



HealthWatch Wisconsin

# REPORTER

April 28, 2011

Decoding Complex Public Health Issues!

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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.*

## Industry-Minded Rule-Making

On February 9, Wisconsin's Commissioner of Insurance implemented an [emergency rule](#) repealing the requirements that improve access to and readability of insurance policies. The repeal eliminates the "[policy simplification provisions](#)" implemented in the Wisconsin Administrative Code (Section 6.07) in 2010 that requires insurers make available an

## Special Report: Emergency Rule Rolls Back Consumer Initiatives in Private Insurance

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The Walker Administration and their legislative allies have proposed radical ideas related to health care in Wisconsin. The new "[Office of Free Market Healthcare](#)," which replaced the Office of Health Care Reform, could dramatically change Wisconsin's health care landscape. Governor Scott Walker described these and other changes as "dropping a bomb" on the state of Wisconsin ([Buffalo Beast](#), Feb. 23). That "bomb" had a dramatic effect on health care, as well. On February 9, Governor Scott Walker and his Administration, through Insurance Commissioner Ted Nickel, notified ABC for Health that they were terminating the [Consumer Assistance Grant](#). In addition, the [Office of the Commissioner of Insurance](#) (OCI) introduced an "[emergency rule](#)" that suspended implementation of a new pro-consumer provision to make insurance policies easier to read and easier to obtain in an electronic format.

### *The Readability Working Group*

In October 2009, then Commissioner of Insurance Sean Dilweg created the "[Readability Working Group](#)," under the authority of Wisconsin [State Statute](#). The group served in an advisory capacity to the Commissioner, making recommendations on the administrative rule changes related to both readability and plain language requirements. The workgroup met for nearly a year to develop recommendations for a new insurance rule to make insurance policies easier to understand. Experts were called in from Wisconsin Literacy, the Literacy Council and from other states to help Wisconsin understand how policies could be created that were understandable to consumers. The insurance industry was strongly represented in the group, along with advocates and community members. Ultimately, the committee agreed – though it was not a unanimous consent process – that a new Flesch Reading standard needed to be selected. The committee compromised on "50," a reasonable mark for insurance policy readability for Wisconsin. The last meeting of the group was May 18, 2010, where the newly written readability rules were adopted. In addition to making

insured's complete insurance policy electronically and sets a timeline for that production. In addition, the rule returns the "readability score" of policies to their prior levels--a level determined too difficult for consumers to understand (based on an evaluated Flesch score). There are additional measures being rolled back as well, including the requirement that all policy "exclusion and limitation" language appear in the same section of the policy, not scattered throughout.

### Proposed Elimination of Wisconsin Insurance Mandates

#### *A Sweet Deal for Insurers*

Republican legislators Sen. Vukmir (R-Wauwatosa) and Rep. Nygren (R-Marinette) have authored [two bills](#) that would allow insurers to offer policies that are exempt from [state mandates](#) requiring policies to cover a range of conditions and procedures, including autism and mammography. The first bill, [LRB 1529](#), allows insurance companies to sell "a la carte insurance policies" without state mandates. Consumers would get a list with their applications showing the premium cost each service would add to their policy. The second bill, [LRB 0373](#), would allow out-of-state health insurers to offer plans in Wisconsin that do not conform to Wisconsin mandates. Plans need only to comply with "home-state" mandates. Wisconsin's Commissioner of Insurance can waive state mandates so Wisconsin insurers can offer similar policies. The proposed legislation would undo the hard-fought consumer protections written into our laws to protect our most vulnerable populations, including autism coverage, maternity, diabetes, cochlear implants, and more. Allowing the Commissioner of Insurance to waive or eliminate these basic protections will prove to either eliminate or drive up

insurance policies more readable, Bobby Peterson and ABC for Health advocated that insurance policies should be available to consumers electronically upon request. ABC for Health pointed out that both consumers and advocates faced hassles and red tape just to get a copy of a policy. Obtaining policy information electronically could expedite the process while building in administrative efficiencies.

