

2005 DRAFTING REQUEST

Bill

Received: **11/10/2005**

Received By: **pkahler**

Wanted: **Soon**

Identical to LRB:

For: **Curtis Gielow (608) 266-0486**

By/Representing: **himself**

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

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Insurance - health
Bus. Assn. - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gielow@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Health benefit purchasing cooperative group plans

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 11/10/2005	jdye 11/11/2005		_____			
/1			jfrantze 11/11/2005	_____	sbasford 11/11/2005 lemery 11/14/2005	lnorthro 12/09/2005	
/2	pkahler 12/20/2005	jdye 12/20/2005	pgreensl 12/20/2005	_____	lnorthro 12/20/2005	lnorthro 12/20/2005	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

Inorthro
12/20/2005

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: **11/10/2005**

Received By: **pkahler**

Wanted: **Soon**

Identical to LRB:

For: **Curtis Gielow (608) 266-0486**

By/Representing: **himself**

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

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Insurance - health
Bus. Assn. - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gielow@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Health benefit purchasing cooperative group plans

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 11/10/2005	jdyer 11/11/2005		_____			
/1		1/2 12/19 jcd	jfrantze 11/11/2005	_____	sbasford 11/11/2005 lemery 11/14/2005	lnorthro 12/09/2005	

FE Sent For:

2005 DRAFTING REQUEST

Bill

Received: 11/10/2005

Received By: pkahler

Wanted: Soon

Identical to LRB:

For: Curtis Gielow (608) 266-0486

By/Representing: himself

This file may be shown to any legislator: NO

Drafter: pkahler

May Contact:

Add. Drafters:

Subject: Insurance - health
Bus. Assn. - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Gielow@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Health benefit purchasing cooperative group plans

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 11/10/2005	jdyer 11/11/2005		_____			
/1			jfrantze 11/11/2005	_____	sbasford 11/11/2005		
				_____	lemery 11/14/2005		

FE Sent For:

for email - per CMH's email
(see back)

2005 DRAFTING REQUEST

Bill

Received: **11/10/2005**

Received By: **pkahler**

Wanted: **Soon**

Identical to LRB:

For: **Curtis Gielow (608) 266-0486**

By/Representing: **himself**

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

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Insurance - health
Bus. Assn. - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gielow@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Health benefit purchasing cooperative group plans

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 11/10/2005	jdyer 11/11/2005		_____			
/1			jfrantze 11/11/2005	_____	sbasford 11/11/2005		

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: 11/10/2005

Received By: pkahler

Wanted: Soon

Identical to LRB:

For: Curtis Gielow (608) 266-0486

By/Representing: himself

This file may be shown to any legislator: NO

Drafter: pkahler

May Contact:

Addl. Drafters:

Subject: Insurance - health
Bus. Assn. - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Gielow@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Health benefit purchasing cooperative group plans

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	<i>[Signature]</i> 11/11	<i>[Signature]</i> 11/11	<i>[Signature]</i> 11/11			

FE Sent For:

<END>

11-10

Rep Below, Julie S., John K., Dick Sweet

Make contract between insurer and coop
(not members)

clarify that ins is provided in a
single group policy covering
all - not separate
policies for members

(2)(c) 2.

→ change to group policy concept

all members are covered under

the contract w/
~~between~~ the cooperatives

may deal w/

(4) (intro) offer can under the group policy to...

(b) K between coops + insurers
insurer's group

or shall be offered in a single group policy

group health care policy or plan

632.795



Kahler, Pam

From: Sweet, Richard
Sent: Wednesday, November 09, 2005 2:06 PM
To: Kahler, Pam
Subject: CoopCare

Pam,

I just met with Dan Schwartzer and came up with some language that I forwarded to Curt and Julie. Do you want to give me a call when you've taken a look at it?

Dick

From: Sweet, Richard
Sent: Wednesday, November 09, 2005 1:56 PM
To: Gielow, Curt; Sawyer, Julie
Cc: 'dans@gdinet.com'
Subject:

Curt/Julie,

I just met with Dan Schwartzer and we developed the following language to address the concerns about CoopCare:

Create s. 185.99(4)(c) as follows:

why?

601.41(8)

185.99(4)(c). For purposes of chapters 600 to 655, an insurer that contracts with a health benefit purchasing cooperative under this section that has more than 50 members is not a small employer insurer, as defined in s. 635.02(8), under the contract with the cooperative.

slbe for purposes of this section, no

Amend s. 635.02(7) as follows:

w/ respect to the contract

635.02(7) "Small employer" means, with respect to a calendar year and a plan year, an employer that employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year, or that is reasonably expected to employ an average of at least 2 but not more than 50 employees on business days during the current calendar year if the employer was not in existence during the preceding calendar year, and that employs at least 2 employees on the first day of the plan year. "Small employer" does not include a health benefit purchasing cooperative under s. 185.99 that has more than 50 members or any employer member of that cooperative.

Dick Sweet

Richard Sweet
Senior Staff Attorney

Wisconsin Legislative Council
(608)266-2982
richard.sweet@legis.state.wi.us

MICHAEL BEST

& FRIEDRICH LLP

MEMORANDUM

CLIENT-MATTER: 048651-0001

TO: Randall Marking, Innovative Benefit Solutions

FROM: Charles P. Stevens

DATE: October 4, 2005

SUBJECT: Co-op Care of Southeastern Wisconsin and Interpretation of Chapter 185.99 of the Wisconsin Statutes

Per your request, this memo addresses § 185.99, Wis. Stats. (entitled Health Benefit Purchasing Cooperatives) and the difference between the apparent intent of the Wisconsin Legislature and the informal interpretation that has so far been communicated concerning this section of the Statutes by the General Counsel and others at the Office of the Commissioner of Insurance for the State of Wisconsin (OCI).

Section 185.99 permits a cooperative to be established and to purchase coverage on behalf of its members who consist of self-employed individuals and employers. The legislative history strongly indicates that the Legislature was attempting to assist farmers and small employers obtain more affordable health care coverage for themselves and their employees.

The cost of health insurance is a function of how each premium dollar is applied by the insurance carrier. Most of a premium dollar goes to health care providers. A smaller portion is paid by the insurance company to its agents and for taxes. The rest is kept by the insurance carrier for reserves, administration, and profits; largely under the insurance carrier's control.

Section 185.99 does not address health care providers; it only addresses the gathering together of members to form a larger group in the form of a cooperative to purchase health care insurance from insurance companies. In fact, § 185.99 does not address health care providers at all. It would then seem that the banding together of a number of small employers (including self-employed individuals) was intended by the Legislature to change the manner in which health insurance was purchased from insurance carriers and to afford an advantage to the members of a cooperative established for this purpose. Logically, viewing the cooperative as the purchaser of insurance coverage in a fashion similar to the manner in which a large employer would purchase coverage appears to be what the Legislature had in mind. It should be noted that § 185.99 was unanimously passed by both the Wisconsin Senate and the Wisconsin Assembly before being signed by the Governor on December 11, 2003.

In adopting § 185.99, the Legislature afforded farmers and small employers the opportunity to join a health benefit purchasing cooperative to be treated by an insurance carrier as if the cooperative were a large employer. This was intended to have the certain advantages, described below.

