



HealthWatch Wisconsin

# REPORTER

August 12, 2011

Health Insurance Exchanges in Wisconsin!

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*ABC for Health, in partnership with HealthWatch Wisconsin, a membership organization that focuses work on maximizing access to care and coverage for the people of Wisconsin, has developed "The HealthWatch Wisconsin Reporter."*

*This special edition newsletter tackles the big issues, providing in-depth analysis and insight into complex public health and health coverage questions.*

## Digging Deeper:

### The Marketplace Outside the Exchange

States have the option to run an insurance market "outside" the exchange. Wisconsin would have to include this language in any

## Special In Depth Report & Analysis: Health Insurance Exchanges

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### The Exchange Change in Wisconsin

The idea for a health insurance exchange is evolving in Wisconsin. The model envisioned in 2010 by then Governor Doyle will surely not be the exchange implemented by Governor Walker and the new Wisconsin administration. Our first clue was the changing of the name of the project administrators, from "Office of Health Care Reform" to the "[Office of Free Market Health Care](#)." Whether Wisconsin ends up with an insurance free market flea market or marketplace with appropriate oversight and consumer protections has yet to be seen.



### Background

Insurance exchanges are an integral part of the health reform law. Exchanges are new organizations or agencies that offer consumers one-stop shopping for a variety of health insurance plans for individuals insurance marketplace consumers, small businesses and public benefits--potentially Medicaid, BadgerCare Plus, FoodShare and Wisconsin Shares in Wisconsin.

Health reform favored exchanges to increase the number of Americans covered by health insurance. The exchange was determined the best means to create a more organized and competitive market for health insurance by:

- Offering a choice of health plans,
- Establishing common rules regarding the offer and pricing of insurance, and
- Providing information to help consumers better understand their options.

Another key component of an effective insurance exchange is support for consumers to navigate various public and private health coverage systems and to challenge inappropriate denials. In a move that puzzled many policy experts, Wisconsin eliminated a nascent

legislation that is passed to establish the exchanges in the state. It is important to remember that whether a plan operates in or out of the exchange, elements and protections of the health reform law still attach. For example, beginning in 2014, the elimination of the pre-existing condition exclusion applies to all insurers selling coverage. Likewise, coverage of essential health benefits is mandated for plans in and out of the exchange. The purpose is to create a standardized, competitive marketplace that protects consumers.

The Congressional Budget Office (CBO) estimates that most individuals will be purchasing their coverage through the exchange. In fact, CBO is counting on 22 million individuals and almost 3 million employees of small businesses purchasing insurance through the exchange by 2016. Over 80% of these would receive tax credits to help pay premiums. These predictions leave almost 9 million individuals and over 22 million employees of small businesses to buy coverage on their own, outside the exchange.

### **More Protections Inside the Exchange**

The decisions HHS and the state of Wisconsin make early on will

consumer assistance program in March 2011 when it [sent back the over \\$500,000 remaining](#) on the federal grant to develop and run the program. Wisconsin, however, held onto the "start-up" money HHS injected into 49 states to promote initial planning for a Wisconsin exchange. Wisconsin applied for and received this first planning grant of \$1 million and then acquired an additional \$37 million in an "Early Innovator Grant." Beyond meeting the benchmarks required in these two grants, the US Department of Health and Human Services (HHS) as the granting agency will evaluate Wisconsin's progress in 2013 and determine if it needs to step in and take over the exchange.

### **Who Can Use the Exchange**

Exchanges are not for everyone. You have to be a "qualified individual or employer" to have access to the plans in the exchange, limited to:

- US citizen and legal immigrant
- Not incarcerated
- No access to affordable employer coverage
- Small businesses with under 100 employees (although states can decide "small" means 50 or fewer employees from 2014-2016)

Individuals with incomes between 138% and 400% of the Federal Poverty Level will be eligible for subsidies in the form of tax credits to purchase insurance in the exchange. On July 11, 2011, HHS published two Notices of Proposed Rulemaking related to health insurance exchanges giving guidance to the states on what benchmarks they need to reach for their exchanges. The [first proposed rule](#) outlines how states can build insurance exchanges, while the [second](#) addresses standards related to reinsurance, risk corridors, and risk adjustment to assure stability in these newly established markets. HHS published the proposed rule in the Federal Register on July 15 and will accept public comments for the next 75 days. HHS will also convene a series of "regional listening sessions and meetings" on the proposal to get additional public feedback.

### **Today's Breaking News:**

On August 12, HHS and the Treasury Department released [three proposed rules for the exchanges](#). One rule speaks directly to small businesses, a second proposes tax credits to help defray insurance costs for individuals and the final rule calls for coordinating the exchange with Medicaid and Children's Health Insurance Program (CHIP) eligibility (BadgerCare Plus in Wisconsin) to make "enrollment more seamless." These rules will be published in the Federal Register on August 17.

