



WISCONSIN ASSOCIATION OF
HEALTH UNDERWRITERS

2007-2008 Legislative Regular Session Wrap-up

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Overview

With a flurry of activity, the 2007-2008 legislative session came to an end on March 12th. Ironically, the state Assembly was already working on Special Session business with passage of their own budget repair proposal to compete with Governor Doyle's.

The Wisconsin Association of Health Underwriters was active and engaged in defending our industry against bad policies and single-payer type proposals while supporting positive changes to existing private healthcare and health insurance models. The session produced numerous bills and proposals that would have had a negative impact on the health agent profession, not the least of which was plan that would have eliminated private insurance altogether in favor of a huge, bureaucratic, state-run healthcare system paid for by taxpayers, heavily regulated and likely rationed.

Healthy Wisconsin (HW) was introduced before the legislature not once, but twice. The first incarnation of Healthy Wisconsin came in the form of a state budget amendment. That proposal would have cost an estimated \$19 billion with businesses taking the full brunt of financing the new system. The second was a stand alone bill by the same author as the first introduction, Senator Jon Erpenbach.

WAHU members and staff provided written and oral testimony opposing both HW proposals. In both hearings, WAHU testified before a packed room as the **only agent or industry association that was willing to publicly oppose this government take over of our health care system**. No other insurer or even insurer association testified, but WAHU was there defending our members and our private market health insurance system. Although there were some changes made in the second HW proposal, the concept of a state-run/operated health care system at an enormous cost to taxpayers and businesses remained at the heart of the proposal. Despite other accounting maneuvers, this second attempt at HW did not even garner the approval of Governor Doyle. WAHU, along with some business associations testified against the bill and we were able to help stop the bill from moving out of committee to the full Senate.

In all, the 2007-2008 Regular Session of the Legislature was successful as the following policy briefs will indicate. **However**, partisan politics and political shenanigans remain problematic. And, there have been several signs that our industry, and the private health care system itself, are coming under increasing attacks as proposals like Healthy Wisconsin are sure to be back, and mandate proposals are becoming more frequent while government lays a heavy hand on private insurers and small business.

1. Coverage for Early Treatment of Autism– Three proposals (AB 417, SB 178, AB 901)

AB 417 and SB 178 each proposed to mandate coverage for early prevention and treatment of autism in children without limitations, requiring full parity of autism coverage. AB 901 was a bill introduced by Assembly Republicans which attempted to put more money into the State's waiver program, which provides intensive home therapy for autistic children. WAHU worked with legislators to explain that the mandating of autism in insurance plans would only help roughly 40% of the children with autism. With roughly 360 children on a waiting list to get services from the State's waiver program, the mandate would likely reduce that waiting list by less than half. AB901 was a much better proposal as it would have funded the program so that all 360 children would have been removed from the waiting list and provided the intensive home therapy.

While SB178 passed the Senate, both AB 417 and SB 178 were blocked in the Assembly by the introduction of AB 901. In the end, and after a great deal of political and parliamentary wrangling, AB901 passed the Assembly and but the Democrats in the Senate refused to vote on the state funded proposal. This issue will most definitely be back next session.

2. BadgerCare Plus – State Budget (Wisconsin Act 20)

BadgerCare Plus (BC+) extends MA eligibility to: (a) all children, regardless of income, including youth ages 18 through 20 aging out of foster care; (b) pregnant women with income up to 300% of the Federal Poverty Level (FPL); and (c) parent and caretaker relatives with income up to 200% of the FPL.

Two benefit plans—the *Standard Plan* and the *Benchmark Plan* make up BadgerCare Plus. Plan enrollment depends on income. Most families with incomes below 200% of the FPL will enroll in the Standard Plan. Families with incomes above 200% of the Federal Poverty Level will enroll the Benchmark Plan. Individuals currently enrolled in family Medicaid and BadgerCare will be enrolled in BC+ automatically. Enrollees of an HMO will not have to change Plans.

