

WISCONSIN STATE  
LEGISLATURE  
COMMITTEE HEARING  
RECORDS

**2005-06**

(session year)

**Senate**

(Assembly, Senate or Joint)

**Committee on  
Agriculture and  
Insurance  
(SC-AI)**

File Naming Example:

Record of Comm. Proceedings ... RCP

- 05hr\_AC-Ed\_RCP\_pt01a
- 05hr\_AC-Ed\_RCP\_pt01b
- 05hr\_AC-Ed\_RCP\_pt02

*Published Documents*

➤ Committee Hearings ... CH (Public Hearing Announcements)

➤ \*\*

➤ Committee Reports ... CR

➤ \*\*

➤ Executive Sessions ... ES

➤ \*\*

➤ Record of Comm. Proceedings ... RCP

➤ \*\*

*Information Collected For Or  
Against Proposal*

➤ Appointments ... Appt

➤ \*\*

➤ Clearinghouse Rules ... CRule

**05hr\_CRule\_05-059\_SC-AI\_pt05**

➤ Hearing Records ... HR (bills and resolutions)

➤ \*\*

➤ Miscellaneous ... Misc

➤ \*\*



**The Honorable Ann Nischke, Chair, Assembly Insurance Committee  
Before the Joint Committee for the Review of Administrative Rules  
Clearinghouse Rule 0-059 (INS 9)  
December 14, 2005**

Mr. Chairman and Members,

Thank you for the opportunity to speak with you today about Clearinghouse Rule 05-059 otherwise known as INS 9.

The Assembly Insurance Committee and the Senate Agriculture and Insurance Committee held a joint public hearing and based on that hearing requested that the agency modify the proposed rule. The agency, in response to the Senate committee's request, declined to consider any modification which brings us here today.

Later you will hear from experts that will discuss in greater detail the objections raised. I am troubled by the proposed rule's reach into limited scope plans and the reach into Preferred Provider Plans and the organizations they partner with to provide service.

In fairness to the proposal, the rule does contain desirable public policy. There is great consensus that ensuring emerging room coverage is good policy.

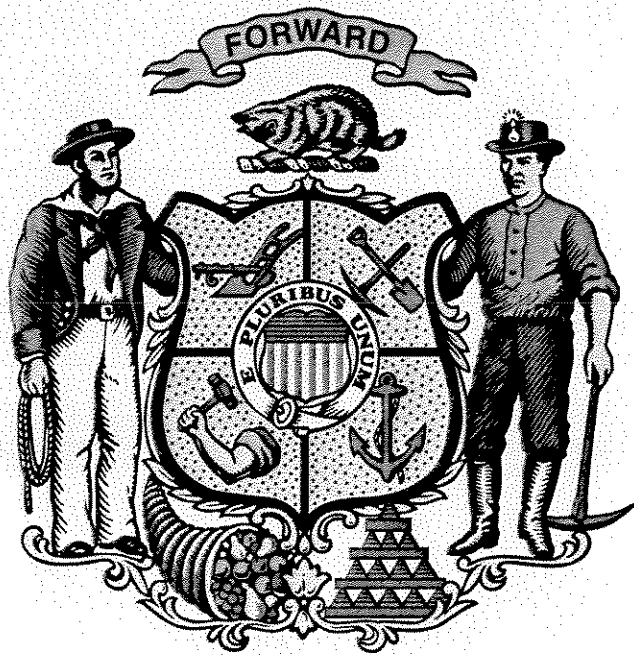
However, no matter what your position on particular policy matter, it is policy that should be set by the Legislature, not any agency.

As I believe is demonstrated in public testimony and Legislative Council staff opinion, the rule is beyond what the Legislature set out in law and what the Legislature reserved to itself.

For these reasons, I am asking that this committee concur in the Senate committee's objection.

I'd be happy to answer any questions.

Thank you Mr. Chairman.



# Dan Kapanke

Wisconsin State Senator - 32nd District

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**The Honorable Dan Kapanke, Chairman, Senate Committee on Agriculture and Insurance**

**Testimony before Joint Committee for the Review of Administrative Rules**

**CR 05-059/INS-9**

**December 14, 2005**

Mr. Chairman and Members,

Thank you for allowing me to testify in regard to CR 05-059.

My esteemed colleague, Rep. Nischke, and I chaired a joint public hearing to get input from stakeholders in the insurance and health care industry along with agency representatives concerning this rule. The testimony that was heard and Legislative Council opinions showed that the rule went beyond what the Legislature set out in law.

After taking time to digest all the material that was presented to the committee members of the Senate Committee on Agriculture and Insurance, by a vote of 7-0, requested modifications. The agency declined to entertain modifications. Thus my committee stood in objection to the rule, which is now before you.

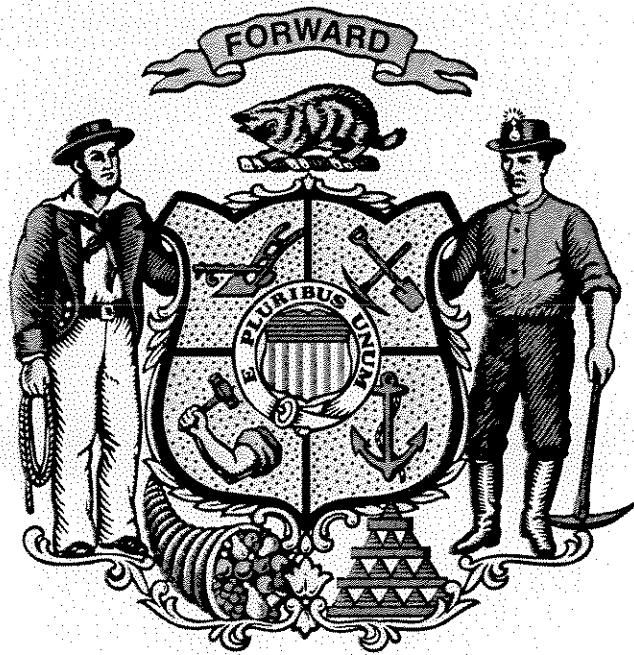
I will let the experts delve into the technical issues of the rule but am concerned about its effects on limited scope plans, access standards, and Preferred Provider Networks and the organizations the PPP's are in partnership with.

While I believe that there are portions of good public policy in the rule that policy should be left up to the elected officials of the Legislature, not the agency.

That is why I am here today to ask this committee to concur in the Senate Committee on Agriculture and Insurance's objection to the rule.

I'm happy to answer any questions committee members might have.

Thank you Mr. Chairman.



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\* This is Ins 9, as amended by CNR 05-59, with the WAPN changes. Also, it deletes definitions that won't have to be moved to the statutes, and subch. II, as it will not have to be included in the statutes.

Chapter Ins 9  
MANAGED CARE PLANS

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(4m) "Participating" has the meaning provided under s. 609.01(3m), Stats., and also includes a provider as being under contract with the insurer when the provider has a contract with an intermediate entity.

Subchapter I — Definitions

Ins 9.01 Definitions. In addition to the definitions in s. 609.01, Stats., in this chapter:

(1) "Acceptable letter of credit" means a clean, unconditional, irrevocable letter of credit issued by a Wisconsin bank or any other financial institution acceptable to the commissioner which renews on an annual basis for a 3-year term unless written notice of non-renewal is given to the commissioner and the limited service health organization at least 60 days prior to the renewal date.

(2) "Commissioner" means the commissioner of insurance of this state or the commissioner's designee.

(3) "Complaint" means any dissatisfaction about an insurer or its contracted provider, expressed by an enrollee, or an enrollee's authorized representative, to the insurer.

(4) "Expedited grievance" means a grievance where the standard resolution process may include any of the following:

(a) Serious jeopardy to the life or health of the enrollee or the ability of the enrollee to regain maximum function.

(b) In the opinion of a physician with knowledge of the enrollee's medical condition, would subject the enrollee to severe pain that cannot be adequately managed without the care or treatment that is the subject of the grievance.

(c) It is determined to be an expedited grievance by a physician with knowledge of the enrollee's medical condition.

(5) "Grievance" means any dissatisfaction with the administration, claims practices or provision of services by a managed care plan, limited service health organization or preferred provider plan that is expressed in writing to the insurer by, or on behalf of, an enrollee.

(6) "Health benefit plan" has the meaning provided under s. 632.745(11), Stats.

(7) "HMO" or "health maintenance organization" means a health care plan as defined in s. 609.01(2), Stats.

(8) "Health maintenance organization insurer" has the meaning provided under s. 600.13(23c), Stats.

(9) "Hospital emergency facility" means any hospital facility that offers services for emergency medical conditions as described in s. 632.85(1)(a), Stats., within its capability to do so and in accordance with s. HFS 124.24, or the licensure requirements of the jurisdiction in which the hospital resides.

(10) "IPA" or "individual practice association" has the meaning provided under s. 600.03(23g), Stats.

(11) "Limited service health organization" means a health care plan as defined in s. 609.01(3), Stats.

(12) "Managed care plan" has the meaning provided under s. 609.01(1b), Stats., and includes Medicare + Choice plan as defined in s. Ins 3.39(3)(cm), Medicare Select policy as defined in s. Ins 3.39(30)(b) 4., and health benefit plans that either directly or indirectly contract for use of providers.

Note: Ins 3.39(3)(cm) no longer exists as a result of the repeal and recreation of Ins 3.39(3) eff. 7-1-05.

(13) "OCI complaint" means any written complaint received by the office of the commissioner of insurance by, or on behalf of, an enrollee of a managed care plan.

(14) "Office" means the office of the commissioner of insurance.

(15) "Preferred provider plan" has the meaning provided under s. 609.01(4), Stats.

(16) "Primary provider" has the meaning provided under s. 609.01(6), Stats.

(17) "Silent provider network" means one or more participating providers that provide services covered under a managed care plan where all of the following apply:

(a) The insurer does not include any incentives or penalties in the managed care plan related to utilization or failure to utilize the provider.

(b) The only direct or indirect compensation arrangement the insurer has with the provider provides for compensation that is:

1. On a fee for service basis and not on a risk sharing basis, including, but not limited to, capitation, withholds, global budgets, or target expected expenses or claims;

2. The compensation arrangement provides for compensation that is not less than 80% of the provider's usual fee or charge.

(c) The insurer, in any arrangement described under par. (b), requires that the reduction in fees will be applied with respect to cost sharing portions of expenses incurred under the managed care plan to the extent the provider submits the claim directly to the insurer.

(d) The provider is not directly or indirectly managed, owned, or employed by the insurer.

(e) The insurer does not disclose, market, advertise, provide a telephone service or number relating to, or include in policyholder or enrollee material information relating to, the availability of the compensation arrangement described under par. (b), or the names or addresses of the provider or an entity that maintains a compensation arrangement described under par. (b), except to the

expression of

provision of services or of an insurer offering a def. network plan or administration of a def. network plan

(9m) "Intermediate entity" means a provider network, a provider association, a provider leasing arrangement or other similar entity that contracts with providers for the rendering of health care services, then or supplies to enrollees of a def. network plan or PPP and also contracts with the insurer

def. network, offering a def. network plan or PPP.

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extent required by law in processing of explanation of benefits. The insurer may not indirectly cause or permit a prohibited disclosure and may not make any such disclosure in the course of utilization review or pre-authorization functions.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00; correction in (12) made under s. 13.93 (2m) (b) 7., Stats.

### Subchapter II — Financial Standards for Health Maintenance Organizations or Limited Service Health Organizations

**Ins 9.02 Purpose.** This subchapter establishes financial standards for health maintenance organizations and limited service health organizations doing business in Wisconsin. These requirements are in addition to any other statutory or administrative rule requirements that apply to health maintenance organizations and limited service health organizations.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

**Ins 9.03 Scope.** This subchapter applies to all insurers writing health maintenance organization or limited service health organization business in this state.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

**Ins 9.04 Financial requirements.** The following are the minimum financial requirements for compliance with this section unless a different amount is ordered by the commissioner:

(1) **CAPITAL.** Unless otherwise ordered by the commissioner the minimum capital or permanent surplus of:

(a) A health maintenance organization insurer first licensed or organized on or after July 1, 1989, is \$750,000;

(b) A health maintenance organization insurer first licensed or organized prior to July 1, 1989, is \$200,000;

(c) The minimum capital or permanent surplus requirement for an insurer licensed to write only limited service health organization business shall be not less than \$75,000. The commissioner may accept the deposit or letter of credit under sub. (3) to satisfy the minimum capital or permanent surplus requirement under this par. (c), if the insurer licensed to write only limited service health organization business demonstrates to the satisfaction of the commissioner that it does not retain any risk of financial loss because all risk of loss has been transferred to providers through provider agreements.