Also on August 12, [HHS awarded](#) yet another round of grants to states to help them establish state insurance exchanges. While Wisconsin was awarded an "Early Innovator Grant" in late 2010, Wisconsin was not one of the 13 recipients of the "Exchange Establishment Grant."

determine the success of the exchange model. Individuals and small businesses will ultimately make the decision to participate in the exchange marketplace, but the regulatory protections and oversight of the exchange may dictate the potential cost savings and risk adjustments on which people base their decisions.

While health reform sets ground rules for plans in and out of the exchange, the protections inside the exchanges are perhaps more advanced. Performance standards, choice of health care providers, state flexibility in review and oversight of insurer rates, policies and practices are stricter in the exchange. Plans outside the exchange are arguably subject to less scrutiny which could mean lower price plans or even a healthier risk pool, and what many advocates fear, an adverse selection of enrollees.

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## Wisconsin's Federal Money to Build an Exchange

### Wisconsin's \$37 Million "Early Innovator" Grant



Wisconsin is one of only eight states that received a \$37 million federal grant to design and implement a model health care exchange. Thus far, Oklahoma and Kansas, where administrations oppose health care reform, returned the grants to federal funders. Wisconsin, which under Governor Walker opposes health reform, appears to be "moving forward" albeit at a glacial pace with their project. Advocates and consumers will be watching to see if the Walker Administration will uphold the objectives and requirements first proposed by the Doyle Administration.

In its original "Early Innovator" proposal to the federal government, Wisconsin proposed a health insurance exchange that would help drive improvements in the delivery of affordable, quality care for up to 35% of the state's population, including:

- One million employees of small businesses
- 160,000 individuals in the Individual Self-funded Health Insurance market
- 770,000 participants in the BadgerCare Plus and Medicaid programs

Under the original application, the goal was to create a single, intuitive web portal with a consumer focus that would streamline health care plan selection. The web portal would offer automatic enrollment and faster eligibility determination than current processes.

This model for the health insurance exchange would enable individuals, families, and small businesses to shop for available medical benefits based on their own individual preferences, then compare the costs before making a decision on which plan to choose. Through the exchange, individuals would be able to review participating health plan provider networks, identify a preferred primary care physician, and review relative health plan performance ratings. Individuals would be able to pay their premiums within the web portal and track premium rebates or federal tax credits. It would offer tools to calculate health costs and better manage health and all users would be able to access customer support.

In addition to the required functions, Wisconsin proposed a series of additional functions including exchange operations, health plan management, financial management, system administration, quality measurement, and reporting. Wisconsin also proposed to continue to engage health care leaders and other stakeholders in the development of the exchange. Under the original funded proposal, the federal grant makers selected Wisconsin's proposal due to a strong state of readiness, and effective plan to succeed.

### Grant Goals in the Original Application

- Create an easy-to-use, consumer-friendly website where small

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### **ALL ABOARD: The BadgerCare+ Express!**

**The BadgerCare+ Express statewide tour is in progress!** ABC for Health is making six BadgerCare+ Express stops across Wisconsin, meeting with families and professionals, providing information and help on BadgerCare programs.

**About the BadgerCare+ Express Tour:** HealthWatch Wisconsin's BadgerCare+ Express hits the road for a summer series of coordinated workshops and exhibits all centered on BadgerCare Plus and keeping kids covered. Workshops also discuss enrollment basics and the legal and administrative hurdles that families encounter with BadgerCare+ health coverage programs.

business owners and individuals can find an "apples-to-apples" comparison of insurance policies – what they offer and how much they cost.

- Provide a single point of access for all eligible residents and businesses to choose their insurance.
- Promote consumer choice by providing easy comparability of health plans and lower health care premium costs by creating a large pool of employees to increase consumer purchasing and bargaining power.
- Ensure that the health insurance purchasing exchange is structured to reward the highest quality and most cost effective health care providers and insurers.

### **Coordinating Draft Legislation**

In 2010, then Governor Doyle created the office called the "Office of Health Care Reform" (OHCR) to oversee the administration of among other things, a health insurance exchange. With the help of a Legislative Council Special Committee on Health Care Reform Implementation, the groups drafted a health insurance exchange governance and organization options paper that described funding requirements, minimum duties, and powers. Support emerged for an independent public agency modeled after the existing Wisconsin health insurance risk sharing plan (HIRSP). The OHCR intended to provide this recommendation via draft legislation for consideration in the 2011 legislative session. Originally, the Legislature directed the Legislative Council committee to study and make recommendations on possible changes to Wisconsin's statutes and administrative rules in response to the Affordable Care Act.

### **A Change, of Course**

#### **Governance Concerns**

Progress on the "Early Innovators" grant ground to an abrupt halt in January 2011, when the Walker Administration took charge of the implementation process for the grant. The leadership of the Special Committee on Health Care Reform Implementation changed, meetings were suspended, and the Office of Health Care Reform was renamed "the Office of Free Market Health Care."



