



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 01/23/2009 (Per: TJD)



Appendix A

 The 2009 drafting file for LRB-0889

has been transferred to the drafting file for

2009 LRB-1658

 This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

 The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2009 DRAFTING REQUEST

Bill

Received: 11/20/2008

Received By: pkahler

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Jablonsky

This file may be shown to any legislator: NO

Drafter: tdodge

May Contact:

Addl. Drafters:

Subject: Insurance - other insurance

Extra Copies: PJK

Submit via email: NO

Pre Topic:

DOA:.....Jablonsky, BB0236 -

Topic:

Oversight of care management organizations by Office of the Commissioner of Insurance

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 12/05/2008	kfollett 12/10/2008		_____			
/P1			phenry 12/10/2008	_____	mbarman 12/10/2008		

FE Sent For:

<END>

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/?	tdodge	1P/16JF 12/10	12/10 ph	12/10 ph/JK			

FE Sent For:

<END>

2009-11 Budget Bill Statutory Language Drafting Request

- Topic: OCI Oversight of Family Care
- Tracking Code: BB0236
- SBO team: Health and Insurance
- SBO analyst: Sue Jablonsky
 - Phone: 7-9546
 - Email: sue.jablonsky@wisconsin.gov
- Agency acronym: OCI
- Agency number: 145
- Priority (Low, Medium, High): High

Intent: OCI will be doing financial examinations of managed care organizations (MCO) that provide services under the Family Care program. Attached is a list from OCI of the insurance statutes that they believe should apply to MCOs as well as OCI's powers and duties related to regulation of these entities.

Outline for Chapter 648, Wis. Stat.

- 648.01 – Definitions
 - Define an MCO – Possibly refer to definition used by DHS
 - Define a corrective action plan
 - Possibly define terms used in financial requirements
- 648.02 – Purpose and Scope
 - Applies to MCOs that would otherwise be exempt from insurance law under s. 601.01 (10), Wis. Stat. *600.01(1)(b)10.*
 - Purpose is to establish dual regulatory roles for OCI and DHS
- 648.03 – Registration
 - Prior to providing services to enrollees, an MCO would be required to register with OCI after being certified by DHS
- 648.04 – Powers and Duties of the Commissioner:
 - Promulgate rules that the commissioner finds are necessary
 - Use the authority granted under s. 601.41 (4) to ensure that an MCO has sufficient financial resources
 - Issue such prohibitory, mandatory, and other orders as are necessary to secure compliance with the law
- 648.05 – Reports and replies
 - The commissioner may require any of the following from any MCO:
 - Statements, reports, answers to questionnaires and other information
 - Information from any books, records, electronic data processing systems, computers or any other information storage system be made available
 - Statements, reports, answers to questionnaires or other information, or reports, audited financial statements
 - The commissioner may prescribe forms for the reports
 - The commissioner may prescribe reasonable minimum standards and techniques of accounting and data handling
- 648.06 – Power to Examine
 - The commissioner may examine the affairs and condition of any registrant under this chapter
 - On demand every examinee shall make available to the commissioner for examination any of its own accounts, records, documents or evidences of transactions
 - The commissioner shall examine each registrant at least every three years
- 648.07 – Conducting examinations
 - For each examination under s. 648.06, the commissioner shall issue an order stating the scope of the examination
 - Any examiner authorized by the commissioner shall, so far as necessary to the purposes of the examination, have access at all reasonable hours to the premises and to any books, records, files, securities, documents or property of the examinee
 - The officers, employees and agents of the examinee shall comply with every reasonable request of the examiners for assistance in any matter relating to the examination. No person may obstruct or interfere with the examination in any way other than by legal process.
 - The examiner in charge of an examination shall make a proposed report of the examination which shall include such information and analysis as is ordered in this section, together with the examiner's recommendations
 - The commissioner shall serve a copy of the proposed report upon the examinee. Within 20 days after service, the examinee may serve upon the commissioner a written demand for a hearing on the contents of the report.

- 648.08 – Nondisclosure of Information
 - Section 601.465 applies to MCOs
- 648.09 – Enforcement Procedure
 - Commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction or by temporary restraining order any violation of ch. 648, any rule promulgated under ch 648, or any order issued
 - Issue forfeitures for violations
- 648.10 – Transactions with Affiliates
 - Require notification of acquisition by another party
 - Require filing of transactions between affiliated companies
 - Require filing of any proposed distribution out of the ordinary course of business
 - Voidable transactions
- 648.11 – Management Changes
 - Notify commissioner of changes in officers and directors
 - File biographical information
- 648.12 – Commissioner's Summary Orders
 - Issue a summary order if an MCO has engaged in or will engage in a transaction that would subject it to formal delinquency proceedings
 - Any MCO who voluntarily seeks to liquidate shall notify the commissioner in advance

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Sue J.

