

2011 DRAFTING REQUEST

Bill

Received: **01/24/2012**

Received By: **pkahler**

Wanted: **As time permits**

Companion to LRB:

For: **John Nygren (608) 266-2343**

By/Representing: **Nels Rude**

May Contact:

Drafter: **pkahler**

Subject: **Public Assistance - med. assist.**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Nygren@legis.wisconsin.gov**

Carbon copy (CC:) to: **Tamara.Dodge@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Medical assistance insurance disclosure

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>
/?	pkahler 01/25/2012	jdyer 01/25/2012		_____			State
/P1			jmurphy 01/25/2012	_____	ggodwin 01/25/2012		State
/1	pkahler 01/31/2012	jdyer 01/31/2012	phenry 01/31/2012	_____	lparisi 01/31/2012	lparisi 01/31/2012	

FE Sent For:

02-02-2012
(1/1)

Requested by Nels

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/?	pkahler 01/25/2012	jdye 01/25/2012	1/31 [signature]				State
/P1		1/31 [signature]	jmurphy 01/25/2012		ggodwin 01/25/2012		

FE Sent For:

<END>

1 " may be jacketed for the Assembly

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Wanted: As time permits

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By/Representing: Nels Rude

May Contact:

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Subject: Public Assistance - med. assist.

Addl. Drafters:

Extra Copies:

Submit via email: YES

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Carbon copy (CC:) to: Tami Dodge (already added)

Pre Topic:

No specific pre topic given

Topic:

Medical assistance insurance disclosure

Instructions:

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/?	pkahler	PK 1/25 jld	jm 1/25/12	Rst/jm 1/25			

FE Sent For:

<END>

Kahler, Pam

From: Rude, Nels
Sent: Tuesday, January 24, 2012 12:19 PM
To: Kahler, Pam
Subject: FW: Insurance Disclosure Legislation

Attachments: MA TPL - insurance disclosure - propd amdmts to 49 475 1-12-12.doc

Pam- This is a high priority for Rep. Nygren and leadership. Any efforts to rush it along would be greatly appreciated! ☺

Have a good day.

Nels

From: Rude, Nels
Sent: Tuesday, January 24, 2012 12:05 PM
To: Kahler, Pam
Subject: Insurance Disclosure Legislation

Hello Pam,

Attached are changes to the statutes Rep. Nygren would like to pursue relating to Medicaid insurance disclosure. Could you please draft this legislation? Also, would it be possible to get us a separate draft that would combine the asset verification bill you already drafted with these changes? We are unsure at this time whether it will go as separate or combined legislation so we would like to have both ready.

The insurance disclosure language came from DHS. Please contact our office or DHS directly with any questions.

Thanks much,

Nels

Nels Rude

Office of Representative John Nygren
89th Assembly District
306 East, State Capitol
608.266.2344
nels.rude@legis.wi.gov



MA TPL -
insurance disclosure

**MEDICAID INSURANCE DISCLOSURE –
PROPOSED AMENDMENTS TO § 49.475**

49.475 Information about medical assistance beneficiaries.

(1) DEFINITIONS. In this section:

~~(ag) "Covered entity" means any of the following that is not an insurer:~~

- ~~1. A nonprofit hospital, as defined in s. 46.21 (2) (m).~~
- ~~2. An employer, as defined in s. 101.01 (4), labor union, or other group of persons organized in this state if the employer, labor union, or other group provides prescription drug coverage to covered individuals who reside or are employed in this state.~~
- ~~3. A comprehensive or limited health care benefits program administered by the state that provides prescription drug coverage.~~

~~(am) "Covered individual" means an individual who is a member, participant, enrollee, policyholder, certificate holder, contract holder, or beneficiary of a covered entity, or a dependent of the individual, and who receives prescription drug coverage from or through the covered entity.~~

~~(ar) "Disability insurance policy" has the meaning given in s. 632.895 (1) (a).~~

~~(b) "Insurer" has the meaning given in s. 600.03 (27).~~

~~(c) "Pharmacy benefits management" means the procurement of prescription drugs at a negotiated rate for dispensation in this state to covered individuals; the administration or management of prescription drug benefits provided by an insurer or other third party, including a covered entity for the benefit of covered individuals; or any of the following services provided in the administration of pharmacy benefits:~~

- ~~1. Dispensation of prescription drugs by mail.~~
- ~~2. Claims processing, retail network management, or and payment of claims to pharmacies for prescription drugs dispensed to covered individuals.~~
- ~~3. Clinical formulary development and management services.~~
- ~~4. Rebate contracting and administration.~~
- ~~5. Conduct of patient compliance, therapeutic intervention, generic substitution, and disease management programs.~~

~~(d) "Pharmacy benefits manager" means an entity a person that performs pharmacy benefits management functions.~~

Receipt
or none ?

