

Before
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2013 SENATE BILL 12

***Notes
need to be
removed.

February 12, 2013 - Introduced by Senators VINEHOUT, CARPENTER, LEHMAN, T. CULLEN and RISSER, cosponsored by Representatives BERNARD SCHABER, BEWLEY, DANOU, HEBL, KAHL, OHNSTAD and POPE. Referred to State and Federal Relations.

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), 49.45 (2) (a) 3., 71.26
7 (1) (be), 77.54 (9a) (a), 101.055 (2) (a), 230.03 (3), 230.80 (4), 230.90 (1) (c) and
8 635.18 (1); **to repeal and recreate** 230.03 (3); and **to create** 13.94 (1) (dj),
9 13.94 (1s) (c) 7., 40.02 (54) (n), 70.11 (41c) and chapter 636 of the statutes;
10 **relating to:** the Badger Health Benefit Authority, health benefit exchange
11 operation, granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

Badger Health Benefit Authority

This bill creates the Badger Health Benefit Authority (authority) that is a public body corporate and politic that is created by state law but that is not a state

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agency. The authority is governed by a board of directors consisting of the commissioner of insurance (commissioner), the secretary of employee trust funds, the director of the state Medical Assistance program, the executive director of the Health Insurance Risk-Sharing Plan Authority, and the following members who are nominated by the governor, and with the advice and consent of the senate appointed, for three-year terms: a member in good-standing of the American Academy of Actuaries, a health economist, an employee benefits specialist, a representative of small employers, a representative of an organization that represents consumer interests, a representative of organized labor, and an individual with experience in health care administration. The chairperson of the board is the commissioner. The board must appoint an executive director of the authority. The executive director must, among other duties, supervise the administrative affairs and general management and operation of the authority, employ professional and clerical staff, as necessary, and prepare the authority's annual budget.

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

Health benefit exchange

Under the bill, the authority must establish and operate a Wisconsin Health Benefit Exchange in this state, must make qualified health plans, with effective dates on or before January 1, 2014, available to qualified individuals and qualified employers, and must seek federal grants and other funding for the purpose of the exchange. A qualified health plan is defined in the bill, generally, as a health benefit plan that covers the costs of health care services and that meets the certification criteria described in the federal Patient Protection and Affordable Care Act (PPACA). A qualified individual is defined in the bill, generally, as a citizen or national of the United States, or an alien lawfully present in the United States, who is not imprisoned in a correctional facility and who resides in this state. A qualified employer is defined in the bill, generally, as an employer with not more than 100 employees (small employer) that either: 1) has its principal place of business in this state and elects to provide coverage to all of its eligible employees, wherever

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employed, through the small business health options program component of the exchange (SHOP Exchange) established by the authority; or 2) elects to provide coverage through the SHOP Exchange to all of its eligible employees who are principally employed in this state.

Only health benefit plans that are certified by the authority as qualified health plans may be offered through the exchange. To be certified as a qualified health plan, a health benefit plan must provide the essential health benefits package described in PPACA, its premium rates and contract language must have been filed with and not disapproved by the commissioner of insurance (commissioner), it must provide at least a bronze level of coverage, as determined by the authority in accordance with criteria developed by the secretary of the federal Department of Health and Human Services (federal secretary), its cost-sharing must not exceed limits established in PPACA, the insurer offering it must meet specified criteria, and the authority must determine that making the plan available through the exchange is in the interest of qualified individuals and qualified employers in this state.

The authority must assign a rating to, and determine the level of coverage of, each qualified health plan offered through the exchange. The levels of coverage under PPACA are bronze, silver, gold, and platinum, and are based on what percentage of the full actuarial value of the benefits provided under the plan the benefits under the plan provides. An eligible employee of a qualified employer that provides coverage through the SHOP Exchange may enroll in any qualified health plan offered through the SHOP Exchange at the level of coverage specified by his or her employer.

After the exchange begins operating, no insurer may offer or issue health benefit plan coverage in this state to an individual or a small employer except through the exchange. Although any insurer that is authorized to do business in this state in one or more lines of insurance that includes health insurance may offer qualified health plans through the exchange, a health benefit plan may not be certified as a qualified health plan unless the insurer that offers it, among other things, is in good standing, charges the same premium for the plan regardless of whether it is offered directly by the insurer or through an insurance intermediary, offers through the exchange at least one qualified health plan in each of the silver and gold levels of coverage, and complies with regulations of the federal secretary and any other requirements established by the authority. In addition, any insurer that seeks certification of a health benefit plan as a qualified health plan must provide a justification for any premium increase; must make specified information available to the public, such as data on enrollment and on the number of claims denied, claims payment policies and practices, and financial disclosures; and must permit individuals enrolled in the plan to learn the amount that an individual would be responsible for paying toward the cost of a specific item or service.

An insurer that offers coverage through the exchange must establish a toll-free hotline for providing information to enrollees and must pay a commission, determined by the authority, to an insurance intermediary who enrolls a qualified individual or employees of a qualified employer in a qualified health plan offered by the insurer through the exchange. For determining premiums, an insurer that offers

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coverage through the exchange may pool together all individuals and employees with coverage under all of the plans issued by the insurer through the exchange. To pay administrative expenses of the exchange, the authority may impose on each insurer offering plans through the exchange a surcharge that is based on the insurer's total premium or flat dollar amount per enrollee collected through the exchange.

The bill sets out numerous responsibilities for the authority with respect to the exchange. In addition to the administrative duties related to certifying and rating health benefit plans and enrolling qualified individuals and qualified employers, the authority must provide for the operation of a toll-free telephone hotline to respond to requests for assistance; establish an appeals process; establish and operate a service center to provide information; publicize the exchange; maintain an Internet site with comparative information about qualified health plans; screen applicants for eligibility for Medical Assistance (MA) and, if eligible, assist them to enroll in MA; select, and award grants to, entities to serve as navigators for conducting public education activities and distributing information about, and facilitating enrollment in, qualified health plans; review the rate of premium growth within the exchange and outside of the exchange; and develop recommendations on whether qualified employers should be limited to small employers. The authority may establish risk adjustment mechanisms for the exchange, contract with a third-party administrator for services on behalf of the exchange, and establish sub-exchanges or other exchanges provided for under federal law. The authority must keep an accounting of all exchange-related activities and receipts and expenditures and annually submit a report of the accounting to the federal secretary, the governor, the commissioner, and the legislature.

The commissioner may promulgate rules related to the implementation of the exchange and must develop a standard application form for use in the exchange.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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.** 1.12 (1) (b) of the statutes is amended to read:
- 2 1.12 (1) (b) "State agency" means an office, department, agency, institution of
- 3 higher education, the legislature, a legislative service agency, the courts, a judicial
- 4 branch agency, an association, society, or other body in state government that is

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1 created or authorized to be created by the constitution or by law, for which
2 appropriations are made by law, excluding the Health Insurance Risk-Sharing Plan
3 Authority, the Badger Health Benefit Authority, and the Wisconsin Economic
4 Development Corporation.

5 **SECTION 2.** 13.172 (1) of the statutes is amended to read:

6 13.172 (1) In this section, "agency" means an 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, and any authority created in subch. II of ch. 114 ~~or~~, subch. III of ch. 149, or
11 subch. III of ch. 636 or in ch. 231, 233, 234, 238, or 279.

