all  
6           collections under this subsection in the appropriation account under s. 20.505 (2) (k).  
7           Costs assessed under this subsection may include judgments, investigative and  
8           adjustment fees, data processing and staff support costs, program administration  
9           costs, litigation costs, and the cost of insurance contracts under sub. (5). In this  
10          subsection, "agency" means an office, department, independent agency, institution  
11          of higher education, association, society, or other body in state government created  
12          or authorized to be created by the constitution or any law, that is entitled to expend  
13          moneys appropriated by law, including the legislature and the courts, but not  
14          including an authority created in subch. II of ch. 114 ~~or~~, subch. III of ch. 149, or subch.  
15          III of ch. 636 or in ch. 231, 232, 233, 234, 235, 237, 238, or 279.

16           **SECTION 37.** 25.50 (1) (d) of the statutes is amended to read:

17           25.50 (1) (d) "Local government" means any county, town, village, city, power  
18          district, sewerage district, drainage district, town sanitary district, public inland  
19          lake protection and rehabilitation district, local professional baseball park district  
20          created under subch. III of ch. 229, long-term care district under s. 46.2895, local  
21          professional football stadium district created under subch. IV of ch. 229, local  
22          cultural arts district created under subch. V of ch. 229, public library system, school  
23          district or technical college district in this state, any commission, committee, board  
24          or officer of any governmental subdivision of this state, any court of this state, other

1 than the court of appeals or the supreme court, or any authority created under s.  
2 114.61, 149.41, 231.02, 233.02 ~~or~~, 234.02, or 636.70.

3 **SECTION 38.** 40.02 (54) (n) of the statutes is created to read:

4 40.02 (54) (n) The Health Benefit Plan Authority.

5 **SECTION 39.** 70.11 (41c) of the statutes is created to read:

6 70.11 (41c) HEALTH BENEFIT PLAN AUTHORITY. All property owned by the Health  
7 Benefit Plan Authority, provided that the use of the property is primarily related to  
8 the purposes of the authority.

9 **SECTION 40.** 71.26 (1) (be) of the statutes, as affected by 2011 Wisconsin Act 10,  
10 is amended to read:

11 71.26 (1) (be) *Certain authorities.* Income of the University of Wisconsin  
12 Hospitals and Clinics Authority, of the Health Insurance Risk-Sharing Plan  
13 Authority, of the Health Benefit Plan Authority, of the Fox River Navigational  
14 System Authority, of the Wisconsin Economic Development Corporation, and of the  
15 Wisconsin Aerospace Authority.

16 **SECTION 41.** 77.54 (9a) (a) of the statutes, as affected by 2011 Wisconsin Act 10,  
17 is amended to read:

18 77.54 (9a) (a) This state or any agency thereof, the University of Wisconsin  
19 Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health  
20 Insurance Risk-Sharing Plan Authority, the Health Benefit Plan Authority, the  
21 Wisconsin Economic Development Corporation, and the Fox River Navigational  
22 System Authority.

23 **SECTION 42.** 101.055 (2) (a) of the statutes is amended to read:

24 101.055 (2) (a) "Agency" means an office, department, independent agency,  
25 authority, institution, association, society, or other body in state government created

1 or authorized to be created by the constitution or any law, and includes the  
2 legislature and the courts, but excludes the Health Insurance Risk-Sharing Plan  
3 Authority and the Health Benefit Plan Authority.

4 **SECTION 43.** 101.177 (1) (d) of the statutes, as affected by 2011 Wisconsin Act  
5 10, is amended to read:

6 101.177 (1) (d) "State agency" means any office, department, agency,  
7 institution of higher education, association, society, or other body in state  
8 government created or authorized to be created by the constitution or any law, that  
9 is entitled to expend moneys appropriated by law, including the legislature and the  
10 courts, the Wisconsin Housing and Economic Development Authority, the Bradley  
11 Center Sports and Entertainment Corporation, the University of Wisconsin  
12 Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Wisconsin  
13 Economic Development Corporation, and the Wisconsin Health and Educational  
14 Facilities Authority, but excluding the Health Insurance Risk-Sharing Plan  
15 Authority, the Health Benefit Plan Authority, and the Lower Fox River Remediation  
16 Authority.

17 **SECTION 44.** 230.03 (3) of the statutes, as affected by 2011 Wisconsin Act <sup>s</sup> 10, <sup>and</sup>  
18 is amended to read: <sup>32</sup>

19 230.03 (3) "Agency" means any board, commission, committee, council, or  
20 department in state government or a unit thereof created by the constitution or  
21 statutes if such board, commission, committee, council, department, unit, or the  
22 head thereof, is authorized to appoint subordinate staff by the constitution or  
23 <sup>plain</sup> statute, except <sup>→ the Board of Regents of the University of Wisconsin System,</sup> a legislative or judicial board, commission, committee, council,  
24 department, or unit thereof or an authority created under subch. II of ch. 114 or,  
25 subch. III of ch. 149, or subch. III of ch. 636 or under ch. 231, 232, 233, 234, 235, 237,

1 238, or 279. "Agency" does not mean any local unit of government or body within one  
2 or more local units of government that is created by law or by action of one or more  
3 local units of government.

4 **SECTION 45.** 230.80 (4) of the statutes is amended to read:

5 230.80 (4) "Governmental unit" means any association, authority, board,  
6 commission, department, independent agency, institution, office, society, or other  
7 body in state government created or authorized to be created by the constitution or  
8 any law, including the legislature, the office of the governor, and the courts, but  
9 excluding the Health Insurance Risk-Sharing Plan Authority and the Health  
10 Benefit Plan Authority. "Governmental unit" does not mean any political  
11 subdivision of the state or body within one or more political subdivisions that is  
12 created by law or by action of one or more political subdivisions.

13 **SECTION 46.** 230.90 (1) (c) of the statutes is amended to read:

14 230.90 (1) (c) "Governmental unit" means any association, authority, board,  
15 commission, department, independent agency, institution, office, society or other  
16 body in state government created or authorized to be created by the constitution or  
17 any law, including the legislature, the office of the governor and the courts.  
18 "Governmental unit" does not mean the University of Wisconsin Hospitals and  
19 Clinics Authority, the Health Insurance Risk-Sharing Plan Authority, the Health  
20 Benefit Plan Authority, or any political subdivision of the state or body within one  
21 or more political subdivisions which is created by law or by action of one or more  
22 political subdivisions.

