



2009 ASSEMBLY BILL 540

October 29, 2009 – Introduced by Representatives VUKMIR, J. FITZGERALD, NYGREN, VOS, STRACHOTA, LOTHIAN, KRAMER, HONADEL, BALLWEG, LEMAHIEU, BIES, ZIPPERER, GUNDERSON, M. WILLIAMS, PRIDEMORE, KNODL, MURTHA, SUDER, DAVIS, PETERSEN, KERKMAN, ZIEGELBAUER, BROOKS, NERISON, VAN ROY, TOWNSEND and NASS, cosponsored by Senators DARLING, HOPPER, KANAVAS, LAZICH and SCHULTZ. Referred to Committee on Health and Healthcare Reform.

1 **AN ACT** *to renumber and amend* 635.01; *to amend* 149.10 (5), 618.36 (1),
2 625.03 (1m) (d), 625.03 (1m) (e), 631.01 (1) (a) and 645.02 (3); and *to create*
3 600.01 (1) (b) 12., 618.02 (4), 618.11 (12m), 618.12 (5), 618.21 (6), 618.26 (5),
4 618.29, 625.03 (1m) (f), 635.01 (2), 646.01 (1) (a) 2. m. and 646.01 (1) (b) 19. of
5 the statutes; **relating to:** allowing out-of-state insurers to offer health care
6 plans that are exempt from certain laws to employers and individuals in this
7 state.

Analysis by the Legislative Reference Bureau

Current law specifies how an insurer that is domiciled in another state (a foreign insurer) may transact an insurance business in this state. If the insurer satisfies certain specified requirements, the insurer will be issued a certificate of authority and may offer insurance policies in this state. Generally, unless a specific exemption applies, a foreign insurer that provides insurance coverage to a person or entity in this state is subject to the insurance laws and other requirements of this state.

This bill provides that a foreign insurer may offer health care plans to groups and individuals in this state. Both the insurer and the health care plans offered are exempt from all insurance laws and requirements of this state except for certain specified ones. To be able to offer these health care plans, a foreign insurer must be

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in compliance with all the laws and regulations of the insurer's domiciliary state that apply to the insurer, must have been issued a certificate of authority by this state to transact an insurance business in this state, must be in compliance with the laws and requirements of this state that do apply to the insurer, and must offer coverage in its domiciliary state under any health care plan that it intends to offer in this state and that health care plan must be in compliance with the laws and regulations of the insurer's domiciliary state. If there is a conflict between a law of the insurer's domiciliary state and a law of this state that applies to the insurer or the health care plan, the law of this state takes precedence unless the Commissioner of Insurance (commissioner) exempts the insurer from this state's law.

A foreign insurer offering health care plans under the bill would be subject to the taxation requirements in this state that apply to insurers in general and would be required to pay the assessments that health insurers pay to help fund the Health Insurance Risk-Sharing Plan (HIRSP). Wisconsin statutes and any administrative rules promulgated under those statutes that specifically apply to the foreign insurer and health care plans offered by the insurer include: requirements relating to the disclosure of personal medical information; prohibitions on various unfair marketing practices; requiring insurers to provide notice of an insured's right to file a complaint with the Office of the Commissioner of Insurance; prohibitions on certain actions relating to whether an applicant or insured has obtained a test, and what the results were, for the presence of human immunodeficiency virus (HIV); preexisting condition, portability, and contract renewability requirements and discrimination prohibitions that apply to employer group health care plans under the federal Health Insurance Portability and Accountability Act of 1996; contract renewability requirements for individual health insurance policies; and prohibitions on a health care plan from refusing to cover the services of certain health care professionals if the health care plan covers the same services when provided by a different type of health care professional. Every application for, and policy of, a health care plan offered by a foreign insurer must include plain language disclosing: 1) the differences between that health care plan and one that is issued in compliance with all of the Wisconsin insurance statutes and rules; and 2) which state's laws govern the issuance and requirements under the health care plan.

The bill also provides that a domestic health insurer may request, and the commissioner must order, an exemption from the Wisconsin insurance laws, as determined by the commissioner, that would allow the insurer to provide health care plans with plan designs that are comparable to those that a foreign insurer may offer under the bill.

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:

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1 149.10 (5) “Insurer” means any person or association of persons, including a
2 health maintenance organization, limited service health organization, or preferred
3 provider plan offering or insuring health services on a prepaid basis, including, but
4 not limited to, policies of health insurance issued by a currently licensed insurer, as
5 defined in s. 600.03 (27), nonprofit hospital or medical service plans under ch. 613,
6 cooperative medical service plans under s. 185.981, or other entity whose primary
7 function is to provide diagnostic, therapeutic or preventive services to a defined
8 population in return for a premium paid on a periodic basis. “Insurer” includes any
9 person providing health services coverage for individuals on a self-insurance basis
10 without the intervention of other entities, as well as any person providing health
11 insurance coverage under a medical reimbursement plan to persons. “Insurer”
12 includes a foreign insurer that issues health care plans in this state under s. 618.29.
13 “Insurer” does not include a plan under ch. 613 which offers only dental care.

