



## WISCONSIN LEGISLATIVE COUNCIL

### HEALTH CARE REFORM IMPLEMENTATION

Room 412 East  
State Capitol

December 13, 2010  
10:00 a.m. – 3:25 p.m.

[The following is a summary of the December 13, 2010 meeting of the Special Committee on Health Care Reform Implementation. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

#### Call to Order and Roll Call

Co-Chair Richards called the committee to order. The roll was called and a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Jon Erpenbach and Rep. Jon Richards, Co-Chairs; Sen. Alberta Darling and Rep. Pat Strochota, Co-Vice-Chairs; Reps. Marlin D. Schneider and Jennifer Shilling; and Public Members Wendy Arnone, Tim Bartholow, Cheryl A. DeMars, Jeff Huebner, Robert Kraig, Joe Llean, David Newby, Robert Palmer, William Petasnick, Robert Phillips, David Riemer, and Barbara Zabawa.

COMMITTEE MEMBERS EXCUSED: Sen. Judy Robson; and Public Members Ed Harding and Candice Owley.

COUNCIL STAFF PRESENT: Laura Rose, Deputy Director, and Heidi Frechette and Margit Kelley, Staff Attorneys.

#### Approval of the Minutes of the Committee's November 9, 2010 Meeting

*Motion was made by Representative Schneider, seconded by Senator Darling, to approve the minutes of the November 9, 2010 meeting. The minutes were approved by unanimous consent.*

## **Description of Materials Distributed**

Ms. Frechette briefly described the following materials distributed to the committee for this meeting:

- WLC: 0038/2, relating to the establishment of the Wisconsin Health Exchange Authority.
- Memo No. 5, *Powers and Duties of Health Care Exchanges from Utah, California, and Massachusetts* (December 7, 2010).

## **Discussion of Committee Assignment**

Ms. Frechette briefly described WLC: 0038/2, which establishes a Wisconsin Health Exchange Authority (the Exchange Authority or the exchange). She noted that the Exchange Authority is modeled on the Health Insurance Risk-Sharing Plan (HIRSP) Authority structure, with the same inclusions and exclusions to particular state agency requirements.

Ms. Frechette noted that the bill draft incorporates all of the federal requirements for an exchange pursuant to the federal Patient Protection and Affordable Care Act (PPACA). Ms. Frechette also stated that the bill draft gives some options for the committee's consideration, including: the name of the Exchange Authority; the particular powers of the board; whether to require all qualified health plans, or only select health plans, to participate in the exchange; whether to require benefits in addition to essential health benefits to be offered by plans in the exchange; whether to extend some, or all, exchange regulations to the outside insurance market; and the composition of the Exchange Authority's board.

### ***Discussion Regarding Guiding Principles***

The committee discussed the guiding principles determined at the previous meeting and included in SECTION 45, *Legislative findings*, of the bill draft.

Mr. Leean commented that he thought the committee had included guarding against adverse selection among the guiding principles, by bringing as large a group as possible into the exchange, but that adverse selection only seems to be mentioned in a note on page 30 of the draft. He stated that he would like to see a statement added to the duties that would require the exchange to work towards adding as many people as possible to guard against adverse selection.

Representative Strachota responded that she does not recall agreeing that a guiding principle of the exchange would be to include as many people as possible.

Mr. Riemer commented that the entire health insurance market is going to be private, whether it is inside the exchange, or outside. He noted that the exchange is a free market, and employers cannot be required to be in it. He suggested that as a piece of the private market, the exchange should have a pool that is average in risk and large enough in size so that it would not fail.

Mr. Kraig stated that since the last meeting, Governor-Elect Walker has commented that Wisconsin should create its own exchange and should not opt for the federal government to run the exchange. He also commented that he agrees that the size of the membership in the exchange should be large enough to avoid adverse selection.

Senator Darling commented that she does not recall the size of the exchange being part of the conversation on the guiding principles. She stated that she thought the issue for the guiding principles was for the exchange to use strategies to avoid adverse selection, without using words that it be large, or be a particular size.

Co-Chair Erpenbach commented that he remembers the committee discussing that the board will have to figure out how to make the exchange as attractive for as many people as possible to enter the exchange, though perhaps there was not consensus on including this in the guiding principles.

