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State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0248/P1 P2  
DAK&PJK:jld:jl

D-NOTE

DOA:.....Pink, BB0012 - Medical Assistance third-party liability

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

in addition to insurers, self-insured plans, service benefit plans ✓

don't gen

INSERT A ✓

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

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MEDICAL ASSISTANCE**

Currently, DHFS may obtain from insurers information DHFS needs to identify a recipient of Medical Assistance (MA) who is eligible for benefits under a disability insurance policy or, if enrolled as the dependent of a beneficiary, would be eligible for benefits; claims submittal information; and types of benefits provided under the policy. DHFS must enter into an agreement with the insurer that identifies the information to be disclosed, safeguards confidentiality, and specifies how the insurer's reasonable costs will be determined and paid from state general purpose revenues and federal moneys. Insurers must provide the information within specified deadlines, and the commissioner of insurance may initiate enforcement proceedings for noncompliance. ✓

This bill expands the sources from whom DHFS may receive health care services coverage information to include entities that are responsible for payment of a claim for a health care item or service. These entities include persons providing health services coverage for individuals on a self-insurance basis, service insurance corporations, and pharmacy benefits managers. ✓

and expands to third parties the compensation payable for providing the information ✓

termed "third parties" ✓

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

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

1           **SECTION 1.** 20.435 (4) (bm) of the statutes is amended to read:

2           20.435 (4) (bm) *Medical Assistance, food stamps, and Badger Care*  
3 *administration; contract costs, insurer reports, and resource centers.* Biennially, the  
4 amounts in the schedule to provide the state share of administrative contract costs  
5 for the Medical Assistance program under s. 49.45, the food stamp program under  
6 s. 49.79, and the Badger Care health care program under s. 49.665, other than  
7 payments to counties and tribal governing bodies under s. 49.78 (8), to develop and  
8 implement a registry of recipient immunizations, to reimburse <sup>✓</sup>insurers ~~and 3rd~~  
9 parties for their costs under s. 49.475, for costs associated with outreach activities,  
10 and for services of resource centers under s. 46.283. No state positions may be funded  
11 in the department of health and family services from this appropriation, except  
12 positions for the performance of duties under a contract in effect before  
13 January 1, 1987, related to the administration of the Medical Assistance program  
14 between the subunit of the department primarily responsible for administering the  
15 Medical Assistance program and another subunit of the department. Total  
16 administrative funding authorized for the program under s. 49.665 may not exceed  
17 10% of the amounts budgeted under pars. (bc), (p), and (x).

\*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

18           **SECTION 2.** 20.435 (4) (pa) of the statutes is amended to read:

19           20.435 (4) (pa) *Federal aid; Medical Assistance and food stamp contracts*  
20 *administration.* All federal moneys received for the federal share of the cost of

1 contracting for payment and services administration and reporting, other than  
2 moneys received under par. (nn), to reimburse ~~insurers and~~ 3rd parties for their costs  
3 under s. 49.475, for administrative contract costs for the food stamp program under  
4 s. 49.79, and for services of resource centers under s. 46.283.

5 **SECTION 3.** 49.475 (1) (a) of the statutes is renumbered 49.475 (1) (ar).

6 **SECTION 4.** 49.475 (1) (ag) of the statutes is created to read:

7 49.475 (1) (ag) "Covered entity" means any of the following that is not an  
8 insurer ~~as defined in s. 600.03 (27):~~

9 1. A nonprofit hospital, as defined in s. 46.21 (2) (m).

10 2. An employer, as defined in s. 101.01 (4), labor union, or other group of persons  
11 organized in this state if the employer, labor union, or other group provides  
12 prescription drug coverage to covered individuals who reside or are employed in this  
13 state.

14 3. A comprehensive or limited health care benefits program administered by  
15 the state that provides prescription drug coverage.

16 **SECTION 5.** 49.475 (1) (am) of the statutes is created to read:

17 49.475 (1) (am) "Covered individual" means an individual who is a member,  
18 participant, enrollee, policyholder, certificate holder, contract holder, or beneficiary  
19 of a covered entity, or a dependent of the individual, and who receives prescription  
20 drug coverage from or through the covered entity.

21 **SECTION 6.** 49.475 (1) (c) of the statutes is created to read:

22 49.475 (1) (c) "Pharmacy benefits management" means the procurement of  
23 prescription drugs at a negotiated rate for dispensation in this state to covered  
24 individuals; the administration or management of prescription drug benefits

**SECTION 6**

1 provided by a covered entity for the benefit of covered individuals; or any of the  
2 following services provided in the administration of pharmacy benefits:

- 3 1. Dispensation of prescription drugs by mail.
- 4 2. Claims processing, retail network management, and payment of claims to
- 5 pharmacies for prescription drugs dispensed to covered individuals.
- 6 3. Clinical formulary development and management services.
- 7 4. Rebate contracting and administration.
- 8 5. Conduct of patient compliance, therapeutic intervention, generic
- 9 substitution, and disease management programs.

10 **SECTION 7.** 49.475 (1) (d) of the statutes is created to read:

11 49.475 (1) (d) "Pharmacy benefits manager" means a person that performs  
12 pharmacy benefits management functions.

13 **SECTION 8.** 49.475 (1) (e) of the statutes is created to read:

14 49.475 (1) (e) "Third party" means an entity other than an insurer that by  
15 statute, rule, or contract is responsible for payment of a claim for a health care item  
16 or service. "Third party" includes all of the following:

- 17 1. A person providing health services coverage for individuals on a  
18 self-insurance basis without the intervention of other entities.
- 19 2. A service insurance corporation under ch. 613.

20 3. A pharmacy benefit manager.

21 **SECTION 9.** 49.475 (2) (intro.) of the statutes is amended to read:

22 49.475 (2) (intro.) An insurer that issues or delivers a disability insurance  
23 policy that provides coverage to a resident of this state and a 3rd party shall provide  
24 to the department, upon the department's request, information contained in the  
25 insurer's or 3rd party's records regarding all of the following:

INSERT 4-19 ✓

~~that otherwise provides coverage for health care items or services~~

1 SECTION 10. 49.475 (2) (a) 1. of the statutes is amended to read:

2 49.475 (2) (a) 1. Are eligible for benefits under a disability insurance policy or  
3 under <sup>other</sup> coverage provided by a 3rd party for health care items or services.

4 SECTION 11. 49.475 (2) (a) 3. of the statutes is created to read:

5 49.475 (2) (a) 3. Would be eligible for health care items or services coverage  
6 provided by a 3rd party if the beneficiary were enrolled or otherwise specified for  
7 coverage as a dependent of a person who receives such coverage provided by the 3rd  
8 party.

9 SECTION 12. 49.475 (2) (b) of the statutes is amended to read:

10 49.475 (2) (b) Information required for submittal of claims under the insurer's  
11 disability insurance policy <sup>other</sup> or for the 3rd party's coverage for health care items or  
12 services.

✓  
INSERT  
5-12

13 SECTION 13. 49.475 (3) (intro.) of the statutes is amended to read:

14 49.475 (3) <sup>(a)</sup> intro.) Upon requesting an insurer <sup>CS</sup> ~~or~~ 3rd party <sup>a</sup> to provide the  
15 information under sub. (2), the department shall enter into a written agreement with  
16 the insurer ~~or~~ 3rd party that satisfies all of the following:

17 SECTION 14. 49.475 (3) (c) of the statutes is amended to read:

18 49.475 (3) (c) Specifies how the insurer's ~~or~~ 3rd party's reimbursable costs  
19 under sub. (5) will be determined and specifies the manner of payment.