23 **SECTION 47.** Chapter 636 of the statutes is created to read:

24 **CHAPTER 636**

25 **HEALTH BENEFIT PLAN EXCHANGE**

## 1 SUBCHAPTER I

## 2 GENERAL PROVISIONS

3 **636.01 Definitions.** In this chapter:

4 (1) "Authority" means the Health Benefit Plan Authority.

5 (2) "Educated health care consumer" means an individual who is  
6 knowledgeable about the health care system and who has background or experience  
7 in making informed decisions regarding health, medical, and scientific matters.8 (3) "Federal act" means the federal Patient Protection and Affordable Care Act  
9 (P.L. 111-148), as amended by the federal Health Care and Education Reconciliation  
10 Act of 2010 (P.L. 111-152), and any amendments to, or regulations or guidance issued  
11 under, those acts.12 (4) (a) Except as provided in pars. (b) to (e), "health benefit plan" means a policy,  
13 contract, certificate, or agreement offered or issued by a health carrier to provide,  
14 deliver, arrange for, pay for, or reimburse any of the costs of health care services.

15 (b) "Health benefit plan" does not include any of the following:

16 1. Coverage only for accident, or disability income insurance, or any  
17 combination of those.

18 2. Coverage issued as a supplement to liability insurance.

19 3. Liability insurance, including general liability insurance and automobile  
20 liability insurance.

21 4. Worker's compensation or similar insurance.

22 5. Automobile medical payment insurance.

23 6. Credit-only insurance.

24 7. Coverage for on-site medical clinics.

1           8. Other similar insurance coverage, specified in federal regulations issued  
2 under P.L. 104-191, under which benefits for health care services are secondary or  
3 incidental to other insurance benefits.

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

7           1. Limited scope dental or vision benefits.

8           2. Benefits for long-term care, nursing home care, home health care,  
9 community-based care, or any combination of those.

10          3. Other similar, limited benefits specified in federal regulations issued under  
11 P.L. 104-191.

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

19          1. Coverage only for a specified disease or illness.

20          2. Hospital indemnity or other fixed indemnity insurance.

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

23          1. Medicare supplemental health insurance as defined under section 1882 (g)  
24 (1) of the federal Social Security Act.

1           2. Coverage supplemental to the coverage provided under 10 USC ch. 55  
2 (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

3           3. Similar supplemental coverage provided to coverage under a group health  
4 plan.

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

12           **(5m)** “Minimum essential coverage” has the meaning given in 26 USC 5000A  
13 (f) (1).

14           **(6)** “Qualified dental plan” means a limited scope dental plan that has been  
15 certified in accordance with s. 636.42 (5).

16           **(7)** “Qualified employer” means a small employer that elects to make its  
17 full-time employees eligible for one or more qualified health plans offered through  
18 the SHOP Exchange and, at the option of the employer, some or all of its part-time  
19 employees, provided that the employer satisfies any of the following:

20           (a) The employer has its principal place of business in this state and elects to  
21 provide coverage through the SHOP Exchange to all of its eligible employees,  
22 wherever employed.

23           (b) The employer elects to provide coverage through the SHOP Exchange to all  
24 of its eligible employees who are principally employed in this state.

1 (8) "Qualified health plan" means a health benefit plan that has in effect a  
2 certification that the plan meets the criteria for certification described in section  
3 1311 (c) of the federal act and s. 636.42.

4 (9) "Qualified individual" means an individual, including a minor, who satisfies  
5 all of the following:

6 (a) The individual is seeking to enroll in a qualified health plan offered to  
7 individuals through the ~~authority~~ → exchange under subch. II

8 (b) The individual resides in this state.

9 (c) At the time of enrollment, the individual is not incarcerated, other than  
10 incarceration pending the disposition of charges.

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

14 (10) "Secretary" means the secretary of the federal department of health and  
15 human services.

16 (11) "SHOP Exchange" means a small business health options program  
17 established under s. 636.30. → (9) (1) (9)

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

\*\*\*\*NOTE: For plan years beginning before January 1, 2016, "small employer" may be an employer with not more than 50 employees. Would you like this to be the case in this draft?

20 (b) For purposes of this subsection, all of the following apply:

21 1. All persons treated as a single employer under section 414 (b), (c), (m), or (o)  
22 of the Internal Revenue Code shall be treated as a single employer.





1 with respect to the confidentiality of the information to be shared and comply with  
2 all state and federal laws and rules and regulations.

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

5 (4) (a) The authority may not make available any health benefit plan that is  
6 not a qualified health plan.

7 (b) The authority shall allow a health carrier to offer a plan that provides  
8 limited scope dental benefits meeting the requirements of section 9832 (c) (2) (A) of  
9 the Internal Revenue Code through the authority, either separately or in conjunction  
10 with a qualified health plan, if the plan provides pediatric dental benefits meeting  
11 the requirements of section 1302 (b) (1) (J) of the federal act.

12 (5) Neither the authority nor the carrier offering health benefit plans through  
13 the authority may charge an individual a fee or penalty for termination of coverage  
14 if the individual enrolls in another type of minimum essential coverage because the  
15 individual has become newly eligible for that coverage or because the individual's  
16 employer-sponsored coverage has become affordable under the standards of section  
17 36B (c) (2) (C) of the Internal Revenue Code.

18 **636.30 Exchange duties** In addition to all other duties imposed under this

19 chapter, the authority shall do all of the following: relating to the exchange

20 (a) (1) Implement procedures for the certification, recertification, and  
21 decertification, consistent with guidelines developed by the secretary under section  
22 1311 (c) of the federal act and s. 636.42, of health benefit plans as qualified health  
23 plans.

24 (b) (2) Provide for the operation of a toll-free telephone hotline to respond to  
25 requests for assistance.

insert 25-21

more

and powers

(1)

1 (c) (3) Provide for enrollment periods, as provided under section 1311 (c) (6) of the  
2 federal act.

3 (d) (4) Maintain an Internet Web site through which enrollees and prospective  
4 enrollees of qualified health plans may obtain standardized comparative  
5 information on such plans.

6 (e) (5) Assign a rating to each qualified health plan offered through the ~~authority~~ <sup>exchange</sup>  
7 in accordance with the criteria developed by the secretary under section 1311 (c) (3)  
8 of the federal act, and determine each qualified health plan's level of coverage in  
9 accordance with regulations issued by the secretary under section 1302 (d) (2) (A) of  
10 the federal act.