The budget passed the legislature and was signed by Governor Doyle in late October, 2007. BadgerCare Plus was a part the final document and implementation of the new benefits and plan structure began on 1 February 2008. Several concerns arise out of this expansion including the possibility that employers could drop insurance in favor of employees getting coverage for children at significantly reduced rates under BC+. The WAHU Legislative

Committee and staff have worked closely with legislators and the Department of Health and Family Services (they are the agency responsible for administering BadgerCare Plus) to ensure that employers don't simply drop dependent coverage moving all previously privately insured children to the state program. A WAHU representative now serves on the agency's task force which provides guidance on the program. We will continue to monitor implementation and work on changes in legislation or by regulation as needed.

3. Cochlear Implant/Hearing Aid Mandate – Three proposals (AB 133, SB 88, AB 912)

AB 133 and SB 88 represent a sweeping mandate on insurers to cover a very expensive surgical procedure and costly equipment for hearing impaired children. Both of these bills required health insurance policies and plans to cover the cost of hearing aids or cochlear implants for any child who had coverage under the policy or plan and who is certified as deaf or severely hearing impaired by a physician or an audiologist. One of the proposals required coverage for children up to age 11. The coverage requirement applied: to both individual and group health insurance policies and plans, including defined network plans and cooperative sickness care associations; to health care plans offered by the state to its employees, including a self-insured plan, and; to self-insured health plans of counties, cities, towns, villages, and school districts.

Under a proposal introduced in the final days of session (AB 912), all families in need, including families not covered by SB 88 and AB 133 - because state mandates do not apply to self-funded plans, would have been covered under BadgerCare Plus program. While the *Standard Plan* in BC+ already covered cochlear implants under certain income requirements, AB 912 extended that benefit to the *Benchmark Plan* enrollees.

The final result was that neither AB 133 nor SB 88 was passed. Parliamentary and political maneuvering prevented this mandate, but both parties agreed that a solution must be found. Assembly Bill 912 failed to make it out of committee.

4. HSA Tax-Deductibility – AB 47, SB 18

Assembly Bill 47 and Senate Bill 18 both would have put Wisconsin citizens on par with what's now grown to 47 states – including all bordering states. AB 47/SB 18 would allow an individual who makes contributions to his/her HSA account may claim a nonrefundable state income tax credit for 6.5 percent of the allowable amount that the individual claims as a federal tax deduction for a contribution to a health savings account (HSA) or 6.5 percent of the federal tax-exempt earnings relating to an HSA, or both. Nearly all 50 states have enacted state matching tax-deductibility for contributions to HSAs.

SB 18 died in committee without a public hearing. Assembly Bill 47 received 45 Assembly cosponsors – from democrats and republicans – and passed the Assembly with bi-partisan support 60-35. Like its companion bill however, AB 47 died when it moved to the Senate.

5. List Bill – AB 807, SB 484

List Bill has been on the legislative radar for several years. The bill, in previous sessions has passed through both houses but has been vetoed by Governor Doyle. While the concept continues to receive tremendous support from all industry segments, both the Office of Commissioner of Insurance and the Wisconsin Association of Health Plans remain opposed to the plan. SB 484 died in the Senate Committee on Health. However, in the Assembly, AB 807 passed the Assembly Committee on Insurance 8-4 and was passed in General Assembly on a 'voice-vote'. Despite the bill passing the Assembly, there was no action taken on AB 807 in the Senate. WAHU will introduce this bill again next session.

6. Mental Health Parity – AB 922, SB 375

AB 922 and SB 375 would remove minimum amounts of coverage that a group health insurance policy must provide for the treatment of mental health and substance abuse problems but retains the requirements with respect to providing the coverage. Except for group plans providing limited benefits, the bill applies the requirements to all types of group health benefit plans, including defined network plans, insurance plans offered by the state, and self-insured health plans of the state and municipalities.

WAHU, along with other industry groups, worked hard to lobby against the bill. Neither bill made it past committee to be voted on in either the Senate or Assembly. As with all mandates, look for this bill to get introduced again next session.