20 SECTION 15. 49.475 (4) (a) of the statutes is amended to read:

21 49.475 (4) (a) <sup>A</sup> An insurer ~~or~~ 3rd party shall provide the information requested  
22 under sub. (2) within 180 days after receiving the department's request if it is the  
23 first time that the department has requested the insurer ~~or~~ 3rd party to disclose  
24 information under this section.

25 SECTION 16. 49.475 (4) (b) of the statutes is amended to read:

(a) ✓ A ✓

1 49.475 (4) (b) An insurer ~~or 3rd party~~ shall provide the information requested  
2 under sub. (2) within 30 days after receiving the department's request if the  
3 department has previously requested the ~~insurer or 3rd party~~ to disclose information  
4 under this section.

INSERT 6-4 →

5 SECTION 17. 49.475 (5) of the statutes is amended to read:

6 49.475 (5) From the appropriations under s. 20.435 (4) (bm) and (pa), the  
7 department shall reimburse an insurer ~~or 3rd party~~ <sup>(a)</sup> that provides information under  
8 ~~this section~~ for the insurer's ~~or 3rd party's~~ reasonable costs incurred in providing the  
9 requested information, including its reasonable costs, if any, to develop and operate  
10 automated systems specifically for the disclosure of information ~~under this section.~~ <sup>STRIKE</sup>

(END)

sub. (2)(a) ✓

the

D-NOTE

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

LRB-0248/P2dn  
DAK&PJB:jld:jf

date

To Michelle Pink:

This redraft is greatly revised from <sup>LRB</sup> -0248/P1. I have provided numerous \*\*\*\*NOTES following statutory text to explain my drafting decisions or ask questions.

Please note that I have not changed the definitions of "covered <sup>LRB</sup> entity," "covered individual," and "pharmacy benefits management," as drafted in -0248/P1 to give meaning to the term "pharmacy benefits manager." I believe that the reviewer of these definitions is reading them incorrectly. The critique stated: "We believe this part is incorrect. A covered entity should include everything. The way this is written now states that a covered entity would have to cover only drugs otherwise it would not be considered a covered entity." Contrary to the reviewer's assertion, the definition of "covered entity" does *not* limit a covered entity to providing only coverage of prescription drugs; it requires that a covered entity provide this coverage, but is silent as to any other coverage that the covered entity might provide. Please also note that these definitions are used only to give meaning to terms used in the definition of "pharmacy benefits manager." Since "insurer" is now part of the definition of "3rd party," the term "pharmacy benefits manager" is meant to be exclusive of an insurer.

This draft repeals and recreates s. 49.475 (2), <sup>✓</sup>stats. As such it eliminates that current subsection. My instructions for this redraft were to include all of the DRA language, which I have done. However, there is an overlap between the federal language, as it is drafted in the repeal and recreation of s. 49.475 (2) (a), <sup>✓</sup>and current language under s. 49.475 (2), <sup>✓</sup>stats. Have I drafted this as is intended? If not, I need more explicit instructions as to what you wish to retain of current law and how you want it to "mesh" with the DRA requirement.

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: debora.kennedy@legis.wisconsin.gov

**INSERT A**

2014  
The bill authorizes DHFS to notify the attorney general of third parties, other than insurers, that fail to provide information requested.

Under the bill, third parties must accept assignment to DHFS of a right of an individual to receive payment from the third party for a health care item or service for which payment under MA has been made. Third parties must also accept the right of DHFS to recover any third-party payment made for which assignment had not been accepted. A third party must respond to an inquiry by DHFS concerning a claim for payment of a health care item or service if the inquiry is made within 36 months after the item or service is provided. Further, third parties must agree not to deny a DHFS claim on the basis of certain circumstances, if submitted less than 36 months after the health care item or service is provided and if action by DHFS to enforce its rights is commenced less than 72 months after DHFS submits the claim.

**INSERT 4-19**

- 1 1. An insurer.

\*\*\*NOTE: It is unnecessary to state, as requested, that the term "insurer" has the meaning given in s. 600.03 (27), stats.; the term is already defined as such under s. 49.475 (1) (b), stats.

- 2 2. An employee benefit plan described in 29 USC 1003 (a) that is not exempt  
3 under 29 USC 1003 (b) and is not a multiple employer welfare arrangement.

\*\*\*NOTE: I have consulted with Fred Nepple, chief counsel for OCI, concerning this language. It is intended to be the equivalent of the term "self-insured plan" used in 42 USC 1396a (25) (I) (the DRA language). It replaces language I used in -0248/P1, that is in current law under s. 149.10 (5), stats. It uses the language of ERISA itself, so that the meaning is clearer. Mr. Nepple indicated that the term "multiple employer welfare arrangement" should, because of ensuing litigation under ERISA, be excluded from the definition. Mr. Nepple further indicated that use of the language under s. 149.10 (3j) (a), stats., as suggested by the reviewer of -0248/P1, would be inappropriate because that language refers to "an employee welfare plan, as defined in section 3 (1) of federal ERISA of 1974" - this federal definition (in 29 USC 1167 (i)) includes self-funded or insured plans.

- 4 3. A service benefit plan, as specified in 42 USC 1396a (25) (I).

\*\*\*NOTE: I also consulted Fred Nepple of OCI concerning this term. It is not defined in federal law, and he does not know what it means. The reference to "service insurance corporation under ch. 613, stats.," which I used in -0248/P1, is, according to Mr. Nepple, incorrect because those entities are regulated as insurers by OCI. I have only been able, therefore, to refer to the place in the DRA language where the term "service benefit plan" is specified.

**INSERT 5-12**

- 5 SECTION 1. 49.475 (2) of the statutes is repealed and recreated to read:



3rd ← CS

1

49.475 (2) REQUIREMENTS OF THIRD PARTIES. As a condition of doing business in

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this state, a 3rd party shall do all of the following:

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(a) Upon the department's request and in the manner prescribed by the

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department, provide information with respect to individuals who have been or are

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eligible for or have been or are recipients of medical assistance, in order to determine

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any period of time in which the individual or his or her spouse or dependent is being

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or has been provided coverage by a 3rd party and the nature of any coverage

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provided, including the name, address, and identifying number of any applicable

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coverage plan.

*of the*  
\*\*\*NOTE: How can the 3rd party, or the department, for that matter, know who are all individuals who are eligible for (but not receiving) medical assistance? As a corollary to this question, should it be made clear that DHFS identifies the individuals to the 3rd party when requesting the information? Otherwise, it appears to be ambiguous whether the 3rd party has to somehow figure out who is eligible for or receiving medical assistance. Also, shouldn't the information that the 3rd party has to provide be limited to information contained in the 3rd party's records? Otherwise, this language requires a 3rd party to provide an individual's information to which it may have no access.

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(b) Accept assignment to the department of a right of an individual to receive

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3rd party payment for an item or service for which payment under medical

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assistance has been made and, under the conditions specified in par. (d), accept the

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department's right to recover any 3rd party payment made for which assignment has

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not been accepted.

\*\*\*NOTE: Is "under the conditions specified in par. (d)" accurate?

15

(c) Respond to an inquiry by the department concerning a claim for payment

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of a health care item or service if the department submits the inquiry less than 36

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months after the date *on which* the health care item or service was provided.

