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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2011-12
(session year)

Senate
(Assembly, Senate or Joint)

Committee on Insurance and Housing...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (July 2012)

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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October 7, 2011

Mr. Ted Nickel, Commissioner
Office of the Commissioner of Insurance
125 South Webster Street
Post Office Box 7873
Madison, Wisconsin 53707-7873

Dear Commissioner Nickel:

I am responding to your letter of September 28, 2011, which asks whether the passage of 2011 Assembly Bill 210 (A.B. 210) would adversely impact Wisconsin's ongoing court challenge to the 2010 Patient Protection and Affordable Care Act (PPACA). It is the Department of Justice's view that it would not.

As you are aware, the State of Wisconsin is one of 26 plaintiff states in *State of Florida, et al. v. U.S. Department of Health and Human Services, et al.*, Case No. 10-CV-91, Northern District of Florida (Pensacola). The action was originally filed by the original plaintiff states on March 23, 2010. Upon taking office, Governor Walker authorized the Attorney General to join this litigation on behalf of the State of Wisconsin. Wisconsin joined the suit on January 19, 2011, when the District Court allowed a Second Amended Complaint to be filed.

The Second Amended Complaint challenged two main features of the Act: (1) the "individual mandate," which provides that, beginning in 2014, U.S. residents must purchase government approved health insurance or face a tax penalty; and (2) conversion of Medicaid into a federally-imposed universal healthcare regime.

On January 31, 2011, District Court Judge Roger Vincent issued a decision granting summary judgment to the states. He concluded that the "individual mandate" portion of the PPACA was not within Congress' powers under the Commerce Clause of the United States Constitution and further concluded that the individual mandate was not severable from the remainder of the health care law, thus making the entire PPACA invalid. *State of Florida, et al. v. U.S. Dept. of Health and Human Services*, 780 F.Supp.2d 1256 (N.D. Fla. 2011). However, in a subsequent order, he stayed his ruling as to severability pending appeal. *State of Florida, et al. v. U.S. Dept. of Health and Human Services*, 780 F.Supp.2d 1307 (N.D. Fla. 2011). Judge Vincent found against the challenging states on the Medicaid issue.

On August 12, 2011, the Eleventh Circuit Court of Appeals affirmed Judge Vincent's decision that the individual mandate was unconstitutional, but concluded that it could be severed from the remainder of the PPACA. It also affirmed Judge Vincent's conclusion on the Medicaid

issue. *State of Florida, et al. v. U.S. Dept. of Health and Human Services*, 648 F.3d 1235 (11th Cir. 2011). Both sides have now asked the Supreme Court to review the Eleventh Circuit decision. It is anticipated that the Supreme Court will grant the petition and decide the case in the Spring or Summer of 2012.

Thus, the current status of Wisconsin's legal challenge is that the individual mandate has been held unconstitutional, but the remainder of the PPACA has been upheld and is binding on the states. The 26 plaintiff states are asking the United States Supreme Court to invalidate the entire PPACA, thus relieving the States and the public from any of its provisions. However, it will likely be several months before any final decision is issued. In the meantime, there are deadlines and milestones in the PPACA that have been or will be reached.

Given the context of the litigation, and the issues that are being considered, there is nothing unusual or unexpected about state legislation, such as A.B. 210, that is intended to implement or address portions of the PPACA. Many other states are in the same position as Wisconsin and we expect many of them will take similar action.

It is the Department of Justice's view that the passage of A.B. 210 into law will not have any impact on the State's likelihood of prevailing in the Supreme Court. While it is possible that some members of the public will view the passage of A.B. 210 as a compromise or concession to the PPACA, that is not our view. But most importantly to your question, the passage of A.B. 210 will not, in our opinion, have any bearing on the Supreme Court's consideration of the important legal issues in the case.

There is one additional consideration to keep in mind. If Wisconsin passes legislation in response to, or because of the PPACA, that legislation will remain the law of this state even if the PPACA is invalidated in its entirety *unless* the state legislature has clearly indicated state law is repealed or sunset under such circumstances. Therefore, it would be appropriate for the legislature to consider automatic repealer provisions that would be triggered by a final judgment in the federal challenge should the legislature wish for A.B. 210's priovisions to be contingent upon the constitutionality of the PPACA.

Finally, this correspondence is not intended to support or oppose A.B. 230 or the underlying policy issues under legislative consideration. On those questions, the Department takes no position.

This letter is not a formal or informal opinion of the Wisconsin Attorney General.

Sincerely,

Kevin M. St. John
Deputy Attorney General

KMS/SPM: pss
cc: Dan Schwartzer, Deputy Commissioner of Insurance
Steven P. Means


FORWARD
E PLURIBUS UNUM

WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2011 Assembly Bill 210	Assembly Substitute Amendment 1 and Assembly Amendment 5 to Assembly Substitute Amendment 1
Memo published: October 19, 2011	*Contact*: Margit Kelley, Staff Attorney (266-9280)

2011 ASSEMBLY BILL 210

2011 Assembly Bill 210 adopts a number of provisions from the federal Patient Protection and Affordable Care Act (PPACA), as amended, that have already gone into effect or are scheduled to go into effect in the near future.

This includes rate reporting requirements, internal grievance procedures and external review procedures, medical loss ratio reporting, standards for lifetime and annual limits, prohibition on rescissions, prohibition on pre-existing condition exclusions for minors, coverage of preventive health services, extension of dependent coverage to age 26, and choice of health care professional.

Additional specific provisions of the bill are described below.