7. IRS Section 125 Expansion – AB 894

When the Governor signed the budget bill, it included a provision that made insurance premiums tax deductible for employees who pay a share of the premium. While we supported the provision, we felt there was a better way. WAHU sponsored a bill, Assembly 894, which would create an income and franchise tax credit for employers who create certain health care benefit plans (cafeteria plan) for their employees. The credit is \$200 and may be claimed for the taxable year in which the employer creates the cafeteria plan. The bill would also require the Department of Revenue to include with its income and franchise tax forms information about cafeteria plans. In addition, the Department of Financial Institutions (DFI) must provide information regarding cafeteria plans to each entity that submits articles of incorporation with DFI. This effort to expand Section 125 among those employers who don't offer such tax breaks provided better results than simply allowing for premiums to get a state tax break. Under the budget provision, the typical savings for an employee who was contributing \$200 per month was roughly \$170. Under a Section 125, that same employee would save about \$700.

The bill garnered bi-partisan support passing the Assembly Health and Healthcare Reform Committee 10-3. The bill was passed in the General Assembly on a voice-vote. While our bill was well received by both Democrats and Republicans in the Senate, it did have a fiscal impact on the state budget. With legislators facing a budget deficit, it was difficult to move the bill this session in the Senate. WAHU will introduce the bill again next session.

8. Transparency – AB 729, SB 337, AB 872

There were three versions of transparency introduced by three legislators representing both political parties. The state Assembly saw two competing bills from within the Republican caucus and one proposal from the Senate Democrats.

Both AB 729 and SB 337 required cost data be held and provided for top performed services by that provider. AB 729 required the top 25 procedures and also created a penalty. SB 337 required the top 50 procedures and excluded the penalty provision. However, SB 337 further required the posting of not only their average cost for the procedure, but also the provider's reimbursement from Medicare and Medicaid. Another provision found in both bills required a good faith estimate on any procedure regardless of whether the procedure was prescribed by a physician or not. The language though was drafted in a way that would have required the patient to collect the cost

(Transparency – AB 729, SB 337, AB 872—Continued)

estimate from each of the providers that would be utilized in the procedure. Relative to insurer responsibility, both bills required insurers to provide deductible and out of pocket costs to insured relative to the procedure. However, SB 337 would have also required insurers to provide what they would ultimately pay after any provider discount. The bill was not specific as to how that would be done, which we believed would have allowed insurers to estimate the average discount and either provide the discount percentage or internally apply the percentage and provide a net payment.

The third Transparency proposal (AB 872) did not include a 'top procedure' list. It did require a cost estimate, but only on a procedure prescribed by a physician and only if that procedure would exceed \$500 in total cost. The major difference in the cost estimate in AB 872 compared to the others was that it required the physician's office to collect and gather all of the pricing information from the various providers who would be used in the procedure. AB 872 would have also required insurer's to provide the after discount payment, but like SB 337, the language was not specific as to how an insurer must provide this information. While WAHU supported all three bills, we worked to move AB872 as a better alternative to transparency.

SB 337 died in the Senate Committee on Health. Rep. Vukmir, Chair of the Assembly Health Committee, and author of AB 872, did not hold a hearing the other Assembly version, authored by Rep. Wieckert (AB 729). Assembly Speaker Mike Huebsch wanted a hearing on AB 872 and based on Vukmir's decision not to hear the bill in her committee, Huebsch referred AB 729 to the Assembly Committee on Small Business, which is chaired by Representative Terry Moulton (Moulton also serves as Vice-Chair on Assembly Health Committee). The Small Business Committee passed AB 729 out of committee by a vote of 9 - 0. However, based on GOP caucus debate on which bill the Assembly Republican's wanted to advance, AB 729 was never scheduled for a floor vote by Assembly Rules Committee.

Rep. Vukmir's AB 872 passed out her Assembly Health Committee by a vote of 9 - 4. The bill was scheduled for floor action and passed the Assembly with a vote of 66 - 29. AB 872, however, never received a hearing in the Senate, let alone a floor vote. While transparency is supported by both Democrats and Republicans in the Assembly, it has run into opposition from Senate Democratic leadership. WAHU will work hard next session to reintroduce legislation to require health care cost transparency.

