



State of Wisconsin
2009 - 2010 LEGISLATURE

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DOA:.....Jablonsky, BB0236 - Oversight of care management organizations
by Office of the Commissioner of Insurance

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

D-2

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

INSURANCE

Under current law, a care management organization is certified by and contracts with DHS to administer the Family Care Program. The Family Care Program provides financial assistance for long-term care to eligible individuals who are either a frail elder or a person who is at least 18 years old with a physical disability or a developmental disability.

This bill requires that, in order to provide services, a care management organization must also obtain a permit from OCI. If a care management organization administers a program that includes primary or acute medical care services, then that organization is already subject to oversight by OCI and is not required to obtain a permit.

To obtain a permit, the care management organization must submit an application to the commissioner of insurance (commissioner) containing certain information. The commissioner may issue the permit if, after consulting with DHS, the commissioner finds that 1) the care management organization has met all requirements of law, 2) the directors, principal officer, or any controlling person are trustworthy and competent to engage in the proposed services, and 3) the care management organization's business plan is consistent with the interests of Family Care Program enrollees and the public. Under certain circumstances, the commissioner may revoke or suspend the permit.

With respect to oversight and enforcement of laws on care management organizations, the commissioner has powers under the bill similar to those granted to oversee and enforce laws on insurance companies. Care management organizations that have a permit are subject to requirements under the bill similar to requirements in current law applicable to insurance companies. Requirements applicable to care management organizations include complying with the commissioner's request for reports, submitting to examinations and audits, paying the costs of examination, complying with rules promulgated by OCI, reporting transactions with affiliates of the care management organization, and reporting changes in ownership or management of the care management organization to OCI. A care management organization with a permit must also make a monetary deposit, which is assessed in an amount determined by DHS to pay for services on behalf of an insolvent or financially hazardous care management organization.

The bill also requires that Family Care Program enrollees not be held liable for any obligations of the care management organization. Other entities may not bill or otherwise try to hold the enrollee responsible for the care management organization's obligations.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.145 (1) (g) (intro.) of the statutes is amended to read:

2 20.145 (1) (g) *General program operations.* (intro.) The amounts in the
3 schedule for general program operations, including organizational support services
4 and oversight of care management organizations, and for transferring to the
5 appropriation account under s. 20.435 (4) (kv) the amount allocated by the
6 commissioner of insurance. All of the following shall be credited to this appropriation
7 account:

8 **SECTION 2.** 20.145 (1) (g) 3. of the statutes is created to read:

9 20.145 (1) (g) 3. All moneys received under ss. 648.15 and 648.27.

10 **SECTION 3.** 20.435 (4) (jt) of the statutes is created to read:

11 20.435 (4) (jt) *Care management organization; insolvency assistance.* All
12 moneys received as assessments under s. 648.75 (3) for the purpose of funding

1 arrangements for, or to pay expenses related to, services for enrollees of an insolvent
2 or financially hazardous care management organization.

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

***NOTE: Should this and the next appropriation actually be under s. 20.435 (7)?

3 **SECTION 4.** 20.435 (4) (kv) of the statutes is created to read:

4 20.435 (4) (kv) *Care management organization; oversight.* All moneys
5 transferred from the appropriation account under s. 20.145 (1) (g), for expenses
6 related to financial certification, monitoring, and assessment of care management
7 organizations that are subject to ch. 648.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

8 **SECTION 5.** 46.284 (3m) of the statutes is created to read:

9 46.284 (3m) PERMIT REQUIRED. A care management organization that is
10 described under s. 600.01 (1) (b) 10. a., to which s. 600.01 (1) (b) 10. b. does not apply
11 and that is certified under sub. (3) shall apply for a permit with the office of the
12 commissioner of insurance under ch. 648.

13 **SECTION 6.** 600.03 (34) of the statutes is amended to read:

14 600.03 (34) "Office" means "the office of the ~~insurance commissioner~~"
15 commissioner of insurance of this state.

16 **SECTION 7.** Chapter 648 of the statutes is created to read:

17 **CHAPTER 648**

18 **REGULATION OF CARE**

19 **MANAGEMENT ORGANIZATIONS**

20 **648.01 Definitions.** In this chapter:

21 (1) "Care management organization" means an entity described in s. 46.284
22 (3m).

1 (2) "Department" means the department of health services.

2 (3) "Enrollee" has the meaning given in s. 46.2805 (3).

3 (4) "Permittee" means a care management organization issued a permit under
4 this chapter.

5 **648.03 Applicability of other laws.** Notwithstanding s. 600.01 (1) (b) 10. a.,
6 ss. 600.01, 600.02, 600.03, and 600.12 apply to this chapter.

7 **648.05 Permit. (1) PERMIT REQUIRED.** After December 31, 2009, no care
8 management organization may provide services to its enrollees without a permit
9 under this chapter.

10 (2) APPLICATION. A care management organization applying for a permit shall
11 submit all of the following information in the format required by the commissioner:

12 (a) The names, addresses and occupations of all controlling persons and
13 directors and principal officers of the care management organization currently and
14 for the preceding 10 years, unless the commissioner waives this requirement.

15 (b) Business organization documents, including articles and bylaws if
16 applicable.

17 (c) A business plan approved by the department, including a projection of the
18 anticipated operating results at the end of each of the next 3 years of operation, based
19 on reasonable estimates of income and operating expenses.

20 (d) Any other relevant documents or information that the commissioner
21 reasonably requires after consulting with the department.

22 (3) STANDARDS FOR ISSUING PERMIT. The commissioner may issue a permit to the
23 care management organization if the commissioner finds, after consulting with the
24 department, all of the following:

25 (a) All requirements of law have been met.

1 (b) All the directors and principal officers or any controlling person are
2 trustworthy and competent and collectively have the competence and experience to
3 engage in the proposed services. *and are not excluded from participation*
in medical services under 42 USC 1320a-7
or 42 USC 1320a-7a

4 (c) The business plan is consistent with the interests of the care management
5 organization's enrollees and the public.

6 (4) **SUSPENSION OR REVOCATION.** The commissioner may suspend or revoke a
7 permit issued under this chapter if the commissioner finds, after consulting with the
8 department, any of the following:

9 (a) The permittee violated a law or rule, including a rule establishing standards
10 for the financial condition of care management organizations.

11 (b) The permittee is in a financially hazardous condition.

12 (c) The permittee is controlled or managed by persons who are incompetent or
13 untrustworthy.

14 (d) The permittee conceals records from the commissioner.

15 (e) The permittee's business plan is not in the public interest or is not prudent.

16 (f) The permittee ceases to be certified by or maintain a contract with the
17 department.

18 **648.10 Powers and duties of the commissioner.** The commissioner may
19 do any of the following:

20 (1) Promulgate rules that are necessary to carry out the intent of this chapter,
21 including, after consulting with the department, standards for the financial
22 condition of care management organizations.

23 (2) Use the authority granted under ss. 601.41, 601.42, 601.43, 601.44, 601.61,
24 601.62, 601.63, and 601.64, including the authority to issue orders, to enforce this

1 chapter and to ensure that a care management organization has sufficient financial
2 resources.

3 **648.15 Reports and replies. (1) REPORTS.** The commissioner may require
4 from any care management organization any of the following:

5 (a) Statements, reports, answers to questionnaires, and other information in
6 whatever reasonable form the commissioner designates and at such reasonable
7 intervals as the commissioner chooses, or from time to time.

8 (b) Full explanation of the programming of any data storage or communication
9 system in use.

10 (c) Information from any books, records, electronic data processing systems,
11 computers, or any other information storage system at any reasonable time in any
12 reasonable manner.

13 (d) Statements, reports, audits, or certification from a certified public
14 accountant or an actuary approved by the commissioner.