12 **SECTION 3.** 13.62 (2) of the statutes is amended to read:

13 13.62 (2) "Agency" means any board, commission, department, office, society,
14 institution of higher education, council, or committee in the state government, or any
15 authority created in subch. II of ch. 114 ~~or~~, subch. III of ch. 149, or subch. III of ch.
16 636 or in ch. 231, 232, 233, 234, 237, 238, or 279, except that the term does not include
17 a council or committee of the legislature.

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

19 13.94 (1) (dj) At least once every 2 years, perform a financial audit and
20 performance evaluation audit of any health benefit plan exchange under subch. II
21 of ch. 636 and an audit of the Badger Health Benefit Authority's policies and
22 management practices and file copies of each audit report under this paragraph with
23 the distributees specified in par. (b).

24 **SECTION 5.** 13.94 (1s) (c) 7. of the statutes is created to read:

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1 13.94 (1s) (c) 7. The Badger Health Benefit Authority for the cost of the audit
2 under sub. (1) (dj).

3 **SECTION 6.** 13.95 (intro.) of the statutes is amended to read:

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

18 **SECTION 7.** 16.002 (2) of the statutes is amended to read:

19 16.002 (2) "Departments" means constitutional offices, departments, and
20 independent agencies and includes all societies, associations, and other agencies of
21 state government for which appropriations are made by law, but not including
22 authorities created in subch. II of ch. 114 ~~or~~, subch. III of ch. 149, or subch. III of ch.
23 636 or in ch. 231, 232, 233, 234, 237, 238, or 279.

24 **SECTION 8.** 16.004 (4) of the statutes is amended to read:

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1 16.004 (4) FREEDOM OF ACCESS. The secretary and such employees of the
2 department as the secretary designates may enter into the offices of state agencies
3 and authorities created under subch. II of ch. 114 and, subch. III of ch. 149, and
4 subch. III of ch. 636 and under chs. 231, 233, 234, 237, 238, and 279, and may
5 examine their books and accounts and any other matter that in the secretary's
6 judgment should be examined and may interrogate the agency's employees publicly
7 or privately relative thereto.

8 **SECTION 9.** 16.004 (5) of the statutes is amended to read:

9 16.004 (5) AGENCIES AND EMPLOYEES TO COOPERATE. All state agencies and
10 authorities created under subch. II of ch. 114 and, subch. III of ch. 149, and subch.
11 III of ch. 636 and under chs. 231, 233, 234, 237, 238, and 279, and their officers and
12 employees, shall cooperate with the secretary and shall comply with every request
13 of the secretary relating to his or her functions.

14 **SECTION 10.** 16.004 (12) (a) of the statutes is amended to read:

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

24 **SECTION 11.** 16.045 (1) (a) of the statutes is amended to read:

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

7 **SECTION 12.** 16.15 (1) (ab) of the statutes is amended to read:

8 16.15 (1) (ab) "Authority" has the meaning given under s. 16.70 (2), but
9 excludes the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox
10 River Remediation Authority, the Wisconsin Economic Development Corporation,
11 the Badger Health Benefit Authority, and the Health Insurance Risk-Sharing Plan
12 Authority.

13 **SECTION 13.** 16.41 (4) of the statutes is amended to read:

14 16.41 (4) In this section, "authority" means a body created under subch. II of
15 ch. 114 ~~or~~, subch. III of ch. 149, or subch. III of ch. 636 or under ch. 231, 233, 234, 237,
16 238, or 279.

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

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

24 **SECTION 15.** 16.52 (7) of the statutes is amended to read:

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1 **16.52 (7) PETTY CASH ACCOUNT.** With the approval of the secretary, each agency
2 that is authorized to maintain a contingent fund under s. 20.920 may establish a
3 petty cash account from its contingent fund. The procedure for operation and
4 maintenance of petty cash accounts and the character of expenditures therefrom
5 shall be prescribed by the secretary. In this subsection, "agency" means an office,
6 department, independent agency, institution of higher education, association,
7 society, or other body in state government created or authorized to be created by the
8 constitution or any law, that is entitled to expend moneys appropriated by law,
9 including the legislature and the courts, but not including an authority created in
10 subch. II of ch. 114 ~~or~~, subch. III of ch. 149, or subch. III of ch. 636 or in ch. 231, 233,
11 234, 237, 238, or 279.

12 **SECTION 16.** 16.528 (1) (a) of the statutes is amended to read:

13 16.528 (1) (a) "Agency" means an office, department, independent agency,
14 institution of higher education, association, society, or other body in state
15 government created or authorized to be created by the constitution or any law, that
16 is entitled to expend moneys appropriated by law, including the legislature and the
17 courts, but not including an authority created in subch. II of ch. 114 ~~or~~, subch. III of
18 ch. 149, or subch. III of ch. 636 or in ch. 231, 233, 234, 237, 238, or 279.

19 **SECTION 17.** 16.53 (2) of the statutes is amended to read:

20 **16.53 (2) IMPROPER INVOICES.** If an agency receives an improperly completed
21 invoice, the agency shall notify the sender of the invoice within 10 working days after
22 it receives the invoice of the reason it is improperly completed. In this subsection,
23 "agency" means an office, department, independent agency, institution of higher
24 education, association, society, or other body in state government created or
25 authorized to be created by the constitution or any law, that is entitled to expend

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1 moneys appropriated by law, including the legislature and the courts, but not
2 including an authority created in subch. II of ch. 114 ~~or~~, subch. III of ch. 149, or subch.
3 III of ch. 636 or in ch. 231, 233, 234, 237, 238, or 279.

4 **SECTION 18.** 16.54 (9) (a) 1. of the statutes is amended to read:

5 16.54 (9) (a) 1. "Agency" means an office, department, independent agency,
6 institution of higher education, association, society or other body in state
7 government created or authorized to be created by the constitution or any law, which
8 is entitled to expend moneys appropriated by law, including the legislature and the
9 courts, but not including an authority created in subch. II of ch. 114 ~~or~~, subch. III of
10 ch. 149, or subch. III of ch. 636 or in ch. 231, 233, 234, 237, 238, or 279.

11 **SECTION 19.** 16.70 (2) of the statutes is amended to read:

12 16.70 (2) "Authority" means a body created under subch. II of ch. 114 ~~or~~, subch.
13 III of ch. 149, or subch. III of ch. 636 or under ch. 231, 232, 233, 234, 237, or 279.

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

15 16.72 (2) (e) (intro.) In writing the specifications under this subsection, the
16 department and any other designated purchasing agent under s. 16.71 (1) shall
17 incorporate requirements for the purchase of products made from recycled materials
18 and recovered materials if their use is technically and economically feasible. Each
19 authority other than the University of Wisconsin Hospitals and Clinics Authority,
20 the Lower Fox River Remediation Authority, the Badger Health Benefit Authority,
21 and the Health Insurance Risk-Sharing Plan Authority, in writing specifications for
22 purchasing by the authority, shall incorporate requirements for the purchase of
23 products made from recycled materials and recovered materials if their use is
24 technically and economically feasible. The specifications shall include requirements
25 for the purchase of the following materials:

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

2 16.72 (2) (f) In writing specifications under this subsection, the department,
3 any other designated purchasing agent under s. 16.71 (1), and each authority other
4 than the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox
5 River Remediation Authority, the Badger Health Benefit Authority, and the Health
6 Insurance Risk-Sharing Plan Authority shall incorporate requirements relating to
7 the recyclability and ultimate disposition of products and, wherever possible, shall
8 write the specifications so as to minimize the amount of solid waste generated by the
9 state, consistent with the priorities established under s. 287.05 (12). All
10 specifications under this subsection shall discourage the purchase of single-use,
11 disposable products and require, whenever practical, the purchase of multiple-use,
12 durable products.