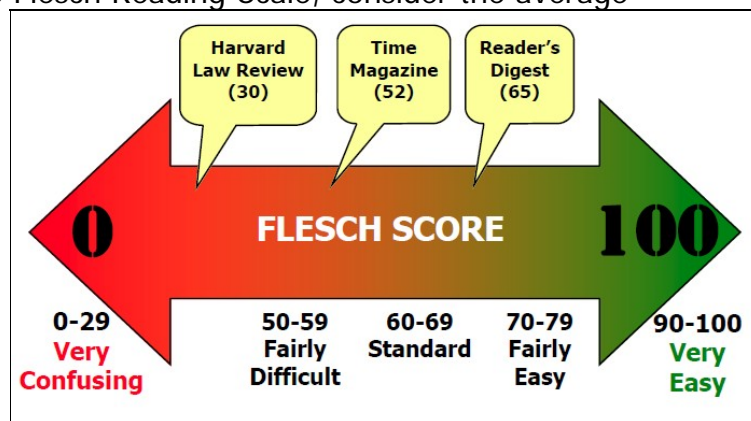
## 1) Making Insurance Policies Easier to Read

### *The Flesch Scale*

Insurance policies are a real challenge for most people to understand. The language is convoluted, disorganized, and just plain hard. The rights of the insured policyholder seem obscure. In response to difficult-to-read policies, Wisconsin developed a process to evaluate and improve policy readability, relying on a set "readability limit." Traditionally, state law required insurance companies to have policies at a specific Flesch Reading Score of 40.

To explain the Flesch Reading Scale, consider the average

reader. A score of 40 means that the document consists of fairly dense and complicated language. For example, the *Harvard Law Review* is usually



written at a level of the low 30's, while the *Reader's Digest* strives to stay at a reading level of 65. The readability of Wisconsin insurance policies had been set at 40 since 1980. Finally in 2009, then Insurance Commissioner Sean Dilweg created a panel to review the readability rules and provisions and to make recommendations to develop policies that were easier for consumers to obtain and read.

### *The "Electronic Copy" Debate*

Getting an electronic copy of an insurance policy, most easily emailed as a PDF, facilitates review and often helps expedite payment for the covered services. Despite these advantages for people with insurance, the insurance industry strongly pushed back against this aspect of the rule. Some industry representatives protested at the Workgroup meetings, alleging that converting insurance policies to an electronic format could cost as much as \$500,000. Others claimed that there were insurance agents and companies out there that didn't even have computers, and it would be unfair to them to institute this rule. While these exaggerated

the costs of private insurance coverage for families with disabilities, special needs, or unique medical situations. This fosters an approach of creating silos of health coverage, isolating the healthy and wealthy from the elderly and those with disabilities. It will stop a trend of increasing the risk-sharing in large scale pooling that brings down cost for everyone. This, at a time when the safety net programs of Medicaid and BadgerCare are threatened by the Secretary of Health Services. In Shawn Doherty's March 7, 2011 [Capital Times](#) post, "GOP bills allow 'a la carte' policies..." suggests the Acts are detrimental to the essential care and coverage needed by our constituents, especially the most vulnerable across the age and disability spectrum.

### **National Association of Insurance Commissioners (NAIC) Holds Public Hearing on Readability Standards**

(Each clip is 30 minutes in duration)

[NAIC Public Hearing Part 1 of 4](#)

[NAIC Public Hearing Part 2 of 4](#)

[NAIC Public Hearing Part 3 of 4](#)

[NAIC Public Hearing Part 4 of 4](#)

### **Listen to the Readability Working Group Meetings!**

#### **Meeting Minutes**

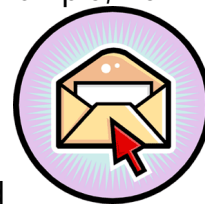
[May 18, 2010](#) (Wave File)

[April 6, 2010](#) (Wave File)

March 2, 2010--[Part 1](#) (Wave File), [Part 2](#) (Wave File)

