

1999 DRAFTING REQUEST

Bill

Received: 07/21/1999

Received By: kahlepj

Wanted: As time permits

Identical to LRB:

For: Sheldon Wasserman (608) 266-7671

By/Representing: Joe Hoey

This file may be shown to any legislator: NO

Drafter: kahlepj

May Contact:

Alt. Drafters: nelsorp1

Subject: Insurance - health
Courts - civil procedure

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Rights related to managed care plans, including rights to sue, appeal decisions and obtain the services of specialists

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>
/?	kahlepj 08/12/1999	ygeller 08/17/1999		_____			
/P1			mclark 08/17/1999	_____	lrb_docadmin 08/18/1999		
/1	kahlepj 09/14/1999 nelsorp1 09/16/1999	chanaman 09/17/1999	martykr 09/17/1999	_____	lrb_docadmin 09/17/1999	lrb_docadmin 09/22/1999	

FE Sent For:

<END>

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/?	kahlepj 08/12/1999	ygeller 08/17/1999		_____			
/P1		<i>cmr</i> a/lv /	mclark 08/17/1999	_____	lrb_docadmin 08/18/1999		
FE Sent For:			<i>km/17</i>	<i>2/9</i> <i>km/17</i>			

<END>

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1/1	kahlepj	1/1 8/17 jlg	MRC 8/17	MRC/KF 8/17			

FE Sent For:

<END>

1999

Date (time) needed

LRB - 3313, P1

BILL

WFO -
check
auto refs
Note

PJK&RPV: jlg:
J+S
gmt

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] **to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .** of the statutes; relating to: *appealing managed care plan decisions, obtaining the services of specialist providers and suing managed care plans.*

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

For the 3 titles used in an analysis, in the component bar:
For the main heading [old =M], execute: **create → anal: → title: → head**
For the subheading [old =S], execute: **create → anal: → title: → sub**
For the sub-subheading [old =P], execute: **create → anal: → title: → sub-sub**

If This is a preliminary draft. An analysis will be provided in a later version.

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

SECTION #.







**ASSEMBLY AMENDMENT 7,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 133**

June 29, 1999 - Offered by Representative WASSERMAN.

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 1404, line 15, after that line insert:

3 ~~SECTION 3036c.~~ SECTION 609.05 (3) of the statutes is amended to read:

4 609.05 (3) Except as provided in ss. 609.22 (4), 609.65 and 609.655, a limited
5 service health organization, preferred provider plan or managed care plan may
6 require an enrollee to obtain a referral from the primary provider designated under
7 sub. (2) to another participating provider prior to obtaining health care services from
8 that participating provider.

9 SECTION ~~3036d.~~ 609.16 of the statutes is created to read:

10 **609.16 Appeals.** (1) After using the procedure under s. 609.15, a grievant may
11 appeal the decision of a managed care plan under s. 609.15. The appeal shall be made
12 to a physician who is licensed under ch. 448, who is not a participating provider of

1 the managed care plan and who specializes in the type of medical practice to which
2 the grievance relates. The decision of the physician hearing the appeal is binding on
3 the grievant and the managed care plan.

4 (2) A managed care plan must include information regarding the appeal
5 procedure in policies or certificates provided to enrollees and must provide such
6 information to an enrollee or prospective enrollee upon request.

7 (3) The commissioner shall promulgate rules for the appeal procedure under
8 this section, including rules related to how an enrollee requests an appeal and how
9 the physician hearing the appeal is selected.

10 ~~SECTION 3036e.~~ 609.22 (4) (a) 1. of the statutes is repealed and recreated to
11 read:

12 609.22 (4) (a) 1. A managed care plan may not require an enrollee of the
13 managed care plan to obtain a referral for coverage of services provided by a
14 participating provider who is a physician licensed under ch. 448 and who specializes
15 in a particular type of medical practice, regardless of whether the participating
16 provider is the enrollee's primary provider.

17 ~~SECTION 3036f.~~ 609.22 (4) (a) 2. of the statutes is repealed.

18 ~~SECTION 3036g.~~ 609.22 (4) (a) 3. of the statutes is amended to read:

19 609.22 (4) (a) 3. A managed care plan must include information regarding
20 ~~referral procedures~~ the requirement under subd. 1. in policies or certificates
21 provided to enrollees and must provide such information to an enrollee or prospective
22 enrollee upon request.