EMERGENCY RULE-MAKING

Assembly Bill 210 provides the Commissioner of Insurance (commissioner) with the authority to promulgate rules under newly created ch. 636, adopting certain provisions of PPACA (or s. 625.03 (1m) (e) and 625.13 (3), relating to rate reviews) as emergency rules. The rules may remain in effect for one year, and may be extended under s. 227.24 (2), Stats. Further, the bill provides that these emergency rules may be promulgated without the usual finding of emergency required under current law.

Assembly Substitute Amendment 1 maintains the commissioner's authority to promulgate emergency rules that may remain in effect for one year and that may be extended under s. 227.24 (2), Stats., but requires that the emergency rules be promulgated with the usual finding of emergency required under current law.

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EMPLOYER SIZE SELECTION

Assembly Bill 210 defines "small employer" as it is defined in PPACA and not as it is defined in ch. 635, Stats., relating to medical loss ratio reporting for small employer health insurance. Therefore, "small employer" is defined as employers of one to 100 employees, rather than two to 50 employees as under ch. 635, Stats. However, the bill reserves the right, as granted under PPACA, to use one to 50 employees as the measure of a small employer.

Assembly Substitute Amendment 1 clarifies that the reservation of this option may be elected only through future legislation.

APPLICABILITY TO GRANDFATHERED HEALTH PLANS

Assembly Bill 210 requires grandfathered health plans to comply with the PPACA provisions for nongrandfathered plans relating to reporting requirements ensuring the quality of care and coverage of preventive health services. The bill also requires grandfathered health plans to comply with PPACA requirements that specifically apply to grandfathered health plans, including coverage of dependent students on a medically necessary leave of absence, coverage of emergency services, and others.

Assembly Substitute Amendment 1 removes the requirement for grandfathered health plans to comply with the PPACA provisions for nongrandfathered plans relating to requirements for coverage of preventive health services. The substitute amendment maintains the other PPACA provisions that apply to grandfathered health plans, and the reporting requirements ensuring the quality of care.

APPLICABILITY IF FEDERAL LAW FOUND UNCONSTITUTIONAL

Assembly Bill 210 provides that if PPACA is found to be unconstitutional in its entirety, and unenforceable in this state, by a final decision of a federal court of competent jurisdiction, and all appeals are exhausted or the time for appeals elapsed, insurers and self-insured governmental health plans are exempt from the following provisions, three months after the date when the appeals are exhausted or the time for appeal has elapsed:

- Chapter 625, Stats., relating to small employer health insurance.
- Section 625.13 (3), relating to rate filings for individual health insurance.
- Section 636.18, relating to rebates for premiums used for administrative costs.
- Section 636.25, relating to incorporating PPACA's federal insurance law changes into state law (except for the provision regarding coverage of adult children).

However, self-insured governmental health plans and insurers would still be subject to current state law requirements for coverage of emergency services, breast reconstruction after mastectomy, coverage of students on medically necessary leave, and colorectal cancer screening.

Assembly Substitute Amendment 1 clarifies that if PPACA is found to be unconstitutional in any part, and unenforceable in this state, then insurers and self-insured governmental health plans are exempt

from any affected corresponding provision in ss. 636.18 and 636.25 that are found to be unconstitutional, except for the provision requiring extension of coverage of dependents through age 26.

The substitute amendment provides that if any provision of the Public Health Services Act (PHSA) is repealed, insurers and self-insured governmental health plans are exempt from the PHSA provision in ch. 636 that is repealed, except for the provision requiring extension of coverage of dependents through age 26.

The substitute amendment clarifies that if PPACA is found to be unconstitutional or repealed, in its entirety or in any part, then any rules or requirements established by the commissioner with respect to each provision are void and unenforceable.

The substitute amendment also adds a sunset provision to the automatic exemptions. If any adopted provisions of the PPACA or PHSA are found unconstitutional or are repealed after January 1, 2020, those provisions would continue to apply unless modified by future state legislation.

Assembly Amendment 5 to Assembly Substitute Amendment 1 specifies that if ***either*** the PPACA is found unconstitutional ***or*** unenforceable in this state, whether in its entirety or in part, then insurers and self-insured governmental health plans are exempt from the specified or affected corresponding provision. The amendment removes the requirement that it be found ***both*** unconstitutional ***and*** unenforceable in order to exempt the provisions.

ESTABLISHMENT OF HEALTH BENEFIT EXCHANGE

Assembly Bill 210 does not address provisions of PPACA relating to establishment of a health benefit exchange.

Assembly Substitute Amendment 1 specifies that any health benefit exchange to be established in Wisconsin pursuant to PPACA may only be established by future legislation.

LEGISLATIVE HISTORY

2011 Assembly Bill 210 was introduced on July 29, 2011, by Representative Petersen. On October 11, 2011, the Assembly Committee on Insurance introduced Assembly Substitute Amendment 1 by unanimous vote, adopted the substitute amendment on a vote of Ayes, 15; Noes, 1; and recommended passage of the bill, as amended, on a vote of Ayes, 12; Noes, 4.

On October 18, 2011, Representative Nygren introduced Assembly Amendment 5 to Assembly Substitute Amendment 1, which was adopted by the Assembly that day on a vote of Ayes, 59; Noes, 37; and Not Voting, 2.

On October 18, 2011, the Assembly passed Assembly Bill 210, as amended, on a vote of Ayes, 57; Noes, 39; and Paired, 2.

MSK:ty


FORWARD

October 25, 2011

Annette Olson
1373 280th St.
Glenwood City, WI 54013

Written Testimony **Opposed to AB 210**
Wisconsin ObamaCare forced Compliance

I am providing my testimony in opposition to this bill since I believe it is my choice to contract for goods and services guaranteed to me already by the Constitution of the State of Wisconsin.