\*\*\*NOTE: I drafted "36 months," rather than "3 years," because, under s. 990.01 (49), stats. (the definitions that are used for all of the statutes), "year" is defined as a calendar year.



1 (d) If all of the following apply, agree not to deny a claim submitted by the  
2 department under <sup>✓</sup>par. (b) solely because of the claim's submission date, the type or  
3 format of the claim form, or failure by an individual described under <sup>✓</sup>par. (a) to  
4 present proper documentation at the point of sale that is the basis of the claim:

<sup>sub. (2)(d)</sup>  
\*\*\*\*NOTE: In this (intro.), is "under par. (b)" correct? Is "individual described under  
par. (a)" correct?

\*\*\*\*NOTE: I do not understand the DRA language for this (intro.). This paragraph  
as a whole says that the third party can't deny a claim if submitted less than 36 months  
after the health care item or service was provided. Does the language "solely because of  
the claim's submission date" mean that the claim can be submitted *more* than 36 months  
after the health care item or service was provided? If not, it is extraneous and confusing.  
What does "point of sale" mean? "Sale" of the health care item or service? "Sale" of a  
policy?

5 1. The department submits the claim less than 36 months after the date <sup>on which</sup> the  
6 health care item or service was provided.

7 2. Action by the department to enforce the department's rights under this  
8 section <sup>✓</sup>with respect to the claim is commenced less than 72 <sup>✓</sup>months after the  
9 department submits the claim.

\*\*\*\*NOTE: Please see the <sup>✓</sup>\*\*\*\*NOTE for par. (c), above.

**INSERT 6-4**

10 **SECTION 2.** 49.475 <sup>✓</sup>(4) (d) of the statutes is created to read:

11 49.475 (4) (d) If a 3rd party other than an insurer fails to comply with par. (a)  
12 or (b), the department may so notify the attorney general <sup>✓</sup>.

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

LRB-0248/P2dn  
DAK:jld:pg

November 17, 2006

To Michelle Pink:

This redraft is greatly revised from LRB-0248/P1. I have provided numerous \*\*\*\*\*NOTES following statutory text to explain my drafting decisions or ask questions.

Please note that I have not changed the definitions of "covered entity," "covered individual," and "pharmacy benefits management," as drafted in LRB-0248/P1 to give meaning to the term "pharmacy benefits manager." I believe that the reviewer of these definitions is reading them incorrectly. The critique stated: "We believe this part is incorrect. A covered entity should include everything. The way this is written now states that a covered entity would have to cover only drugs otherwise it would not be considered a covered entity." Contrary to the reviewer's assertion, the definition of "covered entity" does *not* limit a covered entity to providing only coverage of prescription drugs; it requires that a covered entity provide this coverage, but is silent as to any other coverage that the covered entity might provide. Please also note that these definitions are used only to give meaning to terms used in the definition of "pharmacy benefits manager." Since "insurer" is now part of the definition of "3rd party," the term "pharmacy benefits manager" is meant to be exclusive of an insurer.

This draft repeals and recreates s. 49.475 (2), stats. As such it eliminates that current subsection. My instructions for this redraft were to include all of the DRA language, which I have done. However, there is an overlap between the federal language, as it is drafted in the repeal and recreation of s. 49.475 (2) (a), and current language under s. 49.475 (2), stats. Have I drafted this as is intended? If not, I need more explicit instructions as to what you wish to retain of current law and how you want it to "mesh" with the DRA requirement.

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
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## Kennedy, Debora

---

**From:** Kennedy, Debora  
**Sent:** Monday, December 04, 2006 4:16 PM  
**To:** Dybevik, Kenneth K - DHFS  
**Subject:** RE: RE: FW: LRB Draft: 07-0248/P2 Medical Assistance third-partyliability

Sure. I'm generally free Tuesday afternoon, Wednesday until 4:30, and all day Thursday and Friday.

-----Original Message-----

**From:** Dybevik, Kenneth K - DHFS  
**Sent:** Monday, December 04, 2006 4:08 PM  
**To:** Kennedy, Debora  
**Cc:** Pink, Michelle; LaPlant, Tricia L - DHFS; Nelson, Kirstin B - DHFS  
**Subject:** Fwd: RE: FW: LRB Draft: 07-0248/P2 Medical Assistance third-partyliability

Debora, can you provide some available times slots on your calendar for us to meet with you this week on the draft stat language. We think a face to face would be more effective than trying to do this by email. Thanks Ken

\* \* \* \* \*

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\* \* \* \* \*

>>> "Pink, Michelle C - DOA" <michelle.pink@wisconsin.gov> 12/1/06 >>>

I have told Deborah Kennedy at LRB that she should work directly with you and your staff on the necessary changes instead of going through me on this particular draft. Feel free to call and meet with her without me. However, please cc me on any correspondence. Thank you for checking Ken!

Michelle

-----Original Message-----

**From:** Kenneth Dybevik [mailto:dybevkk@dhfs.state.wi.us]  
**Sent:** Thursday, November 30, 2006 2:58 PM  
**To:** Pink, Michelle C - DOA  
**Cc:** LaPlant, Tricia L - DHFS; Nelson, Kirstin B - DHFS  
**Subject:** Re: FW: LRB Draft: 07-0248/P2 Medical Assistance third-partyliability

My staff and I need a meeting with you and LRB staff to review and discuss this language draft, can you set this up or should we work directly with Deborah from LRB? thanks Ken

\* \* \* \* \*

NOTICE: This email and any attachments may contain confidential information. Use and further disclosure of the information by the recipient must be consistent with applicable laws, regulations and agreements. If you received this email in error, please notify the sender; delete the email; and do not use, disclose or store the information it contains.

\* \* \* \* \*

>>> "Pink, Michelle C - DOA" <michelle.pink@wisconsin.gov> 11/22/06

>>>

Can you please review the attached revisions and let me know if changes are necessary? Thank you.

Michelle Pink

---

From: Greenslet, Patty [mailto:Patty.Greenslet@legis.wisconsin.gov]  
Sent: Monday, November 20, 2006 9:56 AM  
To: Pink, Michelle C - DOA  
Cc: Johnston, James - DOA; Hanaman, Cathlene; Palchik, Laurie A - DOA  
Subject: LRB Draft: 07-0248/P2 Medical Assistance third-party  
liability

Following is the PDF version of draft 07-0248/P2.

**Wisconsin State Statute – 49.475 Information about medical assistance beneficiaries.**

**(1) DEFINITIONS.** In this section:

(ar) "Disability insurance policy" has the meaning given in s.632.895 (1)(a).

(ag) "Covered entity" means any of the following that is not an insurer: ~~as defined in s.600.03.~~

1. A nonprofit hospital, as defined in s. 46.21

2. An employer, as defined in s. 101.01 (4), labor union, or other group of persons organized in this state if the employer, labor union, or other group provides prescription drug coverage to covered individuals who reside or are employed in this state.

3. A comprehensive or limited health care benefits program administered by the state that provides prescription drug coverage.

(am) "Covered individual" means an individual who is a member, participant, enrollee, policyholder, certificate holder, contract holder, or beneficiary of a covered entity, or a dependent of the individual, and who receives prescription drug coverage from or through the covered entity.

(b) "Insurers" has the meaning given in S.600.03(27).