23 ~~SECTION 3036h.~~ 609.39 of the statutes is created to read:

24 **609.39 Right to sue.** ~~Any~~ person may bring an action in tort ~~for negligence,~~
25 ~~including an action for medical malpractice,~~ against a managed care plan

for a bad faith denial of coverage

1999

Nonstat File Sequence: **E E E**

LRB 3313, P1

JK+RN: _____

INITIAL APPLICABILITY

1. In the component bar:

For the action phrase, execute: create → action: → *NS: → inappl

For the budget action phrase, execute: create → action: → *NS: → 93XX

For the text, execute: create → text: → *NS: → inappl

2. Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, for the budget, fill in the 9300 department code; and fill in "___" or "()" only if a "frozen" number is needed.

SECTION # 193 Initial applicability;

(#1) () The treatment of sections ..
.....
..... of the statutes
first applies to

1. In the component bar:

For the action phrase, execute: create → action: → *NS: → inappl

For the text, execute: create → text: → *NS: → inapplA

2. Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, fill in "___" or "()" only if a "frozen" number is needed.

SECTION # _____ Initial applicability;

(#1) () This act first ap-
plies to



1 ~~2~~ Page 1592, line 23: after that line insert:

2 ~~(3)~~ SPECIALIST PROVIDERS UNDER MANAGED CARE PLANS.

3 (a) Except as provided in paragraph (b), if a policy or certificate that is affected
4 by the treatment of sections 609.05 (3) and 609.22 (4) (a) 1., 2. and 3. of the statutes
5 contains terms or provisions that are inconsistent with the treatment of sections
6 609.05 (3) and 609.22 (4) (a) 1., 2. and 3. of the statutes, the treatment of sections
7 609.05 (3) and 609.22 (4) (a) 1., 2. and 3. of the statutes first applies to that policy or
8 certificate upon renewal.

9 (b) The treatment of sections 609.05 (3) and 609.22 (4) (a) 1., 2. and 3. of the
10 statutes first applies to policies or group certificates covering employes who are
11 affected by a collective bargaining agreement containing provisions that are
12 inconsistent with the treatment of sections 609.05 (3) and 609.22 (4) (a) 1., 2. and 3.
13 of the statutes that are issued or renewed on the earlier of the following:

- 14 1. The day on which the collective bargaining agreement expires.
- 15 2. The day on which the collective bargaining agreement is extended, modified
16 or renewed.

17 ~~(3)~~ APPEALS OF DECISIONS OF MANAGED CARE PLANS.

18 (a) The treatment of section 609.16 (1) of the statutes first applies to grievances
19 arising on September 1, 2000.

20 (b) The treatment of section 609.16 (2) of the statutes first applies to policies
21 issued or renewed on September 1, 2000.

22 ~~(3)~~ LAWSUITS AGAINST MANAGED CARE PLANS. The treatment of section 609.39 of

23 the statutes first applies to ~~injuries or deaths occurring~~ ^{claims arising} on the effective date of this

24 subsection.



EFFECTIVE DATE

1. In the component bar: For the action phrase, execute: ... **create** → **action:** → *NS: → **effdate**
For the text, execute: **create** → **text:** → *NS: → **effdateA**
2. Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, fill in "____" or "()" only if a "frozen" number is needed.

SECTION # _____ . Effective date,

(#1) () This act takes effect on

1. In the component bar: For the action phrase, execute: .. **create** → **action:** → *NS: → **effdateE**
For the text, execute: **create** → **text:** → *NS: → **effdate**
2. Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, fill in "____" or "()" only if a "frozen" number is needed.

SECTION # _____ . Effective dates; ?.....

