



2013 SENATE BILL 392

November 4, 2013 – Introduced by Senators VUKMIR, LASEE, SCHULTZ and LAZICH, cosponsored by Representatives CRAIG, AUGUST, BIES, JACQUE, KAPENGA, KNODL, KOOYENGA, LEMAHIEU, MURPHY, NASS, PETERSEN, PRIDEMORE, SANFELIPPO, SCHRAA, STROEBEL and THIESFELDT. Referred to Committee on Government Operations, Public Works, and Telecommunications.

1 **AN ACT to amend** 49.45 (2m) (c) (intro.); and **to create** 49.45 (2m) (dm) and
2 146.965 of the statutes; **relating to:** requiring legislation for agencies to take
3 an action to, request federal moneys to, and use state moneys to assist the
4 federal government to create or implement a health benefit exchange.

Analysis by the Legislative Reference Bureau

On March 23, 2010, the federal government enacted the Patient Protection and Affordable Care Act, which, among other things, imposes requirements and limitations on health insurance policies and health plans; requires the creation of American health benefit exchanges, which are health insurance exchanges through which individuals and small employers can purchase insurance; and creates incentives for improving access to health care. This bill requires that, before a state agency, including the governor, takes any action to create or implement an American health benefit exchange for which the agency would typically promulgate a rule or issue an executive order, the agency must request the Legislative Reference Bureau to prepare legislation that allows the agency to take the action. The agency must then submit the proposed legislation to each standing committee of each house of the legislature that has jurisdiction over health or insurance matters. The bill prohibits the agency from taking the action to create or implement an American health benefit exchange until the legislation allowing the agency to take the action takes effect. The bill also prohibits an agency from requesting a grant or other moneys from the federal government to create or implement an American health benefit exchange and from

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expending any state moneys, or federal moneys passing through the state treasury, to assist the federal government in creating an American health benefit exchange.

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.** 49.45 (2m) (c) (intro.) of the statutes is amended to read:

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

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

8 49.45 **(2m)** (dm) The department may not follow the procedures under this
9 section to implement a policy that involves an action to create or implement any
10 American health benefit exchange, as defined in s. 146.965 (1) (b). If the department
11 proposes a policy under par. (c) that involves an action to create or implement any
12 American health benefit exchange, the department shall comply with the procedure
13 under s. 146.965 (2) before taking the action.

14 **SECTION 3.** 146.965 of the statutes is created to read:

15 **146.965 Implementation of health benefit exchanges. (1) DEFINITIONS.**

16 In this section:

17 (a) “Agency” means a board, commission, committee, department, or officer in
18 the state government, including the governor but excluding a district attorney or a
19 military or judicial officer.

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1 (b) “American health benefit exchange” means any American health benefit
2 exchange, as described in 42 USC 18031 as created by the federal Patient Protection
3 and Affordable Care Act, P.L. 111–148, as amended by the federal Health Care and
4 Education Reconciliation Act of 2010, P.L. 111–152, regardless of whether the
5 American health benefit exchange is established solely by the state, operated under
6 a partnership with the federal government, or established and facilitated in the state
7 by the federal government.

8 (2) LEGISLATION REQUIRED. (a) Notwithstanding s. 227.11 (2), before an agency
9 takes any action to create or implement any portion of an American health benefit
10 exchange for which the agency would typically promulgate a rule or issue an
11 executive order, the agency shall request that the legislative reference bureau
12 prepare legislation that allows the agency to take the action. The agency shall
13 submit the proposed legislation to each standing committee of each house of the
14 legislature that has jurisdiction over health or insurance matters under s. 13.172 (3).
15 The agency may not take the action until the legislation allowing the agency to take
16 the action takes effect.

17 (b) No agency may request a grant or other moneys from the federal
18 government to create or implement an American health benefit exchange, unless the
19 state legislature has enacted legislation to allow the request for the grant or other
20 moneys and the legislation is in effect.

21 (c) No agency may expend any moneys of this state, or of any subdivision or
22 agency of this state, or any federal moneys passing through the state treasury to
23 assist the federal government in creating an American health benefit exchange

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SECTION 3

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

3 (END)