(e) "Recipient" means an individual or his or her spouse or dependent who has been or is one of the following:

1. A recipient of medical assistance or of a program administered under medical assistance under a waiver of federal Medicaid laws.
2. An enrollee of family care.
3. A recipient of the Badger Care health care program.
4. An individual who receives benefits under s. 49.68, 49.683, or 49.685.
5. A participant in the program of prescription drug assistance for elderly persons under s. 49.688.
6. A woman who receives services that are reimbursed under s. 255.06.

(f) "Third party" means an entity that by statute, rule, or contract or agreement is responsible for payment of a claim for a health care item or service, including but not limited to any. ~~"Third party" includes all of the following:~~

1. An insurer.
2. An employee benefit plan, as defined described in 29 USC 1002 (3) 4003 ✓
(a) that is not exempt under 29 USC 1003 (b) and is not a multiple employer welfare arrangement.
3. A service benefit plan, as defined in 5 USC 8903 ⁽¹⁾ specified in 42 USC ✓
1396a (25) (f).
4. A pharmacy benefits manager.
5. A group health plan, as defined in 29 USC 1191b (a) (1), including a self- ✓
insured plan.
6. The issuer of a disability insurance policy.
7. An entity that administers benefits on behalf of another risk-bearing third party, including but not limited to a third party administrator, a fiscal intermediary or a managed care contractor.

(2) REQUIREMENTS OF 3RD PARTIES. As a condition of doing business in this state, a 3rd party shall do all of the following:

(a) Upon the department's request and in the manner prescribed by the department, provide information to the department necessary for the department to ascertain all of the following with respect to a recipient:

1. Whether the recipient is being or has been provided coverage or a benefit or service by a 3rd party.

2. If subd. 1. applies, the nature and period of time of any coverage, benefit, or service provided, including the name, address, and identifying number of any applicable coverage plan.

(b) Accept assignment to the department of a right of a recipient to receive 3rd-party payment for an item or service for which payment under medical assistance has been made and accept the department's right to recover any 3rd-party payment made for which assignment has not been accepted.

(c) Respond to an inquiry by the department concerning a claim for payment of a health care item or service if the department submits the inquiry less than 36 months after the date on which the health care item or service was provided.

(d) If all of the following apply, agree not to deny a claim submitted by the department under par. (b) solely because of the claim's submission date, the type or format of the claim form, or failure by a recipient to present proper documentation at the time of delivery of the service, benefit, or item that is the basis of the claim:

1. The department submits the claim less than 36 months after the date on which the health care item or service was provided.

2. Action by the department to enforce the department's rights under this section with respect to the claim is commenced less than 72 months after the department submits the claim.

(3) WRITTEN AGREEMENT. Upon requesting a 3rd party to provide the information under sub. (2) (a), the department and the 3rd party shall enter into a written agreement that satisfies all of the following:

(a) Identifies the detailed format of the information to be provided to the department.

(b) Includes provisions that adequately safeguard the confidentiality of the information to be disclosed.

(c) Specifies how the 3rd party's reimbursable costs under sub. (5) will be determined and specifies the manner of payment.

(4) DEADLINE FOR RESPONSE; ENFORCEMENT. (a) A 3rd party shall provide the information requested under sub. (2) (a) within 180 days after receiving the department's request if it is the first time that the department has requested the 3rd party to disclose information under this section.

(b) A 3rd party shall provide the information requested under sub. (2) (a) within 30 days after receiving the department's request if the department has previously requested the 3rd party to disclose information under this section.

(c) If an insurer fails to comply with par. (a) or (b), the department may notify the commissioner of insurance, and the commissioner of insurance may initiate enforcement proceedings against the insurer under s. 601.41 (4) (a).

(d) If a 3rd party other than an insurer fails to comply with par. (a) or (b), the department may so notify the attorney general.

(5) REIMBURSEMENT OF COSTS. From the appropriations under s. 20.435 (4) (bm) and (pa), the department shall reimburse a 3rd party that provides information under sub. (2) (a) for the 3rd party's reasonable costs incurred in providing the requested information, including its reasonable costs, if any, to develop and operate automated systems specifically for the disclosure of the information.