Former committee chairs, Representative John Richards and Senator Jon Erpenbach wrote a letter to the new committee chair Representative Alberta Darling to urge her to reinstate the work group meetings. That letter went unanswered. Instead, the Walker Administration has posted to the Office of Free Market Health Care's website a bare bones approach to the health care exchange that focuses on minimizing cost while including insurance insiders in the governance of the program.

### **The Walker Way?**

## Where is the Next BadgerCare+ Express Stop?

Tuesday, August 16,  
10:00am-12:00pm, Bad  
River Community Center,  
7277 Elm St., Odanah,  
WI

### Who is it For?

ABC for Health will gather advocates, public health community stakeholders and members of the local media to talk about the importance of BadgerCare Plus for families, especially in these tough times.

### What Families will Learn:

1. BadgerCare Plus for Children and Families **still exists!**
2. The BadgerCare+ Express tour is a chance for families to learn the basics of getting and keeping BadgerCare Plus, and for service providers to learn the latest strategies to help guide people to the health care and coverage they need.

### Resources for Families:

ABC for Health has free materials to share: A printed advocacy guide, called "*The AdvoKit for BadgerCare Plus Programs*," and "*3 Steps to Family Health Coverage kits*" for families, to help them connect and retain health care coverage. These guides are available by **free download** from our website for a limited time:

[www.abcforhealth.org](http://www.abcforhealth.org)

## The Walker Administration Plan

Since January 2011, the Walker administration has staked out a new direction for the exchanges in Wisconsin. However, The Walker administration plan is vague and leaves much to the imagination. The new *Office of Free Market Health Care* proposal suggests that the Office of Insurance Commissioner and the Department of Health Services will focus the functions of the exchange in order to minimize costs. The office will be comprised of an executive director and an advisory council.

### Goals under Walker's Office of Free Market Health Care

- Assess the impact of health reform on Wisconsin insurance markets and programs
- Conditionally develop a plan for the design and implementation of a Wisconsin health benefit exchange that utilizes a free market, consumer driven approach
- Explore all opportunities and alternative approaches, including waivers if necessary, that would protect Wisconsin from the establishment of a federal health benefit exchange
- Encourage transparency in state efforts
- Minimize federal interference
- Protect and enhance Wisconsin's current competitive health insurance marketplace
- Seek counsel from a wide range of health care stakeholders including consumers, small business, providers, insurers, labor unions, and other vested organizations.

### A New Model for Wisconsin?

Released July 8, 2011, Wisconsin's Office of Free Market Health Care issued a "[Request for Information](#)," to all "interested parties to demonstrate their product offerings." The Office was interested in learning "more about health insurance exchange systems and applications that serve the non-group and group health insurance markets." The demonstrations of products took place August 1 & 2, 2011, and only those products with fully functional enrollment and plan comparison features needed apply. Not required, but encouraged was functionality that showed health insurance education tools as they related to purchasing health insurance and customer support—the "consumer assistance" pieces to the exchange, the same consumer assistance elements that Commissioner of Insurance Ted Nickel defunded on March 12, 2011. It appears obvious that the Walker administration is moving in a different direction from the exchange built in autumn 2010 under the Doyle administration and debuted at the HealthWatch Wisconsin "The Changing Landscape" Health Reform Conference on October 28, 2010. This comes as no surprise.

### A Third Way?

The new Office of Free Market Health Care signals a new direction for health care reform in Wisconsin. In many ways the Walker plan is difficult to critique because of the stunning lack of details. Nonetheless, the name if nothing else portends an exchange that could take Wisconsin in a dangerous direction. To be clear, ABC for

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### **HealthWatch Public Hearings: The Human Impact of Medicaid/BadgerCare Cuts in Wisconsin**

HealthWatch Wisconsin has posted the complete video footage of public testimony on the impact of proposed BadgerCare+ and Medicaid cuts that will affect 1.2 million Wisconsinites covered by these programs. Please [CLICK HERE](#) to view these HealthWatch Wisconsin public hearings.

### **We're on Facebook and Twitter!**

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Health strongly opposes an over reliance on the free market to solve our health care woes in Wisconsin. The government has and always will have an important role to play in the oversight of our health care systems. The government needs to protect against unbridled greed of potential free marketers that could harm consumer trust and confidence in any new system. At the same time government can play a role in calming irrational fear in the marketplace by providing transparent structures and ground rules for a level playing field for competing health plans and insurers. And we even agree that, under appropriate oversight, market forces can facilitate innovation and efficiencies that promote health and wellness without sacrificing needed services for consumers. We believe that the middle ground is available to promote and effective public and private partnership that supports the interests of consumers while at the same time helping the industry market cost effective plans to consumers and to business. Therefore, we urge policymakers to work to promote maximum transparency in the exchange while promoting policies to both lower cost and increase access to health care for consumers. If we hold insurance companies accountable to enforceable standards regulated through the exchange, Wisconsin can accomplish both of these important goals.