14 **SECTION 2.** 600.01 (1) (b) 12. of the statutes is created to read:

15 600.01 (1) (b) 12. Health care plans offered by a foreign insurer under s. 618.29.

16 **SECTION 3.** 618.02 (4) of the statutes is created to read:

17 618.02 (4) “Health care plan” has the meaning given in s. 628.36 (2) (a) 1.

18 **SECTION 4.** 618.11 (12m) of the statutes is created to read:

19 618.11 (12m) If the insurer is a foreign insurer that intends to offer health care
20 plans to employers or individuals in this state, the proposed disclosures required
21 under s. 618.29 (3);

22 **SECTION 5.** 618.12 (5) of the statutes is created to read:

23 618.12 (5) SPECIAL CONSIDERATION FOR FOREIGN HEALTH INSURERS. When
24 determining whether to issue a certificate of authority or a new certificate of
25 authority to an applicant who intends to offer health care plans under s. 618.29, the

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1 commissioner may consider the applicant's financial condition, marketing practices,
2 and compliance with the applicable laws and regulations of the applicant's
3 domiciliary state. However, the commissioner may not apply these factors in a
4 manner that would place a greater burden on these foreign insurers than on domestic
5 insurers.

6 **SECTION 6.** 618.21 (6) of the statutes is created to read:

7 618.21 (6) FOREIGN HEALTH INSURERS. This section does not apply to foreign
8 insurers offering health care plans under s. 618.29.

9 **SECTION 7.** 618.26 (5) of the statutes is created to read:

10 618.26 (5) FOREIGN HEALTH INSURERS. This section does not apply to foreign
11 insurers offering health care plans under s. 618.29.

12 **SECTION 8.** 618.29 of the statutes is created to read:

13 **618.29 Sale by foreign insurer of health insurance. (1) REQUIREMENTS**
14 **FOR OFFERING COVERAGE.** (a) A foreign insurer may offer and provide coverage to
15 employers in this state under group health care plans, and may offer and provide
16 coverage to individuals in this state under individual health care plans, that are
17 exempt from the requirements specified in this section, if all of the following are
18 satisfied:

19 1. The insurer is in compliance with the laws, regulations, and other
20 requirements of its domiciliary state that apply to the insurer.

21 2. The insurer has been issued a certificate of authority or a new certificate of
22 authority to do business in this state under s. 618.12 and is in compliance with the
23 laws and other requirements of this state that apply to the insurer.

24 3. The insurer offers coverage in its domiciliary state under any group or
25 individual health care plan under which it offers coverage in this state and the group

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1 or individual health care plan is in compliance with the laws, regulations, and other
2 requirements of the insurer's domiciliary state.

3 (b) Notwithstanding par. (a), if there is a conflict between an applicable law or
4 requirement of the insurer's domiciliary state and an applicable law or requirement
5 of this state, the law or requirement of this state applies, unless the commissioner
6 orders an exemption from the law or requirement under s. 618.28.

7 **(2) EXEMPTIONS, REQUIREMENTS, AND LAWS THAT APPLY.** (a) A foreign insurer that
8 satisfies the requirements under sub. (1), and any health care plan that the insurer
9 offers or intends to offer in this state, shall be exempt from chs. 600 to 646, and any
10 rules promulgated under those chapters, except as otherwise provided in this
11 chapter and except as follows:

12 1. The insurer and health care plan, as applicable, are subject to ss. 600.03,
13 610.70, 631.27 with respect to rules of law that are applicable to the insurer or health
14 care plan, 631.28, 631.90, 631.93, 632.715, 632.745 to 632.7495, and 632.785, subchs.
15 III and IV of ch. 628, subch. I of ch. 631, and chs. 601 and 618, and any rules
16 promulgated under any of them.

17 2. If the insurer's domiciliary state does not require the insurer to establish and
18 follow grievance and independent claims review procedures, the insurer and health
19 care plan are subject to ss. 632.83 and 632.835 and any rules promulgated under
20 them.

21 3. The insurer may not refuse to provide or pay for benefits under the health
22 care plan for health care services provided by a licensed health care professional on
23 the ground that the services were not rendered by a physician, as defined in s. 990.01
24 (28), unless the health care plan clearly excludes services by such practitioners, but

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1 no health care plan under this section may exclude services in violation of s. 632.87
2 (2), (2m), (3), (4), or (5).

3 (b) An insurer under par. (a) is subject to assessment under ch. 149 and taxation
4 under subch. III of ch. 76.