11 (f) (6) Use a standardized format for presenting health benefit options in the  
12 ~~authority~~ <sup>exchange</sup>, including the use of the uniform outline of coverage established under  
13 section 2715 of the federal Public Health Service Act <sup>(42 USC 300gg-15)</sup>

14 (g) (7) In accordance with section 1413 of the federal act, inform individuals of  
15 eligibility requirements for Medical Assistance under subch. IV of ch. 49 or any other  
16 applicable state or local public program and if, through screening of the application  
17 by the authority, the authority determines that any individual is eligible for any such  
18 program, enroll that individual in that program.

19 (p) (8) Establish and make available by electronic means a calculator to determine  
20 the actual cost of coverage after application of any premium tax credit under section  
21 36B of the Internal Revenue Code and any cost-sharing reduction under section  
22 1402 of the federal act.

23 (q) (9) Establish a SHOP Exchange through which qualified employers may access  
24 health care coverage for their employees and which shall enable any qualified  
25 employer to specify a level of coverage so that any of its employees may enroll in any

Insert 27-13

Handwritten annotations: 'exchange' with arrows pointing to 'authority' in lines 12 and 13; '(42 USC 300gg-15)' with an arrow pointing to 'section 2715' in line 13.

1 qualified health plan offered through the SHOP Exchange at the specified level of  
2 coverage.

3 **(10)** Subject to section 1411 of the federal act, grant a certification attesting  
4 that, for purposes of the individual responsibility penalty under section 5000A of the  
5 Internal Revenue Code, an individual is exempt from the individual responsibility  
6 requirement or from the penalty imposed by that section for any of the following  
7 reasons:

8 (a) There is no affordable qualified health plan available through the authority,  
9 or the individual's employer, covering the individual.

10 (b) The individual meets the requirements for any other such exemption from  
11 the individual responsibility requirement or penalty.

12 **(11)** Transfer to the federal secretary of the treasury all of the following:

13 (a) A list of the individuals who are issued a certification under sub. (10),  
14 including the name and taxpayer identification number of each individual.

15 (b) The name and taxpayer identification number of each individual who was  
16 an employee of an employer but who was determined to be eligible for the premium  
17 tax credit under section 36B of the Internal Revenue Code for any of the following  
18 reasons:

19 1. The employer did not provide minimum essential coverage.

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

24 (c) The name and taxpayer identification number of all of the following:

9

1 1. Each individual who notifies the authority under section 1411 (b) (4) of the  
2 federal act that he or she has changed employers.

3 2. Each individual who ceases coverage under a qualified health plan during  
4 a plan year and the effective date of that cessation.

5 (12) Provide to each employer the name of each employee of the employer  
6 described in sub. (11) (b) who ceases coverage under a qualified health plan during  
7 a plan year and the effective date of the cessation.

Insert 29-10

8 (13) Perform duties required of the authority by the secretary or the <sup>federal</sup> secretary  
9 of the treasury related to determining eligibility for premium tax credits, reduced  
10 cost-sharing, or individual responsibility requirement exemptions.

11 (14) Select entities <sup>Insert 29-11</sup> qualified to serve as navigators in accordance with section  
12 1311 (i) of the federal act and standards developed by the secretary, and award grants  
13 to enable navigators to do all of the following:

14 1. (a) Conduct public education activities to raise awareness of the availability of  
15 qualified health plans.

16 2. (b) Distribute fair and impartial information concerning enrollment in  
17 qualified health plans and concerning the availability of premium tax credits under  
18 section 36B of the Internal Revenue Code and cost-sharing reductions under section  
19 1402 of the federal act.

20 3. (c) Facilitate enrollment in qualified health plans.

21 4. (d) Provide referrals to any applicable office of health insurance consumer  
22 assistance or health insurance ombudsman established under section 2793 of the  
23 federal Public Health Service Act or to any other appropriate state agency or  
24 agencies, for any enrollee with a grievance, complaint, or question regarding their  
25 health benefit plan, coverage, or determination under that plan or coverage.

(42 USC 300gg-93)

- 1 5. (e) Provide information in a manner that is culturally and linguistically
- 2 appropriate to the needs of the population being served by the authority.
- 3 (15) Review the rate of premium growth within the authority and outside the
- 4 authority and consider the information in developing recommendations on whether
- 5 to continue limiting qualified employer status to small employers.
- 6 (u) (16) Credit the amount of any free choice voucher to the monthly premium of
- 7 the plan in which a qualified employee is enrolled, in accordance with section 10108
- 8 of the federal act, and collect the amount credited from the offering employer.
- 9 (v) (17) Consult with stakeholders relevant to carrying out the activities required
- 10 under this chapter, including any of the following:
- 11 1. (a) Educated health care consumers who are enrollees in qualified health
- 12 plans.
- 13 2. (b) Individuals and entities with experience in facilitating enrollment in
- 14 qualified health plans.
- 15 3. (c) Representatives of small businesses and self-employed individuals.
- 16 4. (d) The department of health services.
- 17 5. (e) Advocates for enrolling hard-to-reach populations.
- 18 (w) (18) Meet all of the following financial integrity requirements:
- 19 1. (a) Keep an accurate accounting of all activities, receipts, and expenditures and
- 20 annually submit to the secretary, the governor, the commissioner, and the legislature
- 21 a report concerning such accountings.
- 22 2. (b) Fully cooperate with any investigation conducted by the secretary under the
- 23 secretary's authority under the federal act and allow the secretary, in coordination
- 24 with the inspector general of the federal department of health and human services,
- 25 to do all of the following:

exchange

- 1 a. (1) Investigate the affairs of the authority.
- 2 b. (2) Examine the properties and records of the authority.
- 3 c. (3) Require periodic reports in relation to the activities undertaken by the
- 4 authority.
- 5 3. (c) In carrying out its activities under this chapter, not use any funds intended
- 6 for the administrative and operational expenses of the authority for staff retreats,
- 7 promotional giveaways, excessive executive compensation, or promotion of federal
- 8 or state legislative and regulatory modifications.

Insert 31-8

**636.42 Health benefit plan certification.** (1) The authority may certify a health benefit plan as a qualified health plan if <sup>all</sup> any of the following are true:

(a) 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 sub. (5), if all of the following are satisfied:

1. The authority has determined that at least one qualified dental plan is available to supplement the plan's coverage.

2. The carrier makes prominent disclosure at the time it offers the plan, in a form approved by the authority, 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 ~~authority~~ <sup>exchange</sup>.