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

14 16.75 (1m) The department shall award each order or contract for materials,
15 supplies or equipment on the basis of life cycle cost estimates, whenever such action
16 is appropriate. Each authority other than the University of Wisconsin Hospitals and
17 Clinics Authority, the Lower Fox River Remediation Authority, the Wisconsin
18 Aerospace Authority, the Badger Health Benefit Authority, and the Health
19 Insurance Risk-Sharing Plan Authority shall award each order or contract for
20 materials, supplies or equipment on the basis of life cycle cost estimates, whenever
21 such action is appropriate. The terms, conditions and evaluation criteria to be
22 applied shall be incorporated in the solicitation of bids or proposals. The life cycle
23 cost formula may include, but is not limited to, the applicable costs of energy
24 efficiency, acquisition and conversion, money, transportation, warehousing and
25 distribution, training, operation and maintenance and disposition or resale. The

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1 department shall prepare documents containing technical guidance for the
2 development and use of life cycle cost estimates, and shall make the documents
3 available to local governmental units.

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

5 16.75 (8) (a) 1. The department, any other designated purchasing agent under
6 s. 16.71 (1), any agency making purchases under s. 16.74, and each authority other
7 than the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox
8 River Remediation Authority, the Badger Health Benefit Authority, and the Health
9 Insurance Risk-Sharing Plan Authority shall, to the extent practicable, make
10 purchasing selections using specifications developed under s. 16.72 (2) (e) to
11 maximize the purchase of materials utilizing recycled materials and recovered
12 materials.

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

14 16.75 (8) (a) 2. Each agency and authority other than the University of
15 Wisconsin Hospitals and Clinics Authority, the Lower Fox River Remediation
16 Authority, the Badger Health Benefit Authority, and the Health Insurance
17 Risk-Sharing Plan Authority shall ensure that the average recycled or recovered
18 content of all paper purchased by the agency or authority measured as a proportion,
19 by weight, of the fiber content of paper products purchased in a fiscal year, is not less
20 than 40% of all purchased paper.

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

22 16.75 (9) The department, any other designated purchasing agent under s.
23 16.71 (1), any agency making purchases under s. 16.74, and any authority other than
24 the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox River
25 Remediation Authority, the Badger Health Benefit Authority, and the Health

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1 Insurance Risk-Sharing Plan Authority shall, to the extent practicable, make
2 purchasing selections using specifications prepared under s. 16.72 (2) (f).

3 **SECTION 26.** 16.765 (1) of the statutes is amended to read:

4 16.765 (1) Contracting agencies, the University of Wisconsin Hospitals and
5 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
6 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the
7 Badger Health Benefit Authority, the Lower Fox River Remediation Authority, the
8 Wisconsin Economic Development Corporation, and the Bradley Center Sports and
9 Entertainment Corporation shall include in all contracts executed by them a
10 provision obligating the contractor not to discriminate against any employee or
11 applicant for employment because of age, race, religion, color, handicap, sex, physical
12 condition, developmental disability as defined in s. 51.01 (5), sexual orientation as
13 defined in s. 111.32 (13m), or national origin and, except with respect to sexual
14 orientation, obligating the contractor to take affirmative action to ensure equal
15 employment opportunities.

16 **SECTION 27.** 16.765 (2) of the statutes is amended to read:

17 16.765 (2) 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 Badger Health Benefit Authority, the Lower Fox River Remediation Authority, the
21 Wisconsin Economic Development Corporation, and the Bradley Center Sports and
22 Entertainment Corporation shall include the following provision in every contract
23 executed by them: "In connection with the performance of work under this contract,
24 the contractor agrees not to discriminate against any employee or applicant for
25 employment because of age, race, religion, color, handicap, sex, physical condition,

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1 developmental disability as defined in s. 51.01 (5), sexual orientation or national
2 origin. This provision shall include, but not be limited to, the following: employment,
3 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or
4 termination; rates of pay or other forms of compensation; and selection for training,
5 including apprenticeship. Except with respect to sexual orientation, the contractor
6 further agrees to take affirmative action to ensure equal employment opportunities.
7 The contractor agrees to post in conspicuous places, available for employees and
8 applicants for employment, notices to be provided by the contracting officer setting
9 forth the provisions of the nondiscrimination clause”.

10 **SECTION 28.** 16.765 (4) of the statutes is amended to read:

11 16.765 (4) Contracting agencies, the University of Wisconsin Hospitals and
12 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
13 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the
14 Badger Health Benefit Authority, the Lower Fox River Remediation Authority, and
15 the Bradley Center Sports and Entertainment Corporation shall take appropriate
16 action to revise the standard government contract forms under this section.

17 **SECTION 29.** 16.765 (5) of the statutes is amended to read:

18 16.765 (5) The head of each contracting agency and the boards of directors of
19 the University of Wisconsin Hospitals and Clinics Authority, the Fox River
20 Navigational System Authority, the Wisconsin Aerospace Authority, the Health
21 Insurance Risk-Sharing Plan Authority, the Badger Health Benefit Authority, the
22 Lower Fox River Remediation Authority, the Wisconsin Economic Development
23 Corporation, and the Bradley Center Sports and Entertainment Corporation shall
24 be primarily responsible for obtaining compliance by any contractor with the
25 nondiscrimination and affirmative action provisions prescribed by this section,

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1 according to procedures recommended by the department. The department shall
2 make recommendations to the contracting agencies and the boards of directors of the
3 University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational
4 System Authority, the Wisconsin Aerospace Authority, the Health Insurance
5 Risk-Sharing Plan Authority, the Badger Health Benefit Authority, the Lower Fox
6 River Remediation Authority, the Wisconsin Economic Development Corporation,
7 and the Bradley Center Sports and Entertainment Corporation for improving and
8 making more effective the nondiscrimination and affirmative action provisions of
9 contracts. The department shall promulgate such rules as may be necessary for the
10 performance of its functions under this section.

11 **SECTION 30.** 16.765 (6) of the statutes is amended to read:

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

22 **SECTION 31.** 16.765 (7) (intro.) of the statutes is amended to read:

23 16.765 (7) (intro.) When a violation of this section has been determined by the
24 department, the contracting agency, the University of Wisconsin Hospitals and
25 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin

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1 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the
2 Badger Health Benefit Authority, the Lower Fox River Remediation Authority, the
3 Wisconsin Economic Development Corporation, or the Bradley Center Sports and
4 Entertainment Corporation, the contracting agency, the University of Wisconsin
5 Hospitals and Clinics Authority, the Fox River Navigational System Authority, the
6 Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority,
7 the Badger Health Benefit Authority, the Lower Fox River Remediation Authority,
8 the Wisconsin Economic Development Corporation, or the Bradley Center Sports
9 and Entertainment Corporation shall:

10 **SECTION 32.** 16.765 (7) (d) of the statutes is amended to read:

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

18 **SECTION 33.** 16.765 (8) of the statutes is amended to read:

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

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

14 **SECTION 34.** 16.85 (2) of the statutes is amended to read:

15 16.85 (2) To furnish engineering, architectural, project management, and other
16 building construction services whenever requisitions therefor are presented to the
17 department by any agency. The department may deposit moneys received from the
18 provision of these services in the account under s. 20.505 (1) (kc) or in the general
19 fund as general purpose revenue — earned. In this subsection, “agency” means an
20 office, department, independent agency, institution of higher education, association,
21 society, or other body in state government created or authorized to be created by the
22 constitution or any law, which is entitled to expend moneys appropriated by law,
23 including the legislature and the courts, but not including an authority created in
24 subch. II of ch. 114 or, subch. III of ch. 149, or subch. III of ch. 636 or in ch. 231, 233,
25 234, 237, 238, or 279.