A few weeks ago, on October 11, 2011 I provided to this same committee my testimony in favor of SJR-21 which is the Wisconsin HealthCare Freedom Amendment.

This bill, AB 210, stands in direct contradiction to HealthCare Freedom. While AB 210 does not set up exchanges it does set up the framework at the state level to administer the federal **Patient Protection and Affordable Care Act** (PPACA), affectionately known as Obama Care.

Please know there is no such thing as a State Exchange. There are only state established Federal Exchanges that will require the states to have to follow federal law and federal rules. States are sovereign. We have the 10th Amendment in our nation's constitution to prevent the federal government from being onerous.

Our own state constitution, ARTICLE I. DECLARATION OF RIGHTS **Equality; inherent rights.** SECTION 1. Tells us that all people are born equally free and independent, and have certain inherent rights; (among these are life, **liberty** and the pursuit of happiness; to secure these rights, **governments are instituted, deriving their just powers from the consent of the governed**.)

One of these rights clearly spelled out is **liberty.** In our nation's founding documents, it is also spelled out very clearly that we have the right of **liberty.**

So what is liberty?: the quality or state of being free: ***a*** : **the power to do as one pleases** ***b*** **:** freedom from physical restraint ***c*** : **freedom from arbitrary or despotic control** ***d*** : **the positive enjoyment of various social, political, or economic rights and privileges** ***e*** : **the power of choice** (Merriam Webster Dictionary)

Liberty means the power to do as one pleases. ObamaCare forces the people to do as it commands.

Liberty means we the people have the right of choice. ObamaCare is despotic control since it regulates choices.

According to the article *Limited options, privacy in health exchanges,* by Twila Brase, president of Citizens' Council for Health Freedom, Ms. Brase states *"it becomes clear that the exchanges will be tightly regulated, insurance choices will be limited and dictated by Washington..."* Ms. Brase was referring to the "American Health Benefit Exchanges" rules that the Department of Health and Human Services issued and states there will be limited choices of four. That is not freedom of choice.

Liberty means the positive enjoyment of various social, political or economic rights and privileges which provides security to Wisconsin citizens that they cannot be subject to purchase any goods or services they do not desire. WI's Congressman Paul Ryan called ObamaCare a "fiscal house of cards," full of "smoke and mirrors" designed to put forth the idea that ObamaCare will help America be fiscally solvent. There is no funding for this mandate. ObamaCare will not provide positive enjoyment nor will limitations be affordable.

Implementing ObamaCare is neither freedom of choice nor affordable as we have been led to believe. ObamaCare is designed to expand into the middle class dependency on the government by using the smoke and mirror tactics of premium tax credits.

In the proposed rules from the Department of Health and Human Services, the federal government requires the release of patients' detailed health care information to the federal government. How is this protection? The release of private information to the government is anything but free. All of citizens' private most personal data will be submitted to the Departments of Homeland Security, HHS and the IRS. It is a system of big government monitoring the citizenry.

The emergency rule making authority in AB 210 granted to the office of the Commissioner of Insurance is an egregious element. As we have recently seen in WI's Department of Justice with ACT 35, emergency rule making authority has been used in an overreaching manner to actually change the law that our legislative governing body passed. No department should be able to overstep our government system of checks and balances. But that is what this bill will do.

Finally, one of the arguments that I have heard about is that if we do not pass AB 210 the federal government will come in and administer ObamaCare in the state of Wisconsin just as they have done in Minnesota. Well, that is a false statement. Governor Dayton signed an Executive Order, in stark contrast to the will of the people of Minnesota. The federal government did not step in.

In closing, ObamaCare is socialism. This is the line in the sand that ALL Americans must draw! We must oppose this bill.

I thank you for taking my testimony. Please return control back to the people where it belongs.

Citizens' Council for Health Freedom

Health Freedom Minute

October 19, 2011

Five Reasons to Say NO to Obamacare Exchange

Welcome to the Health Freedom Minute. This is Twila Brase, president of Citizens' Council for Health Freedom.

Here are five reasons to stop the Obamacare health insurance exchange:

1 – The exchange is a federal command and control center established in your state to implement government-run health care. Stop the exchange and you stop Obamacare.

2 – Exchanges limit your insurance options. Only bronze, silver, gold and platinum government-authorized plans can be sold.

3 – Exchanges expand government dependency through federal subsidies to the middle class.

4 – Insurers love the exchange because it squeezes out their competition and creates a cartel.

5 – The exchange will monitor and enforce the unconstitutional mandate that you purchase health insurance.

Stop the Exchange in your state.

Join us November 10th for "The Way Back to Liberty." Our annual event features the constitutional attorney Jonathan Emord. Sign up at healthfreedomminute.net.

The Health Freedom Minute is heard on 159 stations in 37 states, including afternoons on American Family Radio.

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CCHF supports patient and doctor freedom, medical innovation, and the right of citizens to a confidential patient-doctor relationship.

statesman.com

Limited options, privacy in health exchanges

Twila Brase, McClatchy-Tribune News Service

Published: 7:30 p.m. Tuesday, Sept. 13, 2011

Another layer of the 2010 federal health care reform law was peeled back recently when the Department of Health and Human Services issued rules for the "American Health Benefit Exchanges" the states are supposed to establish.

If you read the fine print in the first of the proposed "exchange" regulations, it becomes clear that the exchanges will be tightly regulated, insurance choices will be limited and dictated by Washington, and the federal government, rather than the states, will be in charge. Although the department has promised flexibility, the first proposed rule includes this: "an Exchange may not establish rules that conflict with or prevent the application of Exchange regulations promulgated by HHS."