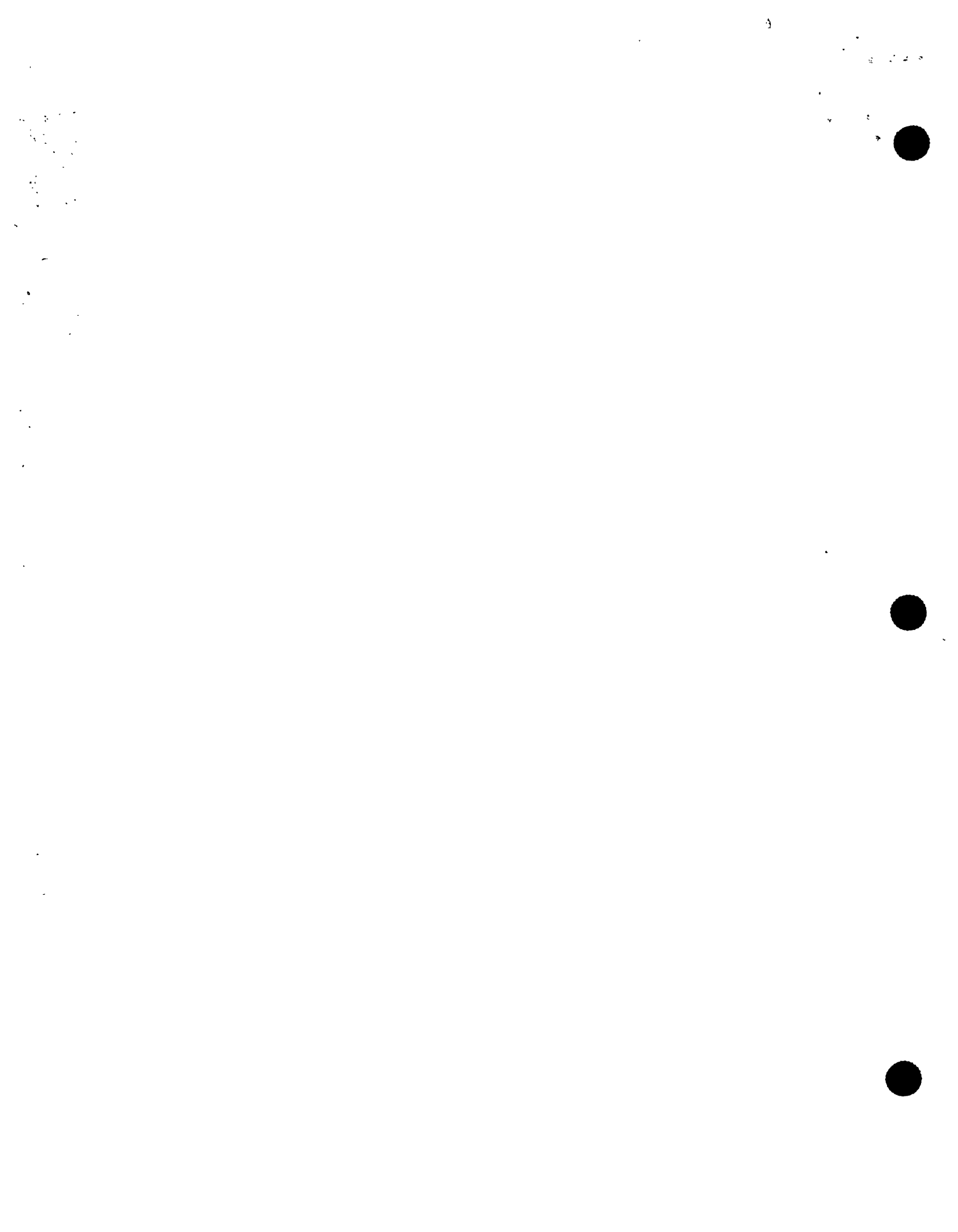
..... This act takes effect on the day after publication, except as follows:

(#1) () The treatment of sections of the statutes takes effect on

1. In the component bar: For the budget action phrase, execute:.. **create** → **action:** → *NS: → **94XX**
For the text, execute: **create** → **text:** → *NS: → **effdate**
2. Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, for the budget, fill in the **9400** department code; and fill in "()" only if a "frozen" number is needed.

SECTION 94 _____ . Effective dates,

(#1) () The treatment of sections of the statutes takes effect on



1 **3.** Page 1610, line 22: after that line insert:

2

~~2~~ APPEALS OF DECISIONS OF MANAGED CARE PLANS. The treatment of section

3

609.16 (1) and (2) of the statutes takes effect on September 1, 2000.

4

(END)

D. Note

Under current law, ch. 655, a person may sue a health care provider, which includes an HMO (s. 655.002) for medical malpractice.

note



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

PI
LRB-3313/3dn
PJK & RPN.....