Advantages of Health Benefit Purchasing Cooperatives

With the requirements imposed on health benefit purchasing cooperatives, come certain corresponding advantages:

- The Co-op would be the purchaser of group health coverage as if it were a large employer, thereby motivating insurance companies to view the Co-op as being attractive just as a large employer is attractive.
- The insurance carrier:
 - Would base renewals on experience of all of the members of the Co-op on a pooled basis,
 - Would provide coverage for all under one umbrella, including self-employed individuals, thereby improving access for those insureds currently shunned in the marketplace, and
 - Would have the ability to pass provider discounts obtained by the Co-op through to the benefit of Co-op members.

Based on the above, the carrier would provide incentives to the Co-op and the Co-op could also collect from its members the additional amounts necessary to operate and serve as security deposits and yet still provide a low enough cost to small employers for the coverage to be better than what they are getting today. This would provide not only lower insurance costs but also the rate stability for farmers and small employers that the Legislature was seeking to achieve.

Transparency, Bargaining Power and Consumerism

There is another advantage to the Co-op purchasing model, however, that should not be ignored and is, in fact, critical to its success. With the Co-op acting as a purchaser of large group coverage, it has the ability to communicate with the insurance carrier regarding claims experience and how such experience relates to paid premiums, amounts attributable to reserves, and other expenses. This affords true transparency with regard to the purchase of health insurance coverage. The Co-op then has the ability to solicit bids for its business among insurance carriers, provide concrete data, negotiate favorable insurance contracts, and not merely be on the receiving end of possible offers by carriers where there is no good claims data and therefore, lower discounts by carriers due to uncertainty. The Co-op would have the ability to require the insurance carrier to be *accountable* to the members of the Co-op. Without the large group Co-op arrangement, a carrier need not explain to a small employer why it is receiving a 40% increase in premiums in the face of relatively low claims in the previous year. 632.797

To the extent claims are higher than the members of the Co-op would care for, the Co-op has the ability to take its business to another carrier. On the other hand, if higher than desired premiums are caused by a generous plan design, the members of the Co-op can approach plan design changes on an informed basis and make their own consumer-oriented decisions as to how to optimize the trade offs between plan design and premiums. Without such data and the corresponding capability to negotiate with carriers based, the Co-op has little chance to achieve the goals of the legislation, particularly when the Co-op must contract for insurance three years.

For the cooperative to exist, however, it must comply with certain requirements that have been established by § 185.99. These are discussed below.

Requirements for Co-op Care to operate under the law:

1. Co-op Care is required to charge a **security deposit** of no less than the estimated 36th month premium payment from each member and may retain it only if the member withdraws less than 36 months after obtaining coverage.
2. Co-op Care is required to charge enough in contributions from the members so that it can operate itself (as an entity, it will have its own expenses to become set up and to operate, pay services providers such as attorneys and actuaries, report to the Wisconsin Legislature as required by §185.99(5), etc.).
3. Co-op Care must negotiate at least a three year contract, but no carrier will provide a three-year rate guarantee under current market circumstances and so part of its arrangement must be that the parties "agree to agree." This uncertainty may be a small negative, but it is still a negative when considering membership in a health benefit purchasing cooperative as opposed to obtaining coverage elsewhere.
4. Co-op Care is required to contract with a single insurance carrier and to offer both single and group coverage and yet finding a single insurance carrier to do this is impossible unless done in the large group setting.

None of the above parameters are applicable to a small employer that goes on its own to an insurance carrier and purchases coverage from that carrier "off the shelf." If the Co-op merely gets the same deal from the insurance carrier as the carrier would provide to any other small employer, the Co-op can provide no incentive to the small employer to join the Co-op. Thus, if the law is not interpreted such that the Co-op receives the advantages discussed on the previous page, then the above requirements would act as an impediments to success for the Co-op project.

"Premium stabilization" is a good concept, but as a practical matter, it is not enough to sell the product to a large enough group of farmers and small employers to make the Co-op successful. This is particularly true when the above four requirements to the Co-op arrangement are in place. Therefore, the only way a health benefit purchasing cooperative will work is if it provides incentives of a magnitude that will overcome the above impediments such that farmers and small employers will see the coverage offered by the Co-op as more attractive than the insurance arrangement currently available to them. While *cost* is a significant component of what makes the product attractive enough to succeed, the other components that it depends on, *consumerism* and *stability*, will not occur absent a "large group" approach to Co-op purchasing of health insurance.

In light of all of the above, we have a situation where, for the concept of a health benefit purchasing cooperative to work, we must have a window of opportunity in which there exists an overlap between:

- The way in which State Law (as interpreted by OCI) perceives the insurance contract issued to health benefit purchasing cooperatives as complying with applicable law,
- The way in which an insurance carrier perceives coverage sold to a health benefit purchasing cooperative as favorable business in determining the discounts it will offer, and
- The way in which potential members of the health benefit purchasing cooperative perceive the available coverage as being better than other coverage available to them.

Provided we have sufficient conjunction of these perceptions by OCI, an insurance carrier, and prospective Co-op members, we will have a window of opportunity for success. Unfortunately, the disparity between the intent of the Legislature and the manner in which OCI has initially interpreted the law is creating problems.

Problems with the Initial Informal Communications with the Office of the Commissioner of Insurance (OCI)

Initial informal discussions with OCI revealed resistance in interpreting § 185.99 as changing the manner in which coverage for small employers and individuals would be written for health benefit purchasing cooperatives. Under this interpretation, OCI has stated that an insurance carrier writing coverage for a health benefit purchasing cooperative may not:

- Underwrite, independently of its small employer business, coverage written for Co-op members, *why not?*
- Pool the experience of all of the Co-op members for purposes of determining and changing premiums,
- Charge in premiums an amount that would be outside of a 30% rate band for all of the insurance carrier's small employer insurance business, and
- Cover Individuals and small employers within the same insurance contract.

According to initial comments from OCI, the coverage written by an insurance carrier for the Co-op is not written with the Co-op as the purchaser, but instead with each individual and small employer as separate purchasers. The Co-op would merely attempt to negotiate an arrangement with the insurance carrier on behalf of the members of the Co-op as individual purchasers, and such coverage would be subject to all of the small employer insurance regulations.

As you know, Wisconsin law sets restrictions on premium rates that an insurance carrier issuing a policy to a small employer can charge. The rates must not vary by more than 30% from the midpoint for policies issued by the insurer to all separate small employers with the same or similar case characteristics and the same or similar benefit design characteristics. This restriction means that any discount provided by an insurance carrier to a health benefit purchasing cooperative would have the effect of lowering the maximum amount that the insurance carrier could charge to small employers outside of the cooperative. Accordingly, if OCI were to interpret coverage afforded to the Co-op to be includable in an insurance carrier's small employer business, the insurance carrier would have a strong disincentive to provide discounted coverage to the cooperative.

Furthermore, as members of a Co-op grow in number, it is anticipated that the Co-op would be able to obtain discounts from providers. Certainly, Co-op Care of Southeastern Wisconsin has already obtained Aurora's commitment to provide discounts if Co-op Care can get up and running. Nevertheless, under the initial OCI interpretation, the Co-op would have no ability to require that negotiated provider discounts would flow through to the members of the Co-op. Such discounts would likely inure only to the benefit of the insurance carrier.