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1 **SECTION 35.** 16.865 (8) of the statutes is amended to read:

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

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

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

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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 37.** 40.02 (54) (n) of the statutes is created to read:

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

5 **SECTION 38.** 49.45 (2) (a) 3. of the statutes is amended to read:

6 49.45 (2) (a) 3. ~~Determine~~ Subject to s. 636.30 (1) (o), determine the eligibility
7 of persons for medical assistance, rehabilitative, and social services under ss. 49.46,
8 49.468, 49.47, and 49.471 and rules and policies adopted by the department and may,
9 under a contract under s. 49.78 (2), delegate all, or any portion, of this function to the
10 county department under s. 46.215, 46.22, or 46.23 or a tribal governing body.

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

12 70.11 (41c) **BADGER HEALTH BENEFIT AUTHORITY.** All property owned by the
13 Badger Health Benefit Authority, provided that the use of the property is primarily
14 related to the purposes of the authority.

15 **SECTION 40.** 71.26 (1) (be) of the statutes is amended to read:

16 71.26 (1) (be) *Certain authorities.* Income of the University of Wisconsin
17 Hospitals and Clinics Authority, of the Health Insurance Risk-Sharing Plan
18 Authority, of the Badger Health Benefit Authority, of the Fox River Navigational
19 System Authority, of the Wisconsin Economic Development Corporation, and of the
20 Wisconsin Aerospace Authority.

21 **SECTION 41.** 77.54 (9a) (a) of the statutes is amended to read:

22 77.54 (9a) (a) This state or any agency thereof, the University of Wisconsin
23 Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health
24 Insurance Risk-Sharing Plan Authority, the Badger Health Benefit Authority, the

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1 Wisconsin Economic Development Corporation, and the Fox River Navigational
2 System Authority.

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

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

9 **SECTION 43.** 230.03 (3) of the statutes is amended to read:

10 230.03 (3) "Agency" means any board, commission, committee, council, or
11 department in state government or a unit thereof created by the constitution or
12 statutes if such board, commission, committee, council, department, unit, or the
13 head thereof, is authorized to appoint subordinate staff by the constitution or
14 statute, except a legislative or judicial board, commission, committee, council,
15 department, or unit thereof or an authority created under subch. II of ch. 114 or,
16 subch. III of ch. 149, or subch. III of ch. 636 or under ch. 231, 232, 233, 234, 237, 238,
17 or 279. "Agency" does not mean any local unit of government or body within one or
18 more local units of government that is created by law or by action of one or more local
19 units of government.

20 **SECTION 44.** 230.03 (3) of the statutes, as affected by 2011 Wisconsin Act 32 and
21 2013 Wisconsin Act (this act), is repealed and recreated to read:

22 230.03 (3) "Agency" means any board, commission, committee, council, or
23 department in state government or a unit thereof created by the constitution or
24 statutes if such board, commission, committee, council, department, unit, or the
25 head thereof, is authorized to appoint subordinate staff by the constitution or

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1 statute, except the Board of Regents of the University of Wisconsin System, a
2 legislative or judicial board, commission, committee, council, department, or unit
3 thereof or an authority created under subch. II of ch. 114, subch. III of ch. 149, or
4 subch. III of ch. 636 or under ch. 231, 232, 233, 234, 237, 238, or 279. "Agency" does
5 not mean any local unit of government or body within one or more local units of
6 government that is created by law or by action of one or more local units of
7 government.

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

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

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

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

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

3 **SECTION 47.** 635.18 (1) of the statutes is amended to read:

4 635.18 (1) ~~Every~~ Any small employer insurer ~~shall~~ may actively market health
5 benefit plan coverage to small employers in the state.

6 **SECTION 48.** Chapter 636 of the statutes is created to read:

7 **CHAPTER 636**

8 **HEALTH BENEFIT PLAN EXCHANGE**

9 **SUBCHAPTER I**

10 **GENERAL PROVISIONS**

11 **636.01 Definitions.** In this chapter:

12 (1) "Authority" means the Badger Health Benefit Authority.

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

16 (3) "Federal act" means the federal Patient Protection and Affordable Care Act
17 (P.L. 111-148), as amended by the federal Health Care and Education Reconciliation
18 Act of 2010 (P.L. 111-152), and any amendments to, or regulations or guidance issued
19 under, those acts.

20 (4) (a) Except as provided in pars. (b) to (e), "health benefit plan" means a policy,
21 contract, certificate, or agreement offered or issued by a health carrier to provide,
22 deliver, arrange for, pay for, or reimburse any of the costs of health care services.

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

24 1. Coverage only for accident, or disability income insurance, or any
25 combination of those.

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- 1 2. Coverage issued as a supplement to liability insurance.
- 2 3. Liability insurance, including general liability insurance and automobile
- 3 liability insurance.
- 4 4. Worker's compensation or similar insurance.
- 5 5. Automobile medical payment insurance.
- 6 6. Credit-only insurance.
- 7 7. Coverage for on-site medical clinics.
- 8 8. Other similar insurance coverage, specified in federal regulations issued
- 9 under P.L. 104-191, under which benefits for health care services are secondary or
- 10 incidental to other insurance benefits.

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

- 14 1. Limited scope dental or vision benefits.
- 15 2. Benefits for long-term care, nursing home care, home health care,
- 16 community-based care, or any combination of those.
- 17 3. Other similar, limited benefits specified in federal regulations issued under
- 18 P.L. 104-191.

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

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

2 2. Hospital indemnity or other fixed indemnity insurance.

3 (e) “Health benefit plan” does not include any of the following if offered as a
4 separate policy, certificate, or contract of insurance:

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

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

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

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

18 (5m) “Minimum essential coverage” has the meaning given in 26 USC 5000A
19 (f) (1).

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

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

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

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

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

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

11 (a) The individual is seeking to enroll in a qualified health plan offered to
12 individuals through the exchange under subch. II.

13 (b) The individual resides in this state.

14 (c) At the time of enrollment, the individual is not incarcerated in a correctional
15 facility, other than incarceration pending the disposition of charges.

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

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

21 (11) "SHOP Exchange" means a small business health options program
22 established under s. 636.30 (1) (q).

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

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

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

3 2. An employer and any predecessor employer shall be treated as a single
4 employer.

5 3. All employees shall be counted, including part-time employees and
6 employees who are not eligible for coverage through the employer.

7 4. If an employer was not in existence during the entire preceding calendar
8 year, the determination of whether that employer is a small employer shall be based
9 on the average number of employees that it is reasonably expected that employer will
10 employ on business days in the current calendar year.

11 5. An employer that makes enrollment in qualified health plans available to
12 its employees through the SHOP Exchange and that would cease to be a small
13 employer by reason of an increase in the number of its employees shall continue to
14 be treated as a small employer for purposes of this chapter as long as it continuously
15 makes enrollment through the SHOP Exchange available to its employees.

SUBCHAPTER II**OPERATION OF EXCHANGE**

16
17
18 **636.25 General matters.** (1) The authority shall establish and operate a
19 Wisconsin Health Benefit Exchange and shall make qualified health plans, with
20 effective dates on or before January 1, 2014, available to qualified individuals and
21 qualified employers.