(b) The premium rates and contract language have been filed with and not disapproved by the commissioner.

(c) The plan provides at least a bronze level of coverage, as determined under s. 636.30 (5) <sup>(1)(e)</sup> unless the plan is certified as a qualified catastrophic plan, meets the

1 requirements of the federal act for catastrophic plans, and will only be offered to  
2 individuals eligible for catastrophic coverage.

3 (d) The plan's cost-sharing requirements do not exceed the limits established  
4 under section 1302 (c) (1) of the federal act and, if the plan is offered through the  
5 SHOP Exchange, the plan's deductible does not exceed the limits established under  
6 section 1302 (c) (2) of the federal act.

7 (e) The health carrier offering the plan satisfies all of the following:

8 1. Is licensed and in good standing to offer health insurance coverage in this  
9 state.

10 2. Offers at least one qualified health plan in the silver level and at least one  
11 plan in the gold level through each component of the ~~Exchange~~ in which the carrier  
12 participates. In this subdivision, "component" refers to the SHOP Exchange and the  
13 ~~Exchange~~ for individual coverage.

\*\*\*NOTE: This is a good example of the terminology problem with the NAIC model.  
Since it wouldn't make sense to change any of the "exchange" references to "authority,"  
I left them all as is.

14 3. Charges the same premium rate for each qualified health plan without  
15 regard to whether the plan is offered through the ~~authority~~ <sup>exchange</sup> and without regard to  
16 whether the plan is offered directly from the carrier or through an insurance  
17 intermediary.

18 4. Does not charge any cancellation fees or penalties in violation of s. 636.25  
19 ~~(b)~~. <sup>3</sup>

20 5. Complies with the regulations developed by the secretary under section 1311  
21 (d) of the federal act and such other requirements as the authority may establish.

22 (f) The plan meets the requirements of certification as required by any rules  
23 promulgated under s. 636.46 <sup>(1)</sup> and by the secretary under section 1311 (c) of the



1 federal act, including minimum standards in the areas of marketing practices,  
2 network adequacy, essential community providers in underserved areas,  
3 accreditation, quality improvement, uniform enrollment forms, and descriptions of  
4 coverage and information on quality measures for health benefit plan performance.

5 (g) The authority determines that making the plan available through the  
6 authority is in the interest of qualified individuals and qualified employers in this  
7 state. *exchange*

8 (2) The authority shall not exclude a health benefit plan for any of the following  
9 reasons or in any of the following ways:

- 10 (a) On the basis that the plan is a fee-for-service plan.
- 11 (b) Through the imposition of premium price controls by the authority.
- 12 (c) On the basis that the health benefit plan provides treatments necessary to  
13 prevent patients' deaths in circumstances the authority determines are  
14 inappropriate or too costly.

15 (3) The authority shall require each health carrier seeking certification of a  
16 plan as a qualified health plan to do all of the following:

17 (a) Submit a justification for any premium increase before implementation of  
18 that increase. The carrier shall prominently post the information on its Internet Web  
19 site. The authority shall take this information, along with the information and the  
20 recommendations provided to the authority by the commissioner under section 2794

21 (b) of the federal Public Health Services Act into consideration when determining  
22 whether to allow the carrier to make plans available through the authority.

23 (b) 1. Make available to the public, in the format described in subd. 2., and  
24 submit to the authority, the secretary, and the commissioner, accurate and timely  
25 disclosure of all of the following:

*(42 USC 300gg-94(b))*

- 1 a. Claims payment policies and practices.
- 2 b. Periodic financial disclosures.
- 3 c. Data on enrollment.
- 4 d. Data on disenrollment.
- 5 e. Data on the number of claims that are denied.
- 6 f. Data on rating practices.
- 7 g. Information on cost-sharing and payments with respect to any
- 8 out-of-network coverage.
- 9 h. Information on enrollee and participant rights under title I of the federal act.
- 10 i. Other information as determined appropriate by the secretary.

11 2. The information required in subd. 1. shall be provided in plain language, as  
12 that term is defined in section 1311 (e) (3) (B) of the federal act.

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

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

1 (5) (a) The provisions of this chapter that are applicable to qualified health  
2 plans shall also apply to the extent relevant to qualified dental plans except as  
3 modified in accordance with pars. (b), (c), and (d) or by regulations adopted by the  
4 authority.

5 (b) The carrier shall be licensed to offer dental coverage, but need not be  
6 licensed to offer other health benefits.

7 (c) The plan shall be limited to dental and oral health benefits, without  
8 substantially duplicating the benefits typically offered by health benefit plans  
9 without dental coverage and shall include, at a minimum, the essential pediatric  
10 dental benefits prescribed by the secretary under section 1302 (b) (1) (J) of the federal  
11 act, and such other dental benefits as the authority or the secretary may specify by  
12 regulation.

13 (d) Carriers may jointly offer a comprehensive plan through the ~~authority~~ <sup>exchange</sup> in  
14 which the dental benefits are provided by a carrier through a qualified dental plan  
15 and the other benefits are provided by a carrier through a qualified health plan,  
16 provided that the plans are priced separately and are also made available for  
17 purchase separately at the same price.

Insert 35-17

18 **636.44 Funding; publication of costs. (1)** The authority may charge  
19 assessments or user fees to health carriers or otherwise may generate funding  
20 necessary to support its operations provided under this chapter

Insert 35-20

21 (2) The authority shall publish the average costs of licensing, regulatory fees,  
22 and any other payments required by the authority, and the administrative costs of  
23 the authority, on an Internet Web site to educate consumers on such costs. This  
24 information shall include information on moneys lost to waste, fraud, and abuse.

*Rules; application form* (B) (1)

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**636.46 Regulations.** The commissioner may promulgate rules to implement the provisions of this chapter. Rules promulgated under this section shall not conflict with or prevent the application of regulations promulgated by the secretary under the federal act.

**636.48 Relation to other laws.** Nothing in this chapter, and no action taken by the authority under this chapter, 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 chapter, all health carriers offering qualified health plans in this state shall comply fully with all applicable health insurance laws of this state and rules promulgated and orders issued by the commissioner.