15 (2) FORMS. The commissioner ^{after consulting with the department} may prescribe forms for the reports under sub.

16 (1) and specify who shall execute or certify such reports.

17 (3) ACCOUNTING METHODS. The commissioner ^{after consulting with the department} may prescribe reasonable
18 minimum standards and techniques of accounting and data handling to ensure that
19 timely and reliable information will exist and will be available to the commissioner.

20 (4) REPLIES. Any officer or manager of a care management organization, any
21 person controlling or having a contract under which the person has a right to control
22 a care management organization, whether exclusively or otherwise, or any person
23 with executive authority over or in charge of any segment of such a care management
24 organization's affairs, shall reply promptly in writing or in another designated form,
25 to any written inquiry from the commissioner requesting a reply.

1 (5) VERIFICATION. The commissioner may require that any communication
2 made to the commissioner under this section be verified.

3 (6) IMMUNITY. In the absence of actual malice, no person shall be subject to
4 damages in an action for defamation based on a communication to the commissioner
5 required by law under this chapter or by the commissioner under this chapter.

6 (7) EXPERTS. The commissioner may employ experts to assist the commissioner
7 in an examination or in the review of any transaction subject to approval under this
8 chapter. The care management organization that is the subject of the examination,
9 or that is a party to a transaction under review, including the person acquiring,
10 controlling, or attempting to acquire the care management organization, shall pay
11 the reasonable costs incurred by the commissioner for the expert and related
12 expenses.

13 **648.20 Examinations.** (1) POWER TO EXAMINE. (a) To inform himself or herself
14 about a matter related to the enforcement of this chapter, the commissioner may
15 examine the affairs and condition of any permittee.

16 (b) So far as reasonably necessary for an examination under par. (a), the
17 commissioner may examine the accounts, records, or documents so far as they relate
18 to the permittee, of any of the following:

19 1. An officer, manager, employee, or person who has executive authority over
20 or is in charge of any segment of the permittee's affairs.

21 2. A person controlling or having a contract under which the person has the
22 right to control the permittee whether exclusively or with others.

23 3. A person who is under the control of the permittee, or a person who is under
24 the control of a person who controls or has a right to control the permittee whether
25 exclusively or with others.

1 (c) On demand, every permittee shall make available to the commissioner for
2 examination any of its own accounts, records, documents, or evidences of
3 transactions.

4 (d) On order of the commissioner any examinee under this chapter shall bring
5 to the office for examination such records as the order reasonably requires.

6 (2) AUDITS OR ACTUARIAL OR OTHER EVALUATIONS. In lieu of all or part of an
7 examination under sub. (1), or in addition to it, the commissioner may order an
8 independent audit by certified public accountants or an actuarial or other evaluation
9 by actuaries or other experts approved by the commissioner of any permittee. Any
10 accountant, actuary, or other expert selected is subject to rules respecting conflicts
11 of interest promulgated by the commissioner. Any audit or evaluation under this
12 section is subject to s. 648.25, so far as applicable.

13 (3) ALTERNATIVES TO EXAMINATION. In lieu of all or part of an examination under
14 this section, the commissioner may accept the report of an audit already made by
15 certified public accountants or of an actuarial or other evaluation already made by
16 actuaries or other experts approved by the commissioner, or the report of an
17 examination made by another government agency in this state, the federal
18 government, or another state.

19 (4) PURPOSE AND SCOPE OF EXAMINATION. An examination may but need not cover
20 comprehensively all aspects of the permittee's affairs and condition. The
21 commissioner shall determine the exact nature and scope of each examination, and
22 in doing so shall take into account all relevant factors, including the length of time
23 the permittee has been doing business, the length of time the permittee has been
24 certified by the department, the nature of the business being examined, the nature

1 of the accounting records available, and the nature of examinations performed
2 elsewhere.

3 **648.25 Conducting examinations. (1) ORDER OF EXAMINATION.** For each
4 examination under s. 648.20, the commissioner shall issue an order stating the scope
5 of the examination and designating the examiner in charge. Upon demand, a copy
6 of the order shall be provided to the examinee.

7 **(2) ACCESS TO EXAMINEE.** Any examiner authorized by the commissioner shall,
8 for the purposes of the examination, have access at all reasonable hours to the
9 premises and to any property of the examinee.

10 **(3) COOPERATION.** The officers, employees, and agents of the examinee shall
11 comply with every reasonable request of the examiners for assistance in any matter
12 relating to the examination. No person may obstruct or interfere with the
13 examination in any way other than by legal process.

14 **(4) CORRECTION OF BOOKS.** If the commissioner finds the accounts or records to
15 be inadequate for proper examination of the condition and affairs of the permittee
16 or improperly kept or posted, the commissioner may employ experts to rewrite, post,
17 or balance them at the expense of the permittee.

18 **(5) REPORT ON EXAMINATION.** The examiner in charge of an examination shall
19 make a proposed report of the examination, including information and analysis
20 ordered in sub. (1), together with the examiner's recommendations. Preparation of
21 the proposed report may include conferences with the examinee or the examinee's
22 representatives at the option of the examiner in charge. The commissioner shall
23 serve the final examination report on the examinee.

24 **(6) COPIES FOR BOARD.** The permittee shall furnish copies of the final
25 examination report to each member of its board or governing body.

1 (7) COPIES FOR OTHER PERSONS. The commissioner may furnish, without cost or
2 at a price to be determined by the commissioner, a copy of the final examination
3 report to the insurance commissioner of each state in the United States and of each
4 foreign jurisdiction in which the examinee is authorized to do business, and to any
5 other interested person in this state or elsewhere.

6 ~~(7)~~ (8) REPORT AS EVIDENCE. In any proceeding by or against the permittee or any
7 officer or agent of the permittee the final examination report shall be admissible as
8 evidence of the facts stated in the report. In any proceeding commenced under this
9 chapter, the final examination report shall be admissible as evidence of the facts
10 stated in the report. In any proceeding by or against the examinee, the facts asserted
11 in any final examination report properly admitted in evidence shall be presumed to
12 be true in the absence of contrary evidence.

13 **648.27 Costs of examination.** (1) COSTS TO BE PAID BY CARE MANAGEMENT
14 ORGANIZATIONS. Permittees shall pay the reasonable estimate of costs of
15 examinations under s. 648.20, of review of applications under s. 648.05, and of
16 ^{and} financial monitoring and analysis of care management organizations by the
17 commissioner and the department, including overhead and fixed costs, by a system
18 of regular annual billings.

19 (2) DETERMINATION OF COSTS. Annually, the commissioner shall determine the
20 estimated costs under sub. (1) for the commissioner and the department. The
21 commissioner shall serve a request for payment on each permittee allocating the cost
22 to each permittee in an amount that the commissioner determines reflects the
23 permittee's proportionate share of projected enrollment in the department's annual
24 contracting period.

1 **(3) PAYMENT DEADLINE.** The permittee shall pay the amount determined by the
2 commissioner within 30 days of service of the request for payment under sub. (2).

3 **648.30 Nondisclosure of information. (1) TYPES OF INFORMATION.** The office
4 may refuse to disclose and may prevent any other person from disclosing any of the
5 following:

6 (a) Testimony, reports, records, and information that are obtained, produced,
7 or created in the course of an inquiry under s. 648.15.

8 (b) Testimony, reports, records, and information that are obtained, produced,
9 or created in the course of an examination under s. 648.20.

10 (c) Testimony, reports, records, communications, and information that are
11 obtained by the office from, or provided by the office to, any of the following, under
12 a pledge of confidentiality or for the purpose of assisting or participating in
13 monitoring activities or in the conduct of any inquiry, investigation, or examination:

14 1. The National Association of Insurance Commissioners.