Beyond this, the 347-page proposal uses the word "require" more than 800 times and the word "must" nearly 440 times. Not much wiggle-room for the states there.

The exchanges were initially sold to state officials and the public as a tool to expand health care choices, especially for individuals and small businesses. The idea was to "give (all) Americans the same insurance choices as members of Congress," who get to choose from a wide variety of insurance plans.

However, health department officials now acknowledge that this is not true. Unlike members of Congress, Americans who purchase insurance from an exchange will get just four choices. These choices might be further limited by their employers. By comparison, a federal employee in the Washington area has a choice of 19 plans. A federal employee in Chicago has 25 plans from which to choose.

Though nothing is locked in concrete, it's a safe bet that Health Savings Accounts and limited-benefit plans, such as those covering "catastrophic" medical expenses only — currently among the most affordable options — will not be among the available exchange choices. In fact, the new law prohibits catastrophic coverage policies for anyone older than 29.

What small amount of health privacy Americans enjoy also will be out the doors. According to the proposed rules, "Privacy policies for the Exchanges will need to allow for the appropriate collection, receipt, use, disclosure and disposal of the various kinds of information including health, financial and other types of personally identifiable information." Furthermore, the department and the exchanges "are authorized to collect and use the names and Social Security account numbers of individuals."

In other words, information will be confidential — except the information the bureaucrats decide to use and share.

Florida, Kansas, Louisiana, New Hampshire and Oklahoma have taken a stand against this latest assault on health freedom and choice, returning to Washington the federal funds they received to create exchanges. The Minnesota legislature recently joined them by rejecting proposed exchange legislation and refusing to implement the exchange mandate.

Utah and Massachusetts already have operating exchanges. Health and Human Services is temporarily required to "presume" that they are in compliance with the federal exchange standards. In an additional 13 states, the exchanges are a work in progress: Legislation creating them has been approved, but that's as far as it's gone.

The good news is that state lawmakers still have a chance to limit the damage. If they've already passed legislation creating an exchange, they can repeal it. There is little likelihood that Washington will step in, since there is no plan for a federal "fallback" exchange and no money to implement such a plan.

If you've heard that the new health care exchanges will create a "marketplace" for health care choice, don't believe it. As the proposed new regulations make clear, what we'll have instead is an "exchange" gang, with Americans chained to government-imposed health care with no way out.

Brase is president of the Citizens' Council for Health Freedom, which favors a free-market health care system.

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Dayton signs executive orders

In a move that can only be described as a spit in the eye to Governor Pawlenty, Minnesota's newly innaugurated governor Mark Dayton signed executive orders this morning providing a fast-track to Obamacare for the state.

In a public ceremony at the Capitol, Governor Dayton signed 2 orders. The first expands the Medicaid program without addressing how to find the money to pay for it, and the second rescinds the popular executive order signed last fall by Governor Pawlenty that banned requests from state agencies seeking federal health grants.

Obviously ignoring the overwhelming wins by the GOP in Minnesota's House and Senate, Dayton signed the orders gleefully as if the citizens of the state were urging him to do it. In fact, Governor Dayton won by only a slight margin (of which many still question the validity), and the state congress is now run by republicans for the first time in 4 decades. The popularity of the Obamacare plan continues to decline and citizens are angry that there seems to be no logical way to pay for the massive expansion of government power.

The governor was also discouraged by Congresswoman Michele Bachmann to sign the orders. In an article from Hometown Source, Bachmann said,

"I am urging Gov. Dayton not to sign this executive order that will expand medical assistance at a cost of $384 million to Minnesota taxpayers between now and 2014. The same voters who elected our new governor also elected legislators willing to work in a bipartisan way to accomplish the goals of healthcare reform without worsening our $6 billion state budget deficit.

...The authority for this executive order was inserted in last year's budget bill during late-night, closed-door negotiations. That action raises serious constitutional questions about whether one legislature can take a future legislature's authority and give it away to the next governor. Prudence dictates that Gov. Dayton should not rush ahead with this executive order, but should instead work with the current legislature to find bipartisan solutions."

Governor Dayton's bold move to sign these executive orders without first discussing alternative solutions with the new GOP majority in the legislature could prove to be detrimental to accomplishing the goals of either party. What should be a healthy process of checks and balances could turn out to be more akin to gridlock.

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Voter fraud still an issue

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January 5, 2011 - Like this? Subscribe to get instant updates

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Obamacare HHS rule would give government everybody's health records

By **Rep. Tim Huelskamp** | 09/23/11 3:29 PM

OpEd Contributor

Secretary of Health and Human Services Kathleen Sebelius has proposed that medical records of all Americans be turned over to the federal government by private health insurers.

It's been said a thousand times: Congress had to pass President Obama's health care law in order to find out what's in it. But, despite the repetitiveness, the level of shock from each new discovery never seems to recede.

This time, America is learning about the federal government's plan to collect and aggregate confidential patient records for every one of us.

In a proposed rule from Secretary Kathleen Sebelius and the Department of Health and Human Services (HHS), the federal government is demanding insurance companies submit detailed health care information about their patients.

(See Proposed Rule: Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment, Volume 76, page 41930. Proposed rule docket ID is HHS-OS-2011-0022 http://www.gpo.gov/fdsys/pkg/FR-2011-07-15/pdf/2011-17609.pdf)

The HHS has proposed the federal government pursue one of three paths to obtain this sensitive information: A "centralized approach" wherein insurers' data go directly to Washington; an "intermediate state-level approach" in which insurers give the information to the 50 states; or a "distributed approach" in which health insurance companies crunch the numbers according to federal bureaucrat edict.