SUBCHAPTER III

HEALTH BENEFIT PLAN AUTHORITY

**636.70 Creation and organization of authority.** (1) There is created a public body corporate and politic to be known as the "Health Benefit Plan Authority." The board of directors of the authority shall consist of the commissioner, or his or her designee; the secretary of employee trust funds, or his or her designee; the person who is appointed by the secretary of health services to be the director of the Medical Assistance program, or his or her designee; the executive director of the Health Insurance Risk-Sharing Plan Authority, or his or her designee; and all of the following members, who shall be nominated by the governor, and with the advice and consent of the senate appointed for 3-year terms, and none of whom shall be an employee of an insurer that is authorized to do business in the state:

- (a) A member in good standing of the American Academy of Actuaries.
- (b) A health economist.

*Insert 36-20-TD*

*Handwritten circle around the sentence: "and none of whom shall be an employee of an insurer that is authorized to do business in the state:"*

*except as provided in sub.(2)*

- 1 (c) An employee benefits specialist.
- 2 (d) A representative of small employers.
- 3 (e) A representative of an organization that represents consumer interests.
- 4 (f) A representative of organized labor.

5 <sup>(B)</sup> (3) <sup>(2)</sup> A vacancy on the board shall be filled in the same manner as the original  
6 appointment to the board for the remainder of the unexpired term, if any.

7 <sup>(B)</sup> (4) <sup>(3)</sup> A member of the board shall receive no compensation for services under this  
8 chapter but shall be reimbursed for actual and necessary expenses, including travel  
9 <sup>(5)</sup> expenses, incurred in the discharge of the member's duties under this chapter.

10 Seven <sup>(4)</sup> The commissioner or the commissioner's designee shall be the chairperson  
11 of the board. <sup>(Six)</sup> members of the board constitute a quorum for the purpose of  
12 conducting the business and exercising the powers of the authority, notwithstanding  
13 the existence of any vacancy. The board may take action upon a vote of a majority  
14 of the members present, unless the bylaws of the authority require a larger number.

\*\*\*\*NOTE: I changed the number of members constituting a quorum to more closely resemble the quorum of other authorities.

15 <sup>(6)</sup> <sup>(5)</sup> The chairperson shall appoint an executive director who shall not be a  
16 member of the board and who shall serve at the pleasure of the board. The executive  
17 director shall receive compensation commensurate with the duties of the office, as  
18 determined by the board. The executive director shall serve as secretary of the  
19 authority and shall keep a record of the proceedings of the authority and shall be  
20 custodian of all books, documents, and papers filed with the authority, the minute  
21 book or journal of the authority, and its official seal. The executive director or other  
22 person may cause copies to be made of all minutes and other records and documents  
23 of the authority and may give certificates under the official seal of the authority to

1 the effect that such copies are true copies, and all persons dealing with the authority  
2 may rely upon such certificates. The executive director shall have all of the following  
3 duties:

4 (a) Supervising the administrative affairs and the general management and  
5 operation of the authority.

6 (b) Planning, directing, coordinating, and executing administrative functions  
7 in conformity with the policies and directives of the board.

8 (c) Employing professional and clerical staff, as necessary.

9 (d) Reporting to the board on all operations under his or her control and  
10 supervision.

11 (e) Preparing an annual budget and managing the administrative expenses of  
12 the authority.

13 (f) Undertaking any activities necessary to implement the powers and duties  
14 set forth in this chapter.

15 **636.72 Authority duties.** In addition to all other duties imposed under this  
16 chapter, the authority shall do all of the following:

17 (1) Establish its annual budget and monitor its fiscal management.

18 (2) No later than two years after an exchange under subch. II begins operation,  
19 and annually thereafter, submit a report to the legislature under s. 13.172 (2) and  
20 to the governor on the operation of any exchange under subch. II, including a review  
21 of all of the following:

22 (a) Progress toward the goals of the exchange.

23 (b) The operations and administration of the exchange.

24 (c) The types of health insurance plans available to eligible individuals and  
25 groups and the percentage of the total exchange enrollees served by each plan.

(5) Comply with the requirements of s. 16.3 as if the authority is a state agency.

1 (d) Surveys and reports on the insurers' experiences with different plans,  
2 including aggregated data on enrollees, claims, statistics, complaint data, and  
3 enrollee satisfaction data.

4 (e) Significant observations regarding utilization and adoption of the  
5 exchange.

6 (3) Annually submit to the governor and the legislative audit bureau a  
7 statement of its activities and financial condition.

8 (4) Approve the use of any trademarks, seals, or logos by participating insurers  
9 and small employers.

10 **636.74 Authority powers.** The authority has all of the powers necessary or  
11 convenient to carry out its duties under this chapter, except that it may not acquire  
12 or hold title to real estate or issue bonds. In addition, the authority may do any of  
13 the following:

14 (1) Adopt bylaws and policies and procedures for the regulation of its affairs  
15 and the conduct of its business.

16 (2) Have a seal and alter the seal at pleasure; have perpetual existence; and  
17 maintain an office.

18 (3) Hire employees, define their duties, and fix their rate of compensation.

19 (4) Delegate by resolution to one or more of its members any powers and duties  
20 that it considers proper.

21 (5) Incur debt.

22 (6) Appoint any technical or professional advisory committee that the  
23 authority finds necessary to assist the authority in exercising its duties and powers.

24 If the authority appoints a committee, the authority shall define the duties of the  
25 committee and provide reimbursement for the expenses of the committee.

1           (7) Accept gifts, grants, loans, or other contributions from private or public  
2 sources.

3           (8) Procure liability insurance.

4           (9) Sue and be sued in its own name and plead and be impleaded.

5           (10) Execute contracts and other instruments, including contracts for  
6 professional or technical services required for the authority or the operation of an  
7 exchange under subch. II.

8           **636.76 Contracting for professional services.** (1) Whenever contracting  
9 for professional services, the authority shall solicit competitive sealed bids or  
10 competitive sealed proposals, whichever is appropriate. Each request for  
11 competitive sealed proposals shall state the relative importance of price and other  
12 evaluation factors.

13           (2) (a) When the estimated cost exceeds \$25,000, the authority may invite  
14 competitive sealed bids or proposals by publishing a class 2 notice under ch. 985 or  
15 by posting notice on the Internet at a site determined or approved by the authority.  
16 The notice shall describe the contractual services to be purchased, the intent to make  
17 the procurement by solicitation of bids or proposals, any requirement for surety, and  
18 the date the bids or proposals will be opened, which shall be at least 7 days after the  
19 date of the last insertion of the notice or at least 7 days after the date of posting on  
20 the Internet.