22 (2) (a) The authority may not make available any health benefit plan that is
23 not a qualified health plan.

24 (b) The authority shall allow a health carrier to offer a plan that provides
25 limited scope dental benefits meeting the requirements of section 9832 (c) (2) (A) of

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1 the Internal Revenue Code through the exchange, either separately or in conjunction
2 with a qualified health plan, if the plan provides pediatric dental benefits meeting
3 the requirements of section 1302 (b) (1) (J) of the federal act.

4 (3) Neither the authority nor a carrier offering health benefit plans through
5 the exchange may charge an individual a fee or penalty for termination of coverage
6 if the individual enrolls in another type of minimum essential coverage because the
7 individual has become newly eligible for that coverage or because the individual's
8 employer-sponsored coverage has become affordable under the standards of section
9 36B (c) (2) (C) of the Internal Revenue Code.

10 (4) The authority may enter into information-sharing agreements with federal
11 and state agencies and entities operating exchanges in other states to carry out its
12 responsibilities under this chapter, provided that such agreements include adequate
13 protections with respect to the confidentiality of the information to be shared and
14 comply with all state and federal laws and rules and regulations.

15 **636.30 Exchange duties and powers.** (1) In addition to all other duties
16 imposed under this chapter, the authority shall do all of the following relating to the
17 exchange:

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

22 (b) Provide for the operation of a toll-free telephone hotline to respond to
23 requests for assistance.

24 (c) Provide for enrollment periods, as provided under section 1311 (c) (6) of the
25 federal act.

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

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

9 (f) Use a standardized format for presenting health benefit options in the
10 exchange, including the use of the uniform outline of coverage established under
11 section 2715 of the federal Public Health Service Act (42 USC 300gg-15).

12 (g) Establish quality improvement standards for health benefit plans offered
13 through the exchange.

14 (h) Establish a system for enrolling eligible groups and individuals, using a
15 standard application form developed by the commissioner under s. 636.46 (2).

16 (i) Establish procedures for collecting premiums and remitting premium
17 payments and providing enrollment information to health carriers.

18 (j) Establish, in consultation with the commissioner, the method for
19 determining the amount of the surcharge under s. 636.45 (1) and establish the
20 procedure for imposing and collecting the surcharge.

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

23 (L) Establish and operate a service center to provide information to small
24 employers, individuals, enrollees, and insurance intermediaries about the exchange.

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1 (m) Establish a mechanism for regular communication and cooperation with
2 insurance intermediaries.

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

5 (o) In accordance with section 1413 of the federal act, inform individuals of
6 eligibility requirements for Medical Assistance under subch. IV of ch. 49 or any other
7 applicable state or local public program and if, through screening of the application
8 by the authority, the authority determines that any individual is eligible for any such
9 program, assist that individual to enroll in that program.

10 (p) Establish and make available by electronic means a calculator to determine
11 the actual cost of coverage after application of any premium tax credit under section
12 36B of the Internal Revenue Code and any cost-sharing reduction under section
13 1402 of the federal act.

14 (q) Establish a SHOP Exchange through which qualified employers may access
15 health care coverage for their employees and which shall enable any qualified
16 employer to specify the level of coverage at which its employees may enroll in any
17 qualified health plan offered through the SHOP Exchange.

18 (r) Perform duties required of the authority by the secretary or the federal
19 secretary of the treasury related to determining eligibility for premium tax credits,
20 reduced cost-sharing, or individual responsibility requirement exemptions.

21 (s) Select entities, which may include insurance intermediaries, that are
22 qualified to serve as navigators in accordance with section 1311 (i) of the federal act
23 and standards developed by the secretary, and award grants to enable navigators to
24 do all of the following:

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1 1. Conduct public education activities to raise awareness of the availability of
2 qualified health plans.

3 2. Distribute fair and impartial information concerning enrollment in qualified
4 health plans and concerning the availability of premium tax credits under section
5 36B of the Internal Revenue Code and cost-sharing reductions under section 1402
6 of the federal act.

7 3. Facilitate enrollment in qualified health plans.

8 4. Provide referrals to any applicable office of health insurance consumer
9 assistance or health insurance ombudsman established under section 2793 of the
10 federal Public Health Service Act (42 USC 300gg-93), or to any other appropriate
11 state agency or agencies, for any enrollee with a grievance, complaint, or question
12 regarding their health benefit plan, coverage, or determination under that plan or
13 coverage.

14 5. Provide information in a manner that is culturally and linguistically
15 appropriate to the needs of the population being served by the exchange.

16 (t) Assist in the coordination of any necessary administrative operations
17 between the department of corrections and the department of health services to
18 ensure all of the following:

19 1. That an individual, upon placement in a correctional facility, is disenrolled
20 for the duration of his or her incarceration from any health care coverage in which
21 he or she is enrolled.

22 2. That an individual who is incarcerated in a correctional facility, but
23 scheduled to be released from incarceration in the near future, is enrolled prior to
24 release, through the exchange and effective upon the date of his or her release, in

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1 Medical Assistance, a qualified health plan, or some other form of minimum
2 essential coverage on the date of his or her release from incarceration.

3 (u) For those persons whose alcohol or other drug abuse or mental health
4 treatment is not covered by a federally administered program, coordinate the
5 relationships among the Medical Assistance program, the exchange, and the county
6 departments under s. 51.42 or 51.437 to provide outpatient and inpatient mental
7 health and alcohol or other drug abuse treatment with all of the following goals for
8 the coordination:

****NOTE: I am unsure whether the county systems under s. 51.42 and 51.437 were
the state-mandated, county-administered systems the draft language was referring to.
You may want to check with whomever drafted that language if my references are correct,
and, if they are not, to get a statutory citation or a more exact name of the program or
facility.

9 1. Maximizing coverage and improving access through the exchange for
10 outpatient and inpatient treatment of mental illness and alcohol or other drug abuse.

11 2. Improving the quality of treatment for persons with alcohol or other drug
12 dependence or a mental illness.

13 3. Fully integrating the treatment for physical conditions, alcohol or other drug
14 abuse, and mental illness.

15 4. Reducing the cost of the county departments under ss. 51.42 and 51.437 to
16 taxpayers by avoiding unnecessary overlap between the improved coverage of
17 alcohol or other drug abuse treatment or mental illness treatment by health plans
18 offered through the exchange and the services provided by county departments
19 under s. 51.42 or 51.437.

20 (v) Review the rate of premium growth within the exchange and outside the
21 exchange, and consider the information in developing recommendations on whether
22 to continue limiting qualified employer status to small employers.

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1 (w) Credit the amount of any free choice voucher to the monthly premium of
2 the plan in which a qualified employee is enrolled, in accordance with section 10108
3 of the federal act, and collect the amount credited from the offering employer.

4 (x) Consult with stakeholders relevant to carrying out the activities required
5 under this chapter, including any of the following:

- 6 1. Educated health care consumers who are enrollees in qualified health plans.
- 7 2. Individuals and entities with experience in facilitating enrollment in
8 qualified health plans.
- 9 3. Representatives of small businesses and self-employed individuals.
- 10 4. The department of health services.
- 11 5. Advocates for enrolling hard-to-reach populations.

12 (y) Meet all of the following financial integrity requirements:

13 1. Keep an accurate accounting of all activities, receipts, and expenditures and
14 annually submit to the secretary, the governor, the commissioner, and the legislature
15 a report concerning such accountings.