It's par for the course with the federal government, but abstract terms are used to distract from the real objectives of this idea: no matter which "option" is chosen, government bureaucrats would have access to the health records of every American - including you.

There are major problems with any one of these three "options." First is the obvious breach of patient confidentiality. The federal government does not exactly have a stellar track record when it comes to managing private information about its citizens.

Why should we trust that the federal government would somehow keep all patient records confidential? In one case, a government employee's laptop containing information about 26.5 million veterans and their spouses was stolen from the employee's home.

There's also the HHS contractor who lost a laptop containing medical information about nearly 50,000 Medicare beneficiaries. And, we cannot forget when the USDA's computer system was compromised and information and photos of 26,000 employees, contractors, and retirees potentially accessed.

The second concern is the government compulsion to seize details about private business practices. Certainly many health insurance companies defended and advocated for the president's health care law, but they likely did not know this was part of the bargain.

They are being asked to provide proprietary information to governments for purposes that will undermine their competitiveness. Obama and Sebelius made such a big deal about Americans being able to keep the coverage they have under ObamaCare; with these provisions, such private insurance may cease to exist if insurers are required to divulge their business models.

Certainly businesses have lost confidential data like the federal government has, but the power of the market can punish the private sector. A victim can fire a health insurance company; he cannot fire a bureaucrat.

What happens to the federal government if it loses a laptop full of patient data or business information? What recourse do individual citizens have against an inept bureaucrat who leaves the computer unlocked? Imagine a Wikileaks-sized disclosure of every Americans' health histories. The results could be devastating - embarrassing - even Orwellian.

With its extensive rule-making decrees, ObamaCare has been an exercise in creating authority out of thin air at the expense of individuals' rights, freedoms, and liberties.

The ability of the federal government to spy on, review, and approve individuals' private patient-doctor interactions is an excessive power-grab.

Like other discoveries that have occurred since the law's passage, this one leaves us scratching our heads as to the necessity not just of this provision, but the entire law.

The HHS attempts to justify its proposal on the grounds that it has to be able to compare performance. No matter what the explanation is, however, this type of data collection is an egregious violation of patient-doctor confidentiality and business privacy. It is like J. Edgar Hoover in a lab coat.

And, no matter what assurances Obama, Sebelius and their unelected and unaccountable HHS bureaucrats make about protections and safeguards of data, too many people already know what can result when their confidential information gets into the wrong hands, either intentionally or unintentionally.

Republican Tim Huelskamp represents the first congressional district of Kansas.

URL: http://washingtonexaminer.com/opinion/op-eds/2011/09/obamare-hhs-rule-would-give-government-everybody-s-health-records


FORWARD

Quarantine: The Best Remedy for Obamacare?

By Brian Sikma
October 25, 2011

The American health care system, already in need of serious reform, was dealt a blow by the passage of the Patient Protection and Affordable Care Act of 2009, better known as Obamacare. At its core, Obamacare eliminates the role that states have traditionally played in regulating their own health insurance markets, and imposes draconian mandates that states must comply with. If these mandates are not implemented, the state will face federally imposed regulations that supersede their own established structures. Building outward from the individual mandate that requires every American to purchase a health insurance plan that complies with federal standards, Obamacare forces states to change their health insurance regulations and create so-called exchanges that administer the buying and selling of health insurance.

Wisconsin is in the process of debating how it should voluntarily conform to the constitutionally questionable, and fiscally unworkable, demands of Obamacare. Legislative leaders have advanced AB 210 - Substitute 1, as the first step in the compliance process. The bill achieves a sweeping rewrite of Wisconsin's health insurance regulations, and lays the foundation for an Obama administration-imposed health insurance exchange.

Before Wisconsin rushes to voluntarily comply with Obamacare even before federal court remedies are exhausted, policymakers and lawmakers would be wise to remember the words of Congressman Paul Ryan who said in January of this year that Obamacare is a "fiscal house of cards," full of "smoke and mirrors." The following is a point-by-point review of the arguments proponents of AB 210-Sub.1, as it stands amended, are using to suggest such "smoke and mirrors" public policy become the law in Wisconsin.

Argument 1: If Wisconsin fails to accept Obamacare, Wisconsinites will be required to file insurance disputes with federal officials in Chicago starting January 1, 2012.

Response 1: This is a matter of geography, not substance. It is a mistake to assume that any Wisconsin legislation can substantially improve the ability of Wisconsinites to have more of a say in the insurance dispute resolution process. The federal process for insurance dispute resolution is forced onto the states by Obamacare and if states refuse to comply 100% with that process, the federal government will revert to using its own powers in this area. AB 210 simply allows Wisconsinites to follow the dictates of Obamacare in Wisconsin instead of following the dictates of Obamacare via a bureaucrat in Chicago. That's not a real choice.

Argument 2: If Wisconsin does not comply with Obamacare, the federal government will impose Obamacare on Wisconsin and the state will concede its rights in this area to the federal government.

Response 2: Federal law already trumps state health insurance law according to Obamacare. If Wisconsin must comply with Obamacare in order to preserve its right to act outside the parameters of Obamacare that is a contradicting argument. While attempting to use the 10th Amendment's protection of federalism as an argument, this logic fails to understand the very essence of the new federal mandates. Obamacare has created a bold new brand of bureaucratic tyranny, and it will remain in force until PPACA is repealed, found unconstitutional, or defunded.

Argument 3: AB 210 has been amended to slow down the process of implementing an exchange and changes to health insurance rules.