In my opinion, OCI's interpretation is not in accord with the intent of the Wisconsin Legislature which can be readily discerned from the statute, including the fact that the Legislature created a new form of cooperative recognized under Wisconsin Law called a "health benefit purchasing cooperative." Cooperatives purchase goods and services for their members. That clearly was the intent with regard to health benefit purchasing cooperatives.

I have reviewed Chapter 185 of the statutes and *attach to this memo* those sections that I believe to be relevant to this analysis along with annotations setting forth my reasoning.

What Co-op Care of Southeastern Wisconsin has Already Done

At this point, we have done the following in our attempts to establish the first live Co-op under the Legislature's health benefit purchasing cooperative project:

- Worked extensively with the Wisconsin Federation of Cooperatives (WFC) to develop the Co-op envisioned by the Legislature and WFC;
- Prepared and filed articles of incorporation (Co-op Care of Southeastern Wisconsin now exists);
- Drafted bylaws;
- Drafted a membership agreement to be executed by the Co-op's members;
- Drafted member guidelines outlining criteria for membership in the Co-op;
- Provided a copy of the draft bylaws and member guidelines to OCI;
- Discussed with WFC and OCI the appropriate geographic area in which Co-op Care would operate;
- Obtained agreement from the largest health care provider in Wisconsin (Aurora) to use its provider network (with discounts) in Eastern and Southeastern Wisconsin;
- Communicated extensively with four different insurance carriers with regard to offering coverage to the members of the Co-op; and
- Expended significant additional time and resources in attempting to fulfill the goal of the Legislature to establish a pooled insurance arrangement so that farmers and small employers would have lower, stable premiums and a meaningful alternative to the current significant insurance problems they face.

In our initial meeting with OCI where we learned its interpretation that § 185.99 did not permit a Co-op to act as a large group purchaser, we indicated we would try to achieve success in spite of this interpretation. We have tried and, unless OCI changes its interpretation or offers other creative assistance, it does not appear that success will be possible, notwithstanding the above-described significant efforts on the part of Co-op Care. In our second meeting with OCI in September, we advised it of our difficulties but received no assistance or suggestions.

What is Needed from OCI

It is imperative that we continue to try with OCI to reach an interpretation in which the Co-op Care of Southeastern Wisconsin is viewed as the purchaser of the coverage on a large group basis as intended by the Legislature. If we can achieve a more appropriate interpretation, then I believe insurance carriers will be more inclined to afford the needed incentives that would then permit the Co-op to operate within the required additional practical and legal parameters.

The legislation did not require or request the Commissioner of Insurance to make a ruling other than to authorize a particular geographic area for a particular health benefit purchasing Co-op. Nevertheless, it is clear that no insurance carrier will issue an insurance contract to a health benefit purchasing cooperative (and not to each individual member employer) if it is uncertain as to how OCI would interpret the carrier's compliance with Wisconsin Insurance regulations. This in fact has happened. Four different insurance carriers, upon learning of OCI's interpretation have declined to offer meaningful incentives to Co-op Care of Southeastern Wisconsin on the basis that such coverage would be part of the respective carriers' other small employer business and would not be written on a large group basis.

Therefore, the success of a health benefit purchasing cooperative depends on the issuance of an opinion by OCI interpreting § 185.99, Wis. Stats. to mean that insurance carriers issue contracts to health benefit purchasing cooperatives and not separate policies of coverage to each of the members of such a cooperative. It is possible that OCI has other suggestions with regard to their own rule-making or issuance of opinions that would be more amenable to achieving this result. So far we have not heard these suggestions. In light of the grave time shortage between now and the time many hundreds if not thousands of individuals would want this coverage in place, I believe we should act as quickly as possible.

Attainment of Wisconsin's Goals

If this arrangement has the effect of requiring insurance carriers to be more adaptive to true market conditions, then isn't this what the Legislature intended? The State of Wisconsin made a business decision that more affordable health care for more people was a right and honorable thing to do. It chose to effect this goal through the establishment of a new form of entity entitled to purchase coverage on behalf of its members. As part of this arrangement, the Co-op and insurance carriers interested in contracting with it must be given the freedom to have such an arrangement play out in the marketplace. The statute is the opposite of business as usual, clearly so, because under current circumstances, farmers, small employers, and self-employed individuals are among the most distressed segment of the health care market.

One should not automatically assume that the health benefit purchasing cooperative approach will automatically cause more problems than it solves with coverage for farmers, small employers and individuals. This project clearly has the attention of the Legislature, OCI, the Governor, the Insurance Industry, the Wisconsin Federation of Cooperatives, and small employers. It is unlikely with this degree of attention that this arrangement could turn into a runaway train that could wreck coverage for all small employers in Wisconsin, as some associated with the Insurance Industry have suggested.

The arrangement we seek is to have the opportunity to afford fully-insured coverage that the carrier wishes to offer and the member wishes to receive. Such coverage is to be issued

pursuant to Wisconsin law including all mandates and other regulations applicable to large group coverage. Furthermore, to the extent that OCI would care to be informed by Co-op Care of Southeastern Wisconsin as to certain particulars or if OCI were to provide relief conditioned upon particular contract terms or other reasonable protocols as the Co-op gets up and running, such involvement and hoped for *assistance* would be welcome. Our hope is that Wisconsin fosters this arrangement and does not hinder it.

The State of Wisconsin has spoken and this law is on the books. It does not take away options that are available today to farmers, small employers, and self-employed individuals, it gives them more options. However, these options will not be meaningful if they are not embraced by OCI, insurance carriers and Co-op members.

In summary, I believe that if we can work with OCI to reach an interpretation in which the Co-op is viewed as the purchaser of the coverage on a large group basis as intended by the Legislature, then I believe insurance carriers would be more inclined to afford the needed discounts that would then permit the Co-op to operate within the required additional practical and legal parameters.

I would appreciate your authorization for me to share this memorandum with OCI (and other interested parties) and proceed with further discussions in this regard.

CPS

Attachment

T:\CLIENTA\048651\0001\A1321705.3

CHAPTER 185 COOPERATIVES

(Annotated with Comments Regarding Interpretation of Cooperative as Contract Holder)

- 185.01 Definitions.
- 185.02 Purposes.
- 185.03 General powers.
- 185.031 Refunds after forfeiture.
- 185.033 Restriction on changes to articles.
- 185.034 Definitions applicable to indemnification and insurance provisions.
- 185.035 Mandatory indemnification.
- 185.036 Determination of right to indemnification.
- 185.037 Allowance of expenses as incurred.
- 185.038 Additional rights to indemnification and allowance of expenses.
- 185.039 Court-ordered indemnification.
- 185.04 Indemnification and allowance of expenses of employees and agents.
- 185.041 Insurance.
- 185.042 Indemnification and insurance against securities law claims.
- 185.043 Incorporators.
- 185.045 Reserved or registered name.
- 185.05 Articles.
- 185.06 Organization meetings.
- 185.07 Bylaws.
- 185.08 Principal office; registered agent; service of process.
- 185.09 Promotion expense; limitation.
- 185.11 Membership.
- 185.12 Voting.
- 185.13 Member meetings.
- 185.14 Quorum.
- 185.15 Notice to members, stockholders or other persons; waiver.
- 185.21 Stock; authorization, issuance, control, use, rights.
- 185.22 Subscriptions for stock; liability therefor.
- 185.23 Missing securities or records.
- 185.24 Liability of cooperative for wrongful transfers of its securities.
- 185.25 Applicability of ch. 408 to cooperative securities.
- 185.31 Directors; number, election, removal and vacancies.
- 185.32 Directors; meetings, quorum and waiver of notice.
- 185.33 Executive committee.
- 185.34 Action without meeting by directors or members.
- 185.35 Officers.
- 185.36 Compensation and benefits to directors, officers and employees.
- 185.363 Reliance by directors or officers.
- 185.365 Consideration of interests in addition to members' and stockholders' interests.
- 185.367 Limited liability of directors and officers.
- 185.37 Liability of directors and members.
- 185.38 Disposition of assets; right to secure debts.
- 185.41 Cooperative contracts.
- 185.42 Recording of cooperative contracts; effect thereof.
- 185.43 Relief against breach or threatened breach.
- 185.44 Application of ss. 185.41 to 185.43; venue of action.
- 185.45 Apportionment and distribution of proceeds.
- 185.47 Books and records; penalty for refusal to produce.
- 185.48 Annual reports; filing thereof.
- 185.49 Omission of seal.
- 185.50 Income or franchise tax returns.
- 185.51 Amendments to articles.
- 185.52 Stockholder voting on amendments to articles.