(d) Any other insurer writing health maintenance organization or limited service health organization business, is the amount of capital or required surplus required under the statutes governing the organization of the insurer.

(2) **COMPULSORY SURPLUS.** (a) An insurer, including an insurer organized under ch. 613, Stats., writing health maintenance organization or limited service health organization business, except for a health maintenance organization insurer or an insurer licensed to write only limited service health organization business, is subject to s. Ins 51.80.

(b) A health maintenance organization insurer shall maintain a compulsory surplus as follows, or a greater amount required by order of the commissioner: the greater of \$750,000 or an amount equal to the sum of:

1. 10% of premiums earned in the previous 12 months for policies that include coverages that are considered other insurance business under s. 609.03 (3) (a) 3., Stats., plus;

2. 3% of other premiums earned in the previous 12 months except that if the percentage of the liabilities of the health maintenance organization insurer that are covered liabilities is less than 90%, 6% of other premiums earned in the previous 12 months.

(c) Each insurer licensed to write only limited service health organization business shall maintain a compulsory surplus to provide security against contingencies that affect its financial position but which are not fully covered by provider contracts, insolvency insurance, reinsurance, or other forms of financial

guarantees. The compulsory surplus shall be the greater of 3% of the premiums earned by the limited service health organization in the previous 12 months, or \$75,000.

(d) The commissioner may accept a deposit of securities or letter of credit with the same terms and conditions as required under sub. (3) to satisfy the compulsory surplus requirement if the limited service health organization demonstrates to the satisfaction of the commissioner that it does not retain any risk of financial loss because all risk of loss has been transferred to providers through provider agreements. The commissioner may, by order, require a higher or lower compulsory surplus or may establish additional factors for determining the amount of compulsory surplus required for a particular limited service health organization.

(3) **DEPOSIT OR LETTER OF CREDIT.** Each limited service health organization shall maintain either a deposit of securities with the state treasurer or an acceptable letter of credit on file with the commissioner's office. The amount of the deposit or letter of credit shall be not less than \$75,000 for limited service health organizations. The letter of credit shall be payable to the commissioner whenever rehabilitation or liquidation proceedings are initiated against the limited service health organization.

(4) **RISKS.** Risks and factors the commissioner may consider in determining whether to require greater compulsory surplus by order include, but are not limited to, those described under s. 623.11 (1) (a) and (b), Stats., and the extent to which the insurer effectively transfers risk to providers. A health maintenance organization insurer may transfer risk through any mechanism including, but not limited to, those provided under s. Ins 9.05 (4).

(5) **SECURITY SURPLUS.** (a) An insurer, including an insurer organized under ch. 613, Stats., writing health maintenance organization insurance or limited service health organization business, except for a health maintenance organization insurer or an insurer licensed to write only limited service health organization business, is subject to s. Ins 51.80.

(b) Health maintenance organization insurers and insurers licensed to write only limited service health organization business should maintain a security surplus to provide an ample margin of safety and clearly assure a sound operation. The security surplus of a health maintenance organization insurer shall be the greater of:

1. Compulsory surplus plus 40% reduced by 1% for each \$33 million of premium in excess of \$10 million earned in the previous 12 months; or

2. 110% of its compulsory surplus.

(c) The security surplus of an insurer licensed to write only limited service health organization business shall be not less than 110% of compulsory surplus.

(6) **INSOLVENCY PROTECTION FOR POLICYHOLDERS.** (a) Each health maintenance organization insurer is required to either maintain compulsory surplus as required for other insurers under s. Ins 51.80 or to demonstrate that in the event of insolvency all of the following shall be met:

1. Enrollees hospitalized on the date of insolvency will be covered until discharged.

2. Enrollees will be entitled to similar, alternate coverage that does not contain any medical underwriting or pre-existing limitation requirements.

(b) Each insurer licensed to write only limited service health organization business that provides hospital benefits shall demonstrate that, in the event of an insolvency, enrollees hospitalized at the time of an insolvency will be covered until discharged.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

**Ins 9.05 Business plan.** All applications for certificates of incorporation and certificates of authority of a health maintenance organization insurer or an insurer licensed to write only limited service health organization business shall include a proposed business plan. In addition to the items listed in ss. 611.13(2) and

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613.13 (1), Stats., the following information shall be contained in the business plan:

- (1) ORGANIZATION TYPE. (a) The type of health maintenance organization insurer, including whether the providers affiliated with the organization will be salaried employees, group contractors, or individual contractors.
- (b) The type of limited service health organization insurer including:
  1. The name and address of the insurer licensed to write only limited service health organization business and the names and addresses of individual providers, if any, who control the insurer licensed to write only limited service health organization business, and;
  2. The type of organization, including information on whether providers will be salaried employees of the organization or individual or group contractors.
- (2) FEASIBILITY STUDIES AND MARKETING SURVEYS. A summary of feasibility studies or marketing surveys that support the financial and enrollment projections for the health maintenance organization insurer or the insurer licensed to write only limited service health organization business. The summary shall include the potential number of enrollees in the operating territory, the projected number of enrollees for the first 5 years, the underwriting standards to be applied, and the method of marketing the organization.
- (3) GEOGRAPHICAL SERVICE AREA. The geographical service area by county including a chart showing the number of primary and specialty care providers with locations and service areas by county; the method of handling emergency care, with locations of emergency care facilities; and the method of handling out-of-area services.
- (4) PROVIDER AGREEMENTS. The extent to which any of the following will be included in provider agreements and the form of any provisions that do any of the following:
  - (a) Limit the providers' ability to seek reimbursement for covered services from policyholders or enrollees.
  - (b) Permit or require the provider to assume a financial risk in the health maintenance organization insurer, including any provisions for assessing the provider, adjusting capitation or fee-for-service rates, or sharing in the earnings or losses.
  - (c) Govern amending or terminating agreements with providers.
- (5) PROVIDER AVAILABILITY. A description of how services will be provided to policyholders in each service area, including the extent to which primary care will be given by providers under contract with the health maintenance organization insurer.
- (6) QUALITY ASSURANCE. A summary of comprehensive quality assurance standards that identify, evaluate and remedy problems related to access to care and continuity and quality of care. The summary shall address all of the following:
  - (a) A written internal quality assurance program.
  - (b) Written guidelines for quality of care studies and monitoring.
  - (c) Performance and clinical outcomes-based criteria.
  - (d) Procedures for remedial action to address quality problems, including written procedures for taking appropriate corrective action.
  - (e) Plans for gathering and assessing data.
  - (f) A peer review process.
  - (g) A process to inform enrollees on the results of the insurer's quality assurance program.
  - (h) Any additional information requested by the commissioner.
- (7) PLAN ADMINISTRATION. A summary of how administrative services will be provided, including the size and qualifications of

the administrative staff and the projected cost of administration in relation to premium income. If management authority for a major corporate function is delegated to a person outside the organization, the business plan shall include a copy of the contract. Contracts for delegated management authority shall be filed for approval with the commissioner under ss. 611.67 and 618.22, Stats. The contract shall include all of the following:

- (a) The services to be provided.
- (b) The standards of performance for the manager.
- (c) The method of payment including any provisions for the administrator to participate in the profit or losses of the plan.
- (d) The duration of the contract.
- (e) Any provisions for modifying, terminating or renewing the contract.

(8) FINANCIAL PROJECTIONS. A summary of current and projected enrollment; income from premiums by type of payor; other income; administrative and other costs; the projected break even point, including the method of funding the accumulated losses until the break even point is reached; and a summary of the assumptions made in developing projected operating results.

(9) FINANCIAL GUARANTEES. A summary of all financial guarantees by providers, sponsors, affiliates or parents within a holding company system, or any other guarantees which are intended to ensure the financial success of the health maintenance organization insurer. These include hold harmless agreements by providers, insolvency insurance, reinsurance or other guarantees.

(10) CONTRACTS WITH ENROLLEES. A summary of benefits to be offered enrollees including any limitations and exclusions and the renewability of all contracts to be written.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

**Ins 9.06 Changes in the business plan.** (1) A health maintenance organization insurer or an insurer licensed to write only limited service health organization business shall file a written report of any proposed substantial change in its business plan. The insurer shall file the report at least 60 days prior to the effective date of the change. The office may disapprove the change. The insurer may not enter into any transaction, contract, amendment to a transaction or contract or take action or make any omission that is a substantial change in the insurer's business plan prior to the effective date of the change or if the change is disapproved. Substantial changes include changes in articles and bylaws, organization type, geographical service areas, provider agreements, provider availability, plan administration, financial projections and guarantees and any other change that might affect the financial solvency of the plan. Any changes in the items listed in s. Ins 9.05 (4) shall be filed under this section.

(2) A change in the quality assurance plan conducted in accordance with s. Ins 9.40 and s. 609.32, Stats., is not a reportable change in a business plan.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

**Ins 9.07 Copies of provider agreements.** (1) Notwithstanding any claim of trade secret or proprietary information, all managed care plan insurers and limited service health organization insurers shall, upon request, make available to the commissioner all executed copies of any provider agreements between the insurer and subcontracts with individual practice associations or individual providers. Managed care plans, provider networks or independent practice associations may assert that a portion of the contracts contain trade secrets and the commissioner may withhold that portion from the insurer to the extent it may be withheld under s. Ins 6.13.

(2) All health maintenance organization insurers or insurers licensed to write only limited service health organization business shall file with the commissioner, prior to doing business, copies of all executed provider agreements and other contracts covering liabilities of the health maintenance organization. For contracts



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with providers, a list of providers executing a standard contract and a copy of the form of the contract may be filed instead of copies of the executed contracts.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

**Ins 9.08 Other reporting requirements. (1) ANNUAL STATEMENT.** All insurers authorized to write health maintenance organization business and insurers licensed to write only limited service health organization business shall file with the commissioner by March 1 of each year an annual statement for the preceding year. A health maintenance organization insurer shall use the current health maintenance organization annual statement blank prepared by the national association of insurance commissioners.

(a) A health maintenance organization insurer shall include with its annual statement a statement of covered expenses, and a special procedures opinion from a certified public accountant, in the form prescribed by the commissioner as appendix A.

(b) A health maintenance organization insurer shall file a quarterly report, including a report concerning covered expenses, in a form prescribed by the commissioner within 45 days after the close of each of the first 3 calendar quarters of the year unless the commissioner has notified the insurer that another reporting schedule is appropriate.

(c) A health maintenance organization insurer shall include with its annual audit financial reports filed under s. Ins 50.05 a statement of covered expenses and an audit opinion concerning the statement. Both the statement and opinion shall be in the form prescribed by the commissioner as appendix B and are due no later than May 1 of each year.

**(2) QUARTERLY REPORT.** An insurer writing health maintenance organization business, other than a health maintenance organization insurer, shall file a quarterly report in a form prescribed by the commissioner within 45 days after the close of each of the first 3 calendar quarters of the year unless the commissioner notifies the insurer that another reporting schedule is appropriate.

**(3) PRESUMPTIONS.** (a) If a health maintenance organization insurer fails to file a statement or opinion required under subs. (1) to (3) by the time required, it is presumed, in any action brought by the office within one year of the due date, that the health maintenance organization insurer is in financially hazardous condition and that the percentage of its liabilities for health care costs which are covered liabilities is and continues to be less than 65% for the purpose of s. 609.95, Stats.

(b) It is presumed that the percentage of liabilities that are covered liabilities of a health maintenance organization insurer is and continues to be not greater than the percentage of covered expenses stated in the report or statement filed under subs. (1) to (3) for the most recent period.

(c) The health maintenance organization insurer has the burden of refuting a presumption under par. (a) or (b).

**(4) ANNUAL STATEMENT FORM.** An insurer licensed to write only limited service health organization business shall use the current Limited Service Health Organization annual statement blank prepared by the national association of insurance commissioners. All other insurers shall file an annual report in a form prescribed by the commissioner.