15 2. An agent or employee of the National Association of Insurance
16 Commissioners.

17 3. The insurance commissioner of another state.

18 4. An agent or employee of the insurance commissioner of another state.

19 5. An international, federal, state, or local regulatory or law enforcement
20 agency, including the department.

21 6. An agent or employee of an agency described in subd. 5.

22 **(2) WAIVER AND APPLICABILITY OF THE PRIVILEGE.** Section 601.465 (2m) (a) to (d)
23 applies to the privilege under sub. (1).

24 **648.35 Enforcement procedure. (1) INJUNCTIONS AND RESTRAINING ORDERS.**
25 The commissioner may commence an action in circuit court in the name of the state

1 to restrain by temporary or permanent injunction or by temporary restraining order
2 any violation of this chapter, any rule promulgated under this chapter, or any order
3 issued under s. 648.10 (2). The commissioner need not show irreparable harm or lack
4 of an adequate remedy at law in an action commenced under this subsection.

5 (2) ORDERS. The commissioner shall issue any orders under the procedures
6 described in s. 601.63 and shall hold any hearings under the procedures described
7 in s. 601.62.

8 (3) COMPULSIVE FORFEITURES. If a person does not comply with an order issued
9 under s. 648.10 (2) within 2 weeks after the commissioner has given the care
10 management organization notice of the commissioner's intention to proceed under
11 this subsection, the commissioner may commence an action for a forfeiture in such
12 sum as the court considers just, but not exceeding \$5,000 for each day that the
13 violation continues after the commencement of the action until judgment is
14 rendered. No forfeiture may be imposed under this subsection if at the time the
15 action was commenced the care management organization was in compliance with
16 the order, nor for any violation of an order occurring while any proceeding for judicial
17 review of the order was pending, unless the court in which the proceeding was
18 pending certifies that the claim of invalidity or nonapplicability of the order was
19 frivolous or a sham. If after judgment is rendered the care management organization
20 does not comply with the order, the commissioner may commence a new action for
21 a forfeiture and may continue commencing actions until the person complies. The
22 proceeds of all actions under this subsection, after deduction of the expenses of
23 collection, shall be paid into the common school fund of the state.

24 (4) FORFEITURES AND CIVIL PENALTIES. (a) *Restitutory forfeiture*. Whoever
25 violates an order issued under s. 648.10 (2) that is effective under s. 601.63, any

1 section of this chapter, or any rule relating to this chapter shall forfeit to the state
2 twice the amount of any profit gained from the violation, in addition to any other
3 forfeiture or penalty imposed.

4 (b) *Forfeiture for violation of order.* Whoever violates an order issued under s.
5 648.10 (2) that is effective under s. 601.63 shall forfeit to the state not more than
6 \$1,000 for each violation. Each day that the violation continues is a separate offense.

7 (c) *Forfeiture for violation of statute or rule.* Whoever violates, intentionally
8 aids in violating, or knowingly permits a person over whom he or she has authority
9 to violate a section of this chapter or a rule promulgated under this chapter shall
10 forfeit to the state not more than \$1,000 for each violation. If the section or rule
11 violated imposes a duty to make a report to the commissioner, each week of delay in
12 complying with the duty is a new violation.

13 (d) *Procedure.* The commissioner may order any person to pay a forfeiture
14 imposed under this subsection, which shall be paid into the common school fund. If
15 the order is issued without a hearing, the affected person may demand a hearing
16 through procedures described under s. 601.62 (3) (a). If the person fails to request
17 a hearing, the order is conclusive as to the person's liability. The scope of review for
18 forfeitures ordered is that specified under s. 227.57. The commissioner may cause
19 an action to be commenced to recover the forfeiture. Before an action is commenced,
20 the commissioner may compromise the forfeiture.

21 (5) CRIMINAL PENALTY. Whoever intentionally violates or intentionally permits
22 any person over whom he or she has authority to violate or intentionally aids any
23 person in violating any section of this chapter, any rule promulgated to administer
24 this chapter, or any order issued under s. 648.10 (2) that is effective under s. 601.63

1 is guilty of a Class I felony, unless a specific penalty is provided elsewhere in the
2 statutes. Intent has the meaning expressed under s. 939.23.

3 **648.45 Affiliates of permittee. (1) INFORMATION.** A permittee and a person
4 attempting to acquire or having control of a permittee, shall report to the
5 commissioner the information concerning the permittee, its affiliates, and the person
6 attempting to acquire control of the permittee that the commissioner requires by
7 rule. The commissioner may promulgate rules prescribing the timing of reports
8 under this subsection, including requiring periodic reporting and the form and
9 procedure for filing reports.

10 **(2) REPORT FOR AFFILIATES.** The permittee may report on behalf of all affiliated
11 entities if it provides all the information that would be required if each affiliate
12 reported separately.

13 **(3) CONSENT TO JURISDICTION.** Every permittee shall promptly submit to the
14 commissioner a statement from each of its affiliates that the affiliate agrees to be
15 subject to the jurisdiction of the commissioner and the courts of this state for the
16 purposes of this chapter. A governmental unit is not subject to this requirement. The
17 commissioner may exempt other affiliates from this subsection.

18 **(4) INFORMATION ORDER.** The commissioner may, by order, require any permittee
19 or any person attempting to acquire or having control of the permittee, to report
20 information under sub. (1) or other information to the commissioner.

21 **(5) TRANSACTIONS WITH AFFILIATES.** Neither a permittee nor an affiliate of the
22 permittee may enter into a transaction between the permittee and affiliate unless
23 all of the following apply:

24 (a) The transaction at the time it is entered into is reasonable and fair to the
25 interests of the permittee.

1 (b) The books, accounts, and records of each party to the transaction are kept
2 in a manner that clearly and accurately discloses the nature and details of the
3 transaction and, in accordance with generally accepted accounting principles,
4 permits ascertainment of charges relating to the transaction.

5 (c) The permittee's financial condition following any dividends or distributions
6 to shareholders or a person having control of the permittee is reasonable in relation
7 to the permittee's outstanding liabilities and is adequate to its financial needs.

8 (d) The transaction complies with any other standard that the commissioner,
9 after consulting with the department, prescribes by rule.

10 **(6) TRANSACTIONS SUBJECT TO DISCLOSURE.** (a) *Affiliated transactions to be*
11 *reported.* 1. The commissioner, after consulting with the department, may
12 promulgate rules requiring a permittee, a person attempting to acquire or having
13 control of a permittee, and affiliates of a permittee to report a transaction or a group
14 or series of transactions, if all of the following are satisfied:

15 a. The transaction is between a permittee and a person attempting to acquire
16 or having control of the permittee or an affiliate of the permittee, or the transaction
17 directly or indirectly benefits the person or affiliate.

18 b. The transaction is, or the group or series of transactions are, material to the
19 permittee.

20 2. Transactions that are material to a permittee for the purposes of subd. 1.
21 include management contracts, service contracts, and cost-sharing arrangements.
22 The commissioner, after consulting with the department, may prescribe by rule
23 standards for determining whether a transaction is material under this subsection.

24 3. No permittee, person attempting to acquire or having control of a permittee,
25 or affiliate of the permittee may enter into a transaction required to be reported to

1 the commissioner under this subsection unless the permittee, person, and affiliate
2 report the transaction to the commissioner in the form and by the date before the
3 effective date of the transaction that are prescribed by the commissioner by rule,
4 after consulting with the department. The commissioner may not require the
5 transaction to be reported earlier than 30 days before the effective date of the
6 transaction.

