

1999 DRAFTING REQUEST

Bill

Received: 10/21/1999

Received By: kahlepj

Wanted: Soon

Identical to LRB:

For: Roger Breske (608) 266-2509

By/Representing: Vaughn

This file may be shown to any legislator: NO

Drafter: kahlepj

May Contact:

Alt. Drafters:

Subject: Insurance - health

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Independent review of health benefit plan decisions

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 10/22/1999	wjackson 10/26/1999		_____			S&L
/1			hhagen 10/26/1999	_____	lrb_docadmin 10/26/1999	lrb_docadmin 10/27/1999	

FE Sent For:

<END>

47"
10/28/99

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See Attached [>] 50139/1 w/a 0771/1

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1?	kahlepj	1/1 WLj 10/26	dh 10/26	<u>all</u> <u>LF 10/26</u>			

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3798

PJK WLJ

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Tueso

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Insert 1-1 ✓

1 AN ACT relating to:

Analysis by the Legislative Reference Bureau

Insert A →

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

2 _____ (END)





ASSEMBLY SUBSTITUTE AMENDMENT,
TO 1999 ASSEMBLY BILL 518

1 AN ACT *to repeal* 609.15 (title) and (1) (intro.); *to renumber* 609.15 (1) (c), 609.15
2 (2) (c), 609.15 (2) (d) and 609.15 (2) (e); *to renumber and amend* 609.15 (1) (a),
3 609.15 (1) (b), 609.15 (2) (intro.), 609.15 (2) (a) and 609.15 (2) (b); *to amend*
4 40.51 (8), 40.51 (8m), 600.01 (2) (b), 601.42 (4) and 609.655 (4) (b); and *to create*
5 111.91 (2) (r), 601.31 (1) (Lp), 601.31 (1) (Lr), 632.83 and 632.835 of the statutes;
6 relating to requiring insurers to establish internal grievance procedures,
7 independent review of certain coverage determinations made by health benefit
8 plans and granting rule-making authority.

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

9 SECTION 1. 40.51 (8) of the statutes is amended to read:
10 40.51 (8) Every health care coverage plan offered by the state under sub. (6)
11 shall comply with ss. 631.89, 631.90, 631.93 (2), 632.72 (2), 632.746 (1) to (8) and (10),

1 632.747, 632.748, 632.83, 632.835, 632.85, 632.853, 632.855, 632.87 (3) to (5),
2 632.895 (5m) and (8) to (13) and 632.896.

3 **SECTION 2.** 40.51 (8m) of the statutes is amended to read:

4 40.51 (8m) Every health care coverage plan offered by the group insurance
5 board under sub. (7) shall comply with ss. 632.746 (1) to (8) and (10), 632.747,
6 632.748, 632.83, 632.835, 632.85, 632.853, 632.855 and 632.895 (11) to (13).

7 **SECTION 3.** 111.91 (2) (r) of the statutes is created to read:

8 111.91 (2) (r) The requirements related to internal grievance procedures under
9 s. 632.83 and independent review of certain health benefit plan determinations
10 under s. 632.835.

11 **SECTION 4.** 600.01 (2) (b) of the statutes is amended to read:

12 600.01 (2) (b) Group or blanket insurance described in sub. (1) (b) 3. and 4. is
13 not exempt from ss. 632.745 to 632.749, 632.83 or 632.835 or ch. 633 or 635.

14 **SECTION 5.** 601.31 (1) (Lp) of the statutes is created to read:

15 601.31 (1) (Lp) For certifying as an independent review organization under s.
16 632.835, \$400.

17 **SECTION 6.** 601.31 (1) (Lr) of the statutes is created to read:

18 601.31 (1) (Lr) For each biennial recertification as an independent review
19 organization under s. 632.835, \$100.

20 **SECTION 7.** 601.42 (4) of the statutes is amended to read:

21 601.42 (4) **REPLIES.** Any officer, manager or general agent of any insurer
22 authorized to do or doing an insurance business in this state, any person controlling
23 or having a contract under which the person has a right to control such an insurer,
24 whether exclusively or otherwise, any person with executive authority over or in
25 charge of any segment of such an insurer's affairs, any individual practice

1 association or officer, director or manager of an individual practice association, any
2 insurance agent or other person licensed under chs. 600 to 646, any provider of
3 services under a continuing care contract, as defined in s. 647.01 (2), any
4 independent review organization certified or recertified under s. 632.835 (4) or any
5 health care provider, as defined in s. 655.001 (8), shall reply promptly in writing or
6 in other designated form, to any written inquiry from the commissioner requesting
7 a reply.

8 **SECTION 8.** 609.15 (title) and (1) (intro.) of the statutes are repealed.

9 **SECTION 9.** 609.15 (1) (a) of the statutes is renumbered 632.83 (2) (a) and
10 amended to read:

11 632.83 (2) (a) Establish and use an internal grievance procedure that is
12 approved by the commissioner and that complies with sub. ~~(2)~~ (3) for the resolution
13 of enrollees' insureds' grievances with the ~~limited service health organization,~~
14 ~~preferred provider plan or managed care~~ health benefit plan.

15 **SECTION 10.** 609.15 (1) (b) of the statutes is renumbered 632.83 (2) (b) and
16 amended to read:

17 632.83 (2) (b) Provide enrollees insureds with complete and understandable
18 information describing the internal grievance procedure under par. (a).

19 **SECTION 11.** 609.15 (1) (c) of the statutes is renumbered 632.83 (2) (c).

20 **SECTION 12.** 609.15 (2) (intro.) of the statutes is renumbered 632.83 (3) (intro.)
21 and amended to read:

22 632.83 (3) (intro.) The internal grievance procedure established under sub. (1)
23 (2) (a) shall include all of the following elements:

24 **SECTION 13.** 609.15 (2) (a) of the statutes is renumbered 632.83 (3) (a) and
25 amended to read:

1 632.83 (3) (a) The opportunity for an enrollee insured to submit a written
2 grievance in any form.

3 **SECTION 14.** 609.15 (2) (b) of the statutes is renumbered 632.83 (3) (b) and
4 amended to read:

5 632.83 (3) (b) Establishment of a grievance panel for the investigation of each
6 grievance submitted under par. (a), consisting of at least one individual authorized
7 to take corrective action on the grievance and at least one enrollee insured other than
8 the grievant, if an enrollee insured is available to serve on the grievance panel.

9 **SECTION 15.** 609.15 (2) (c) of the statutes is renumbered 632.83 (3) (c).

10 **SECTION 16.** 609.15 (2) (d) of the statutes is renumbered 632.83 (3) (d).

11 **SECTION 17.** 609.15 (2) (e) of the statutes is renumbered 632.83 (3) (e).

12 **SECTION 18.** 609.655 (4) (b) of the statutes is amended to read:

13 609.655 (4) (b) Upon completion of the review under par. (a), the medical
14 director of the managed care plan shall determine whether the policy or certificate
15 will provide coverage of any further treatment for the dependent student's nervous
16 or mental disorder or alcoholism or other drug abuse problems that is provided by
17 a provider located in reasonably close proximity to the school in which the student
18 is enrolled. If the dependent student disputes the medical director's determination,
19 the dependent student may submit a written grievance under the managed care
20 plan's internal grievance procedure established under s. ~~609.15~~ 632.83.

21 **SECTION 19.** 632.83 of the statutes is created to read:

22 **632.83 Internal grievance procedure.** (1) In this section, "health benefit
23 plan" has the meaning given in s. 632.745 (11), except that "health benefit plan"
24 includes the coverage specified in s. 632.745 (11) (b) 2, 8, 9, and 10. and includes a

1 policy, certificate or contract under s. 632.745 (11) (b) 9. that provides only
2 limited-scope dental or vision benefits.

3 (2) Every insurer that issues a health benefit plan shall do all of the following:

4 SECTION 20. 632.835 of the statutes is created to read:

5 **632.835 Independent review of adverse and experimental treatment**
6 **determinations.** (1) DEFINITIONS. In this section:

7 (a) "Adverse determination" means a determination by or on behalf of an
8 insurer that issues a health benefit plan to which all of the following apply:

9 1. An admission to a health care facility, the availability of care, the continued
10 stay or other treatment that is a covered benefit has been reviewed.

11 2. Based on the information provided, the treatment under subd. 1. does not
12 meet the health benefit plan's requirements for medical necessity, appropriateness,
13 health care setting, level of care or effectiveness.

14 3. Based on the information provided, the insurer that issued the health benefit
15 plan reduced, denied or terminated the treatment under subd. 1. or payment for the
16 treatment under subd. 1.

17 4. Subject to sub. (5) (c), the amount of the reduction or the ^{cost or expected cost} ~~value~~ of the denied
18 or terminated treatment or payment exceeds \$500. ^{→, or will exceed during}
_{the course of the treatment,}

19 (b) "Experimental treatment determination" means a determination by or on
20 behalf of a health benefit plan to which all of the following apply:

21 1. A proposed treatment has been reviewed.

22 2. Based on the information provided, the treatment under subd. 1. is
23 determined to be experimental under the terms of the health benefit plan.

an insurer that issues

17
18
20

1 3. Based on the information provided, the insurer that issued the health benefit
2 plan denied the treatment under subd. 1. or payment for the treatment under subd.

3 1. *cost or expected cost*

4 4. Subject to sub. (5) (c), the ~~value~~ of the denied treatment or payment exceeds
5 \$500. *or will exceed during the course of the treatment*

6 (c) "Health benefit plan" has the meaning given in s. 632.745 (11), except that
7 "health benefit plan" includes the coverage specified in s. 632.745 (11) (b) ~~202.83 and~~

8 10.

9 (d) "Treatment" means a medical service, diagnosis, procedure, therapy, drug
10 or device.

11 (2) REVIEW REQUIREMENTS; WHO MAY CONDUCT. (a) Every insurer that issues a
12 health benefit plan shall establish an independent review procedure whereby an
13 insured under the health benefit plan, or his or her authorized representative, may
14 request and obtain an independent review of an adverse determination or an
15 experimental treatment determination made with respect to the insured.

16 (b) Whenever an adverse determination or an experimental treatment
17 determination is made, the insurer involved in the determination shall provide
18 notice to the insured of the insured's right to obtain the independent review required
19 under this section, how to request the review and the time within which the review
20 must be requested. The notice shall include a current listing of independent review
21 organizations certified under sub. (4). An independent review under this section
22 may be conducted only by an independent review organization certified under sub.
23 (4) and selected by the insured.

24 (c) Except as provided in par. (d), an insured must exhaust the internal
25 grievance procedure under s. 632.83 before the insured may request an independent

1 review under this section. Except as provided in sub. (9), an insured who uses the
2 internal grievance procedure must request an independent review as provided in
3 sub. (3) (a) within 4 months after the insured receives notice of the disposition of his
4 or her grievance under s. 632.83 (3) (d).

5 (d) An insured is not required to exhaust the internal grievance procedure
6 under s. 632.83 before requesting an independent review if any of the following
7 apply:

8 1. The insured and the insurer agree that the matter may proceed directly to
9 independent review under sub. (3).

10 2. Along with the notice to the insurer of the request for independent review
11 under sub. (3) (a), the insured submits to the independent review organization
12 selected by the insured a request to bypass the internal grievance procedure under
13 s. 632.83 and the independent review organization determines that the health
14 condition of the insured is such that requiring the insured to use the internal
15 grievance procedure before proceeding to independent review would jeopardize the
16 life or health of the insured or the insured's ability to regain maximum function.

17 (3) PROCEDURE. (a) To request an independent review, an insured or his or her
18 authorized representative shall provide timely written notice of the request for
19 independent review, and of the independent review organization selected, to the
20 insurer that made or on whose behalf was made the adverse or experimental
21 treatment determination. The insurer shall immediately notify the commissioner
22 and the independent review organization selected by the insured of the request for
23 independent review. The insured or his or her authorized representative must pay
24 a \$50 fee to the independent review organization. If the insured prevails on the
25 review, in whole or in part, the entire amount paid by the insured or his or her

1 authorized representative shall be refunded by the insurer to the insured or his or
2 her authorized representative. For each independent review in which it is involved,
3 an insurer shall pay a fee to the independent review organization.

4 (b) Within 3 business days after receiving written notice of a request for
5 independent review under par. (a), the insurer shall submit to the independent
6 review organization copies of all of the following:

7 1. Any information submitted to the insurer by the insured in support of the
8 insured's position in the internal grievance under s. 632.83.

9 2. The contract provisions or evidence of coverage of the insured's health benefit
10 plan.

11 3. Any other relevant documents or information used by the insurer in the
12 internal grievance determination under s. 632.83.

13 (c) Within 5 business days after receiving the information under par. (b), the
14 independent review organization shall request any additional information that it
15 requires for the review from the insured or the insurer. Within 5 business days after
16 receiving a request for additional information, the insured or the insurer shall
17 submit the information or an explanation of why the information is not being
18 submitted.

19 (d) An independent review under this section may not include appearances by
20 the insured or his or her authorized representative, any person representing the
21 health benefit plan or any witness on behalf of either the insured or the insurer.

22 (e) In addition to the information under pars. (b) and (c), the independent
23 review organization may accept for consideration any typed or printed, verifiable
24 medical or scientific evidence that the independent review organization determines
25 is relevant, regardless of whether the evidence has been submitted for consideration

1 at any time previously. The insurer and the insured shall submit to the other party
2 to the independent review any information submitted to the independent review
3 organization under this paragraph and pars. (b) and (c). If, on the basis of any
4 additional information, the insurer reconsiders the insured's grievance and
5 determines that the treatment that was the subject of the grievance should be
6 covered, the independent review is terminated.

7 (f) If the independent review is not terminated under par. (e), the independent
8 review organization shall, within 30 business days after the expiration of all time
9 limits that apply in the matter, make a decision on the basis of the documents and
10 information submitted under this subsection. The decision shall be in writing,
11 signed on behalf of the independent review organization and served by personal
12 delivery or by mailing a copy to the insured or his or her authorized representative
13 and to the insurer. A decision of an independent review organization is binding on
14 the insured and the insurer.

15 (g) If the independent review organization determines that the health
16 condition of the insured is such that following the procedure outlined in pars. (b) to
17 (f) would jeopardize the life or health of the insured or the insured's ability to regain
18 maximum function, the procedure outlined in pars. (b) to (f) shall be followed with
19 the following differences:

20 1. The insurer shall submit the information under par. (b) within one day after
21 receiving the notice of the request for independent review under par. (a).

22 2. The independent review organization shall request any additional
23 information under par. (c) within 2 business days after receiving the information
24 under par. (b).

1 3. The insured or insurer shall, within 2 days after receiving a request under
2 par. (c), submit any information requested or an explanation of why the information
3 is not being submitted.

4 4. The independent review organization shall make its decision under par. (f)
5 within 72 hours after the expiration of the time limits under this paragraph that
6 apply in the matter.

7 **(3m) STANDARDS FOR DECISIONS.** (a) A decision of an independent review
8 organization regarding an adverse determination must be consistent with the terms
9 of the health benefit plan under which the adverse determination was made.

10 (b) A decision of an independent review organization regarding an
11 experimental treatment determination is limited to a determination of whether the
12 proposed treatment is experimental. The independent review organization shall
13 determine that the treatment is not experimental and find in favor of the insured
14 only if the independent review organization finds all of the following:

- 15 1. The treatment has been approved by the federal food and drug
16 administration. *→, if the treatment is subject to the approval of the
federal food and drug administration*
- 17 2. Medically and scientifically accepted evidence clearly demonstrates that the
18 treatment meets all of the following criteria:

- 19 a. The treatment is proven safe.
20 **→ 4 am. The treatment is proven effective for the insured's condition.**
- 21 b. The treatment can be expected to produce greater benefits than the standard
22 treatment without posing a greater adverse risk to the insured.

23 c. The treatment meets the coverage terms of the health benefit plan and is not
24 specifically excluded under the terms of the health benefit plan.

25 **(4) CERTIFICATION OF INDEPENDENT REVIEW ORGANIZATIONS.** (a) The commissioner
shall certify independent review organizations. An independent review

1 organization must demonstrate to the satisfaction of the commissioner that it is
2 unbiased, as defined by the commissioner by rule. An organization certified under
3 this paragraph must be recertified on a biennial basis to continue to provide
4 independent review services under this section.

5 (ag) An independent review organization shall have in operation a quality
6 assurance mechanism to ensure the timeliness and quality of the independent
7 reviews, the qualifications and independence of the clinical peer reviewers and the
8 confidentiality of the medical records and review materials.

9 (ap) An independent review organization shall ~~determine~~ ^{establish} fees that it will
10 charge for independent reviews and ^{shall} submit its fee schedule to the commissioner for
11 ^{a determination of reasonableness and for} approval. An independent review organization may not change any fees approved
12 by the commissioner more than once per year and shall submit any proposed fee
13 changes to the commissioner for approval.

14 (b) An organization applying for certification or recertification as an
15 independent review organization shall pay the applicable fee under s. 601.31 (1) (Lp)
16 or (Lr). Every organization certified or recertified as an independent review
17 organization shall file a report with the commissioner in accordance with rules
18 promulgated under sub. (5) (a) 4.

19 (c) The commissioner may examine, audit or accept an audit of the books and
20 records of an independent review organization as provided for examination of
21 licensees and permittees under s. 601.43 (1), (3), (4) and (5), to be conducted as
22 provided in s. 601.44, and with costs to be paid as provided in s. 601.45.

23 (d) The commissioner may revoke, suspend or limit in whole or in part the
24 certification of an independent review organization, or may refuse to recertify an
25 independent review organization, if the commissioner finds that the independent

1 review organization is unqualified or has violated an insurance statute or rule or a
2 valid order of the commissioner under s. 601.41 (4), or if the independent review
3 organization's methods or practices in the conduct of its business endanger, or its
4 financial resources are inadequate to safeguard, the legitimate interests of
5 consumers and the public. The commissioner may summarily suspend an
6 independent review organization's certification under s. 227.51 (3).

7 (e) The commissioner shall keep an up-to-date listing of certified independent
8 review organizations and shall provide a copy of the listing to all of the following:

- 9 1. Every insurer that is subject to this section, at least quarterly.
- 10 2. Any person who requests a copy of the listing.

11 (5) RULES; REPORT; ADJUSTMENTS. (a) The commissioner shall promulgate rules
12 for the independent review required under this section. The rules shall include at
13 least all of the following:

14 1. The application procedures for certification and recertification as an
15 independent review organization.

16 2. The standards that the commissioner will use for certifying and recertifying
17 organizations as independent review organizations, including standards for
18 determining whether an independent review organization is unbiased.

19 3. Procedures and processes, in addition to those in sub. (3), that independent
20 review organizations must follow.

21 4. What must be included in the report required under sub. (4) and the
22 frequency with which the report must be filed with the commissioner.

23 5. Standards for the practices and conduct of independent review
24 organizations.

1 6. Standards, in addition to those in sub. (6), addressing conflicts of interest by
2 independent review organizations.

3 (b) The commissioner shall annually submit a report to the legislature under
4 s. 13.172 (2) that specifies the number of independent reviews requested under this
5 section in the preceding year, the insurers and health benefit plans involved in the
6 independent reviews and the dispositions of the independent reviews.

7 (c) To reflect changes in the consumer price index for all urban consumers, U.S.
8 city average, as determined by the U.S. department of labor, the commissioner shall
9 at least annually adjust the amounts specified in sub. (1) (a) 4. and (b) 4.

10 **(6) CONFLICT OF INTEREST STANDARDS.** (a) An independent review organization
11 may not be affiliated with any of the following:

12 1. A health benefit plan.

13 2. A national, state or local trade association of health benefit plans, or an
14 affiliate of any such association.

15 3. A national, state or local trade association of health care providers, or an
16 affiliate of any such association.

17 (b) An independent review organization appointed to conduct an independent
18 review and a clinical peer reviewer assigned by an independent review organization
19 to conduct an independent review may not have a material professional, familial or
20 financial interest with any of the following:

21 1. The insurer that issued the health benefit plan that is the subject of the
22 independent review.

23 2. Any officer, director or management employe of the insurer that issued the
24 health benefit plan that is the subject of the independent review.

1 3. The health care provider that recommended or provided the health care
2 service or treatment that is the subject of the independent review, or the health care
3 provider's medical group or independent practice association.

4 4. The facility at which the health care service or treatment that is the subject
5 of the independent review was or would be provided.

6 5. The developer or manufacturer of the principal procedure, equipment, drug
7 or device that is the subject of the independent review.

8 6. The insured or his or her authorized representative.

9 **(6m) QUALIFICATIONS OF CLINICAL PEER REVIEWERS.** A clinical peer reviewer who
10 conducts a review on behalf of a certified independent review organization must
11 satisfy all of the following requirements:

12 (a) Be a health care provider who is expert in treating the medical condition
13 that is the subject of the review and who is knowledgeable about the treatment that
14 is the subject of the review through current, actual clinical experience.

15 (b) Hold a credential, as defined in s. 440.01 (2) (a), that is not limited or
16 restricted; or hold a license, certificate, registration or permit that authorizes or
17 qualifies the health care provider to perform acts substantially the same as those
18 acts authorized by a credential, as defined in s. 440.01 (2) (a), that was issued by a
19 governmental authority in a jurisdiction outside this state and that is not limited or
20 restricted.

21 (c) If a physician, hold a current certification by a recognized American medical
22 specialty board in the area or areas appropriate to the subject of the review.

23 (d) Have no history of disciplinary sanctions, including loss of staff privileges,
24 taken or pending by the medical examining board or another regulatory body or by
25 any hospital or government.

1 (7) IMMUNITY. (a) A certified independent review organization is immune from
2 any civil or criminal liability that may result because of an independent review
3 determination made under this section. An employe, agent or contractor of a
4 certified independent review organization is immune from civil liability and criminal
5 prosecution for any act or omission done in good faith within the scope of his or her
6 powers and duties under this section.

7 (b) A health benefit plan that is the subject of an independent review and the
8 insurer that issued the health benefit plan shall not be liable in damages to any
9 person for complying with any decision rendered by a certified independent review
10 organization during or at the completion of an independent review.

11 (8) NOTICE OF SUFFICIENT INDEPENDENT REVIEW ORGANIZATIONS. The
12 commissioner shall make a determination that at least one independent review
13 organization has been certified under sub. (4) that is able to effectively provide the
14 independent reviews required under this section and shall publish a notice in the
15 Wisconsin Administrative Register that states a date that is 2 months after the
16 commissioner makes that determination. The date stated in the notice shall be the
17 date on which the independent review procedure under this section begins operating.

18 (9) APPLICABILITY. The independent review required under this section shall be
19 available to an insured who receives notice of the disposition of his or her grievance
20 under s. 632.83 (3) (d) on or after the first day of the 7th month beginning after the
21 effective date of this subsection [revisor inserts date]. Notwithstanding sub. (2)
22 (c), an insured who receives notice of the disposition of his or her grievance under s.
23 632.83 (3) (d) on or after the first day of the 7th month beginning after the effective
24 date of this subsection [revisor inserts date], but before the date stated in the
25 notice published by the commissioner in the Wisconsin Administrative Register

1 under sub. (8) [revisor inserts date], must request an independent review no later
2 than 4 months after the date stated in the notice published by the commissioner in
3 the Wisconsin Administrative Register under sub. (8) [revisor inserts date].

4 **SECTION 21. Nonstatutory provisions.**

5 (1) RULES REGARDING INDEPENDENT REVIEW. The commissioner of insurance shall
6 submit in proposed form the rules required under section 632.835 (5) (a) of the
7 statutes, as created by this act, to the legislative council staff under section 227.15
8 (1) of the statutes no later than the first day of the 7th month beginning after the
9 effective date of this paragraph.

10 **SECTION 22. Effective dates.** This act takes effect on the day after publication,
11 except as follows:

12 (1) The treatment of sections 609.15 (title), (1) (intro.), (a), (b) and (c) and (2)
13 (intro.), (a), (b), (c), (d) and (e), 609.655 (4) (b) and 632.83 of the statutes takes effect
14 on the first day of the 7th month beginning after publication.

15 (2) The treatment of section 632.835 (2), (3), (3m) and (5) (b) and (c) of the
16 statutes takes effect on the date stated in the notice published by the commissioner
17 of insurance in the Wisconsin Administrative Register under section 632.835 (8) of
18 the statutes, as created by this act.

19 (END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBs0139/1
PJK:wlj:mrc

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 1999 ASSEMBLY BILL 518

Insert 1-1

1 **AN ACT** *to repeal* 609.15 (title) and (1) (intro.); *to renumber* 609.15 (1) (c), 609.15
2 (2) (c), 609.15 (2) (d) and 609.15 (2) (e); *to renumber and amend* 609.15 (1) (a),
3 609.15 (1) (b), 609.15 (2) (intro.), 609.15 (2) (a) and 609.15 (2) (b); *to amend*
4 40.51 (8), 40.51 (8m), 600.01 (2) (b), 601.42 (4) and 609.655 (4) (b); and *to create*
5 111.91 (2) (r), 601.31 (1) (Lp), 601.31 (1) (Lr), 632.83 and 632.835 of the statutes;
6 **relating to** requiring insurers to establish internal grievance procedures,
7 independent review of certain coverage determinations made by health benefit
8 plans and granting rule-making authority.

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

9 **SECTION 1.** 40.51 (8) of the statutes is amended to read:
10 40.51 (8) Every health care coverage plan offered by the state under sub. (6)
11 shall comply with ss. 631.89, 631.90, 631.93 (2), 632.72 (2), 632.746 (1) to (8) and (10),

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Under current law, every managed care plan is required to have an internal grievance procedure under which an enrollee may submit a written grievance and a grievance panel must investigate the grievance and, if appropriate, take corrective action. This bill requires every health benefit plan to have such an internal grievance procedure. In addition, the bill requires every health benefit plan, including managed care plans and plans covering state and municipal employees, to have an independent review procedure for review of certain decisions under the health benefit plan's internal grievance procedure that are adverse to insureds. The decision must relate to the ~~denial~~ denial of treatment or payment for treatment that the ~~denial~~ determined was experimental or to the ~~denial~~ denial, reduction or termination of a health care service or payment for a health care service, including admission to or continued stay in a health care facility, on the basis that the health care service did not meet the plan's requirements for medical necessity or appropriateness, health care setting or level of care or effectiveness. In order to be eligible for independent review, the amount of the reduction or the ~~value~~ of the denied or terminated service must be at least \$500, which may be increased or decreased by the commissioner of insurance (commissioner) based on changes in the consumer price index. Generally, an insured must request independent review within four months after receiving notice of ~~the~~ adverse decision on his or her grievance under the internal grievance procedure.

Under the bill, an independent review may be conducted only by an independent review organization that has been certified by the commissioner. A certified independent review organization must be recertified every two years to continue to conduct independent reviews. The commissioner may revoke, suspend or limit the certification of an independent review organization for various reasons specified in the bill. Clinical peer reviewers, who conduct the reviews on behalf of independent review organizations, must be health care providers who satisfy specified criteria, including having expertise through actual clinical experience in treating the condition that is the subject of the review. Current, Every insurer that issues a health benefit plan must contract with one or more certified independent review organizations for the purpose of conducting the independent reviews in which the plan is involved. A contract must be at least two years long, and an insurer must inform the commissioner if such a contract is not renewed and of the reasons for the nonrenewal.

To request an independent review, an insured must provide written notice of the request to the health benefit plan, which must inform the commissioner of the request and inform the insured of the name and address of the independent review organization that will be conducting the independent review. The insured must pay \$50 to the independent review organization, which is refunded to the insured if he or she prevails, in whole or in part, in the independent review. In addition, the ~~insurer~~ insurer must pay a fee to the independent review organization for each review.

Within three days after receiving the notice from the insured, the ~~health benefit plan~~ health benefit plan must send to the independent review organization all of the information that

^{No. 44} The insured selects the independent review organization that will conduct the review.

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it used in making the determination in the internal grievance procedure. No later than five days after receiving that information, the independent review organization may request more information from either or both parties, who have five more days in which to supply the requested information. The independent review organization may consider, however, any other relevant information, and any information that a party provides to the independent review organization must also be provided to the other party. Within 30 days after the expiration of all relevant time limits in the matter, the independent review organization must make a determination on the basis of the written information submitted by the parties. If an expedited review is required because of the ~~employee's~~ medical condition, all specified time limits are shortened, and the independent review organization must make a determination within 72 hours after the expiration of all relevant time limits in the matter. The bill specifies certain review standards for independent review organizations, including under what circumstances treatment that was considered experimental by the health benefit plan must be covered. The decision at the conclusion of an independent review, which is binding on the insured and the ~~health benefit plan~~ ^{insurer}, must be in writing and served on both parties.

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The bill contains prohibitions aimed at avoiding conflicts of interest for independent review organizations, such as prohibiting an independent review organization from owning, controlling or being a subsidiary of a health benefit plan or an association of health benefit plans. The bill also provides independent review organizations and clinical peer reviewers with immunity from liability for decisions made in independent reviews.

insured A-7

The bill requires the commissioner to promulgate rules relating to such topics as the application procedures and standards for certification and recertification of independent review organizations, additional procedures and processes that independent review organizations must use in independent reviews, standards for the practices and conduct of independent review organizations and additional standards related to conflicts of interest.

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Finally, the bill requires the commissioner to determine when ~~a sufficient number of~~ independent review organizations ~~have~~ ^{has} been certified to effectively provide the independent reviews required under the bill. When the commissioner makes that determination, the commissioner must publish a notice in the Wisconsin Administrative Register that specifies a date that is ~~at least~~ months after the determination is made. That date is the date on which the independent review procedure must begin operating.

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

(end of ins. A)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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CL Generally, an insured must exhaust the internal grievance procedure under the health benefit plan before he or she may request independent review. Exceptions are if the insured and insurer agree to bypass the internal grievance procedure or if the insured submits a request to the independent review organization for a bypass and the independent review organization determines that requiring the insured to use the internal grievance procedure would jeopardize the life or health of the insured or the insured's ability to regain maximum function.

(END OF INSERT A-3)

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no ft The commissioner must also approve, on the basis of reasonableness, fees that independent review organizations ~~establish~~ for conducting independent reviews.

(END OF INSERT A-7)

charge

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**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: 10/26/1999

To: Senator Breske

Relating to LRB drafting number: LRB-3798

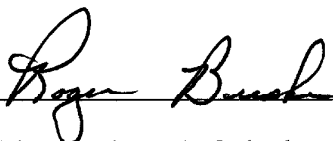
Topic

Independent review of health benefit plan decisions

Subject(s)

Insurance - health

1. **JACKET** the draft for introduction _____



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

CCC to SB-269

Page 18, line 9: delete "paragraph" and substitute
"Subsection".



State of Wisconsin
1999-2000 LEGISLATURE

CORRECTIONS IN:

1999 SENATE BILL 269

Prepared by the Legislative Reference Bureau
(January 24, 2000)

1. Page 18, line 9: delete "paragraph" and substitute "subsection".