(c) "Pharmacy management benefits" means the procurement of prescription drugs at a negotiated rate for dispensation in this state to covered individuals; the administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals; or any of the following services provided in the administration of pharmacy benefits:

1. Dispensation of prescription drugs by mail.

2. Claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to covered individuals.

3. Clinical formulary development and management services.

4. Rebate contracting and administration.

5. Conduct of patient compliance, therapeutic intervention, generic substitution, and disease management programs.

(d) "Pharmacy benefits manager" means a person that performs pharmacy benefits management functions.

(e) "Third party" means an entity, ~~other than an insurer,~~ that by statute, rule, or contract is responsible for payment of a claim for a health care item or service. "Third Party" includes all of the following:

1. ~~A person providing health services coverage for individuals on a selfinsurance basis without the intervention of other entities.~~ An insurer.

2. ~~A service insurance corporation under ch. 613.~~ An Employee benefit plan described in 29 USC 1003 (a) that is not exempt under 29 USC 1003 (b) and is not a multiple employer welfare arrangement.

3. A service benefit plan, as specified in 42 USC 1396a (25) (1).

4. A pharmacy benefits manager.

~~(2) DISCLOSURE TO DEPARTMENT. An insurer that issues or delivers a disability insurance policy that provides coverage to a resident of this state and a 3<sup>rd</sup> party shall~~

~~provide to the department, upon the department's request information contained in the insurer's or 3<sup>rd</sup> party's records regarding all of the following:~~

(2) REQUIREMENTS OF 3<sup>RD</sup> PARTIES. As a condition of doing business in this state, a 3<sup>rd</sup> party shall do all of the following:

~~(a) Information that the department needs to identify beneficiaries of medical assistance who satisfy any of the following:~~ Upon the department's request and in the manner prescribed by the department, provide information with respect to individuals who have been or are eligible for or have been or are recipients of medical assistance, in order to determine any period in which the individual or his spouse or dependent is being or has been provided coverage by a 3<sup>rd</sup> party and the nature of any coverage provided, including the name, address, and identifying number of any applicable coverage plan.

~~1. Are eligible for benefits under a disability insurance policy or under coverage provided by a 3<sup>rd</sup> party for health care items or services.~~

~~2. Would be eligible for benefits under a disability insurance policy if the beneficiary were enrolled as a dependent of a person insured under the disability insurance policy.~~

~~3. Would be eligible for health care items or services coverage provided by a 3<sup>rd</sup> party if the beneficiary were enrolled or otherwise specified for coverage as a dependent of a person who receives such coverage provided by the 3<sup>rd</sup> party.~~

~~(b) Information required for submittal of claims under the insurer's disability insurance policy or for the 3<sup>rd</sup> party's coverage for health care items or services.~~ Accept assignment to the department of a right of an individual to receive 3<sup>rd</sup> party payment for an item or service for which payment under medical assistance has been made and, under the conditions specified in par. (d), accept the department's right to recover any 3<sup>rd</sup> party payment made for which assignment has not been accepted.

~~(c) The types of benefits provided by the disability insurance policy.~~ Respond to an inquiry by the department concerning a claim for payment of a health care item or service if the department submits the inquiry less than 36 months after the date on which the health care item or service was provided.

(d) If all of the following apply, agree not to deny a claim submitted by the department under par. (b) solely because of the claim's submission date, the type of format of the claim form, or failure by an individual described under par. (a) to present proper documentation at the point of sale that is the basis of the claim:

1. The department submits the claim less than 36 months after the date on which the Health care item or service was provided.

2. Action by the department to enforce the department's rights under this section with respect to the claim is commenced less than 72 months after the department

*and the third party*  
\* WRITTEN AGREEMENT. Upon requesting an insurer or 3<sup>rd</sup> party to provide the information under sub.(2), the department shall enter into a written agreement with the insurer or the 3<sup>rd</sup> party that satisfies all of the following:

(a) Identifies in detail the information to be disclosed.

- (b) Includes provisions that adequately safeguard the confidentiality of the information to be disclosed.
- (c) Specifies how the ~~insurer's~~ 3<sup>rd</sup> party's reimbursable costs under sub.(5) will be determined and specifies manner of payment.

(3) DEADLINE FOR RESPONSE; ENFORCEMENT.

- (a) ~~An insurer or~~ 3<sup>rd</sup> party shall provide the information requested under sub.(2) within 180 days after receiving the department's request if it is the first time that the department has requested the ~~insurer or~~ 3<sup>rd</sup> party to disclose information under this section.
- (b) ~~An insurer or~~ 3<sup>rd</sup> party shall provide the information requested under sub.(2) within 30 days after receiving the department's request if the department has previously requested the insurer or 3<sup>rd</sup> party to disclose information under this section.
- (c) If an insurer fails to comply with par.(a) or (b), the department may notify the commissioner of insurance who may initiate enforcement proceedings against the insurer under s.601.41 (4)(a)
- (d) If a 3<sup>rd</sup> party other than an insurer fails to comply with par. (a) or (b), the department may so notify the attorney general.

(5) REIMBURSEMENT OF COSTS. From the appropriations under s.20.435 (4)(bm) and (pa), the department shall reimburse ~~an insurer or~~ 3<sup>rd</sup> party that provides information under this section for the ~~insurer's or~~ 3<sup>rd</sup> party's reasonable costs incurred in providing the requested information, including its reasonable costs, if any, to develop and operate automated systems specifically for the disclosure of information ~~under this section.~~

## Questions to discuss during 12/14 Meeting on TPL DRA Budget Request

- ✓ 1. Under WRITTEN AGREEMENT, discuss requirement of entering into a written agreement. Both parties should be required to enter into a written agreement. 49.475(3)
2. Under 2(a) the draft language states that insurance carriers would provide information with respect to individuals who have been or are eligible for or have been or are recipients of medical assistance. The files carriers currently send us includes data for all recipients they cover (not just Medicaid). We want to continue to receive the entire file from insurance carriers.
3. Under 2 (a) the term Medical Assistance is too narrow. Can this be redefined to include the term Wisconsin Health Care Programs?
- ✓ 4. Under AG #2 and AG #3, please explain the reason for including prescription drug coverage as part of the definition. 49.475(1)(ag) 2+3
- ✓ 5. Was it the intent to include covered entity and covered individual in the definition of third party? No; is part of def. of "pharmacy benefits manager"
- ✓ 6. Discuss requirements needed to support DRA.

Chronic disease  
Well woman  
Child support enforcement  
Budget Care  
Senior Care  
Family Care  
(Define "public assistance")

Also:

- (a) Point of sale = time of service, benefit, or item delivery
- (b) Redo 49.45(2)(a), state - change (a) to be: Info DHS needs to identify beneficiaries of "public assistance" who receive or are elig. to receive coverage, services, benefits, items, or payments made for hc services from 3rd party.

## Kennedy, Debora

---

**From:** LaPlant, Tricia L - DHFS  
**Sent:** Thursday, December 14, 2006 2:33 PM  
**To:** Kennedy, Debora  
**Subject:** Child Support Arrangement

**Attachments:** insurance disclosure coverletter july 14.10.doc



insurance disclosure  
coverlett...

Hi Debora,

Attached is a letter we sent out to our insurance carriers explaining why we want to share their insurance files with DWD. Please let me know if you have any other questions.  
Thanks.