7 (b) *Disapproval.* The commissioner may, within the period prescribed in par.
8 (a) 3., disapprove any transaction reported under par. (a) if the commissioner finds,
9 after consulting with the department, that it would violate the law or would be
10 contrary to the interests of enrollees of the permittee, the department, or the public.

11 (c) *Transactions prohibited.* No permittee, person attempting to acquire or
12 having control of the permittee, or affiliate of the permittee may enter into a
13 transaction that is not reported as required under par. (a) or that is disapproved by
14 the commissioner under par. (b).

15 (d) *Voidable transactions.* If a permittee, person attempting to acquire or
16 having control of the permittee, or affiliate enters into a transaction in violation of
17 this section, the permittee may void the transaction, obtain an injunction, and
18 recover from the person or affiliate the amount necessary to restore the permittee to
19 its condition had the transaction not occurred. The commissioner may order a
20 permittee to void the transaction, to commence an action against the person or
21 affiliate, or to take other action.

22 (e) *Required financial conditions.* The commissioner, after consulting with the
23 department, may promulgate rules for determining adequacy of financial condition
24 under this section.

1 (f) *Exemption if permittee reports.* Paragraph (a) does not apply to a person
2 attempting to acquire or having control of, or an affiliate of, a permittee, if the
3 permittee reports on behalf of the person or on behalf of the affiliate, and the
4 transaction is not disapproved by the commissioner under par. (b).

5 **(7) DIVIDENDS AND DISTRIBUTIONS.** (a) A permittee may not pay a dividend or
6 distribution, and an affiliate of a permittee may not accept a dividend or distribution,
7 unless the permittee reports the dividend or distribution to the commissioner at least
8 30 days before payment and the commissioner does not disapprove the dividend or
9 distribution within that period.

10 (b) The commissioner, after consulting with the department, may promulgate
11 rules under this section that do any of the following:

12 1. Prescribe the form and content of and procedure for filing reports under this
13 subsection.

14 2. Exempt dividends or distributions from the reporting requirement under
15 par. (a) under conditions that the commissioner determines will not jeopardize the
16 financial condition of the permittee.

17 (c) A permittee may declare a dividend or distribution that is conditioned upon
18 the permittee's compliance with this subsection. A declaration of a dividend or
19 distribution under this subsection does not confer rights to the proposed recipient of
20 the dividend or distribution unless this subsection is complied with and is void if the
21 dividend or distribution is disapproved by the commissioner under par. (a).

22 (d) In addition to any other remedies available, a permittee may recover from
23 the recipient any dividend or distribution paid in violation of this subsection.

1 (8) DUTIES OF OFFICERS AND DIRECTORS. (a) No director or officer of a permittee
2 or of an affiliate of a permittee may permit, participate in, or assent to a transaction
3 or payment or acceptance of a dividend or distribution prohibited under this chapter.

4 (b) An officer or director of a permittee or of an affiliate of a permittee who
5 knows, or reasonably should know, that the permittee or affiliate has entered into
6 a transaction or paid a dividend or distribution that violates this chapter shall report
7 the transaction, dividend, or distribution to the commissioner in writing within 30
8 days after attaining that knowledge. Section 648.15 (6) applies to a report under this
9 section, and the report is confidential unless the commissioner finds it necessary to
10 disclose the report for the purpose of enforcing this chapter.

11 **648.50 Management changes. (1) APPROVAL REQUIRED.** No proposed plan of
12 merger or other plan for acquisition of control of a permittee may be executed unless
13 the commissioner, after consulting with the department, approves the plan.

14 (2) GROUNDS FOR APPROVAL. The commissioner shall approve the plan under this
15 section if the commissioner finds, after a hearing, that it would not violate the law
16 or be contrary to the interests of the public, the department, or the enrollees.

17 (3) INFORMATION REQUIRED. A permittee shall report to the commissioner any
18 changes in directors or principal officers after a permit is issued, together with
19 biographical data on the new director or officer that the commissioner requires by
20 rule.

21 **648.55 Commissioner's summary orders. (1)** The commissioner, after
22 consulting with the department, may make and serve an order on a permittee,
23 requiring it to stop providing services under the department contract, or to take
24 corrective measures, without notice and before hearing, if it appears to the
25 commissioner that irreparable harm to the property or business of the permittee or

1 to the interests of its enrollees or the public, will occur unless the commissioner acts
2 with immediate effect and one of the following applies:

3 (a) The permittee is not in compliance with a rule establishing standards for
4 the financial condition of care management organizations.

5 (b) Grounds exist to suspend or revoke the permittee's permit.

6 (2) An order issued under this subsection is effective immediately.

7 (3) The permittee has the rights provided under s. 601.62. The commissioner
8 may serve upon the permittee notice of hearing under the procedures under s. 601.62
9 simultaneously with service of the order under sub. (1).

10 (4) The commissioner may keep proceedings under this section confidential.

11 **648.65 Enrollee immunity. (1) IMMUNITY.** An enrollee of a care management
12 organization is not liable for health care, service, equipment, or supply charges that
13 are covered under the care management organization's contract with the
14 department.

15 (2) **PROHIBITED RECOVERY ATTEMPTS.** No person may bill, charge, collect a deposit
16 from, seek compensation from, file or threaten to file with a credit reporting agency
17 with respect to, or have any recourse against an enrollee or any person acting on the
18 enrollee's behalf, for any health care, service, equipment, or supply charges for which
19 the enrollee or person acting on his or her behalf is not liable under sub. (1).

20 (3) **IMMUNITY NOT AFFECTED.** The immunity of an enrollee under subs. (1) and
21 (2) is not affected by any of the following:

22 (a) A breach or default on an agreement by the care management organization
23 or the failure of any person to compensate the provider.

24 (b) The insolvency of the care management organization or any person
25 contracting with the care management organization or the commencement or the

1 existence of conditions permitting the commencement of insolvency, delinquency, or
2 bankruptcy proceedings involving the care management organization or other
3 person, regardless of whether the care management organization or other person has
4 agreed to compensate, directly or indirectly, the provider for health care, services,
5 equipment, or supplies for which the enrollee is not liable under sub. (1)

6 (c) The inability of the provider or other person who is owed compensation for
7 health care, services, equipment, or supplies to obtain compensation from the care
8 management organization.

9 **648.75 Insolvency funding. (1) DEPOSIT REQUIRED.** A permittee shall deposit
10 an amount established by the contract with the department, and not less than
11 \$250,000, using the procedures under s. 601.13.

12 (2) RELEASE OF DEPOSIT. A deposit under this section may be released only with
13 *after consulting with the department*
14 the approval of the commissioner by the procedures under s. 601.13 (10) and only in
15 one of the following circumstances:

16 (a) To pay an assessment under sub. (3).

17 (b) To pay creditors of the permittee according to the priority determined by the
18 department if the permittee is insolvent, dissolves, or is subject to an insolvency
19 proceeding, including a bankruptcy proceeding.

20 (3) ASSESSMENT. The department may assess an amount from each permittee's
21 deposit for the purpose of funding arrangements for, or to pay expenses related to,
22 services for enrollees of an insolvent or financially hazardous permittee. The
23 department's assessment shall be allocated to each permittee's deposit in an amount
24 that reflects the permittee's proportionate share of projected enrollment in the
department's annual contracting period. The commissioner may authorize release,

1 and the department of administration shall pay to the department the assessed
2 amount for the purposes of this subsection.

3 (4) RESTORATION. A permittee shall restore its deposit that is subject to an
4 assessment under sub. (3) within 30 days after the assessment, unless the office,
5 after consulting with the department, authorizes a longer period, which shall not
6 exceed 2 years.