- 185.53 Filing and recording amendments; effect thereof.
- 185.54 Restated articles.
- 185.55 Amendments by bankruptcy court.
- 185.61 Merger and consolidation.
- 185.62 Articles of merger or consolidation; effect thereof.
- 185.63 Division of a cooperative.
- 185.64 Conversion of corporation.
- 185.71 Voluntary dissolution.
- 185.72 Involuntary dissolution.
- 185.73 Liquidation under court supervision.
- 185.74 Property not distributed prior to dissolution.
- 185.75 Unclaimed assets.
- 185.76 Survival of remedy after dissolution.
- 185.81 Admission of foreign cooperatives.
- 185.815 Recording change of principal office or registered agent.
- 185.82 Procedure on filing and recording of documents.
- 185.825 Penalty for false document.
- 185.83 Fees for filing.
- 185.84 Fees or penalty due state.
- 185.85 Forms to be furnished by department of financial institutions.
- 185.91 Voting requirements of articles.
- 185.92 Effect of unauthorized acts.
- 185.93 Member or stockholder derivative actions.
- 185.94 Use of term "cooperative"; penalty for improper use.
- 185.95 Discrimination against association.
- 185.96 Application of chapter.
- 185.97 Title.
- 185.981 Cooperative sickness care.
- 185.982 Manner of practicing medicine, chiropractic and dentistry; payment; promotional expense.
- 185.983 Requirements of plan.
- 185.985 Inconsistent provisions of the statutes.
- 185.99 Health benefit purchasing cooperatives.

185.01 Definitions. As used in this chapter, unless the context requires otherwise, the term:

- (1) "Articles" means the articles of incorporation of a cooperative unless the context otherwise requires.
- (1g) "Association" includes both cooperatives and foreign cooperatives.
- (1m) "Board" means the board of directors of a cooperative.
- (1r) "Bylaws" means the bylaws of a cooperative.
- (2) "Cooperative" means an association incorporated under this chapter.
- (3) "Corporation" means all corporations not associations.
- (3m) "Department", except in s. 185.45 (3) (c) and (4) (b), means the department of financial institutions.
- (4) "Foreign cooperative" means an association incorporated under a cooperative law of another state which has members residing within this state and which is operating on the following cooperative basis:
 - (a) Either no member of the foreign cooperative who is an individual is allowed more than one vote because of the amount of stock or membership capital the member owns therein, or the foreign cooperative does not pay dividends on stock or membership capital in excess of 8% per year; and (b) The

foreign cooperative shall not deal in the products of or for nonmembers to an amount greater in value than such as are handled by it for members; and (c) The foreign cooperative distributes its proceeds according to either s. 185.45 or the law of the state of the foreign cooperative's incorporation.

(5) "Member" means a person who has been qualified and accepted for membership in an association. If a cooperative has one or more classes of members not entitled to vote, "member" or "members", as used in this chapter with respect to the right of a member to vote, voting procedure, the required proportion of member votes, actions that must or may be taken by members, the number of members required for a quorum and the eligibility of directors, means a member or members entitled to vote, unless the bylaws provide otherwise.

(6) "Membership stock" means any class of stock, continuous ownership of which is required for membership in a cooperative.

(6m) "Patronage" means business done by a patron with a cooperative and, if the bylaws provide, labor performed for a cooperative by a patron.

(7) "Security" as used in ss. 185.23 and 185.24 means any indebtedness, capital stock or other equity interest in a cooperative's assets.

185.02 Purposes. Cooperatives may be organized under this chapter for any lawful purpose except banking and insurance, but subject to statutes relating to the organization of specified kinds of corporations.

185.03 General powers. Unless otherwise provided by its articles, a cooperative may:

(1) Exist perpetually.

(2) Sue and be sued.

(3) Have a seal.

(4) **Make contracts**¹ incur liabilities and borrow money; issue certificates representing indebtedness, or representing equity interests in its assets; acquire property; dispose of, mortgage, pledge, lease or otherwise use in any manner any of its property, or any interest therein, wherever situated.

(5) **Invest its funds**², lend money for its purposes, and hold any property as security for repayment.

(6) Conduct its business and affairs and have offices and exercise its powers in the United States or in any foreign country.

(7) Elect officers and appoint agents, define their duties and fix their compensation.

(8) Make and alter bylaws, consistent with its articles and the laws of this state, for the administration and regulation of its affairs.

(9) Make donations for charitable, scientific, educational or religious purposes.

(10) Effect the forfeiture to the cooperative of unclaimed funds, including all forms of distributions or credits under s. 185.45 (2) (b) and (c), (3) (a) and (b) and (4) (b) and unclaimed stock, membership fees and deposits, if all of the following conditions are met:

¹ One of the powers and purposes of a cooperative is to enter into contracts.

² Another power of a cooperative is to hold and invest money on behalf of its members.

(a) No earlier than 3 years and no later than 5 years after the funds are first made available to their owners, the board declares the funds forfeited to the cooperative unless claimed by the date specified in par. (b).

(b) After the declaration under par. (a), the cooperative gives notice that states that the funds shall be forfeited if not claimed by a specified date.

(c) The date specified in the notice under par. (b) is a business day at least 60 days after the date of mailing of the notice.

(d) The notice under par. (b) is mailed to the last-known address of each owner and is published as a class 1 notice under ch. 985 on or before the date of mailing in a newspaper published in the municipality containing the service area of the cooperative.

(e) The cooperative dedicates any funds remaining unclaimed after the date specified in par. (b) to educational purposes, limited to providing scholarships or loans to students, or to charitable purposes, as the board determines, within one year after the date the funds are declared forfeited under par. (a). In this paragraph, educational purposes does not include political purposes as defined in s. 11.01 (16).

(11) Cease its activities and surrender its franchise.

(12) ~~Exercise all powers necessary or convenient to effect its purposes.~~³

History: 1985 a. 30, 332.

* * *

185.41 Cooperative contracts. (1) If otherwise lawful, contracts for any of the following purposes, whether written or contained in the bylaws, are valid when made between an association and any member in which such member agrees to:

(a) Sell, market or deliver all or any specified part of products produced or to be produced either by the member or under the member's control to or through the association or any facilities furnished by it.