Response 3: Running out the clock a little bit more does nothing to improve the underlying bad public policy behind Obamacare. Accepting all the baggage that comes with the bill is not offset by a few gains in scheduling the imposition of reform. If time really was of concern, lawmakers would perhaps refuse to consider a bill similar to AB 210 until all sought out federal court remedies regarding the individual mandate were exhausted. If the individual mandate is found unconstitutional the workability of Obamacare would unravel, and Congress would be forced to expeditiously revisit PPACA and ponder ways to amend or repeal it. Such Congressional action would have a direct impact on the compliance measures being contemplated by the Wisconsin legislature.

Argument 4: Without AB 210 in place, insurance companies would be forced to report some information to the federal government that they otherwise would not be required to report.

Response 4: This is a minor point, and one that is not worth conceding an entire state prerogative over. Insurance companies could lobby the federal government to remove information sharing requirements that they find distasteful. Doing that would certainly respect the best interests of Wisconsinites to a greater degree than turning the entire Wisconsin health insurance structure on its head by voluntarily embracing every major and substantial element of Obamacare.

Argument 5: AB 210 requires legislative action before a health insurance exchange may be imposed on Wisconsin.

Response 5: Under PPACA, a Wisconsin exchange must reflect non-negotiable federally dictated standards. Whether the state vests the authority to establish such an exchange in the legislative or executive branch makes little difference. The only end result that will pass federal Health and Human Services review will be a plan that fully complies with Obamacare. That standard exists regardless of whether or not the plan comes from the executive branch or the legislature. According to HHS Secretary Kathleen Sebelius, state input doesn't matter when exchanges are formulated. The *Heritage Foundation* noted that: "In truth, the proposed regulations [for exchanges] *don't give states any additional flexibility* beyond what they are permitted under Obamacare anyway, and in some places they may further limit state lawmakers' options." *Emphasis added.*

Argument 6: Recall elections have created uncertainty about the sustainability of the present balance of power in Madison. Hurried enactment of AB 210 would lead to some level of free-market policies in Wisconsin's compliance with Obamacare.

Response 6: As stated before, Obamacare does not allow for truly free-market developments in state health care policy. Michael Cannon of the *Cato Institute* explained the issue in crystal clear language to the Missouri legislature:

> "The fact that an Exchange is state-run does not diminish federal control by one iota. There is nothing that a federal Exchange can do that the federal government cannot also force a state-run Exchange to do through regulation."

Although AB 210 does not establish an exchange, it is vain hope to believe that the foundation it lays for such an exchange will lead to a free market exchange.

With respect to political considerations, basing far-reaching public policy decisions on the potential likelihood of hypothetical political outcomes speaks more of probable political cowardice than political courage or foresight. Many lawmakers campaigned on the premise that they would change the way Madison functions. This kind of reasoning reflects Madison politics as usual and is diametrically opposed

to the kind of courageous decision-making that characterized the collective bargaining reforms of earlier this year.

Argument 7: The sunset provisions of AB 210-Sub. 1 provide ample protection for Wisconsinites, and state law and regulatory structures relating to health insurance will revert to pre-AB 210 standards if Obamacare is repealed or found unconstitutional either in whole or in part.

Response 7: Placing a sunset provision on terrible public policy does not automatically make such public policy in the genuine public interest. Instead of a complete surrender to Obamacare, Wisconsin would be better served by sunset policy that is comprised of a no-compliance policy with Washington's heavy-handed dictates.

In sum, Obamacare will be felt in Wisconsin because the federal government will eventually impose health insurance regulatory reform and an exchange system that reflects the priorities of the Obama administration. AB 210 only gives the Obama administration cover and further legitimizes their attempts to dictatorially impose a policy failure on the states. Wisconsin should live up to its history as an independently thinking state and refuse to quietly and unquestioningly accept the failures that Washington wishes to force it to "*voluntarily*" accept.

The best remedy for the heath care reform disease known as Obamacare is to quarantine its failures at the national level while state policymakers refuse to spread the infection to Wisconsin state law and public policy.


FORWARD
E PLURIBUS UNUM

no date

Dear Folks,

The language similarities between "Obama Care" and SB 210 are frightening.

It is without a doubt that no one in their right mind wants anything that looks like and smells like "Obama Care".

The people of Wisconsin do not want anything that could at the wildest of imaginations bear any resemblance to "Obama Care" now or ever.

The difference between the two could easily be interpreted by any of our many liberal courts to be negligible and corrected by any court order.

"Insurance Exchanges" are no more than politically correct language for Cartels, more properly identified as "Corruption Central".

Wisconsin's early history, before the Lafollette socialist era, has been one of independence and a champion of states rights.

Instead of passing this piece of a poisoned apple now is the time to repeal act 9, to reaffirm our state sovereignty, to stand up as a free people. refuse one more dollar of federal tribute; refuse federal slavery and declare NULLIFICATION of "Obama Care".

Paul R. Lendrich


FORWARD

AB 210 no date

REAL HEALTH CARE REFORM REQUIRES ATTITUDE ADJUSTMENTS

I am convinced that we can dramatically lower health care costs and improve our health at the same time. I can say this with confidence because I have done it myself and in the process I have surrounded myself with like minded people. Many of us have experienced health improvements so dramatic that they should be making headlines but instead we have very successful practitioners who "fly under the radar" for fear of being persecuted, prosecuted and put out of business.

How did we get ourselves into such a harmful state of affairs; here in the Land of the Free? The abuse of Government regulations intended to "protect" us is the main cause. Some organizations have successfully used the licensure and regulatory process to eliminate competition. We all know that some oversight is necessary, but when taken advantage of in this way, it stifles competition, discussion and innovation and artificially drives up health care costs.