Mr. Leean requested an amendment to the bill draft stating that the exchange must encourage as many people as possible to use the exchange, in order to make the exchange as large as possible in numbers of people and as average as possible in terms of risk. Co-Chair Erpenbach stated that he would second such a motion.

Ms. Zabawa commented that the subsidy will only be available to people who get insurance through the exchange, which will encourage people to go through the exchange.

Mr. Palmer stated that the bill draft is balanced in forwarding the federal legislation, and is more appropriate than the Exchange Authority draft proposed by the Department of Health Services (DHS). On the question of adverse selection, he stated that he would prefer to see broad language, not a narrowing of how to avoid adverse selection.

Co-Chair Richards suggested a friendly amendment to Mr. Leean's motion, accepted by Mr. Leean, to add avoidance of adverse selection in subsection (1) of the board's duties.

Mr. Palmer commented that adverse selection issues would require actuarial services, which is beyond the scope of expertise of the committee. He commented that as long as the exchange has the authority, it will give them the tools to work on adverse selection.

Mr. Newby commented that the issues of adverse selection and size of the exchange overlap, because the issue is really about whether the exchange can be used to drive down cost.

Ms. Arnone noted that the exchange will offer health insurance coverage to small employers with two to 50 employees, many of whom today do not offer coverage, and so the exchange will already be attractive.

In response to a comment, Senator Darling noted that she is not against public education about the exchange. She also noted that the best way to make the exchange large is to make it attractive in terms of quality, cost, and access.

*Mr. Leean's motion, with Co-Chair Richards' friendly amendment, seconded by Co-Chair Erpenbach, to add a new s. 260.04 (1) (d) to WLC: 0038/2, that the exchange should work to avoid adverse selection, passed by unanimous consent.*

Mr. Petasnick asked whether the references to patient-centered, coordinated care in the guiding principles are to medical homes. He commented that patient-centered, coordinated care is central to all providers in Wisconsin, but that he would be concerned about making that a requirement of the exchange.

Co-Chair Erpenbach stated that the committee is not defining what patient-centered, coordinated care requires.

Dr. Huebner stated that he recalls the conversation on patient-centered, coordinated care, and thinks that phrase was determined as a compromise, rather than requiring medical homes. He stated that this requirement would not hamstring the exchange, as patient-centered, coordinated care should be a guiding principle for both providers and insurers.

Dr. Bartholow commented that patient-centeredness will remain a central pillar for providers who are working to better coordinate their care. He also commented that patients should have a duty to be engaged and participating in their care.

Mr. Newby stated that the phrase, “patient-centered coordinated care,” is very broad, is not restrictive as used in the bill draft, and is a fair principle to be sought.

Dr. Phillips stated that it was his recollection that the committee was looking at a broad term so that the focus on patients would not be lost, and that is an important goal.

Ms. Arnone noted that patients need to work with their doctors to manage their care, but that they are not always willing to do so.

*Mr. Riemer moved, seconded by Mr. Petasnick, to delete s. 260.04 (1) (c) in Section 41 of WLC: 0038/2, and insert “patient-centered, coordinated care” in par. (b), between the words “access” and “prevention.” The motion passed by unanimous consent.*

Ms. Zabawa asked the committee to consider adding a guiding principle to protect and secure confidential patient data in accordance with standards set by the Health Information Portability and Accountability Act (HIPAA). She stated that the committee should make sure that this is adequately explicit.

Senator Darling stated that she would agree with that principle.

Ms. Rose stated that the exchange may be required to comply with HIPAA under current law, and suggested that this principle might suitably be added to the duties of the Exchange Authority.

Ms. Zabawa agreed to reserve the question about HIPAA applicability until the committee’s discussion on the Exchange Authority’s powers and duties.

Representative Strachota noted that she did not see the authority in the bill draft for the exchange to request waivers from the federal government.

Ms. Rose stated that such authority might suitably be added to the powers of the Exchange Authority, if that power is given by the committee.

Ms. DeMars questioned the use of the word “maximizes” in Section 45 (1) (a) 1. of the bill draft to describe the principle of providing choice for all participants in the exchange, and suggested that it would be preferable to “facilitate informed choice.” She commented that limitless choices are actually

confusing, and can be a disservice. She suggested another option could be to insert “innovation” at the end of line 20 on page 34 of the bill draft.