5 **(3) DISCLOSURES REGARDING PLAN DIFFERENCES.** Each application form for, and
6 each policy of, a health care plan under this section shall disclose, in plain language,
7 all of the following:

8 (a) The differences between the health care plan under this section and a health
9 care plan issued in compliance with chs. 600 to 646.

10 (b) What state's laws govern the issuance of and requirements under the health
11 care plan offered under this section.

12 **(4) RULES.** The commissioner may promulgate rules for the administration of
13 this section. The commissioner may not promulgate a rule that does any of the
14 following:

15 (a) Requires a foreign insurer under this section to modify coverage or benefit
16 requirements or to restrict rate increases in any way that exceeds the insurer's
17 domiciliary state's laws or regulations.

18 (b) Expands the commissioner's authority over foreign insurers in a way that
19 conflicts with this section.

20 (c) Conflicts with the purpose of exempting foreign insurers under this section
21 from requirements under chs. 600 to 646.

22 **(5) EXEMPTIONS FOR DOMESTIC INSURERS.** A domestic insurer authorized to do
23 business in this state in one or more lines of insurance that includes health insurance
24 may apply for an exemption from such provisions under chs. 600 to 646 and such
25 rules promulgated under those provisions as would, in the determination of the

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1 commissioner, allow the insurer to offer health care plans that are comparable in
2 plan design to health care plans offered by foreign insurers under this section. Upon
3 an insurer's application, the commissioner shall make an order exempting the
4 insurer from those provisions and rules that would allow the domestic insurer to offer
5 a health care plan or plans that are comparable in design to health care plans offered
6 by foreign insurers under this section. Any health care plan offered by a domestic
7 insurer under an exemption under this subsection shall be subject to the
8 requirements that apply to health care plans offered by foreign insurers under this
9 section, including the disclosure requirements under sub. (3).

10 **SECTION 9.** 618.36 (1) of the statutes is amended to read:

11 618.36 (1) CONTINUANCE OF REGULATION. ~~A~~ Subject to s. 618.29 (2) (a), a
12 nondomestic insurer authorized under this chapter is subject to regulation under the
13 applicable provisions of chs. 600 to 646 until released from regulation under this
14 section.

15 **SECTION 10.** 625.03 (1m) (d) of the statutes is amended to read:

16 625.03 (1m) (d) Variable and fixed annuities; ~~and~~

17 **SECTION 11.** 625.03 (1m) (e) of the statutes is amended to read:

18 625.03 (1m) (e) Group and blanket accident and sickness insurance other than
19 credit accident and sickness insurance; and

20 **SECTION 12.** 625.03 (1m) (f) of the statutes is created to read:

21 625.03 (1m) (f) Individual health care plans, as defined in s. 628.36 (2) (a) 1.,
22 offered by a foreign insurer under s. 618.29.

23 **SECTION 13.** 631.01 (1) (a) of the statutes is amended to read:

24 631.01 (1) (a) As provided in ss. 600.01, 618.29, and 618.42;

ASSEMBLY BILL 540**SECTION 14**

1 **SECTION 14.** 635.01 of the statutes is renumbered 635.01 (1) and amended to
2 read:

3 635.01 (1) ~~This~~ Except as provided in sub. (2), this chapter applies to all group
4 health insurance plans, policies, or certificates, written on risks or operations in this
5 state, providing coverage for employees of a small employer, or employees of a small
6 employer and the employer, and to individual health insurance policies, written on
7 risks or operations in this state, providing coverage for employees of a small
8 employer, or employees of a small employer and the employer when 3 or more are sold
9 to or through a small employer.

10 **SECTION 15.** 635.01 (2) of the statutes is created to read:

11 635.01 (2) This chapter does not apply to a group or individual health care plan,
12 as defined in s. 628.36 (2) (a) 1., that is offered by a foreign insurer under s. 618.29.

13 **SECTION 16.** 645.02 (3) of the statutes is amended to read:

14 645.02 (3) ~~All~~ Except as provided in s. 618.29 (2) (a) 1., all insurers who have
15 insureds resident in this state.

16 **SECTION 17.** 646.01 (1) (a) 2. m. of the statutes is created to read:

17 646.01 (1) (a) 2. m. Foreign insurers offering health care plans under s. 618.29.

18 **SECTION 18.** 646.01 (1) (b) 19. of the statutes is created to read:

19 646.01 (1) (b) 19. Health care plans offered by foreign insurers under s. 618.29.

20 **SECTION 19. Initial applicability.**

21 (1) This act first applies to all of the following:

22 (a) Foreign insurers that apply for a certificate of authority under section
23 618.11 of the statutes, as affected by this act, or that apply for a new certificate of
24 authority under section 618.12 (4) of the statutes, as created by this act, on the
25 effective date of this paragraph.

