



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRBs0444/1  
TJD:cjs

**SENATE SUBSTITUTE AMENDMENT 2,  
TO ASSEMBLY BILL 365**

December 4, 2018 - Offered by Senators FEYEN and FITZGERALD.

1 **AN ACT** *to amend* 40.51 (8), 40.51 (8m), 66.0137 (4), 120.13 (2) (g) and 185.983  
2 (1) (intro.); and *to create* 609.847 and 632.728 of the statutes; **relating to:**  
3 coverage of individuals with preexisting conditions.

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

Currently, the federal Patient Protection and Affordable Care Act generally allows premium rates to be based only on individual or family coverage, rating area, age, and tobacco use; requires group and individual health insurance policies to accept every employer and individual that applies for coverage, known as guaranteed issue, and renew health insurance coverage at the option of the sponsor or individual; and prohibits health insurance policies from imposing preexisting condition exclusions. If those requirements and prohibitions of the Affordable Care Act are no longer enforceable or no longer preempt state law, all of the following apply under this substitute amendment: every individual health insurance policy must accept every individual in this state who applies for coverage and every group health insurance policy must accept every employer in this state that applies for coverage, regardless of whether any individual or employee has a preexisting condition; a health insurance policy may restrict enrollment in coverage described to open or special enrollment periods; the commissioner of insurance must ensure a statewide open enrollment period allowing individuals, including individuals who do not have coverage, to enroll in coverage; health insurance policies must provide special

enrollment periods for certain qualifying events described in federal law; a health insurance policy offered on the individual or small employer market or a self-insured health plan may not vary premium rates for a specific policy or plan except on the basis of whether the policy or plan covers an individual or a family, area in the state, age, and tobacco use; a group health benefit plan, including a self-insured governmental health plan, may not impose a preexisting condition exclusion; and an individual health insurance policy may not reduce or deny a claim or loss incurred or disability commencing under the policy on the ground that a disease or physical condition existed prior to the effective date of coverage. Certain grandfathered and transitional health insurance policies that are exempt from some requirements of the Affordable Care Act, including the premium rate requirements, are exempt from the premium rate requirements under the substitute amendment. Under the substitute amendment, an individual health insurance policy is known as a disability insurance policy.

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

1           **SECTION 1.** 40.51 (8) of the statutes is amended to read:

2           40.51 **(8)** Every health care coverage plan offered by the state under sub. (6)  
3 shall comply with ss. 631.89, 631.90, 631.93 (2), 631.95, 632.72 (2), 632.728, 632.746  
4 (1) to (8) and (10), 632.747, 632.748, 632.798, 632.83, 632.835, 632.85, 632.853,  
5 632.855, 632.867, 632.87 (3) to (6), 632.885, 632.89, 632.895 (5m) and (8) to (17), and  
6 632.896.

7           **SECTION 2.** 40.51 (8m) of the statutes is amended to read:

8           40.51 **(8m)** Every health care coverage plan offered by the group insurance  
9 board under sub. (7) shall comply with ss. 631.95, 632.728, 632.746 (1) to (8) and (10),  
10 632.747, 632.748, 632.798, 632.83, 632.835, 632.85, 632.853, 632.855, 632.867,  
11 632.885, 632.89, and 632.895 (11) to (17).

12           **SECTION 3.** 66.0137 (4) of the statutes, as affected by 2017 Wisconsin Act 30,  
13 is amended to read:

1           66.0137 (4) SELF-INSURED HEALTH PLANS. If a city, including a 1st class city, or  
2 a village provides health care benefits under its home rule power, or if a town  
3 provides health care benefits, to its officers and employees on a self-insured basis,  
4 the self-insured plan shall comply with ss. 49.493 (3) (d), 631.89, 631.90, 631.93 (2),  
5 632.728, 632.746 (10) (a) 2. and (b) 2., 632.747 (3), 632.798, 632.85, 632.853, 632.855,  
6 632.867, 632.87 (4) to (6), 632.885, 632.89, 632.895 (9) to (17), 632.896, and 767.513  
7 (4).

8           **SECTION 4.** 120.13 (2) (g) of the statutes, as affected by 2017 Wisconsin Act 30,  
9 is amended to read:

10           120.13 (2) (g) Every self-insured plan under par. (b) shall comply with ss.  
11 49.493 (3) (d), 631.89, 631.90, 631.93 (2), 632.728, 632.746 (10) (a) 2. and (b) 2.,  
12 632.747 (3), 632.798, 632.85, 632.853, 632.855, 632.867, 632.87 (4) to (6), 632.885,  
13 632.89, 632.895 (9) to (17), 632.896, and 767.513 (4).