### **Our Expectations for the Exchange**

- The exchange must promote a strong public-private partnership
- The exchange, from planning and development through implementation and operation, should be transparent
- Consumers, consumer advocates, and community representatives must be involved in the development and oversight of the exchange
- The exchange should be available to all residents of Wisconsin
- The exchange must include consumer assistance and protection
- The exchange must protect patient privacy
- Exchange rules and consumer protections must be strictly enforced
- Enrollment must be simple and straightforward
- The renewal process should be automatic
- The exchange must engage the public through outreach, assistance and education
- The exchange must develop strategies to support low income, culturally distinct and populations that are hard to reach
- A single application must be available for consumers to help choose the health plan that best meets their needs
- Eligible participants need accurate and timely information about both private coverage, and available public programs
- The exchange must allow consumers to stay covered through job changes and loss of income.

Important questions about the exchange under Governor Walker continue to linger and in some cases languish. What does the Walker administration have in mind for the details of the exchange? How will they involve and support consumers? What do the new proposed insurance bills say about the direction of the Walker administration and the republican controlled legislature?

Consider [Assembly Bill 210 \(AB 210\)](#), relating to the "implementation

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**ABC for Health, Inc.** is a Wisconsin-based, nonprofit public interest law firm dedicated to linking children and families, particularly those with special health care needs, to health care benefits and services. ABC for Health's mission is to provide information, advocacy tools, legal services, and expert support needed to

of health insurance reform, providing an exemption from emergency rule procedures, and granting rule-making authority." This bill gives Wisconsin's Commissioner of Insurance (OCI) rule-making authority (equivalent to the unusual delegation of legislative authority the state budget granted DHS Secretary Dennis Smith). In the bill, OCI is able to roll back the improvements made to Wisconsin's internal claims and appeals processes and external review, for starters, claiming to be more "consistent" with health reform. The bill takes Wisconsin from a progressive state, with improved protections and regulations and strips it down to the bare minimum federal requirements.

Finally, what are federal regulators doing to monitor Wisconsin's "Early Innovator" grant? At some point regulators should conclude that Wisconsin's grant departs too radically from the original proposal submitted in 2010 under the Doyle administration. And, if that happens and the grant tilts too sharply to the interests of the insurance industry and against consumers, federal authorities should terminate the grant.

### The Need for Transparent Health Care Exchange

Our health care exchange must operate in a transparent environment in order to benefit consumers. Unfortunately, under Insurance Commissioner Nickel, the public has been largely excluded from the planning process. For example, the new administration has outlined an advisory council for the exchange that is mostly made up of insurance insiders. The newly proposed advisory council includes the following:

#### Voting Members:

- 2 insurers
- 2 business representatives
- 1 consumer advocate
- 1 agent/broker representative



#### Non-voting Members:

- 1 independent actuary
- 3 providers
- Secretary of DHS
- Commissioner of Insurance

Prior to the Walker administration the legislative council working group debated over whether anyone with a conflict of interest should sit on the health care exchange advisory council. This model goes too far in allowing insurance industry insiders to run the exchange.

Both the current Insurance Commissioner Ted Nickel and Deputy Commissioner of Insurance Dan Schwartzer are former insurance executives and while in office they have repeatedly blocked efforts to make health insurance more consumer friendly. For example, they blocked a proposal to modify the readability standards for health insurance plans which would have made plans easier to read. They blocked regulation that would have required insurance companies to provide their customers with electronic versions of their health insurance plan. And they declined to apply a uniformity plan

obtain, maintain, and finance health care coverage and services.



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requirement that would have made health care plans more similar and easier to understand. Moreover as noted earlier, they summarily terminated an important Consumer Assistance Program Grant.

Unfortunately, the Commissioner of Insurance and his deputy seem more interested in making money for insurance companies than promoting policies to help consumers to understand their rights and their policies. The Insurance Commissioner must act in the best interests of the people of Wisconsin and not the interests of the industry he worked for his entire career.

## Conclusion

The Health care exchange proposal is integral to health care reform. If implemented correctly it will provide an opportunity for individual consumers and small businesses to bargain with insurance companies just as the large employers do now. This will lower prices and keep health insurance competitive. If Wisconsin does not take the opportunity the "Early Innovator" grant has given us to implement a strong exchange, the federal funders should rescind the grant and recoup the funding. Finally, the lack of a strong consumer protection component is deeply troubling. The proposed bare bones flea market of an exchange will do nothing to help consumers and it is no substitute for a strong health plan marketplace that supports consumers in their decisions.

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