(b) Authorize the association or any facilities furnished by it to act for the member in any manner with respect to all or any specified part of such products and any services to be furnished by the member.

(c) ~~Buy or procure all or a specified part of goods or services from or through the association or any facilities furnished by it.~~⁴

(d) ~~Authorize the association or any facilities furnished by it to act for the member in any manner in the procurement of goods or services.~~⁵

³ Another power of a cooperative is to exercise those powers necessary or convenient to effect its purposes. Entering into a contract with an insurance carrier to obtain coverage for its members is the purpose of a health benefit purchasing cooperative. Pursuant to section 185.99(2)(b), "the purpose of a health benefit purchasing cooperative is to *provide* health care benefits for the individuals specified in sub. (4)(a)1. to 3." Of s. 185.99 (emphasis added). The logical interpretation is that the health benefit purchasing cooperative does the *purchasing* and then *provides* the coverage.

⁴ Section 185.41 recognizes that a cooperative may enter into an agreement with its members in which the cooperative buys or procures services through the association (cooperative) for the member. Again, the cooperative is doing the buying and procuring; not the member.

(2) The term of such contracts may not exceed 5 years, but they may be made self-renewing for periods not exceeding 5 years each, subject to the right of either party to terminate at the end of the original and each renewal term upon giving written notice of such termination during a period specified in such contract.

Such period shall be of at least 30 days' duration during the last year of each term. The association shall furnish to each member-maker a completed original or copy of the member-maker's contract, and on the member-maker's request at any time shall promptly furnish the member-maker information as to the member-maker's rights of termination. The 5-year limitation herein contained shall not apply to contracts for the furnishing of electric energy or service involving an investment by the vendor in fixed assets to be amortized over a longer term.

(3) Such contract may require liquidated damages to be paid by the member in the event of a breach of the contract. Liquidated damages may be either a percentage of the value of the products, goods or services, or a specific sum, but neither may be more than 30 per cent of the value of the products, goods or services, subject to the breach. Where a specific sum is provided as liquidated damages, but such sum exceeds 30 per cent of the value of the products, goods or services which are the subject of the breach, then the contract shall be construed as providing an amount equal to 30 per cent.

(4) If any contract authorized by sub. (1) (a) or (b) contains an assignment to the association of any part or all of funds due or to become due the member during the life of the contract for any product produced or to be produced by the member or for any services performed or to be performed in producing any product, any person who accepts or receives such product from the member is bound by such assignment after receiving written notice from the association or the member of the amount and duration of such assignment. However, as to any seasonal crop, if no funds are paid or become payable by any person under such an assignment for a period of 2 consecutive years during the life of the contract, thereafter the assignment shall not be binding upon any person who receives or accepts such product from the member until the assignment is reaffirmed by the member in writing and written notice thereof is given by the association or the member. Any such reaffirmation shall continue to be effective during the life of the contract until another such lapse of 2 consecutive years shall occur.

History: 1985 a. 30 s. 42; 1993 a. 482.

185.45 Apportionment and distribution of proceeds.

At least once annually the directors shall determine and distribute net proceeds as follows:

(1) There shall be deducted from total proceeds:

(a) All operating expenses and costs.

(b) The cost of supplies, commodities, equipment and other property or services procured or sold for patrons.

(c) The cost of services performed for patrons.

(d) All taxes and all other expenses.

⁵ The law also recognizes that the members authorized the cooperative to act for the members in any manner in the procurement of goods or services. Logically interpreted, this includes the procurement of medical insurance on behalf of the members.

(e) Reasonable and necessary reserves for depreciation, depletion and obsolescence of physical property, doubtful accounts and other valuation reserves, all of which shall be established in accordance with usual and customary accounting practices.⁶

(2) The remainder of the total proceeds are net proceeds and shall be distributed and paid as follows:

(a) An amount not to exceed 5 per cent thereof may be set aside as an educational fund to be used in teaching or promoting cooperative organization or principles. Such funds shall for all purposes except the computation of net proceeds be deemed an expense of operation of the cooperative.

(b) A share of the net proceeds may be set aside for or paid to officers or employees, or both. Such amount shall for all purposes except the computation of net proceeds be deemed an expense of operation of the cooperative.

(c) In a cooperative organized with capital stock such dividend may be paid upon capital stock as is authorized by the articles. No dividend may be paid if the capital is impaired or if payment of such dividend would result in an impairment of capital.

(3) Unless the articles or bylaws otherwise expressly provide, none of the remainder of the net proceeds shall constitute income of the cooperative but all thereof shall be distributed and paid to patrons, whether members or not, as follows:

(a) Reasonable reserves for necessary purposes may be created, which shall be credited to patrons in accordance with the ratio which their patronage bears to total patronage.

(b) All the remainder of the net proceeds shall be distributed and paid to patrons in accordance with the ratio which their patronage bears to total patronage.

(c) There shall be no distinction between the persons entitled thereto, but such reserves and distributions may be based upon business done with particular departments or in particular commodities, supplies or services, or upon classification of business according to the type or nature thereof.

(4) If the articles or bylaws so provide:

(a) Any of the net proceeds may be credited to allocated or unallocated surplus or reserves of the cooperative.

(b) None of the remainder shall constitute income to the cooperative, but all of it shall be distributed and paid in accordance with the ratio which individual patronage bears to total patronage, either to member patrons only, to member patrons only with one or more classes receiving a lower proportion than others or to all patrons with nonmembers receiving a lower proportion than members, as the bylaws provide. There shall be no other distinction between members and nonmembers, but distribution may be based on business done with particular departments, or in particular commodities, supplies or services, or upon classification of business according to type or nature.

(5) The distribution and payment of net proceeds under sub.

⁶ Cash that is received by the health benefit purchasing cooperative is to be spent on items that include (b) the cost of supplies, commodities, equipment and other property or services procured or sold for patrons and (c) the cost of services performed for patrons (emphasis added).

Furthermore, the cooperative may retain "reasonable and necessary reserves". Logically interpreted, this is what the Wisconsin Legislature had in mind with regard to the "security deposit" required in s. 185.99(4)(b).

(3) or (4) may be in cash, credits, stock, certificates of interest, revolving fund certificates, letters of advice, or other certificates or securities of the cooperative or of other associations, limited liability companies or corporations, in other property, or in any combination thereof.

(6) All or any part of the net proceeds may be applied to losses incurred in prior years, and the bylaws may also include any reasonable provisions for the apportionment of losses.

History: 1985 a. 30 ss. 23, 42; 1993 a. 112.

185.99 Health benefit purchasing cooperatives.

(1) DEFINITIONS. In this section:

(a) "Commissioner" means the commissioner of insurance.

(b) "Eligible employee" has the meaning given in s. 632.745 (5) (a).

(c) "Person" means any corporation, limited liability company, partnership, cooperative, association, trade or labor organization, city, village, town, county, or self-employed individual.

(2) ORGANIZATION AND PURPOSE. (a) Notwithstanding s. 185.02, health benefit purchasing cooperatives may be organized under this chapter in each of the geographic areas designated under sub. (6). Notwithstanding s. 185.043, a health benefit purchasing cooperative may be formed by one or more persons.