16 2. Fully cooperate with any investigation conducted by the secretary under the
17 secretary's authority under the federal act and allow the secretary, in coordination
18 with the inspector general of the federal department of health and human services,
19 to do all of the following:

- 20 a. Investigate the affairs of the authority.
- 21 b. Examine the properties and records of the authority.
- 22 c. Require periodic reports in relation to the activities undertaken by the
23 authority.

24 3. In carrying out its activities under this chapter, not use any funds intended
25 for the administrative and operational expenses of the authority for staff retreats,

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1 promotional giveaways, excessive executive compensation, or promotion of federal
2 or state legislative or regulatory modifications, except that this subdivision does not
3 prohibit the authority from advocating, as part of administering the exchange, for
4 policies that the authority determines are in the best interest of the exchange or of
5 individuals and employees receiving coverage through the exchange.

6 (2) The authority may do all of the following relating to the exchange:

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

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

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

11 (d) Create any other exchange, or component of the exchange, that is provided
12 for under federal law.

13 (3) The authority shall seek grants to the fullest extent to which it is eligible,
14 including amounts under section 1311 (a) (1) and (4) of the federal act, or other
15 funding from the federal or state government for which it may be eligible and from
16 private foundations for the purpose of the exchange.

17 **636.42 Health benefit plan certification.** (1) The authority may certify a
18 health benefit plan as a qualified health plan if all of the following are true:

19 (a) The plan provides the essential health benefits package described in section
20 1302 (a) of the federal act, except that the plan is not required to provide essential
21 benefits that duplicate the minimum benefits of qualified dental plans, as provided
22 in sub. (5), if all of the following are satisfied:

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

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1 2. The carrier makes prominent disclosure at the time it offers the plan, in a
2 form approved by the authority, that the plan does not provide the full range of
3 essential pediatric benefits and that qualified dental plans providing those benefits
4 and other dental benefits not covered by the plan are offered through the exchange.

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

7 (c) The plan provides at least a bronze level of coverage, as determined under
8 s. 636.30 (1) (e), unless the plan is certified as a qualified catastrophic plan, meets
9 the requirements of the federal act for catastrophic plans, and will only be offered to
10 individuals eligible for catastrophic coverage.

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

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

16 1. Is licensed and in good standing to offer health insurance coverage in this
17 state.

18 2. Offers at least one qualified health plan in the silver level and at least one
19 qualified health plan in the gold level through each component of the exchange in
20 which the carrier participates. In this subdivision, "component" refers to the SHOP
21 Exchange and the exchange for individual coverage.

22 3. Charges the same premium rate for each qualified health plan without
23 regard to whether the plan is offered directly from the carrier or through an
24 insurance intermediary.

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1 4. Does not charge any cancellation fees or penalties in violation of s. 636.25
2 (3).

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

5 (f) The plan meets the requirements of certification as required by any rules
6 promulgated under s. 636.46 (1) and by the secretary under section 1311 (c) of the
7 federal act, including minimum standards in the areas of marketing practices,
8 network adequacy, essential community providers in underserved areas,
9 accreditation, quality improvement, uniform enrollment forms, and descriptions of
10 coverage and information on quality measures for health benefit plan performance.

11 (g) The authority determines that making the plan available through the
12 exchange is in the interest of qualified individuals and qualified employers in this
13 state.

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

16 (a) On the basis that the plan is a fee-for-service plan.

17 (b) Through the imposition of premium price controls by the authority.

18 (c) On the basis that the plan provides treatments necessary to prevent
19 patients' deaths in circumstances the authority determines are inappropriate or too
20 costly.

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

23 (a) Submit a justification for any premium increase before implementation of
24 that increase. The carrier shall prominently post the information on its Internet site.

25 The authority shall take this information, along with the information and the

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1 recommendations provided to the authority by the commissioner under section 2794
2 (b) of the federal Public Health Service Act (42 USC 300gg-94 (b)), into consideration
3 when determining whether to allow the carrier to make the plan available through
4 the exchange.

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

8 a. Claims payment policies and practices.

9 b. Periodic financial disclosures.

10 c. Data on enrollment.

11 d. Data on disenrollment.

12 e. Data on the number of claims that are denied.

13 f. Data on rating practices.

14 g. Information on cost-sharing and payments with respect to any
15 out-of-network coverage.

16 h. Information on enrollee and participant rights under title I of the federal act.

17 i. Other information as determined appropriate by the secretary.

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

20 (c) Permit individuals to learn, in a timely manner upon the request of the
21 individual, the amount of cost-sharing, including deductibles, copayments, and
22 coinsurance, under the individual's plan or coverage that the individual would be
23 responsible for paying with respect to the furnishing of a specific item or service by
24 a participating provider. At a minimum, this information shall be made available

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1 to the individual through an Internet site and through other means for individuals
2 without access to the Internet.

3 (4) The authority may not exempt any health carrier seeking certification of
4 a health benefit plan as a qualified health plan, regardless of the type or size of the
5 carrier, from state licensure or solvency requirements and shall apply the criteria of
6 this section in a manner that assures equitable treatment of all health carriers
7 participating in the exchange.

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

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

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

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

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1 **636.43 Insurer requirements.** (1) Any health carrier that is authorized to
2 do business in this state in one or more lines of insurance that includes health
3 insurance may offer health benefit plans through the exchange. After the exchange
4 becomes operational, no health carrier may offer or issue a health benefit plan in this
5 state to an individual or to a small employer except through the exchange.

6 (2) For the purpose of determining premiums, a carrier may pool together all
7 individuals and employees who have coverage under all of the qualified health plans
8 issued by the carrier through the exchange.

9 (3) A carrier that offers qualified health plans through the exchange shall
10 establish a toll-free hotline for providing information to enrollees and other
11 individuals and shall furnish such reasonable reports as the authority determines
12 necessary for the administration of the exchange.

13 (4) The authority may audit any carrier that provides coverage under a
14 qualified health plan through the exchange for the purpose of ensuring that the
15 carrier is providing covered individuals with the benefits provided for under this
16 subchapter in a manner that does all of the following:

17 (a) Complies with the provisions of this chapter.

18 (b) Promotes positive health outcomes.

19 (c) Advances value-based and evidence-based medical practices.

20 (d) Avoids unnecessary operating and capital costs arising from inappropriate
21 utilization or inefficient delivery of health care services, unwarranted duplication of
22 services and infrastructure, or creation of excess care delivery capacity.

23 (e) Holds down the growth of health care costs.

24 **636.44 Intermediaries.** An insurance intermediary that enrolls a qualified
25 individual in a qualified health plan through the exchange shall be paid a

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1 commission by the carrier offering the qualified health plan. An insurance
2 intermediary that enrolls the employees of a qualified employer in one or more
3 qualified health plans through the exchange shall be paid a commission by each
4 carrier offering a qualified health plan selected by an employee of the qualified
5 employer. The authority shall determine the commission amounts that must be paid
6 to intermediaries under this section after considering information provided to the
7 commissioner under s. 628.81 with respect to health insurance.

8 **636.45 Funding; publication of costs.** (1) For payment of administrative
9 expenses, the authority may impose a surcharge on each health carrier offering
10 qualified health plans through the exchange. The surcharge shall be based on the
11 carrier's total premium or flat dollar amount per enrollee collected through the
12 exchange.

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

17 **636.46 Rules; application form.** (1) The commissioner may promulgate
18 rules to implement the provisions of this chapter. Rules promulgated under this
19 section may not conflict with or prevent the application of regulations promulgated
20 by the secretary under the federal act.