DIVISION OF HEALTH CARE FINANCING

1 WEST WILSON STREET  
P O BOX 309  
MADISON WI 53701-0309

Jim Doyle  
Governor

Helene Nelson  
Secretary

**State of Wisconsin**

Department of Health and Family Services

Telephone: 608-266-8922  
FAX: 608-266-1096  
TTY: 608-261-7798  
dhfs.wisconsin.gov

July 21, 2006

WPS

Attention: Barb Bleiler  
1800 Engel Street  
Madison, WI 53713

Dear Ms. Bleiler:

I am writing to request your approval of an amendment to the Wisconsin Medicaid Insurance Information Disclosure agreement you have entered into with the Department of Health and Family Services (DHFS) pursuant to s. 49.475, Wis. Stats. Under the terms of that agreement, you are required to provide DHFS with information that we need to identify beneficiaries of medical assistance who are covered or eligible for coverage under a health insurance policy. The written agreement further provides that we will adequately safeguard the confidentiality of the information you disclose to us. Under the terms of our agreement, DHFS has agreed that neither it, nor its agent, EDS, will disclose information obtained from you to any other agency or person except to the extent needed to coordinate health coverage benefits for Medicaid recipients.

DHFS currently provides the Department of Workforce Development (DWD) health insurance coverage information regarding individuals who are eligible for Medicaid. DWD uses this information to determine which MA-eligible children who are subject to child support orders might be eligible for coverage as a dependent under a parent's health insurance policy. DWD is interested in obtaining the same information regarding individuals who are not eligible for Medicaid. Access to that information will enable DWD to identify non-Medicaid children who are subject to child support orders and who might be eligible for coverage as a dependent under a parent's health insurance policy. We are requesting permission to amend our agreement with you to permit us to disclose the entire insurance carrier file to DWD, including information for participants not currently on Medicaid. Providing DWD with access to this information will assist us in screening for Medicaid cost avoidance and third party liability, as we will be able to identify children eligible for coverage as dependents on a parent's insurance policy, thereby reducing the potential for these children to become Medicaid recipients.

Wisconsin is required under both state and federal law to ensure that all child support orders include provisions for health care coverage of the children. To comply with that requirement, DWD is authorized by s. 49.22(2m), Wis. Stats., to request information from any person in this state necessary and appropriate to administer the child support program. Your agreement to allow our Department to share this information with DWD will enable DWD to enforce medical support orders without contacting individual carriers for specific insurance information based on individual court or administrative orders for medical support.

In addition, we are requesting approval to use this information to identify beneficiaries of the Wisconsin Chronic Disease Program (WCDP) who are covered or eligible for coverage under a health insurance policy. The WCDP offers services to individuals who have end-stage renal

July 17, 2006

Page 2

failure, hemophilia or cystic fibrosis. The program pays health care providers for disease-related services and supplies that are provided to certified WCDP recipients.

Enclosed for your reference is a copy of the Wisconsin Medicaid Insurance Information Disclosure Agreement. We are proposing the Confidentiality and Protection of Information section be amended as follows:

The Department agrees that neither it nor its fiscal agent, EDS, will disclose information obtained from the insurer to any other agency or person except to the extent needed to coordinate Medicaid benefits and Wisconsin Chronic Disease Program (WCDP) benefits with the insurer's benefits and to enforce non-Medicaid child support orders issued in the State of Wisconsin. Coordination of benefits and child support order enforcement may necessitate disclosure of specific insurance plan or policy information relevant to Wisconsin Medicaid and WCDP recipients, to Department of Workforce Development, to custodial and non-custodial parents, medical providers, other potential third-party payers or to the recipients themselves.

The Department agrees that neither it nor its fiscal agent, EDS, will disclose information the insurer has identified as, and is in fact, of a proprietary nature, and further that neither the Department nor EDS will knowingly disclose to the insurer's competitors or potential competitors any information provided as part of the insurer's policy and policyholder information disclosure.

The insurer agrees that it will maintain the confidentiality of information identified in 42 Code of Federal Regulations Part 431, Subpart F and s. 49.45(4), Wisconsin Statutes, which may come into its possession as a result of this written agreement. This confidentiality shall extend to the insurer's employees, agents and any other person, whether or not employed by the insurer, who may have access to the disclosed information.

If your company agrees to the amendment, please sign the enclosed document and return to the address listed below by August 25, 2006. As a reminder, you are required to abide by the terms in the current contract until the amendment is signed.

Department of Health and Family Services  
Attention: Tricia Laplant  
1 West Wilson Street, Room 472  
Madison, WI 53701

If you have any questions regarding this letter or the amendment, please contact Tricia Laplant at (608) 267-6847.

Sincerely,

Cheryl McIlquham  
Interim Administrator

CM:dd  
CB07002.TL

Enclosure

**Kennedy, Debora**

---

**From:** Pink, Michelle C - DOA  
**Sent:** Monday, December 18, 2006 4:40 PM  
**To:** Kennedy, Debora  
**Subject:** RE: 07-0248

Hi Debora,

Thank you for bringing this to my attention.

Adding the other programs is a policy decision so I will pursue getting a decision from the administration on it. However, it seems likely that it would be approved. Depending on your workload issues, if you have time to create a separate draft including these programs, that would be fine. Otherwise, please exclude them from the draft for now and I can request a new version after the decision is made.

Thank you, again,

Michelle

---

**From:** Kennedy, Debora [<mailto:Debora.Kennedy@legis.wisconsin.gov>]  
**Sent:** Monday, December 18, 2006 2:47 PM  
**To:** Pink, Michelle C - DOA  
**Subject:** 07-0248

I left a voice mail for you on Friday concerning this draft. In essence, my question has to do with whether application of the 3rd-party liability provisions that are currently applicable only to Medical Assistance (and, consequently, to Badger Care, Senior Care, and Family Care) should be expanded to disease aids (s. 49.687), the well woman program (s. 255.06 ), and child support enforcement. The expansion is requested by DHFS, and I need to know if you approve of it or not before I undertake the work to achieve it.

*Debora A. Kennedy*

Managing Attorney

Legislative Reference Bureau

(608) 266-0137

[debora.kennedy@legis.state.wi.us](mailto:debora.kennedy@legis.state.wi.us)

12/18/2006



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0248/P2 /  
DAK&PJK:jld:pg

D-NOTE

DOA:.....Pink, BB0012 - Medical Assistance third-party liability

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

DO NOT  
REGENERATE

1 AN ACT ~~to renumber~~ 49.475 (1) (a); ~~to amend~~ 20.435 (4) (bm), 20.435 (4) (pa),  
2 49.475 (3) (intro.), 49.475 (3) (c), 49.475 (4) (a), 49.475 (4) (b) and 49.475 (5); ~~to~~  
3 ~~repeat and recreate~~ 49.475 (2); and ~~to create~~ 49.475 (1) (ag), 49.475 (1) (am),  
4 49.475 (1) (c), 49.475 (1) (d), 49.475 (1) (e) and 49.475 (4) (d) of the statutes;  
5 relating to: the budget. ✓

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MEDICAL ASSISTANCE**

Currently, DHFS may obtain from insurers information DHFS needs to identify a recipient of Medical Assistance (MA) who is eligible for benefits under a disability insurance policy or, if enrolled as the dependent of a beneficiary, would be eligible for benefits; claims submittal information; and types of benefits provided under the policy. DHFS must enter into an agreement with the insurer that identifies the information to be disclosed, safeguards confidentiality, and specifies how the insurer's reasonable costs will be determined and paid from state general purpose revenues and federal moneys. Insurers must provide the information within specified deadlines, and the commissioner of insurance may initiate enforcement proceedings for noncompliance.