↑
jlg

This draft is the bill form of LRBb1287/1, with the change to s. 609.39[✓] noted below. Let us know what changes you would like to this bill draft.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: Pam.Kahler@legis.state.wi.us

in this draft

Under current law (see chapter 655) a person who is injured or dies as a result of medical malpractice may sue the health care provider that committed the malpractice. Medical malpractice is defined by the courts to mean the mistakes made in the diagnosis or treatment, or both, of a person. Section 655.002 includes HMOs as health care providers. In McEvoy v. Group Health Cooperative, 213 Wis. 2d 507 (1997), the Wisconsin supreme court held that a patient of an HMO can recover damages for the denial of benefits by that HMO, based on the common law tort of bad faith. This draft does not change the current law regarding medical malpractice but does codify the McEvoy decision. See the creation of s. 609.39. I am not clear if this is your intent, so please advise me if changes are needed in the draft.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

**DRAFTER'S NOTE
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PI
LRB-3313/3dn
PJK & RPN.....

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jg

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Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3313/P1dn
PJK & RPN;jlg:mrc

August 17, 1999

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Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: Pam.Kahler@legis.state.wi.us

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Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3313/EA
PJK&RPN;jlg&cmh:mrc

h m isreen

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

repeal

1 **AN ACT to repeal** 609.22 (4) (a) 2.; **to amend** 609.05 (3) and 609.22 (4) (a) 3.; **to**
2 **repeal and recreate** 609.22 (4) (a) 1.; and **to create** 609.16 and 609.39 of the
3 statutes; **relating to:** appealing managed care plan decisions, obtaining the
4 services of specialist providers and suing managed care plans.

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

*Insert
A & B*

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

5 **SECTION 1.** 609.05 (3) of the statutes is amended to read:
6 609.05 (3) Except as provided in ss. 609.22 (4), 609.65 and 609.655, a limited
7 service health organization, preferred provider plan or managed care plan may
8 require an enrollee to obtain a referral from the primary provider designated under
9 sub. (2) to another participating provider prior to obtaining health care services from
10 that participating provider.

1 **SECTION 2.** 609.16 of the statutes is created to read:

2 **609.16 Appeals.** (1) After using the procedure under s. 609.15, a grievant may
3 appeal the decision of a managed care plan under s. 609.15. The appeal shall be made
4 to a physician who is licensed under ch. 448, who is not a participating provider of
5 the managed care plan and who specializes in the type of medical practice to which
6 the grievance relates. The decision of the physician hearing the appeal is binding on
7 the grievant and the managed care plan.

8 (2) A managed care plan must include information regarding the appeal
9 procedure in policies or certificates provided to enrollees and must provide such
10 information to an enrollee or prospective enrollee upon request.

11 (3) The commissioner shall promulgate rules for the appeal procedure under
12 this section, including rules related to how an enrollee requests an appeal and how
13 the physician hearing the appeal is selected.

14 **SECTION 3.** 609.22 (4) (a) 1. of the statutes is repealed and recreated to read:

15 609.22 (4) (a) 1. A managed care plan may not require an enrollee of the
16 managed care plan to obtain a referral for coverage of services provided by a
17 participating provider who is a physician licensed under ch. 448 and who specializes
18 in a particular type of medical practice, regardless of whether the participating
19 provider is the enrollee's primary provider.

20 **SECTION 4.** 609.22 (4) (a) 2. of the statutes is repealed.

21 **SECTION 5.** 609.22 (4) (a) 3. of the statutes is amended to read:

22 609.22 (4) (a) 3. A managed care plan must include information regarding
23 ~~referral procedures~~ the requirement under subd. 1. in policies or certificates
24 provided to enrollees and must provide such information to an enrollee or prospective
25 enrollee upon request.

1 **SECTION 6.** 609.39 of the statutes is created to read:

2 **609.39 Right to sue.** A person may bring an action in tort against a managed
3 care plan for a bad faith denial of coverage.

4 **SECTION 7. Initial applicability.**

5 (1) **SPECIALIST PROVIDERS UNDER MANAGED CARE PLANS.**

6 (a) Except as provided in paragraph (b), if a policy or certificate that is affected
7 by the treatment of sections 609.05 (3) and 609.22 (4) (a) 1., 2. and 3. of the statutes
8 contains terms or provisions that are inconsistent with the treatment of sections
9 609.05 (3) and 609.22 (4) (a) 1., 2. and 3. of the statutes, the treatment of sections
10 609.05 (3) and 609.22 (4) (a) 1., 2. and 3. of the statutes first applies to that policy or
11 certificate upon renewal.