Co-Chair Richards suggested, from Legislative Council staff, replacing “maximizes” with “encourages innovation and facilitates informed choice for all participants,” as another way to approach this. He stated that his preference would be to keep the word “maximizes.”

Representative Strachota suggested using the following language: “insurance marketplace that maximizes choice and innovation and promotes informed choice for all participants.”

Senator Darling agreed with Representative Strachota’s suggestion.

Mr. Riemer stated that he would be concerned about the interpretation of the legislative history if the word “maximizes” were to be removed, and that it could seem that the Exchange Authority would be authorized to reduce choices. He suggested keeping the word “maximizes,” and adding the suggested language about encouraging innovation and facilitating informed choice.

*Ms. DeMars’ motion, with Representative Strachota’s friendly amendment to keep the word “maximizes” and insert “encourages innovation and facilitates informed choice,” in Section 45 (1) (a) 1. of WLC: 0038/2, passed by unanimous consent.*

#### ***Discussion Regarding the Size and Composition of the Exchange Authority’s Board***

Co-Chair Richards asked for comments on the size and composition of the Exchange Authority’s board, as given in the bill draft.

Dr. Bartholow asked, on behalf of the medical society, to add a category of board member to represent physicians. Senator Darling agreed with that request.

Mr. Kraig asked to add a category of board member to represent nurses. He also noted that in California, the exchange has very strict conflict of interest rules that prohibit interested parties from serving on the board. Mr. Kraig asked what other committee members thought about whether or not to include industry representatives on the board.

Ms. Rose reviewed the information from Memo No. 1 on the makeup of the exchange boards in California and Massachusetts.

Co-Chair Richards commented that it is generally preferable to keep a board like this small, to avoid the appearance that the board includes industry representatives who might be seen as feathering their own nests.

Ms. Zabawa acknowledged that there could be a conflict of interest, but noted that it may be important to include people who have a stake in the industry on the board in order to promote buy-in to the exchange process by members of the provider and insurance industries.

Mr. Palmer noted that if health plan or insurer representatives are kept out of the board, it could cause the industry to reduce its participation in the exchange, while the exchange should be inclusive

rather than exclusive. He suggested including a recusal process for instances where a board member would have a direct interest in the outcome of a decision.

Ms. Arnone commented that there is a need to have proper public accountability, but that if industry representatives are not allowed on the board, then only retirees would have the expertise to serve. She suggested including strong recusal and conflict rules, so that industry representatives could bring their expertise to the board.

Representative Strachota asked why the bill draft includes the Secretary of the Department of Employee Trust Funds (ETF) as a nonvoting member of the board. Ms. Frechette commented that the ETF Secretary is not on the HIRSP board, but is included in this board as there had been substantial discussion and interest by the committee about bringing ETF's expertise to the exchange.

Co-Chair Richards noted that a recusal process could be messy in determining whether someone was properly recused or not, or if many board members were to be recused from a particular decision.

Mr. Newby suggested that this could possibly be handled by including health industry representatives as nonvoting members of the board in order to bring their expertise to the table, as part of the discussion. He further stated that it would be foolish to exclude those who are closest to the system and whose expertise is needed to make the exchange work.

Senator Darling commented that the Exchange Authority needs to have people on the board who have the expertise. She stated that she is in favor of the makeup of the HIRSP board.

Mr. Leean suggested that the committee consider a board for the Exchange Authority that has five to seven voting members, who do not have any personal financial interest, with an advisory committee made up of doctors, nurses, insurers, and other appropriate industry representatives. He suggested that any issue in the advisory committee should have a certain number of members in agreement before the issue can be brought to the board for an executive decision. He suggested that it would make sense to have ETF involved in the advisory committee, because they have expertise in the state, and that the composition of the board should have input from the Governor.

Dr. Huebner stated that he favors a small board that is devoid of conflict of interest, as it is important for the citizens of Wisconsin to trust the board, and to then also have a nonvoting advisory board. He commented that the bill draft does not include adequate patient representation.