21           (b) When the estimated cost is \$25,000 or less, the authority may award the  
22 contract in accordance with simplified procedures established by the authority for  
23 such transactions.

24           (c) For purposes of clarification, the authority may discuss the requirements  
25 of the proposed contract with any person who submits a bid or proposal and shall



1 permit any offerer to revise his or her bid or proposal to ensure its responsiveness to  
2 those requirements.

3 (3) (a) The authority shall determine which bids or proposals are reasonably  
4 likely to be awarded the contract and shall provide each offerer of such a bid or  
5 proposal a fair and equal opportunity to discuss the bid or proposal. The authority  
6 may negotiate with each offerer in order to obtain terms that are advantageous to  
7 the authority. Prior to the award of the contract, any offerer may revise his or her  
8 bid or proposal. The authority shall keep a written record of all meetings,  
9 conferences, oral presentations, discussions, negotiations, and evaluations of bids or  
10 proposals under this section.

11 (b) In opening, discussing, and negotiating bids or proposals, the authority may  
12 not disclose any information that would reveal the terms of a competing bid or  
13 proposal.

14 (4) (a) After receiving each offerer's best and final offer, the authority shall  
15 determine which proposal is most advantageous and shall award the contract to the  
16 person who offered it. The authority's determination shall be based only on price and  
17 the other evaluation factors specified in the request for bids or proposals. The  
18 authority shall state in writing the reason for the award and shall place the  
19 statement in the contract file.

20 (b) Following the award of the contract, the authority shall prepare a register  
21 of all bids or proposals.

22 **636.78 Political activities.** (1) No employee of the authority may directly  
23 or indirectly solicit or receive subscriptions or contributions for any partisan political  
24 party or any political purpose while engaged in his or her official duties as an  
25 employee. No employee of the authority may engage in any form of political activity

1 calculated to favor or improve the chances of any political party or any person seeking  
2 or attempting to hold partisan political office while engaged in his or her official  
3 duties as an employee or engage in any political activity while not engaged in his or  
4 her official duties as an employee to such an extent that the person's efficiency during  
5 working hours will be impaired or that he or she will be tardy or absent from work.  
6 Any violation of this section is adequate grounds for dismissal.

7 (2) If an employee of the authority declares an intention to run for partisan  
8 political office, the employee shall be placed on a leave of absence for the duration  
9 of the election campaign and if elected shall no longer be employed by the authority  
10 on assuming the duties and responsibilities of such office.

11 (3) An employee of the authority may be granted, by the executive director, a  
12 leave of absence to participate in partisan political campaigning.

13 (4) Persons on leave of absence under sub. (2) or (3) shall not be subject to the  
14 restrictions of sub. (1), except as they apply to the solicitation of assistance,  
15 subscription, or support from any other employee in the authority.

16 **636.80 Liability; expenses; limitations.** (1) Neither the state, nor any  
17 political subdivision of the state, nor any officer, employee, or agent of the state or  
18 a political subdivision who is acting within the scope of employment or agency is  
19 liable for any debt, obligation, act, or omission of the authority.

20 (2) All of the expenses incurred by the authority in exercising its duties and  
21 powers under this chapter shall be payable only from funds of the authority.

22 (3) A cause of action may arise against and civil liability may be imposed on  
23 the authority for its acts or omissions or for any act or omission of a member of the  
24 board, the executive director, or an employee of the authority in the performance of  
25 his or her powers and duties under this chapter.



SENATE BILL 707

*health benefit*

1 (g) Establish quality improvement standards for plans offered through the  
2 exchange.

3 (h) Establish a system for enrolling eligible groups and individuals, using a  
4 standard application form developed by the commissioner under sub. (5) (a)

5 (i) Establish procedures for collecting premiums and remitting premium  
6 payments and providing enrollment information to ~~insurers~~ *health carriers*

7 (j) Establish, in consultation with the commissioner, the method for  
8 determining the amount of the surcharge under sub. (1) and establish the procedure  
9 for imposing and collecting the surcharge.

10 (k) Establish a plan for publicizing the exchange and the eligibility  
11 requirements and enrollment procedures.

12 (l) Establish and operate a service center to provide information to small  
13 employers, individuals, enrollees, and insurance intermediaries about the exchange.

14 (m) Establish a mechanism for regular communication and cooperation with  
15 insurance intermediaries.

16 (n) Establish an independent and binding appeals process for resolving disputes  
17 over eligibility and other determinations made by the authority.

18 (3) The authority may do all of the following *relating to the exchange*

19 (a) Contract with a 3rd-party administrator for the provision of services on  
20 behalf of the exchange.

21 (b) Establish risk adjustment mechanisms for the exchange.

22 (c) Enter into agreements with or establish sub-exchanges.

23 (4) The authority shall seek grants or other funding from the federal or state  
24 government for which it may be eligible and from private foundations. The authority

*Insert 27-13*

*Insert 31-8*

*Insert 31-8  
Contd*

SENATE BILL 707

*insert 31-8 contd*

1 may begin operating the exchange only if it receives federal grant moneys or other  
2 funds for that purpose. *(end of insert 31-8)*

*insert 36-4*

3 *ch* *2* *5* (a) The commissioner shall develop a standard application form for use in  
4 the exchange.

5 (b) The commissioner may promulgate rules, with the approval of the authority,  
6 for the administration of this subchapter.

7 SECTION 52. Subchapter III of chapter 635 [precedes 635.70] of the statutes is  
8 created to read:

CHAPTER 635

SUBCHAPTER III

SMALL BUSINESS HEALTH

OPTIONS PROGRAM AUTHORITY

9  
10  
11  
12  
13 635.70 Creation and organization of authority. (1) There is created a  
14 public body corporate and politic to be known as the "Small Business Health Options  
15 Program Authority." The board of directors of the authority shall consist of the  
16 commissioner, or his or her designee; the secretary of employee trust funds, or his or  
17 her designee; the person who is appointed by the secretary of health services to be  
18 the director of the Medical Assistance program, or his or her designee; the executive  
19 director of the Health Insurance Risk-Sharing Plan Authority, or his or her designee;  
20 and all of the following members, who shall be nominated by the governor, and with  
21 the advice and consent of the senate appointed for 3-year terms, and none of whom  
22 shall be an employee of an insurer that is authorized to do business in the state:

- 23 (a) A member in good standing of the American Academy of Actuaries.
- 24 (b) A health economist.
- 25 (c) An employee benefits specialist.