(6) SHARING INFORMATION. The department of health services shall provide to the department of children and families, for purposes of the medical support liability program under s. 49.22, any information that the department of health services receives under this section. The department of children and families may allow a county child support agency under s. 59.53 (5) or a tribal child support agency access to the information, subject to the use and disclosure restrictions under s. 49.83, and shall consult with the department of health services regarding procedures and methods to adequately safeguard the confidentiality of the information provided under this subsection.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3917

PJK:.....

Jld

PI

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D - write today

gen cat

LX

1 AN ACT relating to: the provision of information regarding health care
2 benefits provided to certain assistance program recipients.

Analysis by the Legislative Reference Bureau

Under current law, as a condition of doing business in this state, certain payers of health care benefits (called third parties) must provide to the Department of Health Services (DHS) information from their records to enable DHS to ascertain whether an individual, or his or her spouse or dependent, who has been or is a recipient under an assistance program, has received or is receiving health care coverage or benefits from a third party. The assistance programs for which DHS seeks information about recipients are the Medical Assistance (MA) program, including the Badger Care health care program, Family Care, Senior Care, the Well-Woman Program, and the program that provides financial assistance for the cost of medical care to persons with chronic kidney disease, cystic fibrosis, and hemophilia. The third parties may receive compensation for providing the information, must provide the information within certain deadlines, and may be subject to enforcement proceedings for noncompliance. The third parties must accept assignment to DHS of a recipient's right to receive payment from the third party for a health care item or service for which payment under an assistance program has been made, as well as the right of DHS to recover any third-party payment made for which assignment had not been accepted, and may not deny a DHS claim on the basis of certain circumstances, if submitted less than 36 months after the health care item or service is provided and if action by DHS to enforce its rights is commenced less than 72 months after DHS submits the claim.

This bill makes modifications to the third parties that are required to provide information to DHS and from which DHS may recover payments for health care services provided to recipients. Under current law, a third party is defined as an insurer, an employee benefit plan, a service benefit plan, or a pharmacy benefits manager. A service benefit plan, which is a plan providing health care benefits to federal government employees, is defined by a reference to federal law. The bill corrects the federal law citation for the definition. An employee benefit plan is also defined by a reference to federal law. The bill changes the federal law citation so that government-provided health care plans, which are exempted under the current law definition, are included. The bill also changes the definition of a pharmacy benefits manager, which, under current law, includes a person that performs pharmacy benefits management functions with respect to prescription drug benefits that are provided by a nonprofit hospital, an employer, a labor union, or another organization. The bill redefines a pharmacy benefits manager simply as an entity that administers or manages prescription drug benefits provided by an insurer or other third party. Finally, the bill adds three other types of third parties: an issuer of a health insurance policy (called disability insurance policy in the statutes); a group health plan, which is a health care plan that provides medical services, directly or through insurance or reimbursement or otherwise, to employees, and specifically includes a self-insured plan; and an entity that administers benefits on behalf of another risk-bearing third party, including a third party administrator, a fiscal intermediary, or a managed care contractor. *

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 SECTION 1. [✓] 49.475 (title) of the statutes is amended to read:

2 **49.475 (title) Information about medical assistance program**
3 **beneficiaries.**

4 History: 1991 a. 39; 1999 a. 9; 2007 a. 20 ss. 1610 to 1626, 9121 (6) [✓](a).
5 SECTION 2. 49.475 (1) (ag) of the statutes is repealed.

6 SECTION 3. 49.475 (1) (am) [✓] of the statutes is repealed.

7 SECTION 4. 49.475 (1) (c) (intro.) of the statutes is amended to read:

8 49.475 (1) (c) (intro.) "Pharmacy benefits management" means the
9 procurement of prescription drugs at a negotiated rate for dispensation in this state
to covered individuals; the administration or management of prescription drug

1 benefits provided by ~~a covered entity for the benefit of covered individuals; or an~~
 2 insurer or other 3rd party, including the performance of any of the following services
 3 provided in the administration of pharmacy benefits:

4 History: 1991 a. 39; 1999 a. 9; 2007 a. 20 ss. 1610 to 1626, 9121 (6) (a).

SECTION 5. 49.475 (1) (c) 2. of the statutes is amended to read:

5 49.475 (1) (c) 2. Claims processing, retail network management, and or
 6 payment of claims to pharmacies for prescription drugs dispensed to covered
 7 individuals.

History: 1991 a. 39; 1999 a. 9; 2007 a. 20 ss. 1610 to 1626, 9121 (6) (a).

****NOTE: Since "covered individuals" is no longer a defined term, I simply removed the word "covered." Would you like this provision amended differently?