9. Ala Carte – AB 871

Ala Carte, or mandate-lite, proposals have been introduced in the past three legislative sessions. AB 871 would authorize an insurer to offer single or family health insurance coverage in individual policies that do not include any or all of the health insurance mandates (mandates). The only mandate that is required is that the policy is prohibited from refusing to pay for the services of a particular type of health care provider on the ground that the provider is not a physician unless the policy specifically excludes coverage of the services of those providers, but the policy is also prohibited from excluding the services of certain specified providers whose services may not be excluded under current law. To be eligible for coverage that does not include any or all of the mandates, a person must be under 36 years old, have family income below 300 percent of the poverty line, or be eligible for continuation coverage. A person whose employer does not offer group health care coverage would also be eligible.

AB 871 passed the Assembly Committee on Health and Healthcare Reform along partisan lines, 8-5, but was not scheduled for Floor Action in the Assembly.

10. Out-of-State Insurance – AB 873

Out-of-State Insurers is a relatively new concept to Wisconsin but has been gaining interest through national trade groups like ALEC and NCOIL. The NAIC has actively sought to regulate and restrict such proposals. AB 873 would allow an insurer to offer health care plans to groups and individuals in Wisconsin. 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, an out-of-state insurer must be 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. 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, the law of this state takes precedence unless the Commissioner of Insurance (commissioner) exempts the insurer from this state's law. The insurer would be required to pay an assessment into HIRSP.

AB 873 passed the Assembly Committee on Health and Healthcare Reform along partisan lines, 8-5, but was not scheduled for Floor Action in the Assembly.

11. Rate Band Compression – LRB 1391

Rate Band legislation, which was also proposed in the 2001 legislative session – and hotly contested then – would reduce, or narrow rating bands. WAHU has long opposed any form of community rating on the basis that it requires the younger, healthier population to have their premiums increased in order to reduce the premiums of those who are older and less healthy. This invariably leads to a higher uninsured population, as those younger, healthier insured tend to drop their insurance coverage because of higher premiums. In effect, this moves the carriers' midpoint higher and thus results in higher insurance premiums for everyone. WAHU believes **any increase in premiums is too much.**

WAHU and its members worked very hard to prevent rate band compression legislation from being enacted during the 2001-2002 Legislative Session by mobilizing our membership to educate legislators and share real-world experiences. In the 2007 -2008 Session, after learning of a bill planned for introduction to establish rate band compression, WAHU leveraged relationships and reminded those still serving in the Assembly of the disastrous effects such proposals would have on the cost of health insurance. In doing so, WAHU prevented the LRB 1391 from ever being put into bill form and it was never even introduced.

We will continue to watch for these onerous proposals and seek to stop them before they gain a head of steam. WAHU members are instrumental in these efforts. The more contact with your Assembly and Senate Representatives you have, the more likely they will be to welcome our opinion and take our expert advice. The Rate Band Compression issue this session is an example of how effective our organization has become.

12. Epilepsy Drug Substitution Mandate – SB 71, AB 150

Under current law, a pharmacist is required to dispense a prescription using the drug prescribed or, if the price is lower, a drug product that the federal Food and Drug Administration has designated the therapeutic equivalent of the drug prescribed (drug product equivalent). Currently, a pharmacist may not substitute a drug product equivalent if a prescription indicates that no such substitution may be made. This bill prohibits a pharmacist from substituting a drug product equivalent if the drug prescribed is a drug for treating epilepsy or for treating convulsions, unless the pharmacist obtains and documents the consent of the prescribing practitioner and the patient or the patient's parent, spouse, or legal guardian. Also, if a pharmacist is dispensing a refill of an epilepsy drug, the bill requires the pharmacist to dispense the same drug product, from the same manufacturer, that was previously dispensed, unless the pharmacist obtains and documents the consent of the prescribing practitioner and the patient or the patient's parent, spouse, or legal guardian.

Assembly Bill 150 was referred to the Assembly Health Committee and was never given a hearing. Senate Bill 71 passed the Senate Health Committee on December 5th by a vote of 7 – 0. The bill was debated on the Senate floor on January 15th and passed by voice vote. SB71 was then referred to the Assembly Public Health Committee, which held a hearing on January 25th. The bill was never voted on by the Committee and died in committee.