(b) The purpose of a health benefit purchasing cooperative is to provide health care benefits for the individuals specified in sub. (4) (a) 1. to 3. through a contract with an insurer authorized to do business in this state in one or more lines of insurance that includes health insurance.⁷

(c) A health benefit purchasing cooperative shall be designed so that all of the following are accomplished:

1. The members become better informed about health care trends and cost increases.

2. All members purchase their health care benefits from the same insurer.⁸

⁷ The health benefit purchasing cooperative *provides* health care benefits through a (singular) contract with an insurer. This reference does not indicate multiple insurance contracts with each individual member of the cooperative. It establishes that the cooperative enters into the contract, purchases the coverage, and in turn provides health care benefits to its members.

⁸ Because all benefits must be purchased through a single insurer, it would be difficult if not impossible to do so where the insurance contract issued to the cooperative was to cover all members including individuals (self-employed persons), small employers (2 to 50 employees), and larger employers (more than fifty employees). Furthermore, the group buying arrangement for all members contemplates that amounts may build within the cooperative for purposes of rate stabilization. Chapter 185 does contemplate the holding of reserves for the members. If the cooperative were deemed to not be the contract holder but merely the "negotiator" of the contract between an insurance carrier and multiple employers, such commingling of reserves would be problematic. Nevertheless, if the cooperative were viewed as a large group purchaser such as a large employer, no such problems should occur.

3. The members are actively engaged in designing health care benefit options that are offered by the insurer and that meet the needs of their community.

4. The health insurance risk of all of the members is pooled.⁹

5. The members actively participate in health improvement decisions for their community.

(2m) TEMPORARY BOARD OF DIRECTORS. Notwithstanding s. 185.05 (1) (m), the articles of a health benefit purchasing cooperative shall set forth the name and address of at least one incorporator who will act as the temporary board.

(3) COOPERATIVE MEMBERSHIP. (a) Notwithstanding s. 185.11 (1), each health benefit purchasing cooperative shall be organized on a membership basis with no capital stock.

(b) Subject to par. (c), any person that does business in, is located in, has a principal office in, or resides in the geographic area in which a health benefit purchasing cooperative is organized, that meets the membership criteria established by the health benefit purchasing cooperative in its bylaws, and that pays the membership fee may be a member of the health benefit purchasing cooperative.

(c) A health benefit cooperative may limit membership of self-employed individuals through its membership criteria, but such criteria must be applied in the same manner to all self-employed individuals.

(d) Each health benefit purchasing cooperative shall file its membership criteria, as well as any amendments to the criteria, with the commissioner.

⁹ Pursuant to the statute, the health insurance risk of all of the members must be pooled. Clearly the goal of such pooling is to provide the benefits of a larger group than the typical farmer or small employer has. Thus, the experience of all of the members of the health benefit purchasing cooperative must be pooled in a single group and the coverage written for such members is not contemplated to be separate. While it is possible through some gymnastics to interpret "pooled" to mean that a small employer's coverage happens to be written alongside other small employers because it is a part of the insurance company's small employer business, such an interpretation is neither logical nor does it provide any benefits to the farmer or small employer. This would merely provide the same insurance options that farmers and small employers have available today, but at a greater cost due to the requirements imposed on the cooperative including the additional cost of operating the cooperative and the required security deposit.

"Pooled," logically interpreted, means that the claims experience of the members of the cooperative are tracked as a pristine group separate and apart from the experience of other farmers and small employers outside of the cooperative under other coverage that the insurance carrier happens to write. It further follows that renewals are based on the experience of the group as a whole.

Finally, the insurance contract between the insurance carrier and the cooperative cannot be viewed as a part of the insurance carrier's small employer or individual business. First, any discounts that the insurance carrier might be inclined to give to the cooperative would negatively affect its rate band under s. 635.05(1) and INS s. 8.52, providing a disincentive to any insurance carrier to negotiate a favorable insurance contract with the cooperative. Second, coverage issued by an insurance carrier to the cooperative should not be interpreted as being small employer coverage because it is not issued to a small employer. Chapter 635 of the statutes applies only to a policy issued to a small employer. The cooperative's policy, however, is issued to the cooperative, not to any one small employer.

(4) HEALTH CARE BENEFITS. (a) The health care benefits offered by a health benefit purchasing cooperative shall be negotiated between the health benefit purchasing cooperative and the insurer. The insurer must offer coverage to all of the following:

1. An individual who is a member, officer, or eligible employee of a member of the health benefit purchasing cooperative.

2. A self-employed individual who is a member of the health benefit purchasing cooperative.

3. A dependent of an individual under subd. 1. or 2. who receives coverage.¹⁰

(b) The contract between the members of a health benefit purchasing cooperative and an insurer shall be for a term of 3 years.

Upon enrollment in the insurer's health benefit plan, each member shall pay to the health benefit purchasing cooperative an amount determined by the health benefit purchasing cooperative that is not less than the member's applicable premium for the 36th month of coverage under the contract.¹¹ If a member withdraws from the health benefit purchasing cooperative before the end of the contract term, the health benefit purchasing cooperative may retain, as a penalty, an amount specified by the health benefit purchasing cooperative that is not less than the premium that the member paid for the 36th month of coverage.

(5) REQUIRED REPORTS. Each health benefit purchasing cooperative shall submit to the legislature under s. 13.172 (2) and to the commissioner all of the following:

(a) Annually, no later than September 30, a report on the progress of the health benefit purchasing arrangement described in this section and, to the extent possible, any significant findings in the criteria under par. (b) 1. to 3.

(b) Within one year after the end of the term of the contract under sub. (4) (b), a final report that details significant findings from the project and that includes, at a minimum, to the extent available, information on all of the following:

1. The extent to which the health benefit purchasing arrangement had an impact on the number of uninsured in the geographic area in which it operated.

¹⁰ Note that the cooperative must (i) purchase its health care benefits from a single insurer, and (ii) offer coverage to members, officers, eligible employees, self-employed persons and dependents. Therefore, the cooperative must be interpreted as a large group because it is not possible in Wisconsin today to pool the health insurance risks of individuals (self-employed members) with the health insurance risks of small employers (2 to 50 employees) under existing insurance rules.

¹¹ The Wisconsin Legislature and Governor are unlikely to have intended that conditions built into the law actually work to prevent it from succeeding in the marketplace. Obviously the required "security deposit" is supposed to keep members from leaving the cooperative so as to give the cooperative enough time to get off the ground and be a stable vehicle for insuring farmers and small employers. But the security deposit constitutes an amount to be paid over and above premiums that also must be paid. Therefore, if the law is interpreted such that the coverage written by the insurance carrier is no different than any other small employer coverage and is not written on a large group basis, than no insurance carrier will provide discounts of the requisite size to overcome the additional cost of the security deposit and coverage provided by the cooperative would cost more than coverage that farmers or small employers could obtain on their own. Under that interpretation, the idea of a health benefit purchasing cooperative is doomed before it starts.

2. The effect on health care coverage premiums for groups in the geographic area in which the health benefit purchasing arrangement operated, including groups other than the health benefit purchasing cooperative.¹²

3. The degree to which health care consumers were involved in the development and implementation of the health benefit purchasing arrangement.