SENATE BILL 707

*Insert 35-17*

*183*

SECTION 51

(b) A state employee who is a limited term employee and who is not eligible for coverage under a health care coverage plan under subch. IV of ch. 40.

(c) An individual who contracts with this state for the performance of services for the state and who is not eligible for coverage under a health care coverage plan under subch. IV of ch. 40.

~~(2) The authority shall accept for enrollment through the exchange any small employer under sub. (1) (a) and any individual under sub. (1) (b) or (c) who applies for enrollment. An individual under sub. (1) (b) or (c) and an employee of a small employer under sub. (1) (a) may select coverage under any health benefit plan offered through the exchange, except that all employees of a single small employer must select coverage under health benefit plans that have been placed in the same tier under s. 635.30 (3) (a), (b), or (c).~~

~~(3) The authority shall collect initial premiums for coverage under each health benefit plan from enrollees in the plan and disburse the initial premium collected to the insurer offering the plan, along with enrollment information about each individual or employee enrolled in the plan.~~

*After the exchange becomes operational*

*636.43*

**635.37 Insurer requirements.** (1) (a) Any insurer that is authorized to do business in this state, in one or more lines of insurance that includes health insurance, may offer coverage through the exchange. ~~No insurer~~ may offer or issue a health benefit plan to a small employer except through the exchange. An insurer that offers coverage through the exchange may offer only health benefit plans that satisfy the requirements under s. 635.30 (2) (a) and that are approved for the exchange by the authority. An insurer that offers coverage through the exchange must offer at least one health benefit plan in each tier under s. 635.30 (3) (a), (b), and (c).

*health carrier*

*in this state to an individual or*

*Insert cont'd*

SENATE BILL 707

SECTION 51

*Sunset 35-17 covered 2003*

*a carrier may*

(b) Notwithstanding ss. 631.36 (4) and 632.749 (1) and (2), a health benefit plan issued to a small employer that is in effect on the day that the exchange begins operating may remain in effect until the end of its term but may not be renewed.

(2) Premiums for coverage through the exchange may be based only on age, sex, geographic location, whether coverage is single or family, and plan design. For the

purpose of determining premiums, an insurer shall pool together all individuals and employees who have coverage under all of the plans issued by the insurer through the exchange.

(3) An insurer may not impose any annual or lifetime limits or any preexisting condition exclusions under any plan offered through the exchange. An insurer offering coverage through the exchange shall accept for enrollment any individual under s. 635.35 (1) (b) or (c) and any employee of a small employer under s. 635.35 (1) (a) who applies for enrollment in a health benefit plan offered by the insurer through the exchange. Section 632.7495 applies to the renewability of an individual's or employee's coverage under a health benefit plan offered through the exchange.

(4) An insurer that offers health benefit plans through the exchange shall establish a toll-free hotline for providing information to enrollees and other individuals and shall furnish such reasonable reports as the authority determines necessary for the administration of the exchange.

(5) The authority may audit any insurer that provides coverage under a health benefit plan through the exchange for the purpose of ensuring that the insurer is providing covered individuals with the benefits provided for under this subchapter in a manner that does all of the following:

(a) Complies with the provisions of this chapter.

*carrier*



358 3

**SENATE BILL 707**

**SECTION 51**

*Insert 35-17 cont'd*

- 1 (b) Promotes positive health outcomes.
- 2 (c) Advances value-based and evidence-based medical practices.
- 3 (d) Avoids unnecessary operating and capital costs arising from inappropriate
- 4 utilization or inefficient delivery of health care services, unwarranted duplication of
- 5 services and infrastructure, or creation of excess care delivery capacity.
- 6 (e) Holds down the growth of health care costs.

7 **635.40 Intermediaries.** An insurance intermediary that enrolls an  
 8 individual under s. 635.35 (1) (b) or (c) in a health benefit plan through the exchange  
 9 shall be paid a commission by the insurer offering the health benefit plan. An  
 10 insurance intermediary that enrolls the employees of a small employer under s.  
 11 635.35 (1) (a) in one or more health benefit plans through the exchange shall be paid  
 12 a commission by each insurer offering a health benefit plan selected by an employee  
 13 of the small employer. The authority shall determine the commission amounts that  
 14 must be paid to intermediaries under this section after considering information  
 15 provided to the commissioner under s. 628.81 with respect to health insurance.

16 **635.45 Administration; rules. (1)** For payment of administrative expenses,  
 17 the authority may impose a surcharge on each insurer offering health benefit plans  
 18 through the exchange. The surcharge shall be based on an insurer's total premium  
 19 collected through the exchange.

20 **(2)** For administering the exchange the authority shall do all of the following:

21 (a) In consultation with the commissioner, establish procedures for approving  
 22 plans that may be offered through the exchange, for ranking plans into the tiers  
 23 under s. 635.30 (3), and for determining whether a plan should continue to be offered  
 24 or should be eliminated from the exchange.

*(end of ins 35-17)*



## Insert 36-20-TD

<sup>No</sup><sub>TI</sub> the executive director, or his or her designee, of the Wisconsin Collaborative for Healthcare Quality, if that organization exists; the executive director, or his or her designee, of the Wisconsin Health Information Organization, if that organization exists;

(End Insert 36-20-TD)

## Insert 37-5-TD

¶ (g) An individual with experience in health care administration.  
 ¶ (2) No member of the board appointed under sub. (1)(a) to (g) may be a health care provider, as defined in s. 146.81(1)(a) to (hp); an employee of a health care provider, as defined in s. 146.81(1)(i) to (p); an employee of an insurer that is authorized to do business in the state; or an insurance intermediary.

(END Insert 37-5-TD)

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

LRB-0760/P2dn

PJK:...

*kjf*

*Date*

Please make sure that all of the provisions from 2009 SB 707 that you want to have included in the draft are included. In proposed s. 636.43<sup>✓</sup> (which is much of s. 635.37 from SB 707), I did not retain any of the insurance reform requirements on the assumption that they are now or will be required under federal law.

We have not yet addressed ch. 635 in this draft.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

*Insert  
11-0760/P2dn-1*

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

LRB-0760/P2dnTD

TJD:.....