*under  
or a program administered  
under MA under a federal waiver,* ✓

This bill expands the sources from whom DHFS may receive health care services coverage information to include entities that are responsible for payment of a claim for a health care item or service and expands to third parties the compensation payable for providing the information. These entities, termed "third parties," include, in addition to insurers, self-insured plans, service benefits plans, and pharmacy benefits managers. The bill authorizes DHFS to notify the attorney general of third parties, other than insurers, that fail to provide information requested.

Under the bill, third parties must accept assignment to DHFS of a right of an individual to receive payment from the third party for a health care item or service for which payment under MA has been made. Third parties must also accept the right of DHFS to recover any third-party payment made for which assignment had not been accepted. A third party must respond to an inquiry by DHFS concerning a claim for payment of a health care item or service if the inquiry is made within 36 months after the item or service is provided. Further, third parties must agree not to deny a DHFS claim on the basis of certain circumstances, if submitted less than 36 months after the health care item or service is provided and if action by DHFS to enforce its rights is commenced less than 72 months after DHFS submits the claim.

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

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

1           **SECTION 1.** 20.435 (4) (bm) of the statutes is amended to read:  
2           20.435 (4) (bm) *Medical Assistance, food stamps, and Badger Care*  
3 *administration; contract costs, insurer reports, and resource centers.* Biennially, the  
4 amounts in the schedule to provide the state share of administrative contract costs  
5 for the Medical Assistance program under s. 49.45, the food stamp program under  
6 s. 49.79, and the Badger Care health care program under s. 49.665, other than  
7 payments to counties and tribal governing bodies under s. 49.78 (8), to develop and  
8 implement a registry of recipient immunizations, to reimburse insurers 3rd parties  
9 for their costs under s. 49.475, for costs associated with outreach activities, and for  
10 services of resource centers under s. 46.283. No state positions may be funded in the  
11 department of health and family services from this appropriation, except positions

1 for the performance of duties under a contract in effect before January 1, 1987,  
2 related to the administration of the Medical Assistance program between the  
3 subunit of the department primarily responsible for administering the Medical  
4 Assistance program and another subunit of the department. Total administrative  
5 funding authorized for the program under s. 49.665 may not exceed 10% of the  
6 amounts budgeted under pars. (bc), (p), and (x).

\*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

7 **SECTION 2.** 20.435 (4) (pa) of the statutes is amended to read:

8 20.435 (4) (pa) *Federal aid; Medical Assistance and food stamp contracts*  
9 *administration.* All federal moneys received for the federal share of the cost of  
10 contracting for payment and services administration and reporting, other than  
11 moneys received under par. (nn), to reimburse ~~insurers~~ 3rd parties for their costs  
12 under s. 49.475, for administrative contract costs for the food stamp program under  
13 s. 49.79, and for services of resource centers under s. 46.283.

14 **SECTION 3.** 49.475 (1) (a) of the statutes is renumbered 49.475 (1) (ar).

15 **SECTION 4.** 49.475 (1) (ag) of the statutes is created to read:

16 49.475 (1) (ag) "Covered entity" means any of the following that is not an  
17 insurer:

18 1. A nonprofit hospital, as defined in s. 46.21 (2) (m).

19 2. An employer, as defined in s. 101.01 (4), labor union, or other group of persons  
20 organized in this state if the employer, labor union, or other group provides  
21 prescription drug coverage to covered individuals who reside or are employed in this  
22 state.

1           3. A comprehensive or limited health care benefits program administered by  
2 the state that provides prescription drug coverage.

3           **SECTION 5.** 49.475 (1) (am) of the statutes is created to read:

4           49.475 (1) (am) "Covered individual" means an individual who is a member,  
5 participant, enrollee, policyholder, certificate holder, contract holder, or beneficiary  
6 of a covered entity, or a dependent of the individual, and who receives prescription  
7 drug coverage from or through the covered entity.

8           **SECTION 6.** 49.475 (1) (c) of the statutes is created to read:

9           49.475 (1) (c) "Pharmacy benefits management" means the procurement of  
10 prescription drugs at a negotiated rate for dispensation in this state to covered  
11 individuals; the administration or management of prescription drug benefits  
12 provided by a covered entity for the benefit of covered individuals; or any of the  
13 following services provided in the administration of pharmacy benefits:

- 14           1. Dispensation of prescription drugs by mail.
- 15           2. Claims processing, retail network management, and payment of claims to  
16 pharmacies for prescription drugs dispensed to covered individuals.
- 17           3. Clinical formulary development and management services.
- 18           4. Rebate contracting and administration.
- 19           5. Conduct of patient compliance, therapeutic intervention, generic  
20 substitution, and disease management programs.

21           **SECTION 7.** 49.475 (1) (d) of the statutes is created to read:

22           49.475 (1) (d) "Pharmacy benefits manager" means a person that performs  
23 pharmacy benefits management functions.

24           **SECTION 8.** 49.475 (1) (e) of the statutes is created to read:

1 49.475 (1) (e) "Third party" means an entity that by statute, rule, or contract  
2 is responsible for payment of a claim for a health care item or service. "Third party"  
3 includes all of the following:

4 1. An insurer.

✓ **NOTE:** It is unnecessary to state, as requested, that the term "insurer" has the meaning given in s. 600.03 (27), stats.; the term is already defined as such under s. 49.475 (1) (b), stats.

5 2. An employee benefit plan described in 29 USC 1003 (a) that is not exempt  
6 under 29 USC 1003 (b) and is not a multiple employer welfare arrangement.

✓ **NOTE:** I have consulted with Fred Nepple, chief counsel for OCI, concerning this language. It is intended to be the equivalent of the term "self-insured plan" used in 42 USC 1396a (25) (I) (the DRA language). It replaces language I used in -0248/P1, that is in current law under s. 149.10 (5), stats. It uses the language of ERISA itself, so that the meaning is clearer. Mr. Nepple indicated that the term "multiple employer welfare arrangement" should, because of ensuing litigation under ERISA, be excluded from the definition. Mr. Nepple further indicated that use of the language under s. 149.10 (3j) (a), stats., as suggested by the reviewer of -0248/P1, would be inappropriate because that language refers to "an employee welfare plan, as defined in section 3 (1) of federal ERISA of 1974" — this federal definition (in 29 USC 1167 (i)) includes self-funded or insured plans.

7 3. A service benefit plan, as specified in 42 USC 1396a (25) (I).

✓ **NOTE:** I also consulted Fred Nepple of OCI concerning this term. It is not defined in federal law, and he does not know what it means. The reference to "service insurance corporation under ch. 613, stats.," which I used in -0248/P1, is, according to Mr. Nepple, incorrect because those entities are regulated as insurers by OCI. I have only been able, therefore, to refer to the place in the DRA language where the term "service benefit plan" is specified.

8 4. A pharmacy benefits manager.

✓ *To the department necessary for the department to ascertain all of the following or his or her spouse or dependent*

9 SECTION 9. 49.475 (2) of the statutes is repealed and recreated to read:  
10 49.475 (2) REQUIREMENTS OF 3RD PARTIES. As a condition of doing business in this  
11 state, a 3rd party shall do all of the following:

12 (a) Upon the department's request and in the manner prescribed by the  
13 department, provide information with respect to individuals who have been or are  
14 eligible for or have been or are recipients of medical assistance in order to determine  
15 any period of time in which the individual or his or her spouse or dependent is being

*or a program administered under medical assistance under a waiver of federal Medicaid laws:  
# 1. Whether #*

SECTION 9

↓ # 2. If subd. 1. applies, ✓

on a benefit or service ✓

benefit, or service ✓

and period of time ✓

1 or has been provided coverage by a 3rd party and the nature of any coverage  
2 provided, including the name, address, and identifying number of any applicable  
3 coverage plan.