(6) DESIGNATION OF GEOGRAPHIC AREAS. After consultation with the Wisconsin Federation of Cooperatives, the commissioner shall designate, by order, the geographic areas of the state in which health benefit purchasing cooperatives may be organized. A geographic area may overlap with one or more other geographic areas.

History: 2003 a. 101; 2005 a. 30.

¹² This phrase implies that the health benefit purchasing cooperative constitutes a single group and that other groups exist outside of the health benefit purchasing cooperative. It also appears that the Wisconsin Legislature was interested in determining the impact of the health benefit purchasing cooperative on other group insurance coverage written in the same geographic area. This interest would be meaningless if the Legislature had not intended s. 185.99 to change the manner in which farmers and small employers were afforded insurance coverage purchased through a cooperative arrangement. Such change was clearly intended to be in the form of pooled coverage sold to the cooperative as a large group and was not intended to be small employer group coverage as available off the shelf from a number of insurance carriers.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-4055/7

PJK:.....

"Kay"

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Monday,
please

- 1 AN ACT ^{gen cat}; relating to: group health care plans offered by health benefit
2 purchasing cooperatives. ✓

Analysis by the Legislative Reference Bureau

Under current law, ✓ nonstock health benefit purchasing cooperatives (cooperative) may be organized in geographic areas of the state designated by the Commissioner of Insurance by order. The purpose of the cooperatives is to provide health care benefits to the employees, members, and officers of the members of each cooperative and to their dependents. Each cooperative may establish membership criteria, but membership in a cooperative is generally open to any business entity, trade or labor organization, municipality, or self-employed individual doing business in, or residing in, the designated geographic area of the cooperative. Current law provides that each cooperative must be designed so that all members purchase their health care benefits from ✓ the same insurer. Each cooperative must negotiate the benefits, and enter into a three-year contract, with the insurer that will provide the health care benefits.

✓ This bill clarifies that the health care benefits provided by a cooperative must be provided in a single group health care policy or plan; that the contract under which the benefits are provided is between the cooperative and the insurer, rather than between the individual members and the insurer; and that the cooperative employees and members and their dependents receive their health care benefits as a single group under the group health care policy or plan.

Also under current law, a small employer, for purposes of insurance coverage under group health benefit plans, is generally defined as an employer with between

2 and 50 employees. An insurer that offers group health benefit plans to one or more small employers in the state is defined as a small employer insurer. With respect to group health benefit plans offered and sold to small employers, small employer insurers are subject to certain marketing standards, certain restrictions on premium rates that may be charged, and certain requirements to accept for coverage any small employer in the state that applies for coverage. This bill provides that: 1) any cooperative that has more than 50 members, and any member of such a cooperative, is not a small employer for purposes of the insurance requirements related to group health benefit plans offered and sold to small employers; and 2) any insurer that contracts with a cooperative that has more than 50 members is not a small employer insurer with respect to the contract with that cooperative.

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

1 **SECTION 1.** 185.99 (2) (b) of the statutes is amended to read:

2 185.99 (2) (b) The purpose of a health benefit purchasing cooperative is to
3 provide health care benefits for the individuals specified in sub. (4) (a) 1. to 3., under
4 a single group health care policy or plan through a contract with between the health
5 benefit purchasing cooperative and an insurer authorized to do business in this state
6 in one or more lines of insurance that includes health insurance.

7 History: 2003 a. 101; 2005 a. 30.

8 **SECTION 2.** 185.99 (2) (c) 2. of the statutes is amended to read:

9 185.99 (2) (c) 2. All members ~~purchase~~ receive their health care benefits ~~from~~
10 ~~the same insurer~~ under the group health care policy or plan negotiated under sub.
11 (4) (a).

12 History: 2003 a. 101; 2005 a. 30.

13 **SECTION 3.** 185.99 (4) (a) (intro.) of the statutes is amended to read:

14 185.99 (4) (a) (intro.) The health care benefits offered by a health benefit
purchasing cooperative shall be negotiated between the health benefit purchasing
cooperative and the insurer and shall be offered in a single group health care policy

1 or plan. The insurer must offer coverage under the group health care policy or plan
2 to all of the following:

3 History: 2003 a. 101; 2005 a. 30.

3 **SECTION 4.** 185.99 (4) (b) ✓ of the statutes is amended to read:

4 185.99 (4) (b) The contract between the members of a health benefit purchasing
5 cooperative and an insurer shall be for a term of 3 years. Upon enrollment in the
6 insurer's group health benefit care policy or plan, each member shall pay to the
7 health benefit purchasing cooperative an amount determined by the health benefit
8 purchasing cooperative that is not less than the member's applicable premium for
9 the 36th month of coverage under the contract. If a member withdraws from the
10 health benefit purchasing cooperative before the end of the contract term, the health
11 benefit purchasing cooperative may retain, as a penalty, an amount specified by the
12 health benefit purchasing cooperative that is not less than the premium that the
13 member paid for the 36th month of coverage.

14 History: 2003 a. 101; 2005 a. 30.

14 **SECTION 5.** 185.99 (4) (c) ✓ of the statutes is created to read:

15 185.99 (4) (c) An insurer that contracts under this section ✓ with a health benefit
16 purchasing cooperative ✓ that has more than 50 ✓ members is not a small employer
17 insurer, as defined in s. 635.02 (8), with respect to the contract between the insurer
18 and the health benefit purchasing cooperative.

19 **SECTION 6.** 635.02 (7) ✗ of the statutes is renumbered 635.02 (7) (a).

20 **SECTION 7.** 635.02 (7) (b) ✓ of the statutes is created to read:

21 635.02 (7) (b) Notwithstanding par. (a) ✓, "small employer" does not include any
22 of the following:

23 1. A health benefit purchasing cooperative under s. 185.99 ✓ that has more than
24 50 members. ✓

Emery, Lynn

From: Hanaman, Cathlene
Sent: Monday, November 14, 2005 1:31 PM
To: Northrop, Lori; Emery, Lynn; Barman, Mike; Basford, Sarah
Subject: -4055

We noticed a computer-generated error in -4055 and we fixed it. Unfortunately Gielow received a copy with the error. Could we send Gielow a copy of -4055/1 now (including an electronic copy)?

Northrop, Lori

From: Rep.Gielow
Sent: Friday, December 09, 2005 11:11 AM
To: LRB.Legal
Subject: LRB 4055/1

Please jacket LRB 4055/1.

Thank you,

Julie Sawyer
Office of Rep. Gielow
(608) 266-0486

Kahler, Pam

From: Sawyer, Julie
Sent: Friday, December 16, 2005 3:44 PM
To: Kahler, Pam

Hi Pam,

We (our office) are going to have a new bill drafted with this language -- I got the jacketed file back from the Speaker's office and it hasn't been introduced yet. The Speaker's office told me that they want to have it for the January floor period (I hope this will work for you).

Please let me know what you need from me (I think I'll have to send the jacketed file back to the LRB, but I'm not sure).

(Hope you're feeling well.)

Julie

From: Sweet, Richard
Sent: Thursday, December 15, 2005 10:24 AM
To: Guidry, Jim
Cc: Gielow, Curt; Reinemann, John; Sawyer, Julie; Nepple, Fred; 'dans@gdinet.com'; 'melissa.duffy@wfcmac.coop'
Subject: RE: LRB 4055/1

Jim,

Thanks for bringing this concern to Rep. Gielow's attention. I think it's a valid concern since the current statute uses "member" to refer to both employer members and individuals who are members.