January 11, 2009--[Part 1](#) (Wave

statements were stunning to most members of the committee, the Commissioner ultimately moved ahead with a carefully crafted rule that allowed some exemptions to the rules that allowed consumers to request certain electronic policy information. For example, he did not require insurance companies to post electronic copies of the policy to their website. A company merely needed to respond to consumer requests for an electronic copy of the policy. People could still get copies of their policies mailed if they didn't have a computer at home, but it was expected that most companies should be able to provide an electronic copy of a policy when asked. The final meeting of the workgroup on May 18, 2010 included spirited debate about using electronic documents to transmit insurance information to consumers. The provisions in the proposed rule related to electronic documents and the Flesch score of 50 were moved forward.



### **Undoing Readability Advancements**

In late 2010, the election of Scott Walker to the Wisconsin Governorship changed the dynamics and administration of health insurance in Wisconsin. The new Insurance Commissioner Ted Nickel moved quickly on February 9 to issue an emergency rule suspending the provisions of a Flesch Score of 50 and the ability of consumers to get documents electronically. But what was the emergency? What were the specific public complaints? Commissioner Nickel reasoned that it would be too expensive for the industry to change its policies and to submit information electronically to consumers. This obviously is a red herring. Insurance companies that sell health, property, and casualty policies typically have to change their policies almost yearly to include new provisions. New changes looming ahead will create many opportunities for insurance companies to update and change their policies – in particular, if Wisconsin eliminates state insurance mandates or allows insurers to sell a la carte policies (*detailed below*). In addition, rationalizing his decision for the emergency rule, a spokesman for the Commissioner of Insurance said in a statement to the press, "the change [in readability] did not appear to provide increased benefit to the consumer.... OCI historically receives very few complaints pertaining to readability, which would indicate that a problem currently does not exist in the marketplace and which would also question the need for the original rule." The National Association of Insurance Commissioners (NAIC), an organization of which Wisconsin Commissioner Ted Nickel is a member, has been working on improving the readability of policies for some time. In fact, public hearings (linked in the left yellow column) were held in May 2010 to review readability and plain language standards. It is anticipated that model rules will be issued by NAIC in the near future.

### **Let Your Voice Be Heard!**

A **PUBLIC HEARING** on the emergency rule will be held on May 3, 2011 at the Insurance Commissioner's office. We hope people will attend and speak up about the issues of readability of

File), [Part 2](#) (Wave File)

[December 11, 2009](#) (Wave File)

[November 19, 2009](#) (Wave File)

[October 9, 2009](#) (Wave File)

**Meeting Agendas**

[May 18, 2010](#)

[April 6, 2010, Health Sub-Group](#)

[March 2, 2010, Health Sub-Group](#)

February 9, 2010, Health Sub-Group--Meeting Cancelled

[January 11, 2010, Health Sub-Group](#)

[December 11, 2009, Health Sub-Group](#)

[November 19, 2009](#)

[October 9, 2009](#)

**ABC for Health in the News: March - April 2011**

[Some wary about Atlanta firm's contract to give rides to Medicaid patients](#)

[Insurance policy readability may not get better](#)

[Insurance Commissioners Prepare for Health Care Policy Conflicts](#)

[Federal funds for "free market" health care?](#)

[Walker's health chief taking on shortfall](#)

[ABC for Health files legal claim against Walker officials for terminating contract](#)

[Bobby Peterson won't stop fighting for health rights of little guy](#)

[State issues enrollment freeze, premium increase for BadgerCare Basic health coverage](#)

insurance and allowing consumers to get information easily through an electronic format at their request. Input at the public hearing may impact the permanent adoption of the emergency rules that roll back the clock on consumer protections. Valuable consumer protections are needed in insurance policies. Simple readability reforms are valuable to consumers and advocates to make sure that people get the health care they need and deserve when they need it.