7 (5) RECOVERY. The department may recover, and may file a claim or bring civil
8 action to recover, from the insolvent or financially hazardous permittee any amount
9 that the department assesses and pays under sub. (3). Any amount recovered shall
10 be restored to each permittee's deposit in the same proportion as the assessment.

11 (END)

D-N

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1658/P3dn

TJD: *ef*

Date

To Sue Jablonsky:

Please note that I did not make the change to the definition as mentioned by DHS in the email of January 28, 2009. This draft has a definition that is acceptable under current law. If another draft creates a conflict with this draft due to the definition of care management organization, then I will reconcile that conflict at that time.

Tamara J. Dodge
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1658/P3dn
TJD:kjf:ph

January 29, 2009

To Sue Jablonsky:

Please note that I did not make the change to the definition as mentioned by DHS in the email of January 28, 2009. This draft has a definition that is acceptable under current law. If another draft creates a conflict with this draft due to the definition of care management organization, then I will reconcile that conflict at that time.

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1658/P3
TJD:cjs&kjf:ph

DOA:.....Jablonsky, BB0236 – Oversight of care management organizations
by Office of the Commissioner of Insurance

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

INSURANCE

Under current law, a care management organization is certified by and contracts with DHS to administer the Family Care Program. The Family Care Program provides financial assistance for long-term care to eligible individuals who are either a frail elder or a person who is at least 18 years old with a physical disability or a developmental disability.

This bill requires that, in order to provide services, a care management organization must also obtain a permit from OCI. If a care management organization administers a program that includes primary or acute medical care services, then that organization is already subject to oversight by OCI and is not required to obtain a permit.

To obtain a permit, the care management organization must submit an application to the commissioner of insurance (commissioner) containing certain information. The commissioner may issue the permit if, after consulting with DHS, the commissioner finds that 1) the care management organization has met all requirements of law, 2) the directors, principal officer, or any controlling person are trustworthy and competent to engage in the proposed services, and 3) the care management organization's business plan is consistent with the interests of Family Care Program enrollees and the public. Under certain circumstances, the commissioner may revoke or suspend the permit.

With respect to oversight and enforcement of laws on care management organizations, the commissioner has powers under the bill similar to those granted to oversee and enforce laws on insurance companies. Care management organizations that have a permit are subject to requirements under the bill similar to requirements in current law applicable to insurance companies. Requirements applicable to care management organizations include complying with the commissioner's request for reports, submitting to examinations and audits, paying the costs of examination, complying with rules promulgated by OCI, reporting transactions with affiliates of the care management organization, and reporting changes in ownership or management of the care management organization to OCI. A care management organization with a permit must also make a monetary deposit, which is assessed in an amount determined by DHS to pay for services on behalf of an insolvent or financially hazardous care management organization.

The bill also requires that Family Care Program enrollees not be held liable for any obligations of the care management organization. Other entities may not bill or otherwise try to hold the enrollee responsible for the care management organization's obligations.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.145 (1) (g) (intro.) of the statutes is amended to read:

2 20.145 (1) (g) *General program operations.* (intro.) The amounts in the
3 schedule for general program operations, including organizational support services
4 and oversight of care management organizations, and for transferring to the
5 appropriation account under s. 20.435 (4) (kv) the amount allocated by the
6 commissioner of insurance. All of the following shall be credited to this appropriation
7 account:

8 **SECTION 2.** 20.145 (1) (g) 3. of the statutes is created to read:

9 20.145 (1) (g) 3. All moneys received under ss. 648.15 and 648.27.

10 **SECTION 3.** 20.435 (4) (jt) of the statutes is created to read:

11 20.435 (4) (jt) *Care management organization; insolvency assistance.* All
12 moneys received as assessments under s. 648.75 (3) for the purpose of funding

1 arrangements for, or to pay expenses related to, services for enrollees of an insolvent
2 or financially hazardous care management organization.

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

3 **SECTION 4.** 20.435 (4) (kv) of the statutes is created to read:

4 20.435 (4) (kv) *Care management organization; oversight.* All moneys
5 transferred from the appropriation account under s. 20.145 (1) (g), for expenses
6 related to financial certification, monitoring, and assessment of care management
7 organizations that are subject to ch. 648.

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

8 **SECTION 5.** 46.284 (3m) of the statutes is created to read:

9 46.284 (3m) PERMIT REQUIRED. A care management organization that is
10 described under s. 600.01 (1) (b) 10. a., to which s. 600.01 (1) (b) 10. b. does not apply
11 and that is certified under sub. (3) shall apply for a permit with the office of the
12 commissioner of insurance under ch. 648.

13 **SECTION 6.** 600.03 (34) of the statutes is amended to read:

14 600.03 (34) "Office" means "the office of the ~~insurance commissioner~~"
15 commissioner of insurance of this state.

16 **SECTION 7.** Chapter 648 of the statutes is created to read:

17 **CHAPTER 648**

18 **REGULATION OF CARE**

19 **MANAGEMENT ORGANIZATIONS**

20 **648.01 Definitions.** In this chapter:

21 (1) "Care management organization" means an entity described in s. 46.284
22 (3m).

1 (2) "Department" means the department of health services.

2 (3) "Enrollee" has the meaning given in s. 46.2805 (3).

3 (4) "Permittee" means a care management organization issued a permit under
4 this chapter.

5 **648.03 Applicability of other laws.** Notwithstanding s. 600.01 (1) (b) 10. a.,
6 ss. 600.01, 600.02, 600.03, and 600.12 apply to this chapter.

7 **648.05 Permit.** (1) PERMIT REQUIRED. After December 31, 2009, no care
8 management organization may provide services to its enrollees without a permit
9 under this chapter.

10 (2) APPLICATION. A care management organization applying for a permit shall
11 submit all of the following information in the format required by the commissioner:

12 (a) The names, addresses and occupations of all controlling persons and
13 directors and principal officers of the care management organization currently and
14 for the preceding 10 years, unless the commissioner waives this requirement.

15 (b) Business organization documents, including articles and bylaws if
16 applicable.

17 (c) A business plan approved by the department, including a projection of the
18 anticipated operating results at the end of each of the next 3 years of operation, based
19 on reasonable estimates of income and operating expenses.

20 (d) Any other relevant documents or information that the commissioner
21 reasonably requires after consulting with the department.

22 (3) STANDARDS FOR ISSUING PERMIT. The commissioner may issue a permit to the
23 care management organization if the commissioner finds, after consulting with the
24 department, all of the following:

25 (a) All requirements of law have been met.

1 (b) All the directors and principal officers or any controlling person are
2 trustworthy and competent and collectively have the competence and experience to
3 engage in the proposed services and are not excluded from participation under 42
4 USC 1320a-7 or 42 USC 1320a-7a.

5 (c) The business plan is consistent with the interests of the care management
6 organization's enrollees and the public.

7 (4) SUSPENSION OR REVOCATION. The commissioner may suspend or revoke a
8 permit issued under this chapter if the commissioner finds, after consulting with the
9 department, any of the following:

10 (a) The permittee violated a law or rule, including a rule establishing standards
11 for the financial condition of care management organizations.

12 (b) The permittee is in a financially hazardous condition.

13 (c) The permittee is controlled or managed by persons who are incompetent or
14 untrustworthy.

15 (d) The permittee conceals records from the commissioner.

16 (e) The permittee's business plan is not in the public interest or is not prudent.

17 (f) The permittee ceases to be certified by or maintain a contract with the
18 department.

19 **648.10 Powers and duties of the commissioner.** The commissioner may
20 do any of the following:

21 (1) Promulgate rules that are necessary to carry out the intent of this chapter,
22 including, after consulting with the department, standards for the financial
23 condition of care management organizations.