Note: The list of the forms described in subs. (1) and (4) may be obtained from the Office of the Commissioner of Insurance, P. O. Box 7873, Madison, WI 53707-7873.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

**Ins 9.09 Notice of election and termination of hold harmless. (1)** A notice of election to be exempt from s. 609.91 (1) (b), Stats., or a notice of termination of election to be subject to s. 609.91 (1) (c), Stats., in accord with s. 609.925 (1), Stats., is effective only if filed on the form prescribed by the commissioner and if the form is properly completed.

**(2)** A notice of termination of election to be exempt from s. 609.91 (1) (b), Stats., in accord with s. 609.92 (4), Stats., or a

notice of termination of election to be subject to s. 609.91 (1) (c), Stats., in accord with s. 609.925 (2), Stats., shall be filed on the form prescribed by the commissioner. Notices described in this subsection that are filed with the commissioner but are not on the prescribed form or are not properly completed are nevertheless effective.

**(3)** In accordance with s. 609.93, Stats., a provider may not exercise an election under s. 609.92 or 609.925, Stats., separately from a clinic or an individual practice association with respect to health care costs arising from health care provided under a contract with, or through membership in, the individual practice association or provided through the clinic.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

**Ins 9.10 Receivables from affiliates.** A receivable, note or other obligation of an affiliate to a health maintenance organization insurer and limited service health organization insurer shall be valued at zero by the insurer for all purposes including, but not limited to, the purpose of reports or statements filed with the office, unless the commissioner specifically approves a different value. The different value shall be not more than the amount of the receivable, note or other obligation which is fully secured by a security interest in cash or cash equivalents held in a segregated account or trust.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

**Ins 9.11 Receivables from Individual Practice Association ("IPA").** After December 31, 1990, a health maintenance organization insurer shall value receivables, notes or obligations of individual practice associations as defined under s. 600.03 (23g), Stats., at zero for all purposes including, but not limited to, the purpose of reports or statements filed with the office, unless the receivable, note or obligation is fully secured by a security interest in cash or cash equivalents held in a segregated account or trust.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

**Ins 9.12 Incidental or immaterial indemnity business in health maintenance organizations. (1)** Except as provided by sub. (2), insurance business is not incidental or immaterial under s. 609.03 (3) (a) 3., Stats., if a health maintenance organization insurer issues coverage which is not typically included in a health maintenance organization or limited service health organization policy and the insurer does any of the following:

(a) Markets the policy containing the coverage.

(b) The total premium for policies containing the coverage exceeds or is projected to exceed 5% of total premium earned in any 12-month period.

**(2)** Insurance business is incidental or immaterial under s. 609.03 (3) (a) 3., Stats., if the business is written according to the terms of a specific business plan for issuance of coverage under s. 609.03 (3) (a) 3., Stats., and the business plan is approved in writing by the office. A request for approval to do business under this paragraph including, but not limited to, issuance of policies with point of service coverage, shall include a detailed business plan, a copy of the policy form, a detailed description of how the business will be marketed and premium volume controlled, and other information prescribed by the office. The total premium for policies containing coverages subject to this paragraph and policies issued under sub. (1) may not exceed 10% of premium earned or projected to be earned in any 12-month period.

**(3)** If the commissioner approves insurance business as incidental or immaterial the commissioner may also, by order under s. Ins 9.04 (2), require the insurer to maintain more than the minimum compulsory surplus.

**(4)** For the purpose of this section, any coverage that covers services by a provider other than a participating provider is not typically included in a health maintenance organization or limited

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service health organization policy, except coverage of emergency out-of-area services.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

**Ins 9.13 Summary.** A health maintenance organization insurer shall use the form prescribed in appendix C to comply with s. 609.94, Stats.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

**Ins 9.14 Nondomestic HMO.** No certificate of authority may be issued under ch. 618, Stats., to a person to do health maintenance organization or limited service health organization business in this state unless the person is organized and regulated as an insurer and domiciled in the United States.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

**Ins 9.15 Time period.** In accordance with s. 227.116, Stats., the commissioner shall review and make a determination on an application for a certificate of authority within 60 business days after it has been received.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

**Subchapter III — Market Conduct Standards for Managed Care Plans**

**Ins 9.30 Purpose.** This subchapter establishes market conduct standards for insurers offering managed care plans, preferred provider plans and limited service health organizations doing business in Wisconsin. These requirements are in addition to any other statutory or administrative rule requirements that apply to insurers offering managed care plans, preferred provider plans or limited service health organizations.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

**Ins 9.31 Scope.** This subchapter applies to all insurers offering managed care plans or limited service health organization plans in this state. The insurer shall ensure that the requirements of this subchapter are met by all managed care plans, preferred provider plans or limited service health organization plans issued by the insurer. The commissioner may approve an exemption to this subchapter for an insurer to market a managed care plan, preferred provider plan or limited service health organization plan if the plan is filed with the commissioner and the commissioner determines that all of the following conditions are met:

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- (1) The coverage involves ancillary coverage with minimal cost controls, such as minimal cost controls involving vision, prescription cards or transplant centers.
- (2) The cost controls are unlikely to significantly affect the pattern of practice.
- (3) The exemption is consistent with the purpose of this subchapter.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

**Ins 9.32 Limited exemptions.** (1) SILENT DISCOUNT. An insurer, with respect to a managed care plan:

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- (a) Is exempt from meeting the requirements under ss. 609.22, 609.24, 609.32, 609.34, 609.36 and 632.83, Stats., and ss. Ins 9.34, 9.35, 9.37, 9.38, 9.39, 9.40 (1) to (7), 9.42 (1) to (7), if the only owned, employed, or participating provider providing services covered under the plan is a silent provider network.
- (b) Is exempt from meeting the requirements under ss. 609.22, 609.24, 609.32, 609.34, and 609.36, Stats., and ss. Ins 9.34, 9.35, 9.37, 9.38, 9.39, 9.40 (1) to (7), and 9.42 (1) to (7), solely with respect to services provided by the silent provider network, if the plan also covers services by providers that the insurer owns or employs, or another participating provider. An insurer is not exempt from these provisions with respect to a provider that is not a silent provider network.

(2) DE MINIMIS LIMITED EXCEPTION. Insurers offering managed care plans are exempt from meeting the requirements under ss. 609.22 (1) to (4) and (8), 609.32 and 609.34, Stats., ss. Ins 9.34, 9.35, 9.37, 9.38, 9.39, 9.40 (1) to (7), 9.42 (1) to (7), with respect to a managed care plan, if the insurer meets all of the following requirements:

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(a) The managed care plan provides comprehensive benefits to insureds of at least 80% coverage for in-plan providers.

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(b) The insurer's only financial incentive to the insureds to utilize participating providers is a co-insurance differential of not more than 10% between in-plan versus off-plan providers. Except for the co-insurance differential of no greater than 10%, all benefits, deductibles and co-payments must be the same regardless of whether the insured obtains benefits, services or supplies from in-plan or off-plan providers.

(c) The insurer makes no representation regarding quality of care.

(d) The insurer makes no representation that the managed care plan is a preferred provider plan or that the plan directs or is responsible for the quality of health care services. Nothing in this paragraph prevents an insurer from describing the availability or limits on availability of participating providers or the extent or limits of coverage under the managed care plan if participating or non-participating providers are utilized by an insured.

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(e) The insurer, at the time an application is solicited, does all of the following:

1. Discloses to a potential applicant, and allows the applicant a reasonable opportunity to review, a directory which reasonably and clearly discloses the availability and location of providers:

a. Within reasonable travel distance from the principle location of the place of employment of employees likely to enroll under the plan, if the applicant is an employer; or

b. Within reasonable travel distance from the residence of the proposed insured, for any other application.

2. Obtains on the application, or on an addendum to the application, the applicant's signed acknowledgement that the applicant:

a. Has reviewed the disclosure under subd. 1.;

b. Understands that participating providers may or may not be available to provide services and that the insurer is not required to make participating providers available; and

c. Understands that the plan will provide reduced benefits if the insured uses a non-participating provider.

3. Provides to each applicant a copy of the provider directory at the time the policy is issued.

4. The insurer provides access to translation services for the purpose of providing information concerning benefits, to the greatest extent possible, if a significant number of enrollees of the plan customarily use languages other than English.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00; correction in (1) (a) made under s. 13.95 (2m) (b) 7, Stats., Register November 2001 No. 551.

**Ins 9.33 Grievance procedure.** History: Cr. Register, February, 2000, No. 530, eff. 3-1-00; corrections in (1) (a), (5) (d), (g), and (7) (c) (intro.) made under s. 13.95 (2m) (b) 7, Stats.; CR 00-169: r. Register November 2001 No. 551, eff. 12-1-01.

**Ins 9.34 Access standards.** (1) ANNUAL CERTIFICATION. An insurer offering a managed care plan shall file a certification with the commissioner within 3 months after the effective date of this rule, and thereafter, no later than August 1 of each year shall submit an annual certification to the commissioner demonstrating compliance with the access standards of this section and with s. 609.22, Stats., and s. Ins 9.32 for the preceding year. The certification shall be submitted on a form prescribed by the commissioner and signed by an officer of the company.

(2) ADDITIONAL REQUIREMENTS. An insurer offering a managed care plan shall have the capability to:

(a) Provide covered benefits by plan providers with reasonable promptness with respect to geographic location, hours of operation, waiting times for appointments in provider offices and after hours care. The hours of operation, waiting times, and availability

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of after hours care shall reflect the usual practice in the local area. Geographic availability shall reflect the usual medical travel times within the community.

(b) Have sufficient number and type of plan providers to adequately deliver all covered services based on the demographics and health status of current and expected enrollees served by the plan.

(c) Provide 24-hour nationwide toll-free telephone access for its enrollees to the plan or to a participating provider for authorization for care which is covered by the plan.

Note: A copy of the annual certification form may be obtained from the Office of the Commissioner of Insurance, P. O. Box 7873, Madison, WI 53707-7873.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

Ins 9.35 Continuity of care. (1) In addition to the requirements of s. 609.24, Stats., a managed care plan shall do one of the following:

(a) Upon termination of a provider from a managed care plan, the plan shall appropriately notify all enrollees of the termination, provide information on substitute providers, and at least identify the terminated providers within a separate section of the annual provider directory. In addition, the plan shall comply with the following as appropriate:

1. If the terminating provider is a primary provider and the managed care plan requires enrollees to designate a primary provider, the plan shall notify each enrollee who designated the terminating provider of the termination the greater of 30 days prior to the termination or 15 days following the insurer's receipt of the provider's termination notice and shall describe each enrollee's options for receiving continued care from the terminated provider.

2. If the terminating provider is a specialist and the managed care plan requires a referral, the plan shall notify each enrollee authorized by referral to receive care from the specialist of the termination the greater of 30 days prior to the termination or 15 days following the insurer's receipt of the provider's termination notice and describe each enrollee's options for receiving continued care from the terminated provider.

3. If the terminating provider is a specialist and the managed care plan does not require a referral, the provider's contract with the plan shall comply with the requirements of s. 609.24, Stats., and require the provider to post a notification of termination with the plan in the provider's office the greater of 30 days prior to the termination or 15 days following the insurer's receipt of the provider's termination notice.

(b) 1. Upon termination of a provider from a managed care plan, the plan shall notify all affected enrollees of the termination and each enrollee's options for receiving continued care from the terminated provider not later than 30 days prior to the termination, or upon notice by the provider if the plan receives less than 30 days notice. The managed care plan shall provide information on substitute providers to all affected enrollees.

2. If the provider is a primary provider and the managed care plan requires enrollees to designate a primary provider, the plan shall notify all enrollees who designated the terminating provider.

(2) A managed care plan is not required to provide continued coverage for the services of a provider if either of the following are met:

(a) The provider no longer practices in the managed care plan's geographic service area.

(b) The insurer issuing the managed care plan terminates the provider's contract due to misconduct on the part of the provider.

(3) The managed care plan shall make available to the commissioner upon request all information needed to establish cause for termination of providers.

(4) Medicare + Choice plans are not subject to s. 609.24 (1) (c), Stats., in accordance with 42 USC 1395w-26 (3) (B) ii.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

Ins 9.36 Gag clauses. (1) No contract between a managed care plan and a participating provider may limit the provider's ability to disclose information, to or on behalf of an enrollee, about the enrollee's medical condition.