12 (b) The treatment of sections 609.05 (3) and 609.22 (4) (a) 1., 2. and 3. of the
13 statutes first applies to policies or group certificates covering employees who are
14 affected by a collective bargaining agreement containing provisions that are
15 inconsistent with the treatment of sections 609.05 (3) and 609.22 (4) (a) 1., 2. and 3.
16 of the statutes that are issued or renewed on the earlier of the following:

- 17 1. The day on which the collective bargaining agreement expires.
18 2. The day on which the collective bargaining agreement is extended, modified
19 or renewed.

20 (2) **APPEALS OF DECISIONS OF MANAGED CARE PLANS.**

21 (a) The treatment of section 609.16 (1) of the statutes first applies to grievances
22 arising on September 1, 2000.

23 (b) The treatment of section 609.16 (2) of the statutes first applies to policies
24 issued or renewed on September 1, 2000.

1 (3) LAWSUITS AGAINST MANAGED CARE PLANS. The treatment of section 609.39 of
2 the statutes first applies to claims arising on the effective date of this subsection.

3 **SECTION 8. Effective dates.** This act takes effect on the day after publication,
4 except as follows:

5 (1) APPEALS OF DECISIONS OF MANAGED CARE PLANS. The treatment of section
6 609.16 (1) and (2) of the statutes takes effect on September 1, 2000.

7 (END)

**1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3313/lins
PJK&RPN:jlg&cmh:mrc

INSERT A

Under current law, a managed care plan must have an internal grievance procedure that allows an enrollee to file a written grievance with the plan and to have a panel investigate and make a determination on the enrollee's grievance. This bill allows an enrollee to appeal a decision of the internal grievance panel to a physician who is not a participating provider in the plan. The decision of the physician on the appeal is binding on the enrollee and the plan. The appeal procedure and how the physician is selected must be determined by the commissioner of insurance by rule.

Also under current law, a managed care plan must have a procedure for an enrollee to obtain a standing referral to a specialist provider if the plan requires enrollees to obtain referrals to specialist providers. However, even if an enrollee has a standing referral to a specialist provider, the plan may require the enrollee's primary provider to remain responsible for coordinating the enrollee's care and may require the specialist provider to obtain prior approval from the enrollee's primary provider before making secondary referrals. The bill eliminates these provisions regarding specialist providers and prohibits a managed care plan from requiring an enrollee to obtain a referral for coverage of the services of a specialist provider who is a participating provider in the plan.

(end of insert A)

INSERT B

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3313/P1dn
PJK & RPN:jlg:mrc

August 17, 1999

Insert B

This draft is the bill form of LRBb1287/1, with the change to s. 609.39 noted below. Let us know what changes you would like to this bill draft.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: Pam.Kahler@legis.state.wi.us

allowing a person to sue a managed care plan in tort for a bad faith denial of coverage

Under current law ~~See chapter 655~~, a person who is injured or dies as a result of medical malpractice may sue the health care provider that committed the malpractice. Medical malpractice is defined by the courts to mean the mistakes made in the diagnosis or treatment, or both, of a person. ~~Section 655.002 includes HMOs as health care providers.~~ In *McEvoy v. Group Health Cooperative*, 213 Wis. 2d 507 (1997), the Wisconsin supreme court held that a patient of an ~~HMO~~ ^{managed care plan} can recover damages for the denial of benefits by that ~~HMO~~ ^{managed care plan}, based on the common law tort of bad faith. This draft does not change the current law regarding medical malpractice but does codify the *McEvoy* decision. ~~See the creation of s. 609.39 in this draft. I am not clear if this is your intent, so please advise me if changes are needed in the draft.~~ ^{medical}

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

(END OF INSERT)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 09/17/1999

To: Representative Wasserman

Relating to LRB drafting number: LRB-3313

Topic

Rights related to managed care plans, including rights to sue, appeal decisions and obtain the services of specialists

Subject(s)

Insurance - health, Courts - civil procedure

1. **JACKET** the draft for introduction WASSERMAN
in the **Senate** ___ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached _____
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Pamela J. Kahler, Senior Legislative Attorney
Telephone: (608) 266-2682