21 (2) The commissioner shall develop a standard application form for use in the
22 exchange.

23 **636.48 Relation to other laws.** Nothing in this chapter, and no action taken
24 by the authority under this chapter, shall be construed to preempt or supersede the
25 authority of the commissioner to regulate the business of insurance within this state.

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1 Except as expressly provided to the contrary in this chapter, all health carriers
2 offering qualified health plans in this state shall comply fully with all applicable
3 health insurance laws of this state and rules promulgated and orders issued by the
4 commissioner.

SUBCHAPTER III**BADGER HEALTH BENEFIT AUTHORITY**

7 **636.70 Creation and organization of authority.** (1) There is created a
8 public body corporate and politic to be known as the “Badger Health Benefit
9 Authority.” The board of directors of the authority shall consist of the commissioner,
10 or his or her designee; the secretary of employee trust funds, or his or her designee;
11 the person who is appointed by the secretary of health services to be the director of
12 the Medical Assistance program, or his or her designee; the executive director, or his
13 or her designee, of the Health Insurance Risk-Sharing Plan Authority, if that
14 organization exists; the executive director, or his or her designee, of the Wisconsin
15 Collaborative for Healthcare Quality, if that organization exists; the executive
16 director, or his or her designee, of the Wisconsin Health Information Organization,
17 if that organization exists; and all of the following members, who shall be nominated
18 by the governor, and with the advice and consent of the senate appointed for 3-year
19 terms except as provided in sub. (2):

20 (a) A member in good standing of the American Academy of Actuaries.

21 (b) A health economist.

22 (c) An employee benefits specialist.

23 (d) A representative of small employers.

24 (e) A representative of an organization that represents consumer interests.

25 (f) A representative of organized labor.

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1 (g) An individual with experience in health care administration.

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

6 (3) A vacancy on the board shall be filled in the same manner as the original
7 appointment to the board for the remainder of the unexpired term, if any.

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

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

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

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1 may rely upon such certificates. The executive director shall have all of the following
2 duties:

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

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

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

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

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

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

14 **636.72 Authority duties.** In addition to all other duties imposed under this
15 chapter, the authority shall do all of the following:

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

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

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

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

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

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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 (5) Comply with the requirements of s. 16.413 as if the authority is a state
11 agency.

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

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

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

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

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

23 (5) Incur debt.

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

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

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

5 (8) Procure liability insurance.

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

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

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

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

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

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1 (c) For purposes of clarification, the authority may discuss the requirements
2 of the proposed contract with any person who submits a bid or proposal and shall
3 permit any offerer to revise his or her bid or proposal to ensure its responsiveness to
4 those requirements.

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

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

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

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

24 **636.78 Political activities.** (1) No employee of the authority may directly
25 or indirectly solicit or receive subscriptions or contributions for any partisan political

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1 party or any political purpose while engaged in his or her official duties as an
2 employee. No employee of the authority may engage in any form of political activity
3 calculated to favor or improve the chances of any political party or any person seeking
4 or attempting to hold partisan political office while engaged in his or her official
5 duties as an employee or engage in any political activity while not engaged in his or
6 her official duties as an employee to such an extent that the person's efficiency during
7 working hours will be impaired or that he or she will be tardy or absent from work.
8 Any violation of this section is adequate grounds for dismissal.

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

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

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

18 **636.80 Financial disclosure.** (1) In this section, "individual required to file"
19 means a person who is a member of the board of the authority or the executive
20 director of the authority.

****NOTE: Did you want all employees of the authority to be required to file financial
disclosure forms?

21 (2) Each individual who in January of any year is an individual required to file
22 shall file with the government accountability board no later than April 30 of that year
23 a statement of economic interests meeting each of the requirements of s. 19.44 (1).

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1 The information contained on the statement shall be current as of December 31 of
2 the preceding year.

3 (3) An individual required to file shall file with the government accountability
4 board a statement of economic interests meeting each of the requirements of s. 19.44
5 (1) no later than 21 days following the date he or she assumes a position on the board
6 or the position of executive director if the individual required to file has not
7 previously filed a statement of economic interests with the government
8 accountability board during that year. The information on the statement shall be
9 current as per the date he or she assumes the position.

10 (4) If an individual required to file fails to make a timely filing, the government
11 accountability board shall promptly provide notice of the delinquency to the
12 secretary of administration, and to the executive director of the authority, or the
13 chairperson of the board if the executive director's filing is untimely. Upon such
14 notification, both the secretary of administration and the executive director, or
15 chairperson, shall withhold all payments for compensation, reimbursement of
16 expenses, and other obligations to the individual until the government
17 accountability board notifies those to whom notice of the delinquency was provided
18 that the individual has complied with this section.

19 (5) On its own motion or at the request of any individual required to file a
20 statement of economic interests, the government accountability board may extend
21 the time for filing or waive any filing requirement if the government accountability
22 board determines that the literal application of the filing requirements of this
23 subchapter would work an unreasonable hardship on that individual or that the
24 extension of the time for filing or waiver is in the public interest. The government

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1 accountability board shall set forth in writing as a matter of public record its reason
2 for the extension or waiver.

3 (6) (a) Any person who violates this section may be required to forfeit not more
4 than \$500 for each violation. If the court determines that the accused has realized
5 economic gain as a result of the violation, the court may, in addition, order the
6 accused to forfeit the amount gained as a result of the violation. The attorney
7 general, when so requested by the government accountability board, shall institute
8 proceedings to recover any forfeiture incurred under this subsection that is not paid
9 by the person against whom it is assessed.

10 (b) Any person who intentionally violates this section shall be fined not less
11 than \$100 nor more than \$5,000 or imprisoned not more than one year in the county
12 jail or both.

13 **636.82 Conflict of interest prohibited; exception.** (1) Except in
14 accordance with the government accountability board's advice under s. 5.05 (6a) and
15 except as otherwise provided in sub. (2), a member of the board and the executive
16 director may not do any of the following:

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

21 (b) Use his or her office or position in a way that produces or assists in the
22 production of a substantial benefit, direct or indirect, for the board member or
23 executive director, one or more members of his or her immediate family either
24 separately or together, or an organization with which the board member or executive
25 director is associated.

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1 (2) This section does not prohibit a board member or the executive director from
2 taking any action concerning the lawful payment of salaries or employee benefits or
3 reimbursement of actual and necessary expenses.

 ****NOTE: Do you want any penalties to apply for violating the conflict of interest
or financial disclosure provisions?

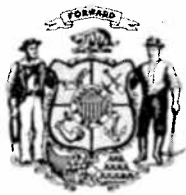
4 (3) (a) Any person who violates this section may be required to forfeit not more
5 than \$5,000 for each violation. If the court determines that the accused has realized
6 economic gain as a result of the violation, the court may, in addition, order the
7 accused to forfeit the amount gained as a result of the violation. The attorney
8 general, when so requested by the government accountability board, shall institute
9 proceedings to recover any forfeiture incurred under this subsection that is not paid
10 by the person against whom it is assessed.

11 (b) Any person who intentionally violates this section shall be fined not less
12 than \$100 nor more than \$5,000 or imprisoned not more than one year in the county
13 jail or both.

14 **636.84 Liability; expenses; limitations.** (1) Neither the state, nor any
15 political subdivision of the state, nor any officer, employee, or agent of the state or
16 a political subdivision who is acting within the scope of employment or agency is
17 liable for any debt, obligation, act, or omission of the authority.