24 (2) Use the authority granted under ss. 601.41, 601.42, 601.43, 601.44, 601.61,
25 601.62, 601.63, and 601.64, including the authority to issue orders, to enforce this

1 chapter and to ensure that a care management organization has sufficient financial
2 resources.

3 **648.15 Reports and replies. (1) REPORTS.** The commissioner may require
4 from any care management organization any of the following:

5 (a) Statements, reports, answers to questionnaires, and other information in
6 whatever reasonable form the commissioner designates and at such reasonable
7 intervals as the commissioner chooses, or from time to time.

8 (b) Full explanation of the programming of any data storage or communication
9 system in use.

10 (c) Information from any books, records, electronic data processing systems,
11 computers, or any other information storage system at any reasonable time in any
12 reasonable manner.

13 (d) Statements, reports, audits, or certification from a certified public
14 accountant or an actuary approved by the commissioner.

15 (2) FORMS. The commissioner, after consulting with the department, may
16 prescribe forms for the reports under sub. (1) and specify who shall execute or certify
17 such reports.

18 (3) ACCOUNTING METHODS. The commissioner, after consulting with the
19 department, may prescribe reasonable minimum standards and techniques of
20 accounting and data handling to ensure that timely and reliable information will
21 exist and will be available to the commissioner.

22 (4) REPLIES. Any officer or manager of a care management organization, any
23 person controlling or having a contract under which the person has a right to control
24 a care management organization, whether exclusively or otherwise, or any person
25 with executive authority over or in charge of any segment of such a care management

1 organization's affairs, shall reply promptly in writing or in another designated form,
2 to any written inquiry from the commissioner requesting a reply.

3 (5) VERIFICATION. The commissioner may require that any communication
4 made to the commissioner under this section be verified.

5 (6) IMMUNITY. In the absence of actual malice, no person shall be subject to
6 damages in an action for defamation based on a communication to the commissioner
7 required by law under this chapter or by the commissioner under this chapter.

8 (7) EXPERTS. The commissioner may employ experts to assist the commissioner
9 in an examination or in the review of any transaction subject to approval under this
10 chapter. The care management organization that is the subject of the examination,
11 or that is a party to a transaction under review, including the person acquiring,
12 controlling, or attempting to acquire the care management organization, shall pay
13 the reasonable costs incurred by the commissioner for the expert and related
14 expenses.

15 **648.20 Examinations. (1) POWER TO EXAMINE.** (a) To inform himself or herself
16 about a matter related to the enforcement of this chapter, the commissioner may
17 examine the affairs and condition of any permittee.

18 (b) So far as reasonably necessary for an examination under par. (a), the
19 commissioner may examine the accounts, records, or documents so far as they relate
20 to the permittee, of any of the following:

21 1. An officer, manager, employee, or person who has executive authority over
22 or is in charge of any segment of the permittee's affairs.

23 2. A person controlling or having a contract under which the person has the
24 right to control the permittee whether exclusively or with others.

1 3. A person who is under the control of the permittee, or a person who is under
2 the control of a person who controls or has a right to control the permittee whether
3 exclusively or with others.

4 (c) On demand, every permittee shall make available to the commissioner for
5 examination any of its own accounts, records, documents, or evidences of
6 transactions.

7 (d) On order of the commissioner any examinee under this chapter shall bring
8 to the office for examination such records as the order reasonably requires.

9 **(2) AUDITS OR ACTUARIAL OR OTHER EVALUATIONS.** In lieu of all or part of an
10 examination under sub. (1), or in addition to it, the commissioner may order an
11 independent audit by certified public accountants or an actuarial or other evaluation
12 by actuaries or other experts approved by the commissioner of any permittee. Any
13 accountant, actuary, or other expert selected is subject to rules respecting conflicts
14 of interest promulgated by the commissioner. Any audit or evaluation under this
15 section is subject to s. 648.25, so far as applicable.

16 **(3) ALTERNATIVES TO EXAMINATION.** In lieu of all or part of an examination under
17 this section, the commissioner may accept the report of an audit already made by
18 certified public accountants or of an actuarial or other evaluation already made by
19 actuaries or other experts approved by the commissioner, or the report of an
20 examination made by another government agency in this state, the federal
21 government, or another state.

22 **(4) PURPOSE AND SCOPE OF EXAMINATION.** An examination may but need not cover
23 comprehensively all aspects of the permittee's affairs and condition. The
24 commissioner shall determine the exact nature and scope of each examination, and
25 in doing so shall take into account all relevant factors, including the length of time

1 the permittee has been doing business, the length of time the permittee has been
2 certified by the department, the nature of the business being examined, the nature
3 of the accounting records available, and the nature of examinations performed
4 elsewhere.

5 **648.25 Conducting examinations. (1) ORDER OF EXAMINATION.** For each
6 examination under s. 648.20, the commissioner shall issue an order stating the scope
7 of the examination and designating the examiner in charge. Upon demand, a copy
8 of the order shall be provided to the examinee.

9 **(2) ACCESS TO EXAMINEE.** Any examiner authorized by the commissioner shall,
10 for the purposes of the examination, have access at all reasonable hours to the
11 premises and to any property of the examinee.

12 **(3) COOPERATION.** The officers, employees, and agents of the examinee shall
13 comply with every reasonable request of the examiners for assistance in any matter
14 relating to the examination. No person may obstruct or interfere with the
15 examination in any way other than by legal process.

16 **(4) CORRECTION OF BOOKS.** If the commissioner finds the accounts or records to
17 be inadequate for proper examination of the condition and affairs of the permittee
18 or improperly kept or posted, the commissioner may employ experts to rewrite, post,
19 or balance them at the expense of the permittee.

20 **(5) REPORT ON EXAMINATION.** The examiner in charge of an examination shall
21 make a proposed report of the examination, including information and analysis
22 ordered in sub. (1), together with the examiner's recommendations. Preparation of
23 the proposed report may include conferences with the examinee or the examinee's
24 representatives at the option of the examiner in charge. The commissioner shall
25 serve the final examination report on the examinee.

1 **(6) COPIES FOR BOARD.** The permittee shall furnish copies of the final
2 examination report to each member of its board or governing body.

3 **(7) REPORT AS EVIDENCE.** In any proceeding by or against the permittee or any
4 officer or agent of the permittee the final examination report shall be admissible as
5 evidence of the facts stated in the report. In any proceeding commenced under this
6 chapter, the final examination report shall be admissible as evidence of the facts
7 stated in the report. In any proceeding by or against the examinee, the facts asserted
8 in any final examination report properly admitted in evidence shall be presumed to
9 be true in the absence of contrary evidence.

10 **648.27 Costs. (1) COSTS TO BE PAID BY CARE MANAGEMENT ORGANIZATIONS.**
11 Permittees shall pay the reasonable estimate of costs of examinations under s.
12 648.20, of review of applications under s. 648.05, and of analysis and financial
13 monitoring of care management organizations by the commissioner and the
14 department, including overhead and fixed costs, by a system of regular annual
15 billings.

16 **(2) DETERMINATION OF COSTS.** Annually, the commissioner shall determine the
17 estimated costs under sub. (1) for the commissioner and the department. The
18 commissioner shall serve a request for payment on each permittee allocating the cost
19 to each permittee in an amount that the commissioner determines reflects the
20 permittee's proportionate share of projected enrollment in the department's annual
21 contracting period.

22 **(3) PAYMENT DEADLINE.** The permittee shall pay the amount determined by the
23 commissioner within 30 days of service of the request for payment under sub. (2).

1 **648.30 Nondisclosure of information. (1) TYPES OF INFORMATION.** The office
2 may refuse to disclose and may prevent any other person from disclosing any of the
3 following:

4 (a) Testimony, reports, records, and information that are obtained, produced,
5 or created in the course of an inquiry under s. 648.15.