The latest example is the WDA licensure bill, LRB-0253 The WDA claims that it is a simple licensure bill, but a careful reading shows that it is a blatant attempt to monopolize all things nutritional. They even attempt to take control of every weight loss program, in spite of their own dismal track record. They also propose to put serious restrictions on retailers and even Religious groups.

This proposal has stirred up a lot of opposition and has resulted in a Consumer Choice and Wellness act, LRB-2331, that is being circulated for sponsorship. The Consumer Choice bill does not attempt to deregulate anything, but rather clarifies the status of those who do not fit into any of the licensed categories.. It encourages innovation, discussion and competition and we all know that competition drives costs down.

So if a spirit of cooperation and fair competition could replace the attitude of using our own Government to stifle competition for monetary gain we can make real progress towards real Health Care Reform.

The Consumer Choice and Wellness bill is a huge step in that direction. and I sincerely hope you will ad your name to the list of sponsors.

Dave Luepke, Advocate for Consumer Choice
544 Deerbush Rd, Edgar, Wi. 54426

Phone 715 687 4251

Dave Luepke


FORWARD

ASA 1 to Assembly Bill 210… relating to: implementing health insurance reform, extending the time limit for emergency rule procedures, specifying that any health insurance exchange must be established by legislation, and granting rule-making authority.

BILL SPONSORS	Authored by Representative Petersen, by the request of the Office of the Commissioner of Insurance.
BILL HISTORY	Assembly Bill 210 was introduced and referred to the Assembly Committee on Insurance on July 29th, 2011. A public hearing was held on September 15th, 2011. An Executive Session was held on October 11th, 2011. ASA (1) to Assembly Bill 210 was added; the Assembly substitute makes 5 changes: 1. The administrative rule-making authority is scaled back from what is contained in AB 210 (as introduced); 2. Removes the requirement that grandfathered health plans comply with provisions of ObamaCare, as they relate to coverage of preventative health services; 3. Changes the definition of a "small employer" for purposes of ObamaCare requirements, as an employer with not more than 100 employees but specifically reserves the right to elect to substitute 50 for 100 for the definition of "small employer." Also, the substitute amendment provides that this election must be done via legislation; 4. ASA 1 to AB 210 makes the legislation self-repealing in the event the US Supreme Court determines ObamaCare to be unconstitutional in whole, or in part, and also in the event the Congress repeals it; and 5. Substitute amendment specifically prohibits the Administration from creating a health care exchange pursuant to ObamaCare without legislative approval. The Assembly Committee on Insurance recommended passage of Assembly 210, as amended, 12 – 4 (Representatives August, Craig, D. Cullen and Burceau voted No).
COMPANION BILL HISTORY	A Senate companion to Assembly Bill 210 was not introduced..
LRB ANALYSIS	***Assembly Bill 210 (as introduced)*** This bill incorporates the health insurance coverage requirements of the federal Patient Protection and Affordable Care Act (PPACA) into the Wisconsin statutes. The bill requires insurers to comply with PPACA provisions that went into effect for plan years beginning on or after March 23, 2010, relating to all of the following: 1) standards relating to benefits for mothers and newborns; 2) required coverage for reconstructive surgery following a mastectomy; and 3) coverage of a dependent student on a medically necessary leave of absence. The bill requires insurers to comply with PPACA provisions that went into effect for plan years beginning on or after September 23, 2010, relating to all of the following: 1) prohibiting annual or lifetime limits; 2) prohibiting coverage rescissions; 3) prohibiting preexisting condition exclusions for individuals under age 19; 4) coverage of certain preventive health services without cost–sharing; 5) extension of coverage to dependents up to age 26; 6) the provision of additional information; 7) giving plan enrollees choice as to a primary care provider; and 8) coverage of emergency services without prior authorization. In addition, the bill requires insurers to comply with

PPACA provisions for plan years beginning on or after March 23, 2012, relating to all of the following: 1) the development and use of uniform explanation of coverage documents and standardized definitions; and 2) requirements for ensuring the quality of care. The bill also requires insurers to comply with the PPACA requirement to file a report for each plan year concerning the ratio of incurred loss, plus loss adjustment expense, to earned premiums and to provide a rebate to enrollees under certain circumstances. Under PPACA, the provisions apply to insurers offering medical care benefits under any hospital or medical service policy or plan contract.

A health care policy or plan that was in effect when PPACA was enacted is called a grandfathered health plan. The bill specifically requires a grandfathered health plan to comply, when the grandfathered health plan is renewed, with the following PPACA provisions: 1) coverage of a dependent student on a medically necessary leave of absence; 2) coverage of certain preventive health services without cost-sharing; 3) coverage of emergency services without prior authorization; and 4) at renewal on or after March 23, 2012, requirements for ensuring the quality of care. The bill provides that the additional requirements under the bill with which insurers must comply apply to grandfathered health plans only with respect to those requirements that apply to grandfathered health plans under PPACA.

Current law requires health insurers to cover emergency services without prior authorization, breast reconstruction after a mastectomy, dependent coverage of a student while on a medically necessary leave of absence, and colorectal screening. These coverage provisions are consistent with, and therefore duplicative of, the relevant PPACA requirements and are not repealed in the bill. Current law also requires health insurers to provide coverage of a dependent up to age 27, or up to any age if the dependent is a student and had to leave school previously because he or she was called to active duty in the armed forces. PPACA requires coverage of a dependent up to age 26 and has no additional requirement related to a student previously called to active duty. Because of this inconsistency, the current law dependent coverage provision is repealed in the bill. The bill specifies that, if PPACA is found by a final decision of a federal court of competent jurisdiction to be unconstitutional in its entirety and unenforceable in this state, after all appeals have been exhausted or the time for appeal has expired insurers are exempt from the PPACA coverage requirements incorporated into the bill, with the exception of the provision related to dependent coverage. Thus, if PPACA were found unconstitutional, in addition to the dependent coverage requirement, insurers would be subject to the coverage requirements in current law that are consistent with PPACA and that have not been repealed in the bill.