(2) A participating provider may discuss, with or on behalf of an enrollee, all treatment options and any other information that the provider determines to be in the best interest of the enrollee and within the scope of the provider's professional license. A managed care plan may not penalize the participating provider nor terminate the contract of a participating provider because the provider makes referrals to other participating providers or discusses medically necessary or appropriate care with or on behalf of an enrollee. A managed care plan may not retaliate against a provider for advising an enrollee of treatment options that are not covered benefits under the plan.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

Ins 9.37 Notice requirements. (1) PROVIDED INFORMATION. Prior to enrolling members, managed care plans shall provide to prospective group or individual policyholders information on the plan including all of the following:

- (a) Covered services.
(b) A definition of emergency and out-of-area coverage.
(c) Cost sharing requirements.
(d) Enrollment procedures.
(e) Limitations on benefits including limitations on choice of providers and the geographical area serviced by the plan.

(2) PROVIDER DIRECTORIES. Managed care plans shall make current provider directories available to enrollees upon enrollment, and no less than annually, following the first year of enrollment. PPPs shall also include language that identifies the number of providers.

(3) OBSTETRICIANS AND GYNECOLOGISTS. Managed care plans that permit obstetricians or gynecologists to serve as primary providers shall clearly so state in enrollment materials. Managed care plans that limit access to obstetricians and gynecologists shall clearly state in enrollment materials the process for obtaining referrals.

(4) STANDING REFERRAL CRITERIA. Managed care plans shall make information available to their enrollees describing the criteria for obtaining a standing referral to a specialist, including under what circumstances and for what services a standing referral is available, how to request a standing referral and how to appeal a standing referral determination. For purposes of s. 609.22 (4), Stats., and this subsection, referral includes prior authorization for services, use or designation of a primary care provider of the insurer, or a similar method for designating referrals to specialists and a general practitioner, as determined by the commissioner.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

Ins 9.38 Policy and certificate language requirements. Each policy form marketed or each certificate issued to an enrollee by a managed care plan or limited service health organization plan shall contain all of the following:

(1) DEFINITIONS. A definition of geographical service area, emergency care, urgent care, out-of-area service, dependent and primary provider, if these terms or terms of similar meaning are used in the policy or certificate and have an effect on the benefits covered by the plan. The definition of geographical service area need not be stated in the text of the policy or certificate if such definition is adequately described in an attachment that is given to all enrollees along with the policy or certificate.

(2) DISCLOSURE OF EXCLUSIONS, LIMITATIONS AND EXCEPTIONS. Clear disclosure of any provision that limits benefits or access to services in the exclusions, limitations, and exceptions sections of the policy or certificate. Among the exclusions, limitations and exceptions that shall be disclosed are those relating to:

- (a) Emergency and urgent care.
(b) Restrictions on the selection of primary or referral providers.

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- (c) Restrictions on changing providers during the contract period.
- (d) Out-of-pocket costs including copayments and deductibles.
- (e) Any restrictions on coverage for dependents who do not reside in the service area.

(3) DISCLOSURE OF MANDATED BENEFITS. Clear disclosure of all benefit mandates outlined in Wisconsin statutes.

(4) DISCLOSURE OF PROCEDURES AND EMERGENCY CARE NOTIFICATION. Managed care plans shall do all of the following in a manner consistent with s. 609.22, Stats.:

(a) Provide a description of the procedure for an enrollee to obtain any required referral, including the right to a standing referral, and notice that any enrollee may request the criteria for the standing referral.

(b) Provide a description of the procedure for any enrollee to obtain a second opinion from a participating plan provider consistent with s. 609.22 (5), Stats.

(c) Consistent with s. 609.22 (6), Stats., managed care plan may require enrollees to notify the insurer of emergency room usage, but in no case may the managed care plan require notification less than 48 hours after receiving services or before it is medically feasible for the enrollee to provide the notice, whichever is later. A managed care plan may impose no greater penalty than assessing a deductible that may not exceed the lesser of 50% of covered expenses for emergency treatment or \$250.00 for failing to comply with emergency treatment notification requirements.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

(b) The failure of the enrollee to follow a prescribed course of treatment.

(c) The failure of an enrollee to keep appointments or to follow other administrative procedures or requirements.

(4) ALTERNATIVE COVERAGE FOR DISENROLLED ENROLLEES. A health maintenance organization or limited service health organization other than a Medicare + Choice plan that has disenrolled an enrollee for any reason except failure to pay required premiums shall make arrangements to provide similar alternate insurance coverage to the enrollee. In the case of group certificate holders, the insurance coverage shall be continued until the affected enrollee finds his or her own coverage or until the next opportunity to change insurers, whichever comes first. In the case of an enrollee covered on an individual basis, coverage shall be continued until the anniversary date of the policy or for one year, whichever is earlier.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

Ins 9.40 Required quality assurance plans. (1) In this section:

(a) "HEDIS data" means the elements of the Health Plan Employer Data and Information Set as defined by the National Committee on Quality Assurance.

(b) "Quality assurance" means the measurement and evaluation of the quality and outcomes of medical care provided.

(c) "Preferred provider plan" means a managed care plan that meets the definition in s. 609.01 (4), Stats. A preferred provider plan does not include any of the following:

1. Coverage written in whole or in part by a health maintenance organization insurer as defined under s. 600.03 (23c), Stats.
2. Coverage where an insurer provides a significant portion of services to its enrollees through direct or indirect risk transferance contracts with providers, including but not limited to capitation, withholds, global budgets, or target expected expenses or claims.
3. Coverage which is marketed by an insurer as, or is, a health maintenance organization plan.

(2) By April 1, 2000, an insurer, with respect to a managed care plan that is not a preferred provider plan, and by April 1, 2007, with respect to a preferred provider plan, shall submit a quality assurance plan consistent with the requirements of s. 609.32, Stats., to the commissioner. The plans shall submit a quality assurance plan that is consistent with the requirements of s. 609.32, Stats., by April 1 of each subsequent year. The quality assurance plan shall be designed to reasonably assure that health care services provided to enrollees of the managed care plan meet the quality of care standards consistent with prevailing standards of medical practice in the community. The quality assurance plan shall document the procedures used to train employees of the managed care plan in the content of the quality assurance plan.

(3) (a) No later than October 1, 2003, and by October 1 each year prior to 2007, every insurer, with respect to a preferred provider plan, shall submit to the commissioner a quality assurance plan appropriate to the plan structure. The quality assurance plan shall be designed to reasonably assure that health care services provided to enrollees of the preferred provider plan meet the quality of care standards consistent with prevailing standards of medical practice in the community. The quality assurance program shall, to the extent it is reasonably given the nature of the direct and indirect arrangement with the providers and type of plan, be designed to assure the quality of services provided by the plan and participating providers. A preferred provider plan shall include in its quality assurance activities an analysis of the plan's grievances, complaints and appeals, statistically credible administrative claims data and other data that is reasonably attainable. An insurer may:

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*and remedial action*

*def. netw.*

*except as provided in par. (2)*

*def. netw.*

*and subsequent year.*

*(b) Insurers offering a def. netw. plan that is not also a PPP or NMO plan shall submit a quality assurance plan consistent with the requirements of par. (a) and s. 609.32, Stats., to the commissioner by 4/1/03 and by 4/1 of*

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1. Include other quality activities such as participant satisfaction surveys, community-based quality improvement/collaborations or health initiatives.

2. Substitute a medical director or contracted medical advisor for the peer review process required under s. 609.32 (1) (f), Stats.

(b) An insurer, with respect to a preferred provider plan, shall also meet the requirements of s. 609.32 (2) (a), Stats., by October 1, 2002, including all of the following:

1. Meet the requirements of s. 609.32 (2) (b), Stats., every four years following initial selection of a provider, except that assessment of clinical outcomes is required only to the extent that the plan is reasonably able to measure such.

2. Direct appointment of a medical director or medical advisor is required only to the extent that the plan assumes direct responsibility for clinical protocols, quality assurance activities and utilization management policies. The insurer may contract for those services otherwise.

(c) An insurer, with respect to a preferred provider plan, may use the quality assurance plan of a health care provider group or another managed care plan to meet the requirements of par. (a) or (b) and the quality assurance requirements under s. 609.32, Stats., if all of the following apply:

1. The participating providers in the managed care plan are substantially the same as the participating providers in the health care provider group or managed care plan for which the quality assurance plan was developed.

2. The preferred provider plan develops a process to monitor, evaluate and remedy complaints and grievances specific to its health benefit plans and participating providers.

(d) An insurer, with respect to a preferred provider plan, shall:

1. By April 1, 2001, establish and file with the commissioner a written plan, including specific goals, activities and time frames to obtain those personnel and other resources, systems, and contractual arrangements by October 1, 2003, reasonably necessary to enable the insurer to carry out the plan described under par. (a) or provide a written plan for compliance with par. (a) or (b) as permitted under par. (c).

2. Not later than April 1 of each calendar year prior to 2004, submit a progress report on its actions implementing its plan to implement its quality assurance plan or to comply under par. (c).

(e) This subsection does not apply after March 31, 2007.

(4) All insurers, with respect to managed care plans, including preferred provider plans, shall establish and maintain a quality assurance committee and a written policy governing the activities of the quality assurance committee that assigns to the committee responsibility and authority for the quality assurance program. A preferred provider plan shall require all complaints, appeals and grievances relating to quality of care to be reviewed by the quality assurance committee.

(5) Beginning June 1, 2002, every health maintenance organization shall submit the HEDIS data, or other standardized data set appropriate for health maintenance organizations designated by the commissioner, for the previous calendar year to the commissioner no later than June 15 or the HEDIS submission deadline established by the national committee for quality assurance of each year.

(6) Beginning June 1, 2004, every managed care plan other than a health maintenance organization plan, shall submit the standardized data set designated by the commissioner and appropriate to the specific plan type for the previous calendar year to the commissioner no later than June 15 of each year.

(7) No later than April 1, 2001, all managed care plans, including health maintenance organization plans shall:

(a) Include a summary of its quality assurance plan in its marketing materials.

(b) Include a brief summary of its quality assurance plan and a statement of patient rights and responsibilities with respect to the plan in its certificate of coverage or enrollment materials.

(8) Beginning April 1, 2000, an insurer offering any managed care plan shall submit an annual certification for each plan with the commissioner no later than April 1 of each year. The certification shall assert the type of plan and be signed by an officer of the company. OCI shall maintain for public review a current list of health benefit plans, categorized by type.

History: Cr. Register, February, 2000, No. 530, eff. 3-1-00.

Ins 9.42 Compliance program requirements. (1) All insurers writing managed care plans, preferred provider plans and limited service health organization insurers, except to the extent otherwise exempted under this chapter by statute, are responsible for compliance with ss. 609.22, 609.24, 609.30, 609.32, 609.34, 609.36, and 632.83, Stats., applicable sections of this subchapter and other applicable sections including but not limited to s. Ins 9.07. Insurers, to the extent they are required to comply with those provisions, shall establish a compliance program and procedures to verify compliance. Nothing in this section shall affect the availability of the privilege established under s. 146.38, Stats.

(2) The insurers shall establish and operate a compliance program that provides reasonable assurance that:

(a) The insurer is in compliance with ss. 609.22, 609.24, 609.30, 609.32, 609.34, 609.36, and 632.83, Stats., this subchapter and other applicable sections including but not limited to s. Ins 9.07.

(b) Any violations of ss. 609.22, 609.24, 609.30, 609.32, 609.34, 609.36, and 632.83, Stats., this subchapter or any applicable sections including but not limited to s. Ins 9.07 are detected and timely corrections are taken by the insurer.

(3) The insurer's compliance program shall include regular internal audits, including regular audits of any contractors or sub-contractors who perform functions relating to compliance with ss. 609.22, 609.24, 609.30, 609.32, 609.34, 609.36, and 632.83, Stats., this subchapter or any applicable sections including but not limited to s. Ins 9.07.

(4) An insurer that materially relies upon another party to carry out functions under ss. 609.22, 609.24, 609.30, 609.32, 609.34, 609.36, and 632.83, Stats., this subchapter or any applicable sections including but not limited to s. Ins 9.07, shall:

(a) Contractually require the other party to carry out those functions in compliance with ss. 609.22, 609.24, 609.30, 609.32, 609.34, 609.36, and 632.83, Stats., this subchapter and other applicable sections including but not limited to s. Ins 9.07.