6 (b) Testimony, reports, records, and information that are obtained, produced,
7 or created in the course of an examination under s. 648.20.

8 (c) Testimony, reports, records, communications, and information that are
9 obtained by the office from, or provided by the office to, any of the following, under
10 a pledge of confidentiality or for the purpose of assisting or participating in
11 monitoring activities or in the conduct of any inquiry, investigation, or examination:

12 1. The National Association of Insurance Commissioners.

13 2. An agent or employee of the National Association of Insurance
14 Commissioners.

15 3. The insurance commissioner of another state.

16 4. An agent or employee of the insurance commissioner of another state.

17 5. An international, federal, state, or local regulatory or law enforcement
18 agency, including the department.

19 6. An agent or employee of an agency described in subd. 5.

20 **(2) WAIVER AND APPLICABILITY OF THE PRIVILEGE.** Section 601.465 (2m) (a) to (d)
21 applies to the privilege under sub. (1).

22 **648.35 Enforcement procedure. (1) INJUNCTIONS AND RESTRAINING ORDERS.**
23 The commissioner may commence an action in circuit court in the name of the state
24 to restrain by temporary or permanent injunction or by temporary restraining order
25 any violation of this chapter, any rule promulgated under this chapter, or any order

1 issued under s. 648.10 (2). The commissioner need not show irreparable harm or lack
2 of an adequate remedy at law in an action commenced under this subsection.

3 (2) ORDERS. The commissioner shall issue any orders under the procedures
4 described in s. 601.63 and shall hold any hearings under the procedures described
5 in s. 601.62.

6 (3) COMPULSIVE FORFEITURES. If a person does not comply with an order issued
7 under s. 648.10 (2) within 2 weeks after the commissioner has given the care
8 management organization notice of the commissioner's intention to proceed under
9 this subsection, the commissioner may commence an action for a forfeiture in such
10 sum as the court considers just, but not exceeding \$5,000 for each day that the
11 violation continues after the commencement of the action until judgment is
12 rendered. No forfeiture may be imposed under this subsection if at the time the
13 action was commenced the care management organization was in compliance with
14 the order, nor for any violation of an order occurring while any proceeding for judicial
15 review of the order was pending, unless the court in which the proceeding was
16 pending certifies that the claim of invalidity or nonapplicability of the order was
17 frivolous or a sham. If after judgment is rendered the care management organization
18 does not comply with the order, the commissioner may commence a new action for
19 a forfeiture and may continue commencing actions until the person complies. The
20 proceeds of all actions under this subsection, after deduction of the expenses of
21 collection, shall be paid into the common school fund of the state.

22 (4) FORFEITURES AND CIVIL PENALTIES. (a) *Restitutionary forfeiture.* Whoever
23 violates an order issued under s. 648.10 (2) that is effective under s. 601.63, any
24 section of this chapter, or any rule relating to this chapter shall forfeit to the state

1 twice the amount of any profit gained from the violation, in addition to any other
2 forfeiture or penalty imposed.

3 (b) *Forfeiture for violation of order.* Whoever violates an order issued under s.
4 648.10 (2) that is effective under s. 601.63 shall forfeit to the state not more than
5 \$1,000 for each violation. Each day that the violation continues is a separate offense.

6 (c) *Forfeiture for violation of statute or rule.* Whoever violates, intentionally
7 aids in violating, or knowingly permits a person over whom he or she has authority
8 to violate a section of this chapter or a rule promulgated under this chapter shall
9 forfeit to the state not more than \$1,000 for each violation. If the section or rule
10 violated imposes a duty to make a report to the commissioner, each week of delay in
11 complying with the duty is a new violation.

12 (d) *Procedure.* The commissioner may order any person to pay a forfeiture
13 imposed under this subsection, which shall be paid into the common school fund. If
14 the order is issued without a hearing, the affected person may demand a hearing
15 through procedures described under s. 601.62 (3) (a). If the person fails to request
16 a hearing, the order is conclusive as to the person's liability. The scope of review for
17 forfeitures ordered is that specified under s. 227.57. The commissioner may cause
18 an action to be commenced to recover the forfeiture. Before an action is commenced,
19 the commissioner may compromise the forfeiture.

20 (5) CRIMINAL PENALTY. Whoever intentionally violates or intentionally permits
21 any person over whom he or she has authority to violate or intentionally aids any
22 person in violating any section of this chapter, any rule promulgated to administer
23 this chapter, or any order issued under s. 648.10 (2) that is effective under s. 601.63
24 is guilty of a Class I felony, unless a specific penalty is provided elsewhere in the
25 statutes. Intent has the meaning expressed under s. 939.23.

1 **648.45 Affiliates of permittee. (1) INFORMATION.** A permittee and a person
2 attempting to acquire or having control of a permittee, shall report to the
3 commissioner the information concerning the permittee, its affiliates, and the person
4 attempting to acquire control of the permittee that the commissioner requires by
5 rule. The commissioner may promulgate rules prescribing the timing of reports
6 under this subsection, including requiring periodic reporting and the form and
7 procedure for filing reports.

8 **(2) REPORT FOR AFFILIATES.** The permittee may report on behalf of all affiliated
9 entities if it provides all the information that would be required if each affiliate
10 reported separately.

11 **(3) CONSENT TO JURISDICTION.** Every permittee shall promptly submit to the
12 commissioner a statement from each of its affiliates that the affiliate agrees to be
13 subject to the jurisdiction of the commissioner and the courts of this state for the
14 purposes of this chapter. A governmental unit is not subject to this requirement. The
15 commissioner may exempt other affiliates from this subsection.

16 **(4) INFORMATION ORDER.** The commissioner may, by order, require any permittee
17 or any person attempting to acquire or having control of the permittee, to report
18 information under sub. (1) or other information to the commissioner.

19 **(5) TRANSACTIONS WITH AFFILIATES.** Neither a permittee nor an affiliate of the
20 permittee may enter into a transaction between the permittee and affiliate unless
21 all of the following apply:

22 (a) The transaction at the time it is entered into is reasonable and fair to the
23 interests of the permittee.

24 (b) The books, accounts, and records of each party to the transaction are kept
25 in a manner that clearly and accurately discloses the nature and details of the

1 transaction and, in accordance with generally accepted accounting principles,
2 permits ascertainment of charges relating to the transaction.

3 (c) The permittee's financial condition following any dividends or distributions
4 to shareholders or a person having control of the permittee is reasonable in relation
5 to the permittee's outstanding liabilities and is adequate to its financial needs.

6 (d) The transaction complies with any other standard that the commissioner,
7 after consulting with the department, prescribes by rule.

8 (6) TRANSACTIONS SUBJECT TO DISCLOSURE. (a) *Affiliated transactions to be*
9 *reported.* 1. The commissioner, after consulting with the department, may
10 promulgate rules requiring a permittee, a person attempting to acquire or having
11 control of a permittee, and affiliates of a permittee to report a transaction or a group
12 or series of transactions, if all of the following are satisfied:

13 a. The transaction is between a permittee and a person attempting to acquire
14 or having control of the permittee or an affiliate of the permittee, or the transaction
15 directly or indirectly benefits the person or affiliate.

16 b. The transaction is, or the group or series of transactions are, material to the
17 permittee.

18 2. Transactions that are material to a permittee for the purposes of subd. 1.
19 include management contracts, service contracts, and cost-sharing arrangements.
20 The commissioner, after consulting with the department, may prescribe by rule
21 standards for determining whether a transaction is material under this subsection.