After some discussion with the parties, I think the concern can be addressed by using the phrase "**more than 50 individuals who are members or whose employer is a member**".

This would cover both self-employed persons who are members and employees of employers who are members. But it wouldn't include the insured family members of those individuals (who would be included if the term "covered lives" were used), so in that respect the co-op would be treated just like a 50+ employee business.

Can you let me know if this takes care of your concern? I cc'ed Fred on this also.

Thanks for your help.

Dick Sweet

Richard Sweet
Senior Staff Attorney
Wisconsin Legislative Council
(608)266-2982

12/16/2005

richard.sweet@legis.state.wi.us

From: Guidry, Jim
Sent: Friday, December 09, 2005 10:11 AM
To: Reinemann, John
Subject: LRB 4055/1

I have a question.

Under your draft, it says (sections 5 and 7) that a "cooperative that has more than 50 members." Say you have a cooperative with only 40 members and with 2 employees each, for a total of 80, or 15 members with 4 employees, etc. Where does that fall? Are employees considered members or are only the employers members? Sec 185.99 (4)(a) 1 would seem to indicate that there is a difference between members and employees. Under the above scenarios, your draft seems to indicate that groups of greater than 50 covered lives could still possibly fall under Chap 635. Is that your intention?

Jim Guidry
Legislative Liaison
Office of the Commissioner of Insurance
125 South Webster Street
PO Box 7873
Madison, WI 53707-7873

Work: (608) 264-6239
Cell: (608) 225-6210

This message scanned for viruses by [CoreComm](#)



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-4055/1
PJK:jld:jf

v must run 2
"Kay"

2005 BILL

2005
(12-19)
D-note

~~(draft is in HOLD-
inboy because my PC
insists that it has
been introduced)~~

Regen

1 AN ACT to renumber 635.02 (7); to amend 185.99 (2) (b), 185.99 (2) (c) 2., 185.99
2 (4) (a) (intro.) and 185.99 (4) (b); and to create 185.99 (4) (c) and 635.02 (7) (b)
3 of the statutes; relating to: group health care plans offered by health benefit
4 purchasing cooperatives.

Analysis by the Legislative Reference Bureau

Under current law, nonstock health benefit purchasing cooperatives (cooperative) may be organized in geographic areas of the state designated by the Commissioner of Insurance by order. The purpose of the cooperatives is to provide health care benefits to the employees, members, and officers of the members of each cooperative and to their dependents. Each cooperative may establish membership criteria, but membership in a cooperative is generally open to any business entity, trade or labor organization, municipality, or self-employed individual doing business in, or residing in, the designated geographic area of the cooperative. Current law provides that each cooperative must be designed so that all members purchase their health care benefits from the same insurer. Each cooperative must negotiate the benefits, and enter into a three-year contract, with the insurer that will provide the health care benefits.

This bill clarifies that the health care benefits provided by a cooperative must be provided in a single group health care policy or plan; that the contract under which the benefits are provided is between the cooperative and the insurer, rather than between the individual members and the insurer; and that the cooperative

BILL

employees and members and their dependents receive their health care benefits as a single group under the group health care policy or plan.

Also under current law, a small employer, for purposes of insurance coverage under group health benefit plans, is generally defined as an employer with between 2 and 50 employees. An insurer that offers group health benefit plans to one or more small employers in the state is defined as a small employer insurer. With respect to group health benefit plans offered and sold to small employers, small employer insurers are subject to certain marketing standards, certain restrictions on premium rates that may be charged, and certain requirements to accept for coverage any small employer in the state that applies for coverage. This bill provides that: 1) any cooperative that has more than 50 members, and any member of such a cooperative, is not a small employer for purposes of the insurance requirements related to group health benefit plans offered and sold to small employers; and 2) any insurer that contracts with a cooperative that has more than 50 members is not a small employer insurer with respect to the contract with that cooperative.

Insert A

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

1 SECTION 1. 185.99 (2) (b) of the statutes is amended to read:

2 185.99 (2) (b) The purpose of a health benefit purchasing cooperative is to
3 provide health care benefits for the individuals specified in sub. (4) (a) 1. to 3., under
4 a single group health care policy or plan through a contract with between the health
5 benefit purchasing cooperative and an insurer authorized to do business in this state
6 in one or more lines of insurance that includes health insurance.

7 SECTION 2. 185.99 (2) (c) 2. of the statutes is amended to read:

8 185.99 (2) (c) 2. All members purchase receive their health care benefits ~~from~~
9 ~~the same insurer~~ under the group health care policy or plan negotiated under sub.
10 (4) (a).

11 SECTION 3. 185.99 (4) (a) (intro.) of the statutes is amended to read:

12 185.99 (4) (a) (intro.) The health care benefits offered by a health benefit
13 purchasing cooperative shall be negotiated between the health benefit purchasing
14 cooperative and the insurer and shall be offered in a single group health care policy

BILL

1 or plan. The insurer must offer coverage under the group health care policy or plan
2 to all of the following:

3 **SECTION 4.** 185.99 (4) (b) of the statutes is amended to read:

4 185.99 (4) (b) The contract between the ~~members of a~~ health benefit
5 purchasing cooperative and an insurer shall be for a term of 3 years. Upon
6 enrollment in the insurer's group health benefit care policy or plan, each member
7 shall pay to the health benefit purchasing cooperative an amount determined by the
8 health benefit purchasing cooperative that is not less than the member's applicable
9 premium for the 36th month of coverage under the contract. If a member withdraws
10 from the health benefit purchasing cooperative before the end of the contract term,
11 the health benefit purchasing cooperative may retain, as a penalty, an amount
12 specified by the health benefit purchasing cooperative that is not less than the
13 premium that the member paid for the 36th month of coverage.

14 **SECTION 5.** 185.99 (4) (c) of the statutes is created to read:

15 185.99 (4) (c) An insurer that contracts under this section with a health benefit
16 purchasing cooperative that has more than 50 members is not a small employer ✓
17 insurer, as defined in s. 635.02 (8), with respect to the contract between the insurer
18 and the health benefit purchasing cooperative. *Insert 3-16*

19 **SECTION 6.** 635.02 (7) of the statutes is renumbered 635.02 (7) (a).

20 **SECTION 7.** 635.02 (7) (b) of the statutes is created to read:

21 635.02 (7) (b) Notwithstanding par. (a), "small employer" does not include any
22 of the following:

23 1. A health benefit purchasing cooperative under s. 185.99 that has more than

24 50 members ✓ *Insert 3-16*

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4055/ins
PJK:.....

INSERT A

wof provides health care benefits for more than 50 individuals who are members or employees of members ~~NO~~ (END OF INSERT A)

INSERT 3-16

- 1 wof provides health care benefits for more than 50 individuals who are members or
- 2 employees of one or more members ~~NO~~

(END OF INSERT 3-16)

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

LRB-4055/1dn
PJK:.....

2
↑
KJ

Since OCI had the question about what the previous language meant, I would suggest that before the draft is introduced you make sure that OCI interprets this language in the manner that you intend.

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

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

LRB-4055/2dn
PJK:jld:pg

December 20, 2005

Since OCI had the question about what the previous language meant, I suggest that before the draft is introduced you make sure that OCI interprets this language in the manner that you intend.

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