Mr. Petasnick stated that the composition of the HIRSP board could be a good starting point. He further stated that he would like to see the board as a facilitating body for the exchange.

Representative Schneider asked if the bill draft requires board members to file statements of economic interest, and if the board is subject to the open meetings law. Ms. Rose responded yes to both questions.

Representative Schneider commented that if the board members are appointed by the Governor, the appointments could be people who are hostile to the exchange.

In response to a question, Ms. DeMars explained that she would like the board members to have actual expertise, and that she would be concerned with only one person having the authority to appoint all the members. She suggests that various interest groups nominate somebody who would have expertise, even if the nominee is not from within each group's ranks. She suggested that the interest

groups be required to agree on a nominee, such as requiring endorsement by two for-profit and two non-profit insurers.

Mr. Newby commented that the Worker's Compensation Advisory Council works very well, and could be a helpful model. He commented that it works well in part due to its 90 years of tradition, which includes a requirement that each decision be made with complete consensus.

Co-Chair Richards and Senator Darling agreed that the Worker's Compensation Advisory Council works very well, and could be a helpful model.

Mr. Leraan stated that he likes the suggestion that there be groups with expertise who would have to agree on a representative.

Senator Darling stated that it might be too early to focus on how many board members the Exchange Authority will have. She commented that Governor-Elect Walker has said that he is looking at the Utah model for the exchange.

Representative Strachota commented that many committee members have stated their preference for the HIRSP model for the Exchange Authority, and she therefore suggests that the composition of that board could be a starting point for this discussion.

Mr. Newby stated that there is a distinction between using HIRSP as a model for the exchange as an authority, versus for the makeup of its board. He commented that the HIRSP focus is very different from what is being set up as the Exchange Authority.

In response to a request from Co-Chair Richards, Amie Goldman, the CEO for HIRSP, who was present in the audience, briefly described the composition of the 13-member HIRSP board.

Mr. Riemer commented that there might not be a middle ground in structuring the board for the exchange. He suggested that one option could be a board made up of 9, 11, or 13 members, but no more than that, and including at least one public member. He suggested that each particular interest group send three nominees to the Governor to choose one representative, who would then be appointed with the advice and consent of the Senate.

Ms. Arnone commented that the nomination process suggested by Mr. Riemer could be cumbersome, and noted that not all physicians, nurses, or hospitals are members of their trade groups and therefore would not have a voice in that nomination process. She commented that she would prefer to see required skill-sets for the board composition.

Co-Chair Erpenbach commented that whoever is on the board, their number one priority needs to be following the guiding principles, before their individual interests.

In response to a question from Representative Schneider, Ms. Zabawa noted that there was an adverse decision on the PPACA issued today from the Eastern District Court of Virginia, but that even though that particular court found the individual mandate to be unconstitutional, it held that provision to be severable, which allows the other aspects of the PPACA to go forward in that district.

Ms. Arnone noted that choosing the number of members for the board is putting the cart before the horse, when its not yet known what will go into that membership. She also commented that she has seen that the HIRSP board of 13 members is workable.

Mr. Palmer stated that a smaller rather than larger number of board members makes sense, but that it should be big enough to be balanced. He stated that he prefers to have board members who have expertise, are passionate, not disinterested, with clear rules for the duties of each member no matter how they came to be on the board.

*Mr. Riemer moved, seconded by Mr. Palmer, with an accepted friendly amendment to include public members, that the board for the Exchange Authority be composed of three nonvoting members as already included in WLC: 0038/2, and 13 voting members appointed by the Governor with the advice and consent of the Senate for four-year terms. Three nominations each for the voting members would be forwarded to the Governor by:*

- 1. AFL-CIO.*
- 2. Wisconsin Manufacturers and Commerce (WMC).*
- 3. Wisconsin Federation of Independent Business (WFIB).*
- 4. Wisconsin Farm Bureau and Farmer's Union.*
- 5. At least two, but no more than five, consumer organizations such as AARP, Disability Rights Wisconsin, and the health care co-ops.*
- 6. Wisconsin Association of Health Plans (WAHP) and other insurance organizations.*
- 7. Wisconsin Hospital Association (WHA).*
- 8. Wisconsin Medical Society (WMS).*
- 9. Wisconsin Nursing Association (WNA), Wisconsin Federation of Nurses and Health Professionals, and SEIU Nurse Alliance of Wisconsin.*