✓ \*\*\*\*NOTE: How can the 3rd party, or the department, for that matter, know who are all of the individuals who are eligible for (but not receiving) medical assistance? As a corollary to this question, should it be made clear that DHFS identifies the individuals to the 3rd party when requesting the information? Otherwise, it appears to be ambiguous whether the 3rd party has to somehow figure out who is eligible for or receiving medical assistance. Also, shouldn't the information that the 3rd party has to provide be limited to information contained in the 3rd party's records? Otherwise, this language requires a 3rd party to provide an individual's information to which it may have no access.

4 (b) Accept assignment to the department of a right of an individual to receive  
5 3rd-party payment for an item or service for which payment under medical  
6 assistance has been made and ~~under the conditions specified in par. (d)~~ accept the  
7 department's right to recover any 3rd-party payment made for which assignment  
8 has not been accepted.

✓ \*\*\*\*NOTE: Is "under the conditions specified in par. (d)" accurate?

9 (c) Respond to an inquiry by the department concerning a claim for payment  
10 of a health care item or service if the department submits the inquiry less than 36  
11 months after the date on which the health care item or service was provided.

✓ \*\*\*\*NOTE: I drafted "36 months," rather than "3 years," because, under s. 990.01 (49), stats. (the definitions that are used for all of the statutes), "year" is defined as a calendar year.

12 (d) If all of the following apply, agree not to deny a claim submitted by the  
13 department under par. (b) solely because of the claim's submission date, the type or  
14 format of the claim form, or failure by an individual described under par. (a) to  
15 present proper documentation at the ~~point of sale~~ that is the basis of the claim:

2 ✓ \*\*\*\*NOTE: In this sub. (2) (d) (intro.), is "under par. (b)" correct? Is "individual described under par. (a)" correct?

\*\*\*\*NOTE: What does "point of sale" mean? "Sale" of the health care item or service? "Sale" of a policy? ✓

# time of delivery of the service, benefit, or item

1           1. The department submits the claim less than 36 months after the date on  
2 which the health care item or service was provided.

3           2. Action by the department to enforce the department's rights under this  
4 section with respect to the claim is commenced less than 72 months after the  
5 department submits the claim.

\*\*\*\*NOTE: Please see the \*\*\*\*NOTE for par. (c), above.

✓  
and the  
3rd party

6           **SECTION 10.** 49.475 (3) (intro.) of the statutes is amended to read:

7           49.475 (3) WRITTEN AGREEMENT. (intro.) Upon requesting an insurer a 3rd party  
8 to provide the information under sub. (2) (a), the department shall enter into a  
9 written agreement with the insurer ~~3rd party~~ that satisfies all of the following:

10           **SECTION 11.** 49.475 (3) (c) of the statutes is amended to read:

11           49.475 (3) (c) Specifies how the insurer's 3rd party's reimbursable costs under  
12 sub. (5) will be determined and specifies the manner of payment.

13           **SECTION 12.** 49.475 (4) (a) of the statutes is amended to read:

14           49.475 (4) (a) ~~An insurer~~ A 3rd party shall provide the information requested  
15 under sub. (2) (a) within 180 days after receiving the department's request if it is the  
16 first time that the department has requested the insurer 3rd party to disclose  
17 information under this section.

18           **SECTION 13.** 49.475 (4) (b) of the statutes is amended to read:

19           49.475 (4) (b) ~~An insurer~~ A 3rd party shall provide the information requested  
20 under sub. (2) (a) within 30 days after receiving the department's request if the  
21 department has previously requested the insurer 3rd party to disclose information  
22 under this section.

23           **SECTION 14.** 49.475 (4) (d) of the statutes is created to read:



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

LRB-0248/1dn  
DAK&PJK:jld:pg

date

To Michelle Pink:

After meeting with several individuals from DHFS on December 14, I have redrafted this bill to do all of the following:

1. Restructure s. 49.475 (2) (a) to require a 3rd party to provide information to DHFS necessary for DHFS to ascertain, with respect to MA recipients, whether the recipient, spouse, or dependent is being or has been provided coverage or benefit or services and, if so, the nature and period of time of the coverage, benefit, or services provided. This revised language clears up difficulties expressed in my \*\*\*\*NOTE for this provision under the /P2 draft. \*
2. Substitute new language for the term "point of sale" in s. 49.475 (2) (d). \*
3. Require in s. 49.475 (3) that the department and the 3rd party enter into a written agreement. \*

DHFS also wanted to have s. 49.475 apply to Badger Care, Senior Care, Family Care, the disease aids programs (s. 49.68, 49.683, and 49.685, stats.), the Well-Woman Program (s. 255.06, stats.), and to child support enforcement. I believe that Badger Care (as referenced in s. 49.46 (1) (a) 11., stats.) and Family Care (as referenced in s. 49.45 (6u) (ag) 1., stats.) already fall under the definition of "medical assistance" under s. 49.43 (8), stats., that guides s. 49.475. However, there is no corresponding reference to Senior Care in ch. 49, stats. To deal with this problem, I have referred in s. 49.475 (2) (a) to "medical assistance or a program administered under medical assistance under a waiver of federal medicaid laws bill \*

Expanding the provisions of this draft to the disease aids programs, the Well-Woman Program, and to child support enforcement, however, entails drafting provisions that correspond to s. 49.475 in the appropriate place in the statutes where these programs are specified; I will redraft this bill if I hear from you that approval has been given to make this expansion. \*

Please let me know if you have questions about or changes to this bill.

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: debora.kennedy@legis.wisconsin.gov

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

LRB-0248/1dn  
DAK:jld:rs

December 20, 2006

To Michelle Pink:

After meeting with several individuals from DHFS on December 14, I have redrafted this bill to do all of the following:

1. Restructure s. 49.475 (2) (a) to require a 3rd party to provide information to DHFS necessary for DHFS to ascertain, with respect to MA recipients, whether the recipient, spouse, or dependent is being or has been provided coverage or benefits or services and, if so, the nature and period of time of the coverage, benefit, or services provided. This revised language clears up difficulties expressed in my \*\*\*\*NOTE for this provision under the /P2 draft.
2. Substitute new language for the term "point of sale" in s. 49.475 (2) (d).
3. Require in s. 49.475 (3) that the department and the 3rd party enter into a written agreement.

DHFS also wanted to have s. 49.475 apply to Badger Care, Senior Care, Family Care, the disease aids programs (s. 49.68, 49.683, and 49.685, stats.), the Well-Woman Program (s. 255.06, stats.), and to child support enforcement. I believe that Badger Care (as referenced in s. 49.46 (1) (a) 11., stats.) and Family Care (as referenced in s. 49.45 (6u) (ag) 1., stats.) already fall under the definition of "medical assistance" under s. 49.43 (8), stats., that guides s. 49.475. However, there is no corresponding reference to Senior Care in ch. 49, stats. To deal with this problem, I have referred in s. 49.475 (2) (a) to "medical assistance or a program administered under medical assistance under a waiver of federal Medicaid laws."