14           **SECTION 5.** 185.983 (1) (intro.) of the statutes, as affected by 2017 Wisconsin  
15 Act 30, is amended to read:

16           185.983 (1) (intro.) Every voluntary nonprofit health care plan operated by a  
17 cooperative association organized under s. 185.981 shall be exempt from chs. 600 to  
18 646, with the exception of ss. 601.04, 601.13, 601.31, 601.41, 601.42, 601.43, 601.44,  
19 601.45, 611.26, 611.67, 619.04, 623.11, 623.12, 628.34 (10), 631.17, 631.89, 631.93,  
20 631.95, 632.72 (2), 632.728, 632.745 to 632.749, 632.775, 632.79, 632.795, 632.798,  
21 632.85, 632.853, 632.855, 632.867, 632.87 (2) to (6), 632.885, 632.89, 632.895 (5) and  
22 (8) to (17), 632.896, and 632.897 (10) and chs. 609, 620, 630, 635, 645, and 646, but  
23 the sponsoring association shall:

24           **SECTION 6.** 609.847 of the statutes is created to read:

1           **609.847 Preexisting condition discrimination prohibited.** Limited  
2 service health organizations, preferred provider plans, and defined network plans  
3 are subject to s. 632.728.

4           **SECTION 7.** 632.728 of the statutes is created to read:

5           **632.728 Coverage of individuals with preexisting conditions; rating.**

6           **(1) DEFINITIONS.** In this section:

7           (a) “Disability insurance policy” has the meaning given in s. 632.895 (1) (a).

8           (b) “Self-insured health plan” has the meaning given in s. 632.85 (1) (c).

9           (c) “Small employer” has the meaning given in s. 635.02 (7).

10          **(2) ACCESS TO COVERAGE.** Every individual disability insurance policy shall  
11 accept every individual in this state who applies for coverage and every group  
12 disability insurance policy shall accept every employer in this state that applies for  
13 coverage, regardless of whether any individual or employee has a preexisting  
14 condition. A disability insurance policy may restrict enrollment in coverage  
15 described in this subsection to open or special enrollment periods under sub. (4).

16          **(3) PREMIUM RATE VARIATION.** (a) A disability insurance policy offered on the  
17 individual or small employer market or a self-insured health plan may vary  
18 premium rates for a specific policy or plan based only on the following considerations:

19           1. Whether the policy or plan covers an individual or a family.

20           2. Rating area in the state, as established by the commissioner.

21           3. Age, except that the rate may not vary by more than 3 to 1 for adults over  
22 the age groups and the age bands shall be consistent with recommendations of the  
23 National Association of Insurance Commissioners.

24           4. Tobacco use, except that the rate may not vary by more than 1.5 to 1.

1 (b) A disability insurance policy that is considered a grandfathered health plan  
2 under 42 USC 18011 or has transitional status granted by the federal department  
3 of health and human services and the commissioner is not required to comply with  
4 par. (a).

5 **(4) ENROLLMENT PERIODS.** (a) The commissioner shall ensure that every  
6 individual disability insurance policy has open enrollment during a statewide open  
7 enrollment period to allow individuals, including individuals who do not have  
8 coverage, to enroll in coverage.

9 (b) Every disability insurance policy shall provide special enrollment periods  
10 for qualifying events under 29 USC 1163 and 26 USC 9801 (f).

11 **(5) PREEXISTING CONDITION EXCLUSION.** (a) A group disability insurance policy  
12 or a self-insured health plan may not impose a preexisting condition exclusion for  
13 any time on a participant or beneficiary under the policy or plan.

14 (b) No claim or loss incurred or disability under an individual disability  
15 insurance policy may be reduced or denied on the ground that a disease or physical  
16 condition existed prior to the effective date of coverage. An individual disability  
17 insurance policy may not define a preexisting condition more restrictively than a  
18 condition, whether physical or mental, regardless of the cause of the condition, for  
19 which medical advice, diagnosis, care, or treatment was recommended or received.

20 **(6) APPLICABILITY.** This section applies only if provisions of the federal Patient  
21 Protection and Affordable Care Act, P.L. 111-148, as amended, under 42 USC  
22 300gg-1 to 300gg-4 are no longer enforceable or no longer preempt state law relating  
23 to individual or group health insurance policies. If this section applies, this section  
24 supersedes any conflicting provision of ss. 625.12 (1) or (2), 625.15 (1), 628.34 (3),  
25 632.746, 632.76, 632.795 (4) (a), 632.896 (4), or 632.897 (11) (a) or any other

1 conflicting provision in chs. 600 to 655 to the extent this section conflicts with that  
2 provision.

3 (END)