*The remaining four voting positions would be public members, to include at least one actuary and one participant in the exchange. When choosing a nominee, the Governor must make the selection based upon the nominee's skills and expertise. Each board member shall function as a trustee, and be responsible for taking care that the highest level of independence and judgment is exercised at all times in designing, establishing, and operating the exchange. All members of the board shall annually complete, and file with the Government Accountability Board, a statement of economic interest. No member of the board shall take part in any discussion of, or vote on, any matter in which the member, or any*

*organization that employs the member or provides compensation for services rendered by the member, has a substantial economic interest.*

Co-Chair Richards commented that it is important for board members to be able to go back to their representative groups and “sell” the board’s actions to them; it is important to include stakeholders in the process.

Mr. Newby suggested that rather than naming the specific groups, Mr. Riemer’s suggestion could simply list the categories for which sector will be making a joint nomination. He thinks it is important to include the trustee language as suggested by Mr. Riemer.

Mr. Leean suggested that it is important to include representatives from the Office of Commissioner of Insurance (OCI) and DHS on the board, as those agencies will be very involved in implementing the exchange. He stated that it would be sufficient to include the secretaries of those agencies as nonvoting members of the board, as included in the bill draft.

Mr. Kraig commented that it is important to have rules about more than a conflict of economic interest, as the board will be making long-term decisions that go beyond current conflicts of interest, and he is concerned that the suggested conflict-of-interest language would not be sufficient. He noted that the concern for Wisconsin citizens is not just about the individual board members being ethical, but also about having the appearance of being ethical. He would like to see other consumer groups such as the American Cancer Society included in forwarding nominees. He stated that he likes the idea of either having nonvoting members, or an advisory group, for the board.

Dr. Huebner commented that that it can be challenging for one group to agree on a nominee, and that it would be even more difficult to agree with another group on which nominees to forward.

Mr. Leean and Senator Darling commented that it is important to have small businesses represented in the categories for the nomination process.

Co-Chair Erpenbach stated that he prefers a small board whose members have no direct, vested economic interest in health care or health insurance, and various advisory boards that can be put together for any needed issues as they arise.

Representative Schneider commented that he prefers Mr. Riemer’s motion over a smaller group model, because it would concentrate power. He gave an example for how concentrated the decision-making could be, that if the board had only five members, three would be a quorum, and two would be a majority.

Mr. Petasnick cautioned that in this field, he has yet to see a disinterested party. He stated that everyone has an issue with the health care system or has a family member or friend who does. He noted that as a member of the board, the primary duty is as trustee to the board, not as representative of the group from which the member came.

*Co-Chair Erpenbach moved that the board for the Exchange Authority be composed of nine to 11 members, without vested interest in health care or insurance, including one member from labor organizations, one*

*member from business, one self-employed, two members from consumer groups, three exchange participants, and one at-large member. The board would be required to form advisory groups with particular expertise for any issues as they arise, with the advisory group to provide recommendations to the board.*

*Mr. Kraig moved that the board for the Exchange Authority be composed as suggested by Co-Chair Erpenbach, with a requirement that all members other than the exchange participants be appointed based on expertise in their fields. The board would be required to form a standing advisory committee appointed in the same manner suggested by Mr. Riemer for the board membership, with nominations from the listed organizations.*

Co-Chair Richards directed Legislative Council staff to prepare drafts of the three motions regarding the composition of the board of the Exchange Authority for further discussion and possible voting at the committee's next meeting.

### **Other Business**

Ms. DeMars commented that there is an issue regarding a difference in taxation between the federal and state revenue services for health insurance coverage of adult children, which employers are having a difficult time navigating. She asked if the board would be able to address this conflict.

Representative Strachota noted that in the next legislative session there will be a health care committee, and suggested that Ms. DeMars bring this to the Legislature as an issue for the next session.

### **Plans for Future Meetings**

The next meeting will be held on *Monday, January 10, 2011, at 10:00 a.m., in Room 412 East, State Capitol, Madison.*

### **Adjournment**

The meeting was adjourned at 3:25 p.m.

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