(b) Enforce the contractual provisions required under par. (a).

(c) Include in the insurer's compliance program provisions to monitor, supervise and audit the performance of the other party in carrying out the functions.

(d) Maintain management reports and records reasonably necessary to monitor, supervise and audit the other party's performance.

(e) Include and enforce contractual provisions requiring the other party to give the office access to documentation demonstrating compliance with ss. 609.22, 609.24, 609.30, 609.32, 609.34, 609.36, and 632.83, Stats., this subchapter and other applicable sections including but not limited to s. Ins 9.07 within 15 days of receipt of notice.

(f) Regularly audit compliance with contract provisions including audits of internal working papers and reports.

(5) The insurer shall maintain all of the following items in its records:

(a) Any audits, and associated work papers of audits, conducted during the period of review relating to the business and service operation of the managed care plan, preferred provider plan or limited service health organization plan.

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Ins 9.41 Right of the commissioner to request OCI complaints be handled as grievances. An insurer offering a def. netw. plan shall treat and process an OCI complaint as a grievance of the insured of the commissioner. The commissioner will provide a written description of the OCI complaint to the insurer.

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(b) All provider directories and provider manuals for the period of review. The directory shall include, as an addendum, a list of all providers that disassociated with the insurer or provider network in the review period.

(c) A sample copy of the provider agreement, including those with a provider network, for each provider category including hospital, physician, medical clinic, pharmacy, mental health services and chiropractor.

(d) Copies of contracts for management services, data management and processing, marketing, administrative services and case management.

(e) A sample copy of each certificate form for the period of review including a copy of sample enrollment forms.

(6) Except as permitted under sub. (7), an insurer shall maintain a complete record of the following:

(a) An access plan developed in accordance with s. ins 9.40 and s. 609.22, Stats., requirements.

(b) A quality assurance plan developed in accordance with s. ins 9.40 and s. 609.32, Stats., requirements including means of identification, evaluation and correction of quality assurance problems.

(c) Credentialing policies and procedures and a credentialing plan.

(d) Utilization management procedures and policies.

(e) Minutes from any committee, physician association, or board of directors meeting pertaining to quality assurance, utilization management, and credentialing.

(7) An insurer that complies with subs. (1) to (5), may permit another party to maintain any record required under sub. (6), but only if both of the following requirements are met:

(a) The insurer includes and enforces the contractual provision described in sub. (4) (e).

(b) The insurer produces any required record within 15 days after the office requests the record.

(8) An insurer shall maintain all of the following documents that relate to a silent provider network and shall make them available at the request of the commissioner:

(a) Provider and provider network agreements, including addenda addressing reimbursement and discounts.

(b) A listing of providers participating in additional group or individual discount contracts with the insurer.

(c) Policy form numbers of those insurance products with silent discounts and associated marketing materials.

(d) Claims administration guidelines for processing discounts including silent discounts.

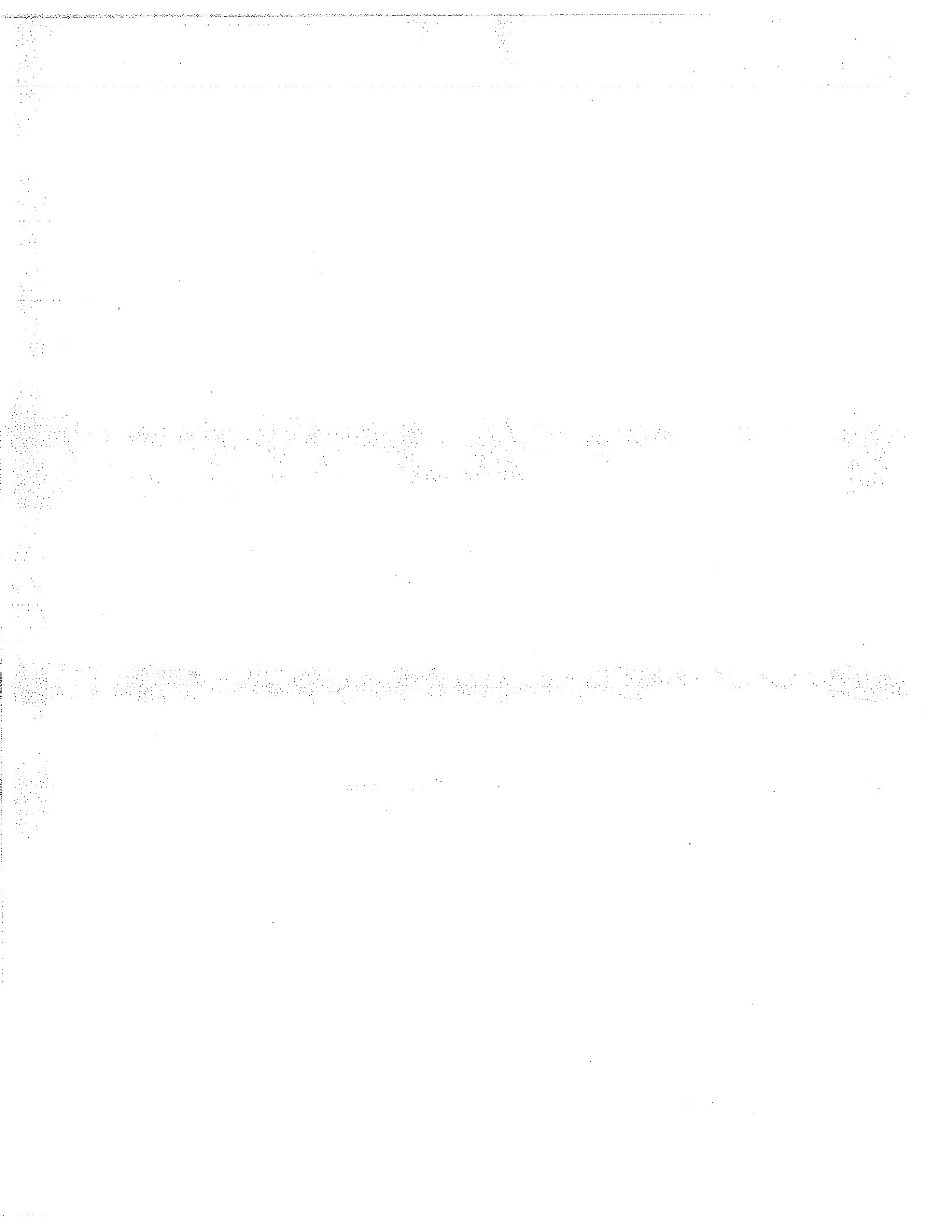
(e) Detailed documentation and explanation of claim system data fields and codes that identify silent discounts, other discount calculations, usual and customary calculations, and billed and paid amounts.

History: Cr. Register, February 2006, No. 530, eff. 3-1-06; corrections in (1) to (6) made under 13.52 (26) (b) 7., Stats., Register November 2004, No. 551.

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(9) An insurer offering a PPP that is not also a def. netw. plan shall comply with this section to the extent applicable.

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of health care services. Nothing in this paragraph prevents an insurer from describing the availability or limits on availability of participating providers or the extent or limits of coverage under the managed care ~~defined network~~ plan if participating or nonparticipating providers are utilized by an enrollee.

**SECTION 14.** INS 9.25, 9.26, 9.27, 9.30, 9.32 and 9.33 are created to read:

**9.25 Preferred provider plan same service provisions.** For purposes of s. 609.35, Stats., an insurer offering a preferred provider plan covers the same services when performed by a nonparticipating provider that it covers when those services are performed by a participating provider only if the insurer complies with all of the following:

(1) The insurer offering a preferred provider plan provides coverage ~~that complies with either of the following:~~

(a) Provides coverage for services performed by nonparticipating providers with the insurer paying at a coinsurance rate of not less than 60% and the enrollee paying at a coinsurance rate of not more than 40%.

(b) Provides coverage for services performed by nonparticipating providers with the insurer paying at a coinsurance rate not less than 50% and the enrollee paying at a coinsurance rate of not more than 50% ~~and the insurer provides the enrollee with the disclosure notice that is compliant with sub (5).~~

(2) The insurer offering a preferred provider plan equally applies material exclusions regardless if the services are performed by either participating or nonparticipating providers. The insurer may exceed the coinsurance differential in s. Ins 9.27 (1) ~~or the deductible differential in s. Ins 9.27 (2), or the co-payment differential in s. Ins 9.27 (3)~~ to the extent the insurer reasonably determines the cost sharing is necessary to encourage enrollees to use participating providers or centers of excellence for transplant or other unique disease treatment



services or preventive health care services limited to immunizations pursuant to s. 632.895 (14), Stats., and the services as covered benefits greater than the minimum required for specific mandated benefits under ss. 632.895 and 632.89, Stats., when the insurer at the time of solicitation and within the policy, does either or both, as applicable, of the following:

(a) Provides a disclosure to enrollees that identify the centers of excellence and the specific covered benefits that are covered at a different rate if provided by a health care provider that is recognized and identified as a center of excellence.

(b) Clearly and prominently discloses that either immunizations or expanded benefits above mandated minimum coverage, or both, are covered when performed by participating providers or with greater disparity than permitted in s. Ins 9.27 (1) through (3).

(3) The insurer offering a preferred provider plan provides coverage of services without use of any financial incentives other than maximum limits, out-of-pocket limits and those incentives described in this section and s. Ins 9.27 to encourage the use of participating providers.

~~(4) The insurer offering a preferred provider plan may use utilization management, including preauthorization or similar methods, for denying access to or coverage of services of nonparticipating providers with just cause and without such frequency as to indicate a general business practice. Using utilization management, including preauthorization or similar methods, for denying access to or coverage of services of nonparticipating providers without just cause and with such frequency as to indicate a general business practice, as determined by the commissioner, results in the plan being treated by the commissioner as a defined network plan and subject to all requirements of a defined network plan.~~

~~(5) An insurer required to provide a disclosure notice under sub. (1) shall provide the disclosure notice to the applicant at the time of solicitation, and shall include in a prominent~~

location within the certificate of coverage issued under a group policy and in a prominent location in an individual policy, the following form and in not less than 11-point bold font

**"NOTICE: LIMITED BENEFITS WILL BE PAID WHEN NONPARTICIPATING PROVIDERS ARE USED.** You should be aware that when you elect to utilize the services of a nonparticipating provider for a covered service, benefit payments to such nonparticipating provider are not based upon the amount billed. The basis of your benefit payment will be determined according to your policy's fee schedule, usual and customary charge (which is determined by comparing charges for similar services adjusted to the geographical area where the services are performed), or other method as defined by the policy. **YOU RISK PAYING MORE THAN THE COINSURANCE, DEDUCTIBLE AND CO-PAYMENT AMOUNT DEFINED IN THE POLICY AFTER THE PLAN HAS PAID ITS REQUIRED PORTION.** Nonparticipating providers may bill enrollees for any amount up to the billed charge after the plan has paid its portion of the bill. Participating providers have agreed to accept discounted payment for covered services with no additional billing to the enrollee other than co-payment, coinsurance and deductible amounts. You may obtain further information about the participating status of professional providers and information on out-of-pocket expenses by calling [the toll free telephone] number on your identification card [or visiting [the company's] website].

4  
(6) The insurer files a report with the commissioner certifying compliance with this section on a form prescribed by the commissioner and signed by an officer of the company.

5  
(7) The insurer does not require a referral to obtain coverage for care from either a participating or nonparticipating provider and complies with ss. Ins 9.27 and 9.32 (2).

**Ins 9.26 Preferred provider plan subject to defined network plan regulations.** An insurer offering a preferred provider plan that does not cover the same services when performed by a nonparticipating provider that it covers when those services are performed by a

participating provider is subject to the requirements of a defined network plan that is not a preferred provider plan including ss. Ins 9.31, 9.32 (1), 9.35 (1), 9.37 (4), 9.40 (2), (4) and (6), and 18.03(2) (c) 1., and ss. 609.22 (2), (3), (4) and (7), 609.32 (1) and 609.34 (1), Stats.