**Public Hearing**  
 "The Repeal of Policy Simplification Provisions"  
 Tuesday, May 3, 2011, 10:00am  
 OCI Building, 125 S. Webster St., 2nd Floor, Rm. 227  
 Madison, WI

**2) Insurance Policies in Wisconsin: A Race to the Bottom?**

**Out of State and A La Carte Insurance**

New legislation sponsored by Senator Leah Vukmir (R-Wauwatosa) and Representative John Nygren (R-Marinette) create openings for Wisconsin to dramatically change the type of insurance offered to consumers. The first bill, [LRB 1529](#), allows insurance companies to sell "a la carte insurance policies" without state mandates. Consumers would get a list with their applications showing the premium cost each service would add to their policy. The second bill, [LRB 0373](#), would allow out-of-state health insurers to offer plans in Wisconsin that do not conform to Wisconsin mandates. This proposal, which is hard to even call insurance, is for out-of-state plans to sell policies in Wisconsin. This has been long-time dream of people on the far right and makes little sense to most advocates, who understand the concept of insurance. The new provision would allow out-of-state plans to sell policies in Wisconsin based on the mandates in their own states, not the Wisconsin mandates. The bill then allows the Wisconsin Insurance Commissioner to waive Wisconsin state mandates to make sure that Wisconsin companies still have "competitive opportunities." By "state mandates," we mean the requirements that insurers offer coverage in a non-discriminatory way, including coverage for mammography, autism, mental health, maternity, and more. This race to the bottom would mean slipshod policies would be sold in Wisconsin that had limited coverage and had difficult

Mental Health Parity.....	\$
Newborn Infants.....	\$
Home Health Care.....	\$
Kidney Disease.....	\$
Adopted Children.....	\$
Mammography.....	\$
Maternity Coverage.....	\$
HIV Drugs.....	\$
Diabetes Insulin/DME.....	\$
Child Immunizations.....	\$
Dependent Coverage.....	\$
Students on Leave.....	\$
Contraceptive Coverage.....	\$
Autism Spectrum.....	\$
Cochlear Implants.....	\$
Colorectal Cancer Screen.....	\$
"Handicapped Children" .....	\$
Lead Screening.....	\$

[Vital Signs: State freezes enrollment, raises premiums, for health pool serving childless adults](#)

[Wisconsin's health-care fight illustrates challenges as states change leadership](#)

[Medicaid programs also a casualty of last night's surprise vote, angry advocates say](#)

[State official wants to keep Medicaid drug coverage, shift patients to managed care](#)

[HealthWatch Wisconsin/ABC for Health: Legislative Panel](#)

[Medicaid and BadgerCare debate continues](#)

[Where's the beef? Advocates for people on Medicaid pan budget speech](#)

## JOIN US...

**...in uniting the Public Health Workforce through comprehensive education and advocacy**

Become a member or subscriber of HealthWatch Wisconsin! Whether you are joining for the first time or renewing, you are teaming up with an impressive effort in Wisconsin that champions education and the accurate dissemination of health coverage information and the accessibility of health coverage for all people in Wisconsin. Let HealthWatch help you amplify your voice! The membership and subscription year begins July 1 of each year, but individuals or organizations may join at any time! [Click here](#) to complete an application. Thank you!

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enforcement mechanisms. Now, **without an insurance consumer assistance program**, it will be even easier for insurance companies to prey upon insurance consumers.

The idea that consumers should have an a la carte menu of insurance is also highly suspect. The idea pitched as "Consumer Driven Health Care" is not new and follows a long line of ideas that work to segregate the healthy and the wealthy from the middle class, poor and people with pre-existing conditions. The idea behind insurance is for us to work on pooling risk to be prepared for those just-in-case situations. Who knows when a person might require transplant surgery, long, intensive rehabilitation services from a car accident, or extended medical care for a sudden but prolonged illness? Most families are at risk of being one medical bill away from financial disaster. Yet, with an a la cart menu, most people will guess the types of coverage they think they need. Of course, "choice" sounds attractive and could result in less expensive insurance in the short-term. But what about down the road? In the long-term, when thousands of people present in hospitals for medical services that are not covered by their a la carte policies, all of us will share the cost. When families are struck with unexpected illness and disease, those uncovered expenses end up getting absorbed by everyone else in society. We call that socializing medical debt.