22 3. No permittee, person attempting to acquire or having control of a permittee,
23 or affiliate of the permittee may enter into a transaction required to be reported to
24 the commissioner under this subsection unless the permittee, person, and affiliate
25 report the transaction to the commissioner in the form and by the date before the

1 effective date of the transaction that are prescribed by the commissioner by rule,
2 after consulting with the department. The commissioner may not require the
3 transaction to be reported earlier than 30 days before the effective date of the
4 transaction.

5 (b) *Disapproval.* The commissioner may, within the period prescribed in par.
6 (a) 3., disapprove any transaction reported under par. (a) if the commissioner finds,
7 after consulting with the department, that it would violate the law or would be
8 contrary to the interests of enrollees of the permittee, the department, or the public.

9 (c) *Transactions prohibited.* No permittee, person attempting to acquire or
10 having control of the permittee, or affiliate of the permittee may enter into a
11 transaction that is not reported as required under par. (a) or that is disapproved by
12 the commissioner under par. (b).

13 (d) *Voidable transactions.* If a permittee, person attempting to acquire or
14 having control of the permittee, or affiliate enters into a transaction in violation of
15 this section, the permittee may void the transaction, obtain an injunction, and
16 recover from the person or affiliate the amount necessary to restore the permittee to
17 its condition had the transaction not occurred. The commissioner may order a
18 permittee to void the transaction, to commence an action against the person or
19 affiliate, or to take other action.

20 (e) *Required financial conditions.* The commissioner, after consulting with the
21 department, may promulgate rules for determining adequacy of financial condition
22 under this section.

23 (f) *Exemption if permittee reports.* Paragraph (a) does not apply to a person
24 attempting to acquire or having control of, or an affiliate of, a permittee, if the

1 permittee reports on behalf of the person or on behalf of the affiliate, and the
2 transaction is not disapproved by the commissioner under par. (b).

3 (7) DIVIDENDS AND DISTRIBUTIONS. (a) A permittee may not pay a dividend or
4 distribution, and an affiliate of a permittee may not accept a dividend or distribution,
5 unless the permittee reports the dividend or distribution to the commissioner at least
6 30 days before payment and the commissioner does not disapprove the dividend or
7 distribution within that period.

8 (b) The commissioner, after consulting with the department, may promulgate
9 rules under this section that do any of the following:

10 1. Prescribe the form and content of and procedure for filing reports under this
11 subsection.

12 2. Exempt dividends or distributions from the reporting requirement under
13 par. (a) under conditions that the commissioner determines will not jeopardize the
14 financial condition of the permittee.

15 (c) A permittee may declare a dividend or distribution that is conditioned upon
16 the permittee's compliance with this subsection. A declaration of a dividend or
17 distribution under this subsection does not confer rights to the proposed recipient of
18 the dividend or distribution unless this subsection is complied with and is void if the
19 dividend or distribution is disapproved by the commissioner under par. (a).

20 (d) In addition to any other remedies available, a permittee may recover from
21 the recipient any dividend or distribution paid in violation of this subsection.

22 (8) DUTIES OF OFFICERS AND DIRECTORS. (a) No director or officer of a permittee
23 or of an affiliate of a permittee may permit, participate in, or assent to a transaction
24 or payment or acceptance of a dividend or distribution prohibited under this chapter.

1 (b) An officer or director of a permittee or of an affiliate of a permittee who
2 knows, or reasonably should know, that the permittee or affiliate has entered into
3 a transaction or paid a dividend or distribution that violates this chapter shall report
4 the transaction, dividend, or distribution to the commissioner in writing within 30
5 days after attaining that knowledge. Section 648.15 (6) applies to a report under this
6 section, and the report is confidential unless the commissioner finds it necessary to
7 disclose the report for the purpose of enforcing this chapter.

8 **648.50 Management changes. (1) APPROVAL REQUIRED.** No proposed plan of
9 merger or other plan for acquisition of control of a permittee may be executed unless
10 the commissioner, after consulting with the department, approves the plan.

11 **(2) GROUNDS FOR APPROVAL.** The commissioner shall approve the plan under this
12 section if the commissioner finds, after a hearing, that it would not violate the law
13 or be contrary to the interests of the public, the department, or the enrollees.

14 **(3) INFORMATION REQUIRED.** A permittee shall report to the commissioner any
15 changes in directors or principal officers after a permit is issued, together with
16 biographical data on the new director or officer that the commissioner requires by
17 rule.

18 **648.55 Commissioner's summary orders. (1)** The commissioner, after
19 consulting with the department, may make and serve an order on a permittee,
20 requiring it to stop providing services under the department contract, or to take
21 corrective measures, without notice and before hearing, if it appears to the
22 commissioner that irreparable harm to the property or business of the permittee or
23 to the interests of its enrollees or the public, will occur unless the commissioner acts
24 with immediate effect and one of the following applies:

1 (a) The permittee is not in compliance with a rule establishing standards for
2 the financial condition of care management organizations.

3 (b) Grounds exist to suspend or revoke the permittee's permit.

4 (2) An order issued under this subsection is effective immediately.

5 (3) The permittee has the rights provided under s. 601.62. The commissioner
6 may serve upon the permittee notice of hearing under the procedures under s. 601.62
7 simultaneously with service of the order under sub. (1).

8 (4) The commissioner may keep proceedings under this section confidential.

9 **648.65 Enrollee immunity. (1) IMMUNITY.** An enrollee of a care management
10 organization is not liable for health care, service, equipment, or supply charges that
11 are covered under the care management organization's contract with the
12 department.

13 (2) PROHIBITED RECOVERY ATTEMPTS. No person may bill, charge, collect a deposit
14 from, seek compensation from, file or threaten to file with a credit reporting agency
15 with respect to, or have any recourse against an enrollee or any person acting on the
16 enrollee's behalf, for any health care, service, equipment, or supply charges for which
17 the enrollee or person acting on his or her behalf is not liable under sub. (1).

18 (3) IMMUNITY NOT AFFECTED. The immunity of an enrollee under subs. (1) and
19 (2) is not affected by any of the following:

20 (a) A breach or default on an agreement by the care management organization
21 or the failure of any person to compensate the provider.

22 (b) The insolvency of the care management organization or any person
23 contracting with the care management organization or the commencement or the
24 existence of conditions permitting the commencement of insolvency, delinquency, or
25 bankruptcy proceedings involving the care management organization or other

1 person, regardless of whether the care management organization or other person has
2 agreed to compensate, directly or indirectly, the provider for health care, services,
3 equipment, or supplies for which the enrollee is not liable under sub. (1)

4 (c) The inability of the provider or other person who is owed compensation for
5 health care, services, equipment, or supplies to obtain compensation from the care
6 management organization.

7 **648.75 Insolvency funding. (1) DEPOSIT REQUIRED.** A permittee shall deposit
8 an amount established by the contract with the department, and not less than
9 \$250,000, using the procedures under s. 601.13.

10 **(2) RELEASE OF DEPOSIT.** A deposit under this section may be released only with
11 the approval of the commissioner, after consulting with the department, by the
12 procedures under s. 601.13 (10) and only in one of the following circumstances:

13 (a) To pay an assessment under sub. (3).

14 (b) To pay creditors of the permittee according to the priority determined by the
15 department if the permittee is insolvent, dissolves, or is subject to an insolvency
16 proceeding, including a bankruptcy proceeding.

17 **(3) ASSESSMENT.** The department may assess an amount from each permittee's
18 deposit for the purpose of funding arrangements for, or to pay expenses related to,
19 services for enrollees of an insolvent or financially hazardous permittee. The
20 department's assessment shall be allocated to each permittee's deposit in an amount
21 that reflects the permittee's proportionate share of projected enrollment in the
22 department's annual contracting period. The commissioner may authorize release,
23 and the department of administration shall pay to the department the assessed
24 amount for the purposes of this subsection.