8 SECTION 6. 49.475 (1) (d) of the statutes is amended to read:

9 49.475 (1) (d) "Pharmacy benefits manager" means ~~a person~~ an entity that
 10 performs pharmacy benefits management ~~functions~~.

History: 1991 a. 39; 1999 a. 9; 2007 a. 20 ss. 1610 to 1626, 9121 (6) (a).

****NOTE: For future reference, it is not necessary to change "person" to "entity" in this context. "Person" is not limited to a natural person or an individual. See s. 990.01 (26).

11 SECTION 7. 49.475 (1) (f) (intro.) of the statutes is amended to read:

12 49.475 (1) (f) (intro.) "Third party" means an entity that by statute, rule, or
 13 contract, or agreement is responsible for payment of a claim for a health care item
 14 or service. ~~"Third party" includes all, including any~~ of the following:

History: 1991 a. 39; 1999 a. 9; 2007 a. 20 ss. 1610 to 1626, 9121 (6) (a).

****NOTE: "Including" means "not limited to" so I did not include that phrase.

15 SECTION 8. 49.475 (1) (f) 2. of the statutes is amended to read:

16 49.475 (1) (f) 2. An employee benefit plan described, as defined in 29 USC 1003
 17 (a) ~~that is not exempt under 29 USC 1003 (b) and is not a multiple employer welfare~~
 18 arrangement 1002 (3).

History: 1991 a. 39; 1999 a. 9; 2007 a. 20 ss. 1610 to 1626, 9121 (6) (a).

19 SECTION 9. 49.475 (1) (f) 3. of the statutes is amended to read:

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

PI
LRB-3917/dn
PJK:.....

date

Jed

Since you indicated that the proposed changes to the language came from DHS, I would appreciate it if you could have them review this draft to ensure that they agree with my analysis of the changes. Also, you should check with DHS on whether ERISA does not preempt applying the requirements under s. 49.475 to self-insured plans (under proposed s. 49.475 (1) (f) 5.). I assume that there is probably an exemption for this purpose, but I have not researched the issue. Hopefully, DHS can verify that there is no preemption problem.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

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

LRB-3917/P1dn
PJK:jld:jm

January 25, 2012

Since you indicated that the proposed changes to the language came from DHS, I would appreciate it if you could have them review this draft to ensure that they agree with my analysis of the changes. Also, you should check with DHS on whether ERISA does not preempt applying the requirements under s. 49.475 to self-insured plans (under proposed s. 49.475 (1) (f) 5.). I assume that there is probably an exemption for this purpose, but I have not researched the issue. Hopefully, DHS can verify that there is no preemption problem.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

Kahler, Pam

From: Rude, Nels
Sent: Tuesday, January 31, 2012 11:19 AM
To: Kahler, Pam
Subject: FW: From DHS Attorney

Pam- Here is the response from DHS to your questions regarding LRB 3917. It should be ready to be jacketed for introduction.

Thanks!

Nels

Nels Rude

Office of Representative John Nygren
 89th Assembly District
 306 East, State Capitol
 608.266.2344
nels.rude@legis.wi.gov

From: O'Brien, Kyle T - DHS [mailto:Kyle.OBrien@dhs.wisconsin.gov]
Sent: Tuesday, January 31, 2012 11:06 AM
To: Rude, Nels
Subject: From DHS Attorney

Hey Nels,

This is from our Department's attorney on the draft. Let me know if you have any further questions.

Thanks man,

- Kyle

I have reviewed the draft and it looks fine as is.

In a drafter's note following section 5, the drafter asks:

Since "covered individuals" is no longer a defined term, I simply removed the word "covered." Would you like this provision amended differently?

The answer is no, the draft looks fine as is in this respect.

Also, in a separate drafter's note, the drafter asks the sponsor to

... check with DHS on whether ERISA does not preempt applying the requirements under s. 49.475 to self-insured plans (under proposed s. 49.475 (1) (f) 5.). I assume that there is probably an exemption for this purpose, but I have not researched the issue. Hopefully, DHS can verify that there is no preemption problem.

The answer to the drafter's question is that under federal law State Medicaid plans are required to include a provision:

1/31/2012

that the State shall provide assurances satisfactory to the Secretary that the State has in effect laws requiring health insurers, including self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service, as a condition of doing business in the State, to—

(i) provide, with respect to individuals who are eligible (and, at State option, individuals who apply or whose eligibility for medical assistance is being evaluated in accordance with section 1902(e)(13)(D)) for, or are provided, medical assistance under the State plan under this title (and, at State option, child health assistance under title XXI), upon the request of the State, information to determine during what period the individual or their spouses or their dependents may be (or may have been) covered by a health insurer and the nature of the coverage that is or was provided by the health insurer (including the name, address, and identifying number of the plan) in a manner prescribed by the Secretary;

Social Security Act § 1902(a)(25)(I)/42 USC § 1396a(a)(25)(I), as amended by the Deficit Reduction Act of 2005, Public Law 109-171, § 6035(b) [emphasis added].

