



Survival Coalition

of Wisconsin Disability Organizations

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TO: Representative Kevin Petersen, Chair
Assembly Committee on Insurance

FROM: Survival Coalition Co-Chairs
Lynn Breedlove, Disability Rights Wisconsin
Maureen Ryan, Wisconsin Coalition of Independent Living Centers, Inc.
Beth Swedeen, Wisconsin Board for People with Developmental Disabilities

SUBJECT: Assembly Bill 210 – Health Insurance Reform

The Survival Coalition of Wisconsin Disability Organizations submits testimony today on behalf of more than 40 member groups representing people of all disabilities and all ages, their family members, advocates and providers of disability services. We are happy to see that Assembly Bill 210 incorporates into Wisconsin law many of the protections for people with disabilities under the Patient Protection and Affordable Care Act (PPACA).

As you know, people with disabilities and chronic conditions experience health care in very unique ways. Currently, Wisconsin's health care system has gaps that prevent children with special health care needs and people with disabilities in Wisconsin from accessing health care services. These gaps can impose significant financial hardship. People with disabilities and chronic illnesses often have health care needs of greater duration and scope than the rest of the population and many have multiple conditions. The most recent national survey of families with children with special health care needs reveals 31.3% of Wisconsin families say their insurance coverage is inadequate in meeting their child's needs¹; nearly 16% of families report unmet medical needs; and 17 % of families say their child's special health care needs have caused them financial problems.² This bill has the potential to address many of these gaps.

However, we do have **two main concerns** with this bill and will withhold our support until changes can be made specifically to the repeal of valuable protections and the extraordinary rulemaking authority being granted to the Office of the Commissioner of Insurance.

¹ 2007 NSCH Disparities Snapshot: Special Health Care Needs, Wisconsin data.

² Child and Adolescent Health Measurement Initiative. 2005/2006, National Survey Children with Special Health Care Needs, Data Resource Center for Child and Adolescent Health website, www.cshcndata.org.

PROTECTIONS

First, as stated, we strongly endorse your proposal to put critical consumer protections, such as the prohibition on denying insurance based upon pre-existing conditions and the prohibitions on lifetime limits on insurance coverage into Wisconsin statutes. In fact, we believe that health care consumers want, and should have access to these protections regardless of what ultimately happens to the Patient Protection and Affordable Care Act (PPACA). We make this statement of support while also fully understanding that the individual mandate was a critical part of the PPACA and that legislating such protection mandates could put considerable upward pressure on health insurance costs, making insurance less accessible to persons with disabilities and their families.

In that context, ultimately we believe this bill should not allow an unelected federal judge to take away needed protections for Wisconsin people with disabilities and families with children with disabilities. There are three very important protections in this bill.

1. First, for families who have children with special health care needs or people with disabilities, the discriminatory practice of denying coverage in cases of pre-existing condition makes it difficult or impossible to find adequate or affordable health coverage and keeps many parents from being able to change jobs. It also puts people at risk for significant financial hardship and medical debt. A family in the Madison area told us that when their child with Down syndrome was born and needed heart surgery, their private insurance plan denied covering their newborn based on his “preexisting condition.”
2. Second, in the past, an insurance company could institute lifetime limits and cut off coverage for a child born with a disability who required frequent care. In effect, the insurance company was saying, “You’ve had enough.” A Milwaukee family was told their child could no longer receive a life sustaining medication because their insurance company declared the child had reached a lifetime limit.
3. Third, this bill prevents insurance companies from arbitrarily terminating a person’s health insurance because the person made an unintentional mistake on his or her application. In the past, insurance companies could find one small mistake on a form, or claim the person already knew about a diagnosis that would come in the future, and immediately rescind, or cancel, the person’s health insurance. As a result, too often people who thought they were insured found out they weren’t just when they needed the help the most.

Obviously insurance company practices like this cause people to go without needed care or face bankruptcy. In addition, these practices cost the tax-payers money. If families or people with disabilities cannot purchase individual health insurance policies because of a disability or are cut off by the insurance company after an arbitrary amount of care, the cost to care for those people may be shifted to the tax-payers if the persons end up on public programs such as BadgerCare or Medicaid.³ Therefore, this bill protects both individuals and the tax-payers of Wisconsin. We think this is an important step in the right direction for people with disabilities and families with children with special health care needs.

However, the bill contains a provision that eliminates these protections should the federal Patient Protection and Affordable Care Act be found unconstitutional by a federal judge.⁴ We see no reason why these important protections be eliminated from Wisconsin law and we ask that the language which

³ Association of Maternal and Child Health Programs, *Health Reform: What’s in it for Children and Youth with Special Health Care Needs?*, October 2010.

⁴ Wisconsin Statute section 636.35 under AB 210.

eliminates these provisions in the event that the federal law is found unconstitutional be removed from the bill.

RULEMAKING AUTHORITY

Our **second** major concern with this bill involves the power granted to the Office of the Commissioner of Insurance (OCI) to make emergency rules that are beyond the normal rule making process.

The bill allows the OCI Commissioner to make any rule under the Health Insurance Reform Chapter (chapter 636) as an emergency rule⁵. Currently under Wisconsin law⁶, an agency may promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements of chapter 227 if preservation of the public peace, health, safety or welfare [the emergency] necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. This bill allows OCI to make rules as emergency rules without an emergency.

These rules could be in place for more than a year, even if there was no emergency or even when OCI would have time to comply with the normal rule making procedure. We are concerned that this new authority cuts the public and legislature out of the normal rule-making process. In the event that OCI believes that it needs to make an immediate rule to comply with the Federal Patient Protection and Affordable Care Act, chapter 227 already gives OCI such emergency rule making authority. This section should be dropped entirely, or narrowly restricted.

In summary, we believe this bill is a step in the right direction because it gives much needed protections to people with disabilities. However, we believe that the Committee should remove the provision that eliminates these protections should a federal judge find the Federal Patient Protection and Affordable Care Act unconstitutional; and remove the language which allows OCI to exclude the public and Legislature from the normal rule making process.

Thank you for the opportunity to comment on this bill. Please do not hesitate to contact us with further questions on this matter.

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⁵ Wisconsin Statute section 636.10(2) under AB 210.

⁶ Wisconsin Statute sections 227.24(1)(a), (2)(b), and (3).