12-2-08

by phone

for regulation of core mgmt org draft

OCI appropriation s. 20.145(1)(g)

want all moneys received (not 90%)

from those orgs for audits to

go to appropriation (like s. 20.145

(not subject to 10% lapse to gen fund) (1)(g) 2.)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0889/? P1
TJD: kjf
RMNR

ups: request sheet please the

In: 12/05/08

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

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

D-N

Don't Gen

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

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided with a later draft.

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

2 SECTION 1. 46.284 (3m) of the statutes is created to read:

3 46.284 (3m) A care management organization that is described under s. 600.01

4 (1) (b) 10. a., to which s. 600.01 (1) (b) 10. b. does not apply, and that is certified under

5 sub. (3) shall register with the office of the commissioner of insurance under ch. 648.

6 SECTION 2. 600.03 (34) of the statutes is amended to read:

7 600.03 (34) "Office" means "the office of the insurance commissioner"

8 commissioner of insurance of this state.

History: 1971 c. 260; 1973 c. 22; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 223, 371, 374, 375, 421; 1977 c. 339; 1979 c. 89 ss. 383, 543; 1979 c. 102 ss. 49 to 53, 236 (22); 1979 c. 177; 1981 c. 38, 82; 1983 a. 120, 189, 274, 358; 1985 a. 29; 1987 a. 167, 247; 1989 a. 23, 31; 1989 a. 187 s. 29; 1993 a. 201; 1995 a. 225; 1999 a. 30; 2001 a. 65; 2003 a. 261; 2007 a. 170.

CRS: check spacing throughout

1 SECTION 3. Chapter 648 of the statutes is created to read:

2 CHAPTER 648

3 REGULATION OF CARE MANAGEMENT ORGANIZATIONS

4 648.01 Definitions. In this chapter:

5 (1) "Care management organization" is an entity described in s. 46.284 (3m).

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

7 648.03 Applicability of other laws. Notwithstanding s. 600.01 (1) (b) 10. a.,
8 ss. 600.01, 600.02, 600.03, and 600.12 apply in this chapter.

9 648.05 Registration. No care management organization may provide services
10 to its enrollees without having registered with the commissioner.

***NOTE: How often would a care management organization need to register? Will there be renewal registrations needed? Should a registration fee provision be added to this section and s. 601.31?

11 648.10 Powers and duties of the commissioner. The commissioner may do
12 any of the following:

13 (1) Promulgate rules that are necessary to carry out the intent of this chapter.

14 (2) Use the authority granted under s. 601.41 (4), including issuing orders, to
15 ensure that a care management organization has sufficient financial resources.

***NOTE: For what does a care management organization need sufficient financial resources? Please advise as to how this provision should be clarified.

16 648.15 Reports and replies. (1) REPORTS. The commissioner may require
17 from any care management organization any of the following:

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

1 (b) Information from any books, records, electronic data processing systems,
2 computers, or any other information storage system at any reasonable time in any
3 reasonable manner.

4 (c) Statements, reports, answers to questionnaires, or other information; or
5 reports, audits, or certification from a certified public accountant or an actuary
6 approved by the commissioner.

7 (2) FORMS. The commissioner may prescribe forms for the reports under sub. (1)
8 and specify who shall execute or certify such reports.

9 (3) ACCOUNTING METHODS. The commissioner may prescribe reasonable
10 minimum standards and techniques of accounting and data handling to ensure that
11 timely and reliable information will exist and will be available to the commissioner.

12 **648.20 Examinations. (1) POWER TO EXAMINE.** (a) To inform himself or herself
13 about a matter related to the enforcement of this chapter, the commissioner may
14 examine the affairs and condition of any registrant under this chapter.

15 (b) On demand, every registrant under this chapter shall make available to the
16 commissioner for examination any of its own accounts, records, documents, or
17 evidence of transactions.

18 (2) DUTY TO EXAMINE. The commissioner shall examine every care management
19 organization registered under this chapter at least once every three years.

20 **648.25 Conducting examinations. (1) ORDER OF EXAMINATION.** For each
21 examination under s. 648.20, the commissioner shall issue an order stating the scope
22 of the examination and designating the examiner in charge. Upon demand, a copy
23 of the order shall be provided to the examinee.

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

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

8 (4) REPORT ON EXAMINATION. The examiner in charge of an examination shall
9 make a proposed report of the examination, including information and analysis
10 ordered in sub. (1), together with the examiner's recommendations.