**Ins 9.27 Preferred provider plan requirements.** Insurers offering a preferred provider plan shall comply with all the following:

~~(1) Except as provided in s. Ins 9.25 (2), insurers offering a preferred provider plan that apply a coinsurance percentage when the services are performed by nonparticipating providers at a different percentage than the coinsurance percentage that is applied when the services are performed by participating providers shall offer plans that have either of the following:~~

~~(a) The coinsurance differential between participating and nonparticipating providers performing the same services is <sup>of 40%</sup> 30% or less.~~

~~(b) The coinsurance differential between participating and nonparticipating provider performing the same services is greater than 30% and the insurer provides the enrollee with a disclosure notice that is compliant with s. Ins 9.25 (5).~~

~~(2) Except as provided in s. Ins 9.25 (2), insurers offering a preferred provider plan that apply a deductible when the services are performed by nonparticipating providers in a different amount than the deductible that is applied when the services are performed by participating providers shall offer plans that have either of the following:~~

~~(a) The deductible applied to nonparticipating providers is no more than 2 times greater than the deductible applied to participating providers or no more than \$2000 higher than the participating provider deductible.~~

~~(b) The deductible applied to nonparticipating providers is more than 2 times greater than the deductible applied to participating providers or is more than \$2000 higher than the~~

participating provider deductible and the insurer provides the enrollee with a disclosure notice that is compliant with s. Ins 9.25 (5).

(3) Except as provided in s. Ins 9.25 (2), insurers offering a preferred provider plan that apply a co-payment when the services are performed by nonparticipating providers in a different amount than the co-payment that is applied when the services are performed by participating providers shall offer plans that have either of the following:

(a) The co-payment applied to nonparticipating providers is no more than 3 times greater than the co-payment applied to participating providers or no more than \$100 for services of a health care provider or no more than \$300 for services of a health care facility.

(b) The co-payment applied to nonparticipating providers is more than 3 times greater than the co-payment applied to participating providers or is more than \$100 for services of a health care provider or is more than \$300 for services of a health care facility and the insurer provides the enrollee with a disclosure notice that is compliant with s. Ins 9.25 (5).

**9.30 Group and blanket health insurers compliance.** The commissioner finds that the circumstances of offering a group or blanket health insurance policy require that the insurer offering the policy otherwise exempt from chs. 600 to 646, Stats., under s. 600.01 (1) (b) 3., Stats., comply with s. Ins 9.32 (2) and s. 609.22 (2), Stats., in order to provide adequate protection to Wisconsin enrollees and the public. An insurer that covers 100 or more residents of this state under a policy otherwise exempt under s. 600.01 (1) (b) 3., Stats., shall comply with s. Ins 9.32 (2) and s. 609.22 (2), Stats.

**9.31 Annual certification of access standards. (1)** An insurer offering a defined network plan that is not a preferred provider plan shall file an annual certification with the commissioner no later than August 1 of each year certifying compliance with the access standards of s. 609.22, Stats., and s. Ins 9.32 (1) for the preceding year. The certification shall

be submitted on a form prescribed by the commissioner and signed by an officer of the company.

(2) An insurer offering a preferred provider plan shall file an annual certification with the commissioner no later than August 1 of each year certifying compliance with the access standards contained in ss. 609.22 (1), (4m), (5), (6) and (8), Stats., and s. Ins 9.32 (2) for the preceding year, on a form prescribed by the commissioner and signed by an officer of the company. The certification is to be filed within 3 months after the effective date of this section . . . [revisor to insert date], and thereafter, no later than August 1 of each year.

Note: A copy of the certification of access standards form required under sub. (1), OCI26-110, and sub. (2), OCI26-111, may be obtained at no cost from the Office of the Commissioner of Insurance, P.O. Box 7873, Madison, WI, 53707-7873 or from the OCI website address: <http://oci.wi.gov>.

**9.32 Defined network plan requirements.** (1) An insurer offering a defined network plan that is not a preferred provider plan shall do all of the following:

(a) Provide covered benefits by plan providers with reasonable promptness with respect to geographic location, hours of operation, waiting times for appointments in provider offices and after hours care. The hours of operation, waiting times, and availability of after hours care shall reflect the usual practice in the local area. Geographic availability shall reflect the usual medical travel times within the community.

(b) Have sufficient number and type of plan providers to adequately deliver all covered services based on the demographics and health status of current and expected enrollees served by the plan.

(c) Provide 24-hour nationwide toll-free telephone access for its enrollees to the plan or to a Wisconsin participating provider for authorization for care which is covered by the plan.

(d) Provide as a covered benefit the emergency services rendered during the treatment of an emergency medical condition, as defined by s. 632.85, Stats., by a nonparticipating provider as though the services was provided by a participating provider, if the insurer provides coverage for emergency medical services and the enrollee cannot reasonably reach a participating provider or, as a result of the emergency, is admitted for inpatient care subject to any restriction which may govern payment to a participating provider for emergency services. The insurer shall pay the nonparticipating provider at the rate the insurer pays a nonparticipating provider after applying any co-payments, coinsurance, deductibles or other cost-sharing provisions that apply to participating providers.

(2) An insurer offering a preferred provider plan shall <sup>also</sup> do all of the following:

~~(a) Provide covered benefits by participating providers with reasonable promptness with respect to geographic location, hours of operation, waiting times for appointments in provider offices and after hours care. The hours of operation, waiting times, and availability of after hours care shall reflect the usual practice in the local area. Geographic availability shall reflect the usual medical travel times within the community. This does not require an insurer offering a preferred provider plan to offer geographic availability of a choice of participating providers.~~

~~(b) Provide sufficient number and type of participating providers to adequately deliver all covered services based on the demographics and to meet the anticipated needs of its enrollees served by the plan including at least one primary care provider and a participating provider with expertise in obstetrics and gynecology accepting new enrollees.~~

~~(c) Include in all contracts with participating providers that are located in Wisconsin or located in the border counties of contiguous states and provide services to Wisconsin enrollees, a provision requiring the participating provider that schedules an elective procedure or other scheduled non-emergency care to fully disclose to the enrollee at the time of scheduling the~~

name of each provider that will or may participate in the delivery of the care and whether each provider is a participating or nonparticipating provider.

(a) ~~(a)~~ Include in its provider directory a prominent notice that complies with Appendix D and is printed in 11-point bold font.

*language that is substantially similar to the language found in*

(e) Provide the covered benefits provided by nonparticipating providers involved in the scheduled elective or non-emergency scheduled care at the rate the insurer pays a nonparticipating provider after applying any co-payments, coinsurance, deductibles or other cost-sharing provisions that apply to participating providers when the enrollee receives care from a nonparticipating provider and either of the following occurs:

1. The insurer fails to comply with par. (c). Failure of the insurer includes the failure of its participating provider to comply with the terms of the contract.
2. The insurer fails to comply with par. (d).

*insert B*

~~(b) Provide as a covered benefit the emergency services rendered during the treatment of an emergency medical condition, as defined by s. 632.85, Stats., by a nonparticipating provider as though the services were provided by a participating provider, if the insurer provides coverage for emergency medical services and the enrollee cannot reasonably reach a participating provider or, as a result of the emergency, is admitted for inpatient care, subject to any restriction that may govern payment to a participating provider for emergency services. The insurer shall pay the nonparticipating provider at the rate the insurer pays a nonparticipating provider after applying any co-payments, coinsurance, deductibles or other cost-sharing provisions that apply to participating providers.~~

**9.33 Enrollee election of nonparticipating provider reimbursement.** Nothing in s. Ins 9.32 changes the reimbursement payable or the amounts due, including co-payments, coinsurance, deductibles and other cost-sharing provisions from an enrollee when the enrollee

*add stabilization language*

of a preferred provider plan that is not a defined network plan elects to utilize the services of a nonparticipating provider when a participating provider is available in accordance with s. Ins 9.32 (2) (a) and (b) and the requirements of s. Ins 9.32 (2) (c) and (d), including the information from the participating provider, are provided to the enrollee.

~~SECTION 15. INS 9.34 is repealed.~~

~~SECTION 16. INS 9.35, 9.36 and 9.37 (1) (intro.), (2), (3), and (4) are amended to read:~~

~~9.35 Continuity of care. (1) In addition to the requirements of s. 609.24, Stats., a managed care an insurer offering a defined network plan shall do either one of the following:~~

~~(a) Upon termination of a provider from a managed care defined network plan, the insurer offering a defined network plan shall appropriately notify all enrollees of the termination, provide information on substitute providers, and at least identify the terminated providers within a separate section of the annual provider directory. In addition, the plan insurer shall comply with all of the following as appropriate:~~

~~1. If the terminating provider is a primary care provider and the managed care insurer offering a defined network plan requires enrollees to designate a primary care provider, the plan insurer shall notify each enrollee who designated the terminating provider of the termination the greater of no later than 30 days prior to the termination or 15 days following the insurer's receipt of date the insurer received the provider's termination notice, whichever is later, and shall describe each enrollee's options for receiving continued care from the terminated provider.~~

~~2. If the terminating provider is a specialist and the managed care insurer offering a defined network plan requires a referral, the plan insurer shall notify each enrollee authorized by referral to receive care from the specialist of the termination the greater of no later than 30 days prior to the termination or 15 days following the insurer's receipt of date the insurer received the~~



(B) → goes on p. 25 of insert A

(b)

**7. Emergency Services Provision.**

9.32 (2)(g) Provide as a covered benefit the emergency services rendered during the treatment of an emergency medical condition, as defined by s. 632.85, Stats., by a nonparticipating provider as though the services were provided by a participating provider, if the insurer provides coverage for emergency medical services and the enrollee cannot reasonably reach a participating provider or, as a result of the emergency, is admitted for inpatient care, subject to any restriction that may govern payment to a participating provider for emergency services. The insurer shall pay the nonparticipating provider at the rate the insurer pays a nonparticipating provider after applying any co-payments, coinsurance, deductibles or other cost-sharing provisions that apply to participating providers. For the purposes of this provision, emergency services mean health care services necessary to screen and stabilize a covered person in connection with an emergency medical condition. Stabilize means when, with respect to transfer to another facility, the examining physician at a hospital emergency department where an individual has sought treatment for an emergency medical condition has determined, within reasonable medical probability, (a) With respect to an emergency medical condition, that no material deterioration of the condition is likely to result from or occur during a transfer of the individual from the facility, and (b) The receiving facility has available space and qualified personnel for the treatment of the individual and has agreed to accept transfer of the individual and provide appropriate medical treatment.

ff

(2)

all of the following

C

provider's termination notice, whichever is later, and describe each enrollee's options for receiving continued care from the terminated provider.

3. If the terminating provider is a specialist and the ~~managed care~~insurer offering a defined network plan does not require a referral, the provider's contract with the ~~plan~~insurer shall comply with the requirements of s. 609.24, Stats., and require the provider to post a notification of termination with the plan in the provider's office ~~the greater of no later than 30 days prior to the termination or 15 days following the date the insurer's receipt of insurer received the provider's termination notice, whichever is later.~~

(b) 1. Upon termination of a provider from a ~~managed care~~defined network plan, the ~~insurer offering a defined network~~ plan shall notify all affected enrollees of the termination and each enrollee's options for receiving continued care from the terminated provider not later than 30 days prior to the termination, or upon notice by the provider if the ~~plan~~insurer receives less than 30 days notice. ~~A managed care~~The insurer offering a defined network plan shall provide information on substitute providers to all affected enrollees.

2. If the provider is a primary care provider and the ~~managed care~~insurer offering a defined network plan requires enrollees to designate a primary care provider, the ~~plan~~insurer shall notify all enrollees who designated the terminating provider.

(1m) An insurer offering a preferred provider plan shall either comply with sub. (1) (a) or (b) or have a contract with participating providers requiring the provider to notify all plan enrollees of the enrollees' rights under s. 609.24, Stats., if the provider's participation terminates for reasons other than provided in sub. (2) (a) or (b). The participating provider contracted with the insurer shall post a notification of termination with the plan no later than 30 days prior to the termination or 15 days following the date the insurer received the provider's termination notice, whichever is later, and describe each enrollee's options for receiving continued care from the

terminated provider. The insurer offering a preferred provider plan shall enforce the contract and ensure that enrollees are informed of a participating provider's termination.