Under current law, a health insurer must have an internal grievance procedure and an independent review procedure whereby an insured person may appeal certain types of coverage denials to an independent review organization. The statutes set out criteria for both procedures and provide for certification of independent review organizations by the commissioner of insurance (commissioner). The bill repeals these provisions and requires the commissioner to establish standards by rule for both internal and external appeals that are consistent with requirements under PPACA. The requirements for internal appeals apply to all group and individual health insurance policies, grandfathered health plans, policies providing limited-scope dental or vision benefits, and hospital or fixed indemnity policies. The requirements for external appeals apply to all group and individual health insurance policies, grandfathered health plans, hospital or fixed indemnity policies, and Medicare supplement or replacement polices, excluding Medicare advantage plans. An independent review organization performing external appeals must be certified by the commissioner, who may revoke, suspend, or limit the certification or refuse to recertify under specified conditions. An independent review organization must have a quality assurance mechanism to ensure timely and independent reviews and may charge reasonable fees, which must be approved by the commissioner. The commissioner has authority to examine and audit an independent review organization's books and records. A decision of an independent review organization is binding on the insured and the insurer. An independent review organization is immune from any liability that may result from an independent review determination, and an insurer is not liable for any damages attributable to actions taken in compliance with an independent review organization determination.

Under current law, rates for insurance must be filed with the commissioner within 30 days after they become effective, and the commissioner may disapprove a rate after it has been filed. Certain types of insurance, including group and blanket accident and sickness insurance, are exempt from the rating requirement provisions, including the requirement to file rates. The bill provides that, beginning on September 1, 2011, group health insurance offered to employers with not more than 50 employees (small employer health insurance) and group and blanket accident and sickness insurance offered in the

	individual market are not exempt from the rating requirement provisions. In addition, the bill requires that rates for individual health insurance, small employer health insurance, and group and blanket accident and sickness insurance offered in the individual market be filed with the commissioner before, rather than after, they become effective.
FISCAL EFFECT	It was determined that ASA 1 to Assembly Bill 210 provides that the fiscal effect is either indeterminate or will have no fiscal effect attributable to the state or local units of government.
SUPPORT	**The following persons appeared in favor of this bill:** Dan Schwartzer, Deputy Secretary, OCI Karen Geiger, Anthem Blue Cross and Blue Shield Pat Osborne, WPS Health Insurance Terry Frett, Wisconsin Employee Benefit Advisors **Registrations in favor**: Wisconsin Association of Health Plans Wisconsin Manufacturers & Commerce The Alliance (Employee Health Care) Humana America's Health Insurance Plans (AHIP) Dean Health Systems Wisconsin Association of Health Underwriters Independent Insurance Agents of Wisconsin
OPPOSITION	**The following person(s) appeared against this bill:** Robert Craig, Citizen Action of Wisconsin **The following persons registered against:** AARP of Wisconsin Wisc. Council on Children and Families ABC for Health, Inc.
NEUTRAL	**The following organization(s) appeared or registered for information only:** None
REPUBLICAN MESSAGE	Beyond the "technical" aspects/changes that this legislation makes pursuant to federal requirements mandated through ObamaCare – external rate reviews on insurance providers, the two important components of the substitute amendment are: 1. This ***legislation is self-repealing*** in the event ObamaCare is determined to be unconstitutional by the US Supreme court, or in the event Congress changes or repeals it; and

	2. **The Administration is prohibited from establishing state-run health care exchanges without legislative approval.**
OPPOSITION MESSAGE	Some on the left would argue that this legislation does not go far enough; that a structure should be put in place to establish health care exchanges per ObamaCare.
CONTACT	Dean Cady, Senator Vukmir's office, 266-2512
DATE	October 17th, 2011


FORWARD
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Support for the Federal Reform Technical Bill
Assembly Bill 210

Assembly Bill 210, as amended and passed by the Assembly October 18, aligns Wisconsin Statutes with the insurance coverage provisions of the Federal Patient Protection and Affordable Care Act (PPACA), while ensuring maximum flexibility for the State of Wisconsin.

AB 210, as amended by the Assembly:

- Brings Wisconsin into compliance with federal health insurance market reform, which **preserves Wisconsin's vibrant and competitive health insurance market**. Wisconsin's market currently provides access and consumer choice among a variety of high quality health plans. The Office of the Commissioner of Insurance (OCI) recently reported that 33 health insurers are actively participating in the individual market and 24 insurers are in the small employer group market, with no one insurer dominating the market.

- **Maintains Wisconsin's authority** over the health insurance regulatory system. Without the provisions of AB 210, many aspects of the responsive Wisconsin regulatory system would be replaced by a complex federal bureaucracy with limited knowledge of the Wisconsin health insurance market.

- **Protects consumers** by maintaining a Wisconsin point of contact for them that is easily accessible and resolves issues in a timely manner. AB 210 ensures that consumers can continue working with Wisconsin state employees who are familiar with both state and federal insurance law, rather than navigate a complex federal bureaucracy that could substantially delay issue resolution and cause confusion.

- Repeals PPACA provisions that are found unconstitutional or unenforceable or are repealed by Congress.

AB 210, as amended and passed by the Assembly, balances the need to comply with certain insurance market reforms of PPACA with the desire to preserve Wisconsin's competitive market. This bill is a step toward readiness while maintaining maximum State flexibility. Please support AB 210, as amended by the Assembly.