Kyle O'Brien
Legislative Liaison
Office of the Secretary
Wisconsin Department of Health Services

Phone: (608) 266-3262

Email: Kyle.Obrien@wisconsin.gov

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State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3917/2

PJK:jld:jm

r m is new

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2011 BILL

SOON
(w/1-31)

X

Regen

1 AN ACT *to repeal* 49.475 (1) (ag) and 49.475 (1) (am); *to amend* 49.475 (title),
 2 49.475 (1) (c) (intro.), 49.475 (1) (c) 2., 49.475 (1) (d), 49.475 (1) (f) (intro.), 49.475
 3 (1) (f) 2. and 49.475 (1) (f) 3.; and *to create* 49.475 (1) (f) 5., 49.475 (1) (f) 6. and
 4 49.475 (1) (f) 7. of the statutes; **relating to:** the provision of information
 5 regarding health care benefits provided to certain assistance program
 6 recipients.

Analysis by the Legislative Reference Bureau

Under current law, as a condition of doing business in this state, certain payers of health care benefits (called third parties) must provide to the Department of Health Services (DHS) information from their records to enable DHS to ascertain whether an individual, or his or her spouse or dependent, who has been or is a recipient under an assistance program, has received or is receiving health care coverage or benefits from a third party. The assistance programs for which DHS seeks information about recipients are the Medical Assistance (MA) program, including the Badger Care health care program, Family Care, Senior Care, the Well-Woman Program, and the program that provides financial assistance for the cost of medical care to persons with chronic kidney disease, cystic fibrosis, and hemophilia. The third parties may receive compensation for providing the information, must provide the information within certain deadlines, and may be subject to enforcement proceedings for noncompliance. The third parties must

accept assignment to DHS of a recipient's right to receive payment from the third party for a health care item or service for which payment under an assistance program has been made, as well as the right of DHS to recover any third-party payment made for which assignment had not been accepted, and may not deny a DHS claim on the basis of certain circumstances, if submitted less than 36 months after the health care item or service is provided and if action by DHS to enforce its rights is commenced less than 72 months after DHS submits the claim.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 49.475 (title) of the statutes is amended to read:

2 **49.475** (title) **Information about medical assistance program**
3 **beneficiaries.**

4 **SECTION 2.** 49.475 (1) (ag) of the statutes is repealed.

5 **SECTION 3.** 49.475 (1) (am) of the statutes is repealed.

1 **SECTION 4.** 49.475 (1) (c) (intro.) of the statutes is amended to read:

2 49.475 (1) (c) (intro.) "Pharmacy benefits management" means the
3 ~~procurement of prescription drugs at a negotiated rate for dispensation in this state~~
4 ~~to covered individuals; the administration or management of prescription drug~~
5 ~~benefits provided by a covered entity for the benefit of covered individuals; or an~~
6 insurer or other 3rd party, including the performance of any of the following services
7 ~~provided in the administration of pharmacy benefits:~~

8 **SECTION 5.** 49.475 (1) (c) 2. of the statutes is amended to read:

9 49.475 (1) (c) 2. Claims processing, retail network management, and or
10 payment of claims to pharmacies for prescription drugs dispensed to covered
11 individuals. ✓

****NOTE: Since "covered individuals" is no longer a defined term, I simply removed
the word "covered." Would you like this provision amended differently?

12 **SECTION 6.** 49.475 (1) (d) of the statutes is amended to read:

13 49.475 (1) (d) "Pharmacy benefits manager" means ~~a person~~ an entity that
14 performs pharmacy benefits management functions.

****NOTE: For future reference, it is not necessary to change "person" to "entity" in
this context. "Person" is not limited to a natural person or an individual. See s. 990.01
(26).

15 **SECTION 7.** 49.475 (1) (f) (intro.) of the statutes is amended to read:

16 49.475 (1) (f) (intro.) "Third party" means an entity that by statute, rule, or
17 contract, or agreement is responsible for payment of a claim for a health care item
18 or service. ~~"Third party" includes all, including any of the following:~~

****NOTE: "Including" means "not limited to" so I did not include that phrase.

19 **SECTION 8.** 49.475 (1) (f) 2. of the statutes is amended to read:

