



2011 SENATE BILL 563

March 15, 2012 – Introduced by Senators VUKMIR, GALLOWAY, GROTHMAN, LASEE and LAZICH, cosponsored by Representatives CRAIG, WYNN, AUGUST, KNUDSON, KNILANS, BERNIER, FARROW, HONADEL, JACQUE, KAPENGA, KOOYENGA, KRAMER, KUGLITSCH, LEMAHIEU, T. LARSON, NASS, STEINEKE, STROEBEL, THIESFELDT and WEININGER. Referred to Committee on Senate Organization.

1 **AN ACT** *to amend* 49.45 (2m) (c) (intro.); and *to create* 20.9265, 49.45 (2m) (dm),
2 146.965 and 601.46 (3) (k) of the statutes; **relating to:** requiring legislation for
3 agencies to take an action to, request federal moneys to, and use state moneys
4 to assist the federal government to implement federal health reform and
5 reports on implementation of federal health reform.

Analysis by the Legislative Reference Bureau

On March 23, 2010, the federal government enacted the Patient Protection and Affordable Care Act (PPACA), which, among other things, imposes requirements and limitations on health insurance policies and health plans, requires the creation of state-based health insurance exchanges through which individuals and small employers can purchase insurance, changes the income eligibility criteria for Medicaid (known as Medical Assistance in this state), and creates incentives for improving access to health care. The insurance reforms, insurance exchange requirements, and changes to Medicaid are located in Titles I and II and Subtitles A and B of Title X of PPACA. This bill requires that, before a state agency takes any action to implement Title I or II or Subtitle A or B of Title X of PPACA for which the agency would typically promulgate a rule, the agency must request the Legislative Reference Bureau to prepare legislation that allows the agency to take the action. The agency must then submit the proposed legislation to each standing committee of each house of the legislature that has jurisdiction over health or insurance matters. The bill prohibits the agency from taking the action to implement Title I

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or II or Subtitle A or B of Title X of PPACA until the legislation allowing the agency to take the action takes effect. The bill also prohibits an agency from requesting a grant or other moneys from the federal government to implement Title I or II or Subtitle A or B of Title X of PPACA and from expending any state moneys, or federal moneys passing through the state treasury, to assist the federal government in implementing Title I or II or Subtitle A or B of Title X of PPACA. The bill specifies that an agency is not prohibited from exchanging or providing information about, communicating or advising about, or discussing PPACA with any person or agency; reviewing, analyzing, or researching PPACA, or addressing consumer complaints about PPACA. A secretary or commissioner of an agency is not prohibited from serving on a board that discusses and considers the effects of PPACA. The bill also specifies that if the Office of the Commissioner of Insurance (OCI) receives a report of an insurer's medical loss ratio, OCI may review that medical loss ratio to determine if the insurer is experiencing financial problems and may work with the insurer to resolve those financial problems. As an exception to the requirements under the bill, the bill allows an agency to request any grant or other moneys for certain purposes specified under Title I or II or Subtitle A or B of Title X of PPACA and to implement the project or program for which the grant or other moneys are received and expend the grant or other moneys.

The bill requires agencies of the state to submit annually to the legislature a report that describes the cost, since March 23, 2010, to that agency of implementing PPACA and any federal moneys received after March 23, 2010, related to implementing PPACA, with the first report due by September 1, 2012. In addition, certain agencies must include certain information in their annual reports for that year and in an analysis of any change in the information after March 23, 2010. DHS must include the average spending per recipient for Medical Assistance programs and the spending for Medical Assistance programs as a percentage of the state budget. The Department of Safety and Professional Services shall include the number of physicians practicing in the state. OCI must include the number of insurance companies that offer health care plans in the state. The bill also requires the commissioner of insurance to include in his or her annual report to the legislature a review of the effect the implementation of PPACA has on rates of health care plans that are not issued through a governmental body. That review must include the average rate for each health care plan.

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

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

- 1 **SECTION 1.** 20.9265 of the statutes is created to read:
- 2 **20.9265 Federal health reform cost reports. (1) DEFINITIONS.** In this
- 3 section:

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1 (a) “Agency” means an office, department, agency, institution of higher
2 education, association, society, or other body in state government created or
3 authorized to be created by the constitution or any law, which is entitled to expend
4 moneys appropriated by law, including the legislature, the courts, and any authority
5 created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 231, 233, 234, 238, or
6 279.

7 (b) “Medical Assistance program” includes any program operated under subch.
8 IV of ch. 49, demonstration program operated under 42 USC 1315, and program
9 operated under a waiver of federal law relating to medical assistance that is granted
10 by the federal department of health and human services.

11 (c) “Patient Protection and Affordable Care Act” means the federal Patient
12 Protection and Affordable Care Act, P.L. 111–148, as amended by the federal Health
13 Care and Education Reconciliation Act of 2010, P.L. 111–152.

14 **(2) REPORT REQUIRED.** By September 1, 2012, and annually thereafter, subject
15 to sub. (3), each agency shall submit to the legislature in the manner provided under
16 s. 13.172 (2) a report that describes the cost, since March 23, 2010, to that agency of
17 implementing the Patient Protection and Affordable Care Act and any moneys
18 received from the federal government after March 23, 2010, that are related to
19 implementing the Patient Protection and Affordable Care Act.

20 **(3) SPECIFIC AGENCY REQUIREMENTS.** (a) In the report under sub. (2), the
21 department of health services shall include the average spending per recipient for
22 Medical Assistance programs, and the spending for Medical Assistance programs as
23 a percentage of the state budget, for that year and in an analysis of any change in
24 spending after March 23, 2010.