← move  
This version of the draft does not include any financial conflict of interest provision for the authority board members. I sent an email to Linda Kleinschmidt of your office with a couple of examples of such provisions. Please advise what type of conflict of interest provisions you would like included in this draft.

Open records law applies to the authority. The Health Benefit Plan Authority is subject to that provision due to the definition of "authority" in s. 19.32 (1). two

There is a specific requirement in this draft that the Legislative Audit Bureau perform financial and performance evaluation of the exchange every 2 years. The Health Benefit Plan Authority is also subject to the Legislative Audit Bureau provisions because those provisions apply to "any body corporate and politic created by the legislature."

Tamara J. Dodge  
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**2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0760/P2ins  
PJK:.....

**INSERT 29-10**

\*\*\*\*NOTE: Should the above provision also be removed for the time being?

**(END OF INSERT 29-10)**

**INSERT 29-11**

1 <sup>wg</sup>, which may include insurance intermediaries, that are

**(END OF INSERT 29-11)**

**INSERT 35-20**

2 <sup>wg</sup> For payment of administrative expenses, the authority may impose a surcharge  
3 on each health carrier offering health benefit plans through the exchange. The  
4 surcharge shall be based on the carrier's total premium collected through the  
5 exchange

**(END OF INSERT 35-20)**

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

LRB-0760/P2dn  
PJK&TJD:kjf:jf

August 5, 2011

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## Dodge, Tamara

---

**From:** Dodge, Tamara  
**Sent:** Thursday, July 28, 2011 2:00 PM  
**To:** Kleinschmidt, Linda  
**Subject:** Conflict of interest - exchange draft

Linda,

Could you please pass this information along to Senator Vinehout regarding our conversation this morning about financial conflict of interest provisions.

After a quick look, I found two financial conflict of interest type of provisions in the statutes and they are included below:

15.105(8) Board for people with developmental disabilities. ...

(bm) A member specified in par. (am) 1. or 3. shall recuse himself or herself from any discussion by the board of grants or contracts for which the member's department, agency, program, or group is a grantee, contractor, or applicant and may not vote on a matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest.

ret  
19.46 Conflict of interest prohibited; exception.

(1) (intro.) Except in accordance with the board's advice under s. 5.05 (6a) and except as otherwise provided in sub. (3), no state public official may:

(a) Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

(b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

(3) This section does not prohibit a state public official from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or prohibit a state public official from taking official action with respect to any proposal to modify state law or the state administrative code.

The provision in ch. 19 could either be replicated directly in the health benefit authority subchapter or the executive director and members of the board of the authority could be included in the definition of "state public official." If you include the director and board members in the definition then other provisions in that subchapter of ch. 19 would apply to them.

(You also mentioned statements of economic interest. Those are in s. 19.43 and are required from "officials required to file." If desired, the executive director and members of the authority's board could be included in that definition as well. Again, then other provisions of that subchapter of ch. 19 would apply to them as well.

You may also want to look at s. 19.45, which is the section regarding standards of conduct required of state public officials, to see if any of those provisions should apply to the director and authority board members.

If these provisions were not what you had in mind, please let me know and I will keep looking.

Tami

### Tamara J. Dodge

Attorney  
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tamara.dodge@legis.wisconsin.gov

ch 635 → just change "shall" to "may" in 635.18 (leave the rest for a  
change title of auth  
trade bill)

\* Badger Health Benefit Authority

\* add 2 additional functions of auth:  
✓ coord. w/ DOC  
coord. w/ counties  
in exchange duties

✓ SB 707 p 26 635.40 (on inter. medicine)

✓ add 1st sentence from 707 p 24, & 17-18  
re insurers

✓ p 34 equitable treatment  
2 13

reference  
s. 19.46  
for caplet of int  
stat of econ int  
← Tomi

✓ give auth ability to create oth exchanges as  
provided by ~~state~~ fed law?  
under

(c) Would be operated on the same terms as the BadgerExchange; and

(d) Would be merged into the BadgerExchange on January 1, 2017.

(2) *Establishment and Operation of a Wisconsin Governmental Employee Exchange*: [If required or authorized to do so]: The Authority shall establish and operate a Wisconsin governmental employee exchange.

**C. Additional Functions of the Authority:**

[If required or authorized to do so:] The Authority shall also:

(1) *Coordination of enrollment*: Coordinate Wisconsin's health insurance enrollment system for persons not covered by federally administered programs such as Medicare and the VA system, i.e., establishing and managing the structures and processes through which "applicable individuals" determine whether they will meet their obligation to obtain "minimum essential coverage" through BadgerCarePlus, the exchanges described in (A) and (B), insurance "issuers" outside of the exchanges (whether through individual insurance or employer-sponsored insurance), or self-funded employers or other self-funded mechanisms;

*General*  
*rule*

(2) *Coordination between the Department of Corrections and Department of Health Services*: Coordinate the relationship between the Wisconsin Department of Corrections and the Department of Health Services to ensure that:

(a) Individuals who are imprisoned (and thus not "applicable individuals"), prior to their release from prison (at which point they become "applicable individuals"), complete the process of enrolling in BadgerCare Plus or other forms of health insurance so that, on the date of their release, they have "minimum essential coverage"; and

*Completed*



(b) Individuals who enter prison (and thus lose their status as “applicable individuals”) are disenrolled from BadgerCare Plus, or whatever other form of health insurance they previously had, for the duration of their incarceration;

(3) *Coordination with county addiction and mental health treatment systems*: Coordinate the relationship between Wisconsin’s health insurance system for persons not covered by federally administered programs and the pre-existing, state-mandated, county-administered system for providing outpatient and inpatient addiction and mental health treatment with the goal of:

(a) Maximizing coverage and improving access through the health insurance system for outpatient and inpatient treatment of addiction and mental illness;

(b) Improving the quality of treatment for persons with addiction to alcohol or other drugs or a mental illness;

(c) Fully integrating the treatment for physical conditions, addiction, and mental illness; and

(d) Avoiding duplication and unnecessary overlap between the health insurance system’s increased and improved coverage of persons with addiction or mental illness and the county-administered system for providing treatment to them, so as to reduce the cost of the county-administered system to the state’s taxpayers and local property tax payers.

### **III. Responsibilities of the Authority:**

**A. Responsibilities in General:** The Authority shall: