

2001 DRAFTING REQUEST

Bill

Received: 11/24/2000

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 266-2288**

By/Representing: **Fossum**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact: **DHFS**

Alt. Drafters:

Subject: **Health - long-term care**

Extra Copies: **ISR**

Pre Topic:

DOA:.....Fossum -

Topic:

Exemption from home health agency requirements for care management organization contractors under family care

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>
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FE Sent For:

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1?	kenneda	11/27 JLD	11/27 PG	11/27 Self			

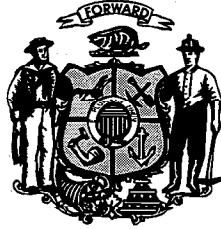
FE Sent For:

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STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR

GEORGE LIGHTBOURN
SECRETARY



Office of the Secretary
Post Office Box 7864
Madison, WI 53707-7864
Voice (608) 266-1741
Fax (608) 267-3842
TTY (608) 267-9629

Date: November 22, 2000

To: Steve Miller, Director
Legislative Reference Bureau

From: Gretchen A. Fossum, Budget Analyst *GAF*
State Budget Office

Subject: Drafting Instructions for the 2001-03 Budget Bill

I have attached drafting instructions for the following item to be included in the 2001-03 budget bill:

A request by the department of Health and Family Services to exempt certain organizations from being required to be licensed as a home health agency.

If you have any questions concerning this request, please contact me at 266-2288.

DHFS

Department of Health and Family Services
1999-2001 Biennial Budget Statutory Language Request
November 15, 2000

Title: Family Care Care Management Organization Home Health Exception

Current Language

50.49 (6m) EXCEPTIONS. None of the following is required to be licensed as a home health agency under sub. (4), regardless of whether any of the following provides services that are similar to services provided by a home health agency:

- (a) A care management organization, as defined in s. 46.2805 (1).
- (b) A program specified in s. 46.2805 (1) (a).
- (c) A demonstration program specified in s. 46.2805 (1) (b).

Proposed Change

50.49 (6m) is amended to read:

50.49 (6m) EXCEPTIONS. None of the following is required to be licensed as a home health agency under sub. (4), regardless of whether any of the following provides services that are similar to services provided by a home health agency:

- (a) A care management organization, as defined in s. 46.2805 (1) or a contract agency under s. 46.284 (4) (d).
- (b) A program specified in s. 46.2805 (1) (a).
- (c) A demonstration program specified in s. 46.2805 (1) (b).

Effect of the Change

Allows pilot counties in Family Care to sub-contract for an array of direct care services from community organizations which promotes cost-effective care planning that is consumer focused. These community organizations would provide the array of direct care services solely to the CMO, and be subject to the stringent quality assurances within the Family Care Quality Assurance framework as required by s. 46.288(1).

Rationale for the Change

Currently, statutory language (50.49 (1) (a) 1.) defines a home health agency as an organization that primarily provides skilled nursing and other therapeutic services. Other therapeutic services are defined as the services that home health agencies provide including

home health aide and personal care. The CMO pilots would like the flexibility to continue contracting with existing local supportive home care contractors for personal care and in addition, contract with those same agencies for additional care managers, including nurses. Under the current statute, they cannot do that without the sub-contract agency being considered a home health agency and thus being subject to licensure requirements for both Medicare and Medicaid. The change in statutory language would mean less fragmentation of service delivery and more consumer choice and flexibility in the provision of needed services.

Desired Effective Date: Upon enactment
Agency: DHFS
Agency Contact: Charles Jones
Phone: 266-0991

**RATIONALE FOR CHANGE OF STATUTORY LANGUAGE IN HOME HEALTH
REGULATIONS TO ALLOW FOR EXTENSION OF THE CURRENT EXEMPTION FROM
CMO ENTITIES TO THEIR SUB-CONTRACT AGENCIES**

During the pilot phase of Family Care, Care Management Organizations (CMOs) would like to contract for additional nurses for the inter-disciplinary case management teams and direct care workers (personal care and supportive home care) from the same local agencies they have sub-contracted with in the past for direct care workers. These agencies are not licensed as home health agencies. However, the home health statute defines a home health agency as an agency which provides two or more therapeutic services (s.s.50.49 (1)(a)1). Nursing and hands-on care by a direct care worker are both considered therapeutic services. Thus, agencies traditionally used by counties for direct service workers will be violating the home health statute if they also contract with the CMO for a nurse to be part of the Inter-Disciplinary Team. If the local agency has to become a licensed home health agency the cost of providing the direct care workers to the CMO will significantly increase and duplication of assessment and care plans would occur.

Background:

Historically, county agencies have contracted with a variety of independent agencies for direct care workers for human service agency activities. Many county boards have placed moratoriums on county workers. With an ever expanding long term care system, requiring flexible worker times (weekends, evenings and general on-call) which conflict with many general county unions at the local level, using a contract agency has been found to be the most convenient way to develop capacity for general human service workers. In the past this has led counties to contract for social workers, personal care and supportive home care workers from a variety of agencies which have evolved in response to the expanding community long term care programs. With the development of Family Care, the Care Management Organizations assumed that they could continue this practice of subcontracting for the inter-disciplinary teams which consist of nurses and social workers, and, in addition, continue to use these same agencies for their personal care and supportive home care workers.

In the past, counties sub-contracting with these external agencies have provided quality assurance through the efforts of the individual case manager for the direct care workers, and the county agency meeting the guidelines for worker training under the waivers and the state plan. Currently, in Family Care, those same counties have now developed performance based contracts for their sub-contract agencies, and have incorporated the sub-contract agencies into the CMO QA/QI plan. With the current home health regulations in Chapter 50, the CMO plans for capacity building are seriously impaired and cannot move forward in the affected CMO's until the issue of not being able to contract with the same agency for a nurse and a personal care worker is settled.

Family Care would like to expand the existing exemption for CMO's in the home health statute under 50.49(6m) to CMO sub-contract agencies. This exemption would allow the CMO AND it's subcontract agencies to provide therapeutic services in the Family Care benefit without becoming a licensed home health agency. This exemption extension is requested for subcontract agencies to avoid the following:

- **Significant cost increases** will occur as the sub-contract agency will have to
 - meet the federal Medicare Conditions of Participation which requires extensive administrative infrastructure and IT systems as a Medicare agency
 - meet the staffing standards of a home health agency and hire professional to provide skilled nursing care
 - meet the initial and on-going training requirements, for direct care staff which will significantly increase costs to the CMO for purchase of the staff time.
- **Duplication of services and paperwork** will occur as the sub-contract agency, to meet the Conditions of Participation standards, will have to
 - meet the clinical requirements for Medicare regardless of who the payor source is, which means completing Oasis, other clinical assessments and care plans on all agency patients even though as members of the CMO they have already received a comprehensive assessment and participated in the care planning process using the RAD with the inter-disciplinary team.

- Meet the requirements of Medicare for case management which would be duplicative and possibly a conflict with the CMO interdisciplinary team who in their contract with the Department under the managed care contract is required to take the lead in case management and coordination of care.
- Meet the clinical requirements and standards for Medicare home health with a population that is not typical of the usual home health population. Home health agencies currently specialize in post-acute medically oriented care, not long term care for a chronic but stable population.
- **Loss of flexibility would occur** for the consumer in the CMO as they are subjected to
 - additional redundant assessments and the overlay of clinical visits required to meet HCFA guidelines.
 - Medicare rules that prescribe certain levels of worker for certain tasks, could fragment the care plan and create coordination problems and possible loss of relationships as workers are moved around according to the task they are required to perform.



SOON - In edit 11/24
State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1194/1

DAK.....

JLD

DOA:.....Fossum – Exemption from home health agency requirements for care management organization contractors under family care

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES ✓

HEALTH ✓

Under current law, DHFS licenses and otherwise regulates home health agencies. Certain entities that may provide services that are similar to those provided by a home health agency (such as care management organizations, which operate under the Family Care program for the provision of long-term care) are exempted from the home health agency requirements.

* This bill expands the exemptions from home health agency licensure and regulatory requirements to include an entity with which a care management organization contracts to provide services under the Family Care program.

For further information see the *state and local* 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:

2 SECTION 1. 50.49 (6m) (a) of the statutes is amended to read: ✓

1 50.49 (6m) (a) A care management organization, as defined in s. 46.2805 (1),
2 or an entity with which a care management organization contracts under s. 46.284
3 (4) (d).

4 History: 1981 c. 93 ss. 162 to 166, 184; 1989 a. 31, 316; 1993 a. 27 s. 279; Stats. 1993 s. 50.49; 1993 a. 482; 1995 a. 225; 1997 a. 27, 237; 1999 a. 9, 83.

(END)



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