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1 (b) In the report under sub. (2), the department of safety and professional
2 services shall include the number of physicians practicing in the state in that year
3 and in an analysis of any change in the number of physicians practicing after March
4 23, 2010.

5 (c) In the report under sub. (2), the office of the commissioner of insurance shall
6 include the number of insurance companies that offer health care plans, as defined
7 in s. 628.36 (2) (a) 1., in the state for that year and in an analysis of any change in
8 the number of insurers after March 23, 2010.

9 **SECTION 2.** 49.45 (2m) (c) (intro.) of the statutes, as affected by 2011 Wisconsin
10 Act 32, section 1423k, is amended to read:

11 49.45 **(2m)** (c) (intro.) Subject to ~~par.~~ pars. (d) and (dm), if the department
12 determines, as a result of the study under par. (b), that revision of existing statutes
13 or rules would be necessary to advance a purpose described in par. (b) 1. to 7., the
14 department may propose a policy that makes any of the following changes related to
15 Medical Assistance programs:

16 **SECTION 3.** 49.45 (2m) (dm) of the statutes is created to read:

17 49.45 **(2m)** (dm) The department may not follow the procedures under this
18 section to implement a policy that involves an action to implement the Patient
19 Protection and Affordable Care Act, as defined in s. 146.965 (1) (b). If the department
20 proposes a policy under par. (c) that involves an action to implement the Patient
21 Protection and Affordable Care Act, the department shall comply with the procedure
22 under s. 146.965 (2) before taking the action.

23 **SECTION 4.** 146.965 of the statutes is created to read:

24 **146.965 Implementation of federal health reform. (1) DEFINITIONS.** In
25 this section:

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1 (a) “Agency” means a board, commission, committee, department, or officer in
2 the state government, except the governor, a district attorney, or a military or judicial
3 officer.

4 (b) “Patient Protection and Affordable Care Act” means the federal Patient
5 Protection and Affordable Care Act, P.L. 111–148, as amended by the federal Health
6 Care and Education Reconciliation Act of 2010, P.L. 111–152.

7 **(2) LEGISLATION REQUIRED; EXCEPTIONS.** (a) Notwithstanding s. 227.11 (2), before
8 an agency takes any action to implement any portion of title I or II or subtitle A or
9 B of title X of the Patient Protection and Affordable Care Act for which the agency
10 would typically promulgate a rule, the agency shall request that the legislative
11 reference bureau prepare legislation that allows the agency to take the action. The
12 agency shall submit the proposed legislation to each standing committee of each
13 house of the legislature that has jurisdiction over health or insurance matters under
14 s. 13.172 (3). The agency may not take the action until the legislation allowing the
15 agency to take the action takes effect.

16 (b) No agency may request a grant or other moneys from the federal
17 government to implement title I or II or subtitle A or B of title X of the Patient
18 Protection and Affordable Care Act, unless the state legislature has enacted
19 legislation to allow the request for the grant or other moneys and the legislation is
20 in effect.

21 (c) No agency may expend any moneys of this state, or of any subdivision or
22 agency of this state, or any federal moneys passing through the state treasury to
23 assist the federal government in implementing any portion of title I or II or subtitle
24 A or B of title X of the Patient Protection and Affordable Care Act unless the state

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1 legislature has enacted legislation to allow the agency to expend those moneys and
2 the legislation is in effect.

3 (d) 1. This subsection does not prohibit an agency from taking any of the
4 following actions in the absence of legislation allowing the agency to take the action:

5 a. Exchanging or providing information about, communicating or advising
6 about, or discussing the Patient Protection and Affordable Care Act with any person
7 or agency.

8 b. Reviewing, analyzing, or researching the Patient Protection and Affordable
9 Care Act.

10 c. Addressing consumer complaints regarding the Patient Protection and
11 Affordable Care Act.

12 2. If the office of the commissioner of insurance receives a report of a medical
13 loss ratio from an insurer, the office of the commissioner of insurance may review the
14 medical loss ratio to determine if the insurer is experiencing financial problems and
15 may work with the insurer to resolve those financial problems.

16 3. This subsection does not prohibit a secretary or commissioner of an agency
17 from serving on any board that discusses and considers the effects of the Patient
18 Protection and Affordable Care Act.

19 (e) Notwithstanding pars. (a) to (c), an agency may request any grant or other
20 moneys from the federal government under the Patient and Protection and
21 Affordable Care Act for the purposes under section 1003, 2403, 2405, 2703, 2704,
22 2706, or 2954 of the Patient Protection and Affordable Care Act; for aging and
23 disability options counseling and assistance programs; for smoking cessation
24 programs for Medical Assistance program recipients; for the Family Care program
25 as described in ss. 46.2805 to 46.2895 or any other long-term care program operated

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1 under the Medical Assistance program; and for any purpose for which the grant or
2 other moneys were available from the federal government before March 24, 2010. If
3 the agency receives the grant or other moneys under this paragraph, the agency may
4 implement the project or program for which the grant or other moneys are received
5 and may expend the grant or other moneys.

6 **SECTION 5.** 601.46 (3) (k) of the statutes is created to read:

7 601.46 (3) (k) A review of the effect the implementation of the Patient
8 Protection and Affordable Care Act, as defined in s. 20.9265 (1) (c), has on rates of
9 health care plans, as defined in s. 628.36 (2) (a) 1., whether offered inside or outside
10 of any health insurance exchange, that are not issued through a governmental body.
11 The review shall include the average rate for each health care plan.

12

(END)