~~(2) A managed care An insurer offering a defined network plan is not required to provide continued coverage for the services of a provider if either of the following is met:~~

~~(a) The provider no longer practices in the managed care defined network plan's geographic service area.~~

~~(b) The insurer issuing the managed care offering a defined network plan terminates the provider's contract due to misconduct on the part of the provider.~~

~~(3) The managed care insurer offering a defined network plan shall make available to the commissioner upon request all information needed to establish cause for termination of providers.~~

~~(4) Medicare + Choice plans are not subject to s. 609.24 (1) (e), Stats., in accordance with 42 USC 1395w-26 (3) (B) ii.~~

**9.36 Gag clauses. (1)** ~~No contract between a managed care an insurer offering a defined network plan and a participating provider may limit the provider's ability to disclose information, to or on behalf of an enrollee, about the enrollee's medical condition.~~

~~(2) A participating provider may discuss, with or on behalf of an enrollee, all treatment options and any other information that the provider determines to be in the best interest of the enrollee and within the scope of the provider's professional license. A managed care An insurer offering a defined network plan may not penalize the participating provider nor terminate the contract of a participating provider because the provider makes referrals to other participating providers or discusses medically necessary or appropriate care with or on behalf of an enrollee. A managed care An insurer offering a defined network plan may not retaliate against a provider for advising an enrollee of treatment options that are not covered benefits under the plan.~~

Insert D

~~(a) An insurer, with respect to a preferred provider plan, shall:~~

~~1. By April 1, 2001, establish and file with the commissioner a written plan, including specific goals, activities and time frames to obtain these personnel and other resources, systems, and contractual arrangements by October 1, 2003, reasonably necessary to enable the insurer to carry out the plan described under par. (a) or provide a written plan for compliance with par. (a) or (b) as permitted under par. (c).~~

~~2. Not later than April 1 of each calendar year prior to 2004, submit a progress report on its actions implementing its plan to implement its quality assurance plan or to comply under par. (c).~~

(e) This subsection does not apply after March 31, 2007. Insurers offering a preferred provider plan shall develop procedures for taking effective and timely remedial action to address issues arising from quality problems including access to, and continuity of care from, participating primary care providers. The remedial action plan shall at least contain all of the following:

(a) Designation of a senior-level staff person responsible for the oversight of the insurer's remedial action plan.

(b) A written plan for the oversight of any functions delegated to other contracted entities.

(c) A procedure for the periodic review of services related to clinical protocols and utilization management performed by the insurer offering a preferred provider plan or by another contracted entity.

(d) Periodic and regular review of grievances, complaints and OCI complaints.

(e) A written plan for maintaining the confidentiality of protected information.

(f) Documentation of timely correction of access to and continuity of care issues

identified in the plan. Documentation shall include all of the following:

1. The date of awareness that an issue exists for which a remedial action plan shall be initiated.
2. The type of issue that is the focus of the remedial action plan.
3. The person or persons responsible for developing and managing the remedial action plan.
4. The remedial action plan utilized in each situation.
5. The outcome of the remedial action plan.
6. The established time frame for re-evaluation of the issue to ensure resolution and compliance with the remedial action plan.

~~(4) All insurers, with respect to managed care plans, including preferred provider plans offering a defined network plan, other than a preferred provider plan, shall establish and maintain a quality assurance committee and a written policy governing the activities of the quality assurance committee that assigns to the committee responsibility and authority for the quality assurance program. A preferred provider plan shall require all All complaints, OCl complaints, appeals and grievances relating to quality of care to shall be reviewed by the quality assurance committee.~~

~~(6) Beginning June 1, 20042008, every managed care insurer offering a defined network plan other than a health maintenance organization or preferred provider plan, shall submit the standardized data set designated by the commissioner and appropriate to the specific plan type for the previous calendar year to the commissioner no later than June 15 of each year.~~



609.32, 609.34, and 609.36, and 632.83, Stats., this subchapter and other applicable sections including but not limited to s. Ins 9.07 within 15 days of receipt of notice.

(5) (a) Any audits, and associated work papers of audits, conducted during the period of review relating to the business and service operation of the managed care plan, preferred provider plan or limited service health organization insurer offering a defined network or limited scope plan.

(6) (a) An access plan developed in accordance with s. Ins 9.349.32 (1) and s. 609.22, Stats., requirements.

SECTION 23. INS 9.42 (9) is created to read:

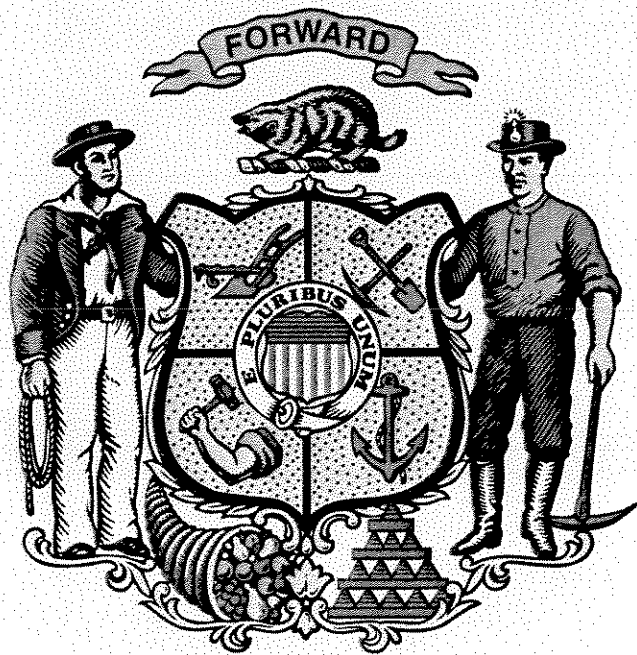
9.42 (9) An insurer offering a preferred provider plan that is not also a defined network plan shall comply with this section to the extent applicable.

SECTION 24. Appendix D to ch. Ins 9 is created to read:

#### APPENDIX D. PREFERRED PROVIDER PLAN NOTICE TO ENROLLEES.

##### IMPORTANT NOTICE

You are strongly encouraged to contact us to verify the status of the providers involved in your care including, for example, the anesthesiologist, radiologist, pathologist, facility, clinic or laboratory, when scheduling appointments or elective procedures to determine whether each provider is a participating or nonparticipating provider. Such information may assist in your selection of provider(s) and will likely affect the level of co-payment, deductible and amount of co-insurance applicable to the care you receive. The information contained in this directory may change during your plan year. Please contact [insert 800 and direct dial phone number of insurer] to learn more about the participating providers in your network and the implications, including financial, if you decide to receive your care from nonparticipating providers.



Suggested Changes  
to  
LRB-4275/P1

SECTION 1. 601.47 (2m) of the statutes is created to read:

601.47 (2m) The commissioner shall prepare and publish a guide to that generally describes out-of-network coverage for all defined network plans and distribute it in a manner that the commissioner determines. The cost of publication and distribution may be paid from the appropriation under s. 20.145 (1) (g).

SECTION 2. 601.47 (3) of the statutes is amended to read:

601.47 (3) FREE DISTRIBUTION. The commissioner may furnish free copies of the publications prepared under subs. (1) and, (2), and (2m) to public officers and libraries in this state and elsewhere. The cost of free distribution shall be charged to the appropriation under s. 20.145 (1) (g).

SECTION 3. 609.01 (4) of the statutes is amended to read:

609.01 (4) "Preferred provider plan" means a health care benefit plan offered by an organization established under ch. 185, 611, 613, or 614 or issued a certificate of authority under ch. 618 that makes available to its enrollees, without referral and for consideration other than predetermined periodic fixed payments, coverage of either comprehensive health care services or a limited range of health care services, regardless of whether the health care services are performed by participating or nonparticipating providers.

SECTION 3. 609.20 (3) of the statutes is created to read:

609.20 (3) The commissioner may not promulgate a rule relating to a preferred provider plan for any of the following purposes:

- (a) ~~To require a specified availability within geographical areas.~~
- (b) ~~To specify hours of operation, waiting times for appointments in provider offices, or care provided after business hours.~~
- (c) ~~To require a certain number or certain types of participating providers per enrollees.~~
- (d) ~~To require any contract between the preferred provider plan and a participating provider to require the participating provider, when scheduling nonemergency care, to disclose to the enrollee the name of any provider participating in the care and to specify whether each provider participating in the care is a participating provider or not.~~
- (e) ~~To require the services of nonparticipating providers to be covered at the same rate as the services of participating providers if the preferred provider plan fails to comply with certain requirements.~~

As an alternative to the above, create a provision that would prohibit OCI from regulating PPO contracts beyond the plan agreement (the agreement with the purchaser of the plan).

*^ impose requirements - contracts*



SECTION 4. 609.20 (4) of the statutes is created to read:

609.20 (4) ~~The commissioner may promulgate a rule that requires a preferred provider plan to shall include in its provider directory, in substantially similar language and in at least 11 point bold type ~~conspicuously placed~~~~ the following notice:

**IMPORTANT NOTICE**

You are strongly encouraged to contact us to verify the status of the providers involved in your care including, for example, the anesthesiologist, radiologist, pathologist, facility, clinic, or laboratory, when scheduling appointments or elective procedures to determine whether each provider is a participating or nonparticipating provider. Such information may assist you in your selection of providers and will likely affect the level of copayment, deductible, and coinsurance applicable to the care you receive. The information contained in this directory may change during your plan year. Please contact [insert 800 and direct dial phone number of insurer] to learn more about the participating providers in your network and the implications, including financial, if you decide to receive your care from nonparticipating providers.

SECTION ?. 609.20 (5) of the statutes is created to read:

609.20 (5) A defined network plan shall include in its marketing material, in substantially similar language and ~~conspicuously placed~~ the following notice:

**IMPORTANT NOTICE – YOUR BENEFITS MAY BE REDUCED WHEN NONPARTICIPATING PROVIDERS ARE USED. Please be aware that benefits for participating providers can be different than those used for non-participating providers. Your plan may actually reduce benefits when using non-participating providers. To find out about your benefits, please read the benefit information found in this document, or you may call (Insert insurer telephone number).**

SECTION ?. 609.20 (5m) of the statutes is created to read:

609.20 (5m) The Commissioner may not promulgate a rule that requires a defined network plan to provide any additional notice on nonparticipating provider limitations, other than the specific language prescribed in Section 609.20 (5).

SECTION 5. 609.21 of the statutes is created to read:

609.21 ~~Rules for limited scope plans. (1) In this section, “limited scope plan” means a health care plan that provides limited scope dental or vision benefits under a separate policy, certificate, or contract of insurance.~~

~~(2) The commissioner may not promulgate a rule that subjects a limited scope plan to s. 609.22, 609.24, 609.30, 609.32, 609.34, or 609.36.~~

SECTION ?. 609.22 (1m)(a) of the statutes is created to read:

609.22 (1m)(a) In order to meet the requirements of 609.22 (1), a Preferred Provider Plan shall ensure that at least one primary care provider, who may also provide the same services of an Obstetric and Gynecologic provider, is available to each enrollee.

**SECTION 7.** 609.22 (1m)(b) of the statutes is created to read:  
609.22 (1m)(b) The Commissioner may not promulgate a rule that requires any additional access requirements on Preferred Provider Plans relative to 609.22 (1m)(a).

~~SECTION 6.~~ ~~609.22 (4) (a) 2.~~ of the statutes is renumbered ~~609.22 (4) (b).~~

**SECTION 7.** ~~609.22 (4) (a) 2m.~~ of the statutes is created to read:  
~~609.22 (4) (a) 2m. The commissioner may not promulgate a rule relating to the use of prior authorization requirements by insurers offering defined network plans that are not preferred provider plans to deny access, or standing referrals, to specialists.~~

~~SECTION 8.~~ ~~609.22 (4) (a) 3.~~ of the statutes is renumbered ~~609.22 (4) (e).~~

**SECTION 7.** 609.22 (9) of the statutes is created to read:  
609.22 (9) Insurers shall not use utilization management, including a pre-authorization or similar methods, for denying access to nonparticipating providers.