### *Socialized Debt*

The out-of-state and a la carte insurance bills sponsored by Sen. Vukmir and Rep. Nygren will only worsen a growing trend by the Walker Administration to take medical expenses and redistribute them throughout society. This socialization of debt has long-term implications for increased health care costs for everybody in Wisconsin. Simply moving medical debt from one category, being paid by insurance companies, to another category, being paid by all of us, results in a giant subsidy to the insurance industry. Health insurers still reap the profits from selling policies that are cut-rate but have very little benefits to Wisconsin consumers. Moreover, when hospitals find that bills are not getting paid by insurance companies because it's for non-covered services, those absorbed costs get shifted to everybody else in the form of higher medical costs which result in higher costs for insurance. Cost shifting like this is a cyclical process that has been going on for years and will only be exacerbated by these proposed insurance "reforms." The new proposals could eliminate most Wisconsin mandates, including mental health parity, mammography, maternity coverage, services for autism that just passed last year, and cochlear implants for hearing-impaired children.



### *Tinkering with Medicaid*

But the socialization and redistribution of medical debt by the Walker Administration doesn't end here. Medicaid officials want to

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



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tinker with the rules to save the state money. Wisconsin's Department of Health Services Secretary Dennis Smith and the Division of Access and Accountability's Administrator Brett Davis have proposed creating a Medicaid program that mirrors the private sector insurance in Wisconsin. Therefore, the *spiral to the bottom* for health insurance will also affect Medicaid. The same cost-shifting pressures, socialization and redistribution of debt will also occur within the Medicaid program. Barebones coverage sounds good until you need extensive treatment that is not covered by your insurance.

For example, at a recent meeting with health care advocates, Administrator Brett Davis indicated that the state would save \$25 million if it terminated Medicaid coverage immediately after a required 10-day notice expires. (A 10-day notice is triggered when the Department deems a person's income to have changed requiring their eligibility for Medicaid coverage to be reevaluated. The 10 days gives an individual a very short window to understand the situation, investigate the termination, and in the case of an error, explain the situation and start an appeal process. The rule currently allows Medicaid coverage to be active through the remainder of the month, not cancelled immediately, another protection in case of error.) Davis reasoned the state would save \$25 million by implementing that simple procedure. However, where does that \$25 million go? That money is redistributed and socialized to everybody else because that \$25 million still exists as a bill. It's just no longer paid by the Wisconsin Medicaid program. The hospital absorbs it and shifts it, resulting in the socialization of that debt to everyone else in Wisconsin. So the "quick fix" by Medicaid ultimately costs everyone in the Wisconsin in the form of higher premiums and higher health care expenses. ABC for Health suggested a different way they state could "save money," in an [open letter](#) to Administrator Brett Davis regarding third party liability issues as they relate to Medicaid/BadgerCare Plus and private insurance. Consider a partnership to develop a project to better coordinate public and private health care coverage for families that would hold private insurance companies accountable for all health benefits due under a given policy. The letter states, "With appropriate monitoring of insurance cost shifting activities, we can develop a strong deterrent effect to both discourage and further evaluate the insurance industry practice of inappropriate cost shifting."



## Conclusion

As advocates, providers, and members of the public health workforce in Wisconsin, we have a continued obligation to ensure adequate access to health care and coverage for all of the people in our state. Now, more than ever, is the time to come together and speak out about these important insurance and health care policy issues. While other issues are garnering more media attention, the changes discussed here will have significant and long-term effects on the quality of care and the access to that care in Wisconsin. The Office of the Commissioner of Insurance is

moving ahead quickly with anti-consumer measures while they believe people are distracted and not paying attention. Please show the powers that be that you *are* paying attention and speak up against these harmful proposed changes!

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