11 (5) ADOPTION AND FILING OF EXAMINATION REPORT. The commissioner shall serve
12 a copy of the proposed report upon the examinee. Within 20 days after service, the
13 examinee may serve upon the commissioner a written demand for a hearing on the
14 contents of the report.

***NOTE: The provision regarding filing of the report is based on s. 601.44 (6).
Would you like the rest of that subsection included here?

***NOTE: In ch. 601, there is a provision for charging the examinee for the
examination conducted by OCI. Would you like a similar provision in this chapter?

15 **648.30 Nondisclosure of information.** (1) TYPES OF INFORMATION. The office
16 may refuse to disclose and may prevent any other person from disclosing any of the
17 following:

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

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

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

5 1. The National Association of Insurance Commissioners.

6 2. An agent or employee of the National Association of Insurance
7 Commissioners.

8 3. The insurance commissioner of another state.

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

10 5. An international, federal, state, or local regulatory or law enforcement
11 agency.

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

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

15 **648.35 Enforcement procedure.** The commissioner may commence an
16 action in circuit court in the name of the state to restrain by temporary or permanent
17 injunction or by temporary restraining order any violation of this chapter, any rule
18 promulgated under this chapter, or any order issued under s. 648.10 (3). (2)

***NOTE: You requested a forfeiture provision. Would you like the provision to be
similar to that in s. 601.64? If so, what dollar amount should the forfeiture be?

19 **648.45 Transactions with affiliates. (1)** A care management organization
20 registered under this chapter shall notify the commissioner if another person is
21 attempting to acquire it.

22 (2) A care management organization shall report to the commissioner all
23 transactions with affiliates.

****NOTE: Similar provisions under ch. 617 allow the commissioner to disapprove of a takeover or a transaction between affiliates. Would you like the commissioner to have that same authority here?

1 (3) A care management organization shall notify the commissioner before
2 paying any distribution outside the ordinary course of business.

3 (4) If a care management organization, person attempting to acquire or having
4 control of a care management organization, or affiliate enters into a transaction in
5 violation of this section, the care management organization may void the transaction
6 and obtain an injunction and recovery from the person or affiliate of the amount
7 necessary to restore the care management organization to its condition had the
8 transaction not occurred. The commissioner may order a care management
9 organization to void the transaction, to commence an action against the person or
10 affiliate, or to take other action.

****NOTE: This subsection is based on s. 617.21 (3m). Is this okay?

11 **648.50 Management changes.** A care management organization shall report
12 to the commissioner any changes in directors or principal officers after registration,
13 together with biographical data on the new director or officer that the commissioner
14 requires by rule.

15 **648.55. Commissioner's summary orders.** (1) For purposes of this section,
16 "delinquency proceeding" means any proceeding commenced against a care
17 management organization for the purpose of liquidating, rehabilitating,
18 reorganizing, or conserving the care management organization.

19 (2) Whenever the commissioner has reasonable cause to believe, and
20 determines, after a hearing held as prescribed in s. 601.62, that any care
21 management organization has engaged in or is about to engage in any act that would
22 subject it to formal delinquency proceedings, the commissioner may make and serve

1 upon the care management organization and any other persons involved orders that
2 are reasonably necessary to remedy such conduct.

***NOTE: This subsection is based on s. 645.21. Is this the provision you wanted?
Please note that while this section refers to formal delinquency proceedings, the
procedures for these proceedings are not set forth in this chapter and are not applied to
care management organizations.

3 **648.60 Voluntary liquidation.** Before taking any action to commence a
4 voluntary liquidation, a care management organization that intends to voluntarily
5 liquidate shall notify the commissioner within the time specified by the
6 commissioner.

***NOTE: Would you like the commissioner to be able to act upon the notification
of a voluntary liquidation?

7

(END)

D- Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0889/dn

TJD...

Date

To Sue Jablonsky:

1. Please review this draft and the notes within the draft. I have written this draft so it applies only to care management organizations that are otherwise exempt from the requirements of the insurance statutes. As I understand, a care management organization administering only family care is exempt from compliance with chapters 600 to 646 under s. 600.01 (1) (b) 10. a. If a care management organization administers a program that includes primary and acute health care benefits, then that care management organization already is subject to oversight under s. 600.01 (1) (b) 10. b. What happens if a care management organization administers both family care and a program including primary and acute health care benefits? Should these care management organizations be required to register and comply with chapter 648?
2. What fees will apply, if any? Will there be charges to the care management organizations for conducting examinations? Should 100 percent of all fees paid by care management organizations be credited to the appropriation under s. 20.145 (1) (g)?

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0889/P1dn
TJD:kjf:ph

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2009 - 2010 LEGISLATURE

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6 commissioner.

****NOTE: Would you like the commissioner to be able to act upon the notification
of a voluntary liquidation?

7

(END)