**SECTION 9.** 609.35 of the statutes is renumbered 609.35 (2).

**SECTION 10.** 609.35 (1) of the statutes is created to read:  
 609.35 (1) In this section, a preferred provider plan does not cover the same services when performed by a nonparticipating provider if any of the following applies covers the same services when performed by a nonparticipating provider that it covers when those services are performed by a participating provider when:  
 (a) ~~The preferred provider plan does not cover a service when performed by a nonparticipating provider that it covers when performed by a participating provider.~~  
 (b) ~~The preferred provider plan covers a service when performed by a nonparticipating provider that it covers when performed by a participating provider, but either of the following applies:~~  
 1. ~~(a) The coinsurance differential between a participating and a nonparticipating provider for the service is more than at least 40 percent or less.~~  
 2. ~~(b) Coinsurance for the service when performed by a nonparticipating provider is more than at least 50 percent.~~

**SECTION 11.** 609.82 of the statutes is renumbered 609.82 (1).

**SECTION 12.** 609.82 (2) of the statutes is created to read:  
 609.82 (2) (a) Except as provided in pars. (b) and (c), if a preferred provider plan provides coverage of emergency medical services, the preferred provider plan shall cover emergency medical services provided to an enrollee during the treatment of an emergency medical condition, as defined in s. 632.85 (1) (a), by a nonparticipating provider as though the services were provided by a participating provider, if any of the following applies:  
 1. The enrollee could not reasonably reach a participating provider for

treatment of the emergency medical condition.

2. As a result of the emergency, the enrollee was admitted to a nonparticipating provider for inpatient care.

(b) The coverage under par. (a) may be subject to any restrictions that govern payment to a participating provider for emergency medical services. The preferred provider plan shall pay the nonparticipating provider at the rate at which it pays a nonparticipating provider, after applying any copayments, deductibles, or other cost-sharing requirements that apply to a participating provider.

(c) A preferred provider plan is required to provide the coverage under par. (a) only with respect to services that are needed to stabilize, as defined in section 1867 of the federal Social Security Act, the enrollee's emergency medical condition.

**SECTION 13. Nonstatutory provisions.**

~~(1) STUDY ON USE OF PRIOR AUTHORIZATION TO DENY ACCESS. The office of the commissioner of insurance shall, through use of its complaint process, conduct a study on whether insurers that offer defined network plans, as defined in section 609.01 (1b) of the statutes, that are not preferred provider plans, as defined in section 609.01 (4) of the statutes, require prior authorization as part of the procedure for obtaining a standing referral to a specialist under section 609.22 (4) of the statutes and shall determine if requiring prior authorization is used for denying standing referrals to specialists without just cause and with such frequency as to indicate a general business practice. Within one year after the effective date of this subsection, the office of the commissioner of insurance shall submit to the appropriate standing committees of the legislature, in the manner provided under section 13.172 (3) of the statutes, a report of the results of the study that includes documentation in support of any determinations made.~~

**SECTION 14. Initial applicability.**

(1) COVERAGE OF SAME SERVICES AND EMERGENCY MEDICAL SERVICES. The renumbering of sections 609.35 and 609.82 of the statutes and the creation of sections 609.35 (1) and 609.82 (2) of the statutes first apply to all of the following:

(a) Except as provided in paragraph (b), policies, plans, or contracts that are issued or renewed on the effective date of this paragraph.

(b) Policies, plans, or contracts covering employees who are affected by a collective bargaining agreement containing provisions inconsistent with the renumbering of sections 609.35 and 609.82 of the statutes and the creation of sections 609.35 (1) and 609.82 (2) of the statutes that are issued or renewed on the earlier of the following:

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

Add a section that provides an effective date on new policies sold on or after that date. It would also allow existing plans sold prior to the effective date to remain in effect until the termination of those specific policies.

(END)

Suggested Changes  
to  
LRB-4275/P1

SECTION 1. 601.47 (2m) of the statutes is created to read:

601.47 (2m) The commissioner shall prepare and publish a guide to that generally describes out-of-network coverage for all defined network plans and distribute it in a manner that the commissioner determines. The cost of publication and distribution may be paid from the appropriation under s. 20.145 (1) (g).

SECTION 2. 601.47 (3) of the statutes is amended to read:

601.47 (3) FREE DISTRIBUTION. The commissioner may furnish free copies of the publications prepared under subs. (1) and, (2), and (2m) to public officers and libraries in this state and elsewhere. The cost of free distribution shall be charged to the appropriation under s. 20.145 (1) (g).

SECTION 3. 609.01 (4) of the statutes is amended to read:

609.01 (4) "Preferred provider plan" means a health care benefit plan offered by an organization established under ch. 185, 611, 613, or 614 or issued a certificate of authority under ch. 618 that makes available to its enrollees, without referral and for consideration other than predetermined periodic fixed payments, coverage of either comprehensive health care services or a limited range of health care services, regardless of whether the health care services are performed by participating or nonparticipating providers.

SECTION 3. 609.20 (3) of the statutes is created to read:

609.20 (3) The commissioner may not promulgate a rule relating to a preferred provider plan for any of the following purposes:

- (a) ~~To require a specified availability within geographical areas.~~
- (b) ~~To specify hours of operation, waiting times for appointments in provider offices, or care provided after business hours.~~
- (c) ~~To require a certain number or certain types of participating providers per enrollees.~~
- (d) (a) To require any contract between the preferred provider plan and a participating provider to require the participating provider, when scheduling nonemergency care, to disclose to the enrollee the name of any provider participating in the care and to specify whether each provider participating in the care is a participating provider or not.
- (e) (b) To require the services of nonparticipating providers to be covered at the same rate as the services of participating providers if the preferred provider plan fails to comply with certain requirements.

SECTION 4. 609.20 (4) of the statutes is created to read:

609.20 (4) ~~The commissioner may promulgate a rule that requires a~~ A preferred provider plan to shall include in its provider directory, in substantially similar language

Must  
not alter  
sections  
+  
redline  
section

still working on it

and in ~~at least 11-point bold type~~ conspicuously placed, the following notice:

**IMPORTANT NOTICE**

You are strongly encouraged to contact us to verify the status of the providers involved in your care including, for example, the anesthesiologist, radiologist, pathologist, facility, clinic, or laboratory, when scheduling appointments or elective procedures to determine whether each provider is a participating or nonparticipating provider. Such information may assist you in your selection of providers and will likely affect the level of copayment, deductible, and coinsurance applicable to the care you receive. The information contained in this directory may change during your plan year. Please contact [insert 800 and direct dial phone number of insurer] to learn more about the participating providers in your network and the implications, including financial, if you decide to receive your care from nonparticipating providers.

SECTION ?. 609.20 (5) of the statutes is created to read:

609.20 (5) A defined network plan shall include in its marketing material, in substantially similar language and conspicuously placed, the following notice:

**IMPORTANT NOTICE – YOUR BENEFITS MAY BE REDUCED WHEN NONPARTICIPATING PROVIDERS ARE USED. Please be aware that benefits for participating providers can be different than those used for non-participating providers. Your plan may actually reduce benefits when using non-participating providers. To find out about your benefits, please read the benefit information found in this document, or you may call (Insert insurer telephone number).**

SECTION ?. 609.20 (5m) of the statutes is created to read:

609.20 (5m) The Commissioner may not promulgate a rule that requires a defined network plan to provide any additional notice on nonparticipating provider limitations, other than the specific language prescribed in Section 609.20 (5).

SECTION 5. 609.21 of the statutes is created to read:

**609.21 Rules for limited scope plans. (1)** In this section, “limited scope plan” means a health care plan that provides limited scope dental or vision benefits under a separate policy, certificate, or contract of insurance.

**(2)** The commissioner may not promulgate a rule that subjects a limited scope plan to s. 609.22, 609.24, 609.30, 609.32, 609.34, or 609.36.

SECTION ?. 609.22 (1m)(a) of the statutes is created to read:

609.22 (1m)(a) In order to meet the requirements of 609.22 (1), a Preferred Provider Plan shall ensure that at least one primary care provider, who may also provide the same services of an Obstetric and Gynecologic provider, is available to each enrollee.

SECTION ?. 609.22 (1m)(b) of the statutes is created to read:

609.22 (1m)(b) The Commissioner may not promulgate a rule that requires any additional access requirements on Preferred Provider Plans, other than the authority granted in Section 609.22 (1m)(a).

SECTION 6. ~~609.22 (4) (a) 2.~~ of the statutes is renumbered 609.22 (4) (b).

SECTION 7. ~~609.22 (4) (a) 2m.~~ of the statutes is created to read:

609.22 (4) (a) 2m. The commissioner may not promulgate a rule relating to the use of prior authorization requirements by insurers offering defined network plans that are not preferred provider plans to deny access, or standing referrals, to specialists.

SECTION 8. ~~609.22 (4) (a) 3.~~ of the statutes is renumbered 609.22 (4) (c).

SECTION 9. 609.22 (9) of the statutes is created to read:

609.22 (9) Insurers shall not use utilization management, including a pre-authorization or similar methods, for denying access to nonparticipating providers.

SECTION 9. 609.35 of the statutes is renumbered 609.35 (2).

SECTION 10. 609.35 (1) of the statutes is created to read:

609.35 (1) In this section, a preferred provider plan does not cover the same services when performed by a nonparticipating provider if any of the following applies covers the same services when performed by a nonparticipating provider that it covers when those services are performed by a participating provider when:

(a) The preferred provider plan does not cover a service when performed by a nonparticipating provider that it covers when performed by a participating provider.

(b) The preferred provider plan covers a service when performed by a nonparticipating provider that it covers when performed by a participating provider, but either of the following applies:

1. (a) The coinsurance differential between a participating and a nonparticipating provider for the service is more than at least 40 percent or less.

2. (b) Coinsurance for the service when performed by a nonparticipating provider is more than at least 50 percent.

SECTION 11. 609.82 of the statutes is renumbered 609.82 (1).

SECTION 12. 609.82 (2) of the statutes is created to read:

609.82 (2) (a) Except as provided in pars. (b) and (c), if a preferred provider plan provides coverage of emergency medical services, the preferred provider plan shall cover emergency medical services provided to an enrollee during the treatment of an emergency medical condition, as defined in s. 632.85 (1) (a), by a nonparticipating provider as though the services were provided by a participating provider, if any of the following applies:

1. The enrollee could not reasonably reach a participating provider for treatment of the emergency medical condition.

2. As a result of the emergency, the enrollee was admitted to a nonparticipating provider for inpatient care.

Replace

(b) The coverage under par. (a) may be subject to any restrictions that govern payment to a participating provider for emergency medical services. The preferred provider plan shall pay the nonparticipating provider at the rate at which it pays a nonparticipating provider, after applying any copayments, deductibles, or other cost-sharing requirements that apply to a participating provider.

(c) A preferred provider plan is required to provide the coverage under par. (a) only with respect to services that are needed to stabilize, as defined in section 1867 of the federal Social Security Act, the enrollee's emergency medical condition.

**SECTION 13. Nonstatutory provisions.**

~~(1) STUDY ON USE OF PRIOR AUTHORIZATION TO DENY ACCESS. The office of the commissioner of insurance shall, through use of its complaint process, conduct a study on whether insurers that offer defined network plans, as defined in section 609.01 (1b) of the statutes, that are not preferred provider plans, as defined in section 609.01 (4) of the statutes, require prior authorization as part of the procedure for obtaining a standing referral to a specialist under section 609.22 (4) of the statutes and shall determine if requiring prior authorization is used for denying standing referrals to specialists without just cause and with such frequency as to indicate a general business practice. Within one year after the effective date of this subsection, the office of the commissioner of insurance shall submit to the appropriate standing committees of the legislature, in the manner provided under section 13.172 (3) of the statutes, a report of the results of the study that includes documentation in support of any determinations made.~~

**SECTION 14. Initial applicability.**

(1) COVERAGE OF SAME SERVICES AND EMERGENCY MEDICAL SERVICES. The renumbering of sections 609.35 and 609.82 of the statutes and the creation of sections 609.35 (1) and 609.82 (2) of the statutes first apply to all of the following:

(a) Except as provided in paragraph (b), policies, plans, or contracts that are issued or renewed on the effective date of this paragraph.

(b) Policies, plans, or contracts covering employees who are affected by a collective bargaining agreement containing provisions inconsistent with the renumbering of sections 609.35 and 609.82 of the statutes and the creation of sections 609.35 (1) and 609.82 (2) of the statutes that are issued or renewed on the earlier of the following:

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

*Add this section*

*This law shall first apply to newly issued policies, or new certificates of insurance under any group or blanket health insurance policy otherwise exempt from regulation under s. 600.01 (1) (b) 3., or new group certificates delivered or issued for delivery in this state, on or after the latter of January 1, 2007 or 12 months after the effective date of the law."*

(END)