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

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



02-25-2013

2013 SENATE BILL 12

Changes Made By WLT

February 12, 2013 – Introduced by Senators VINEHOUT, CARPENTER, LEHMAN, T. CULLEN and RISSER, cosponsored by Representatives BERNARD SCHABER, BEWLEY, DANOU, HEBL, KAHL, OHNSTAD and POPE. Referred to State and Federal Relations.

**** Notes Removed

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), 49.45 (2) (a) 3., 71.26
 7 (1) (be), 77.54 (9a) (a), 101.055 (2) (a), 230.03 (3), 230.80 (4), 230.90 (1) (c) and
 8 635.18 (1); *to repeal and recreate* 230.03 (3); and *to create* 13.94 (1) (dj),
 9 13.94 (1s) (c) 7., 40.02 (54) (n), 70.11 (41c) and chapter 636 of the statutes;
 10 **relating to:** the Badger Health Benefit Authority, health benefit exchange
 11 operation, granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau
Badger Health Benefit Authority

This bill creates the Badger Health Benefit Authority (authority) that is a public body corporate and politic that is created by state law but that is not a state

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agency. The authority is governed by a board of directors consisting of the commissioner of insurance (commissioner), the secretary of employee trust funds, the director of the state Medical Assistance program, the executive director of the Health Insurance Risk-Sharing Plan Authority, and the following members who are nominated by the governor, and with the advice and consent of the senate appointed, for three-year terms: a member in good-standing of the American Academy of Actuaries, a health economist, an employee benefits specialist, a representative of small employers, a representative of an organization that represents consumer interests, a representative of organized labor, and an individual with experience in health care administration. The chairperson of the board is the commissioner. The board must appoint an executive director of the authority. The executive director must, among other duties, supervise the administrative affairs and general management and operation of the authority, employ professional and clerical staff, as necessary, and prepare the authority's annual budget.

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

Health benefit exchange

Under the bill, the authority must establish and operate a Wisconsin Health Benefit Exchange in this state, must make qualified health plans, with effective dates on or before January 1, 2014, available to qualified individuals and qualified employers, and must seek federal grants and other funding for the purpose of the exchange. A qualified health plan is defined in the bill, generally, as a health benefit plan that covers the costs of health care services and that meets the certification criteria described in the federal Patient Protection and Affordable Care Act (PPACA). A qualified individual is defined in the bill, generally, as a citizen or national of the United States, or an alien lawfully present in the United States, who is not imprisoned in a correctional facility and who resides in this state. A qualified employer is defined in the bill, generally, as an employer with not more than 100 employees (small employer) that either: 1) has its principal place of business in this state and elects to provide coverage to all of its eligible employees, wherever

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employed, through the small business health options program component of the exchange (SHOP Exchange) established by the authority; or 2) elects to provide coverage through the SHOP Exchange to all of its eligible employees who are principally employed in this state.

Only health benefit plans that are certified by the authority as qualified health plans may be offered through the exchange. To be certified as a qualified health plan, a health benefit plan must provide the essential health benefits package described in PPACA, its premium rates and contract language must have been filed with and not disapproved by the commissioner of insurance (commissioner), it must provide at least a bronze level of coverage, as determined by the authority in accordance with criteria developed by the secretary of the federal Department of Health and Human Services (federal secretary), its cost-sharing must not exceed limits established in PPACA, the insurer offering it must meet specified criteria, and the authority must determine that making the plan available through the exchange is in the interest of qualified individuals and qualified employers in this state.

The authority must assign a rating to, and determine the level of coverage of, each qualified health plan offered through the exchange. The levels of coverage under PPACA are bronze, silver, gold, and platinum, and are based on what percentage of the full actuarial value of the benefits provided under the plan the benefits under the plan provides. An eligible employee of a qualified employer that provides coverage through the SHOP Exchange may enroll in any qualified health plan offered through the SHOP Exchange at the level of coverage specified by his or her employer.

After the exchange begins operating, no insurer may offer or issue health benefit plan coverage in this state to an individual or a small employer except through the exchange. Although any insurer that is authorized to do business in this state in one or more lines of insurance that includes health insurance may offer qualified health plans through the exchange, a health benefit plan may not be certified as a qualified health plan unless the insurer that offers it, among other things, is in good standing, charges the same premium for the plan regardless of whether it is offered directly by the insurer or through an insurance intermediary, offers through the exchange at least one qualified health plan in each of the silver and gold levels of coverage, and complies with regulations of the federal secretary and any other requirements established by the authority. In addition, any insurer that seeks certification of a health benefit plan as a qualified health plan must provide a justification for any premium increase; must make specified information available to the public, such as data on enrollment and on the number of claims denied, claims payment policies and practices, and financial disclosures; and must permit individuals enrolled in the plan to learn the amount that an individual would be responsible for paying toward the cost of a specific item or service.

An insurer that offers coverage through the exchange must establish a toll-free hotline for providing information to enrollees and must pay a commission, determined by the authority, to an insurance intermediary who enrolls a qualified individual or employees of a qualified employer in a qualified health plan offered by the insurer through the exchange. For determining premiums, an insurer that offers

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coverage through the exchange may pool together all individuals and employees with coverage under all of the plans issued by the insurer through the exchange. To pay administrative expenses of the exchange, the authority may impose on each insurer offering plans through the exchange a surcharge that is based on the insurer's total premium or flat dollar amount per enrollee collected through the exchange.

The bill sets out numerous responsibilities for the authority with respect to the exchange. In addition to the administrative duties related to certifying and rating health benefit plans and enrolling qualified individuals and qualified employers, the authority must provide for the operation of a toll-free telephone hotline to respond to requests for assistance; establish an appeals process; establish and operate a service center to provide information; publicize the exchange; maintain an Internet site with comparative information about qualified health plans; screen applicants for eligibility for Medical Assistance (MA) and, if eligible, assist them to enroll in MA; select, and award grants to, entities to serve as navigators for conducting public education activities and distributing information about, and facilitating enrollment in, qualified health plans; review the rate of premium growth within the exchange and outside of the exchange; and develop recommendations on whether qualified employers should be limited to small employers. The authority may establish risk adjustment mechanisms for the exchange, contract with a third-party administrator for services on behalf of the exchange, and establish sub-exchanges or other exchanges provided for under federal law. The authority must keep an accounting of all exchange-related activities and receipts and expenditures and annually submit a report of the accounting to the federal secretary, the governor, the commissioner, and the legislature.

The commissioner may promulgate rules related to the implementation of the exchange and must develop a standard application form for use in the exchange.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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.** 1.12 (1) (b) of the statutes is amended to read:
- 2 1.12 (1) (b) “State agency” means an office, department, agency, institution of
- 3 higher education, the legislature, a legislative service agency, the courts, a judicial
- 4 branch agency, an association, society, or other body in state government that is

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1 executive director, or employee fails to cooperate with the authority in defense of the
2 claim and if the failure to cooperate affects the defense of the action.

3 (5) The amount recoverable by any person for any damages, injuries, or death
4 in any civil action or civil proceeding against the authority, including any such action
5 or proceeding based on contribution or indemnification, shall not exceed \$100,000.

6 **SECTION 49. Effective dates.** This act takes effect on the day after publication,
7 except as follows:

8 (1) The repeal and recreation of section 230.03 (3) of the statutes takes effect
9 on July 1, 2013, or on the day after publication, whichever is later.

10 (2) The treatment of section 635.18 (1) of the statutes takes effect on January
11 1, 2014.

12 (END)