Expanding the provisions of this bill to the disease aids programs, the Well-Woman Program, and to child support enforcement, however, entails drafting provisions that correspond to s. 49.475 in the appropriate place in the statutes where these programs are specified; I will redraft this bill if I hear from you that approval has been given to make this expansion.

Please let me know if you have questions about or changes to this bill.

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: [debora.kennedy@legis.wisconsin.gov](mailto:debora.kennedy@legis.wisconsin.gov)

12/21/06

**Kennedy, Debora**

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**To:** Pink, Michelle C - DOA; Jablonsky, Sue - DOA  
**Cc:** Kahler, Pam  
**Subject:** More about 07--0248 (3rd party liability)

Pam Kahler has pointed out several things in connection with my Drafter's Note to Michelle on 05-0248/1, with respect to DHFS' desire to have s. 49.475 apply to Badger Care, Senior Care, Family Care, the disease aids programs, the Well-Woman Program and to child support enforcement:

1. Family Care, Badger Care, and Senior Care already have in current law, at ss. 46.286 (3m), 49.665 (5m), and 49.688 (8m), stats., requirements for insurers that correspond to s. 49.475, stats.; these provisions, then, apply to recipients of the Family Care and Badger Care benefits and to Senior Care enrollees regardless of whether they are MA recipients or not--would you want these provisions to be changed as 07-0248 changes s. 49.475?
2. Pam has been separately requested by Sue to draft, and has drafted, 07-1140, which, among other things, adds to the disease aids programs s. 49.687 (6), which corresponds to s. 49.475, stats. Would either of you want this subsection to be changed as 07-0248 changes s. 49.475?
3. Also, as I previously explained, expanding the changes to s. 49.475, stats., that are under 07-0248 to the Well-Woman Program and to child support enforcement, entails other additional drafting--the child support enforcement language seems to involve simply a sharing of information DHFS receives with DWD.

*Debora A. Kennedy*  
Managing Attorney  
Legislative Reference Bureau  
(608) 266-0137  
debora.kennedy@legis.state.wi.us

**Kennedy, Debora**

---

**From:** Pink, Michelle C - DOA  
**Sent:** Tuesday, January 02, 2007 2:55 PM  
**To:** Kennedy, Debora  
**Subject:** FW: Ins. Disclosure Language from DWD on Child Support

**Attachments:** a1t37500\_1.PDF



a1t37500\_1.PDF  
(121 KB)

FYI, Deborah. Here is the draft that was prepared for the last biennial budget on sharing third-party liability information with DWD for child support purposes.

Please incorporate these changes into LRB-0248.

Thanks, again!

Michelle

-----Original Message-----

From: Dybevik, Kenneth [mailto:DYBEVKK@dhfs.state.wi.us]  
Sent: Tuesday, January 02, 2007 2:28 PM  
To: Pink, Michelle C - DOA; Kennedy, Debora  
Cc: Chesnik, Connie - DWD; Dew, Karla J - DHFS; LaPlant, Tricia L - DHFS; McIlquham, Cheryl J - DHFS; Nelson, Kirstin B - DHFS; [dwd.state.wi.us].Carol.Chellew; [dwd.state.wi.us];.Phyllis.Fuller  
Subject: Re: Ins. Disclosure Language from DWD on Child Support

Here is the information I received from DWD on suggested changes to 49.475 to allow sharing data with DWD child support. Please contact Phyllis Fuller at DWD if you have any questions. Thanks Ken

\* \* \* \* \*  
NOTICE: This email and any attachments may contain confidential information. Use and further disclosure of the information by the recipient must be consistent with applicable laws, regulations and agreements. If you received this email in error, please notify the sender; delete the email; and do not use, disclose or store the information it contains.  
\* \* \* \* \*

>>> "Fuller, Phyllis" <Phyllis.Fuller@dwd.state.wi.us> 1/2/07 >>>  
Hello Ken,

Per your request, attached is the proposed language relating to DHFS and DWD sharing health coverage information from insurers.

Thank you so much for your efforts to make it possible for our depts. to share this information.

Please contact me if you have questions.

Phyllis Fuller  
Bureau of Child Support  
608-264-6065

> \_\_\_\_\_  
>

**2003 BILL**

1 **AN ACT to create 49.475 (6) of the statutes; relating to: sharing health**  
2 **insurance coverage information obtained from insurers.**

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***Analysis by the Legislative Reference Bureau***

Under current law, the Department of Health and Family Services (DHFS) may request from health insurers information to enable DHFS to identify medical assistance beneficiaries who are eligible, or who would be eligible as dependents, for health insurance coverage. An insurer that receives a request must provide the information within a certain period of time. Under the bill, DHFS is authorized to provide any information that it receives from a health insurer to the Department of Workforce Development. The two departments must agree on procedures to safeguard the confidentiality of the information.

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

3 SECTION 1. 49.475 (6) of the statutes is created to read:  
4 49.475 (6) SHARING INFORMATION. The department of health and family services  
5 shall provide to the department of workforce development or a county child support  
6 agency under s. 59.53 (5), for purposes of the medical support liability program under

**BILL**

1 s. 49.22, any information that the department of health and family services receives  
 2 under this section. The 2 departments shall agree on procedures and methods to  
 3 adequately safeguard the confidentiality of the information provided under this  
 4 subsection.

5 (END)

**Kennedy, Debora**

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**From:** Pink, Michelle C - DOA  
**Sent:** Tuesday, January 02, 2007 1:48 PM  
**To:** Kennedy, Debora; Jablonsky, Sue - DOA  
**Cc:** Kahler, Pam  
**Subject:** RE: More about 07--0248 (3rd party liability)

Good afternoon, Debora,

Sue and I have conferred on your concerns and have decided that the changes in draft LRB-1140 requested by Sue should be incorporated into LRB-0248. Consequently, the MA third-party liability draft should cover not only the Medicaid programs (Medical Assistance including Family Care, BadgerCare, and SeniorCare) but also the Well Woman Program (s. 255.06) and the disease aids programs (s. 49.687).

In addition, the statutory language changes should include a provision allowing DHFS to share data with the child support program at the Department of Workforce Development for children who are not enrolled in Medicaid. It is my understanding that current law already allows DHFS to share this information with DWD for children who are enrolled in Medicaid. The language to enable this information sharing was included in the 05-07 Executive Budget but was removed by the Legislature. DHFS has requested DWD resurrect the drafting instructions from two years ago and I will send them as soon as they are received.

As always, please let me know if you need further clarification. Thanks!

Michelle Pink

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**From:** Kennedy, Debora [mailto:Debora.Kennedy@legis.wisconsin.gov]  
**Sent:** Thursday, December 21, 2006 10:59 AM  
**To:** Pink, Michelle C - DOA; Jablonsky, Sue - DOA  
**Cc:** Kahler, Pam - LEGIS  
**Subject:** More about 07--0248 (3rd party liability)

Pam Kahler has pointed out several things in connection with my Drafter's Note to Michelle on 05-0248/1, with respect to DHFS' desire to have s. 49.475 apply to Badger Care, Senior Care, Family Care, the disease aids programs, the Well-Woman Program and to child support enforcement:

1. Family Care, Badger Care, and Senior Care already have in current law, at ss. 46.286 (3m), 49.665 (5m), and 49.688 (8m), stats., requirements for insurers that correspond to s. 49.475, stats.; these provisions, then, apply to recipients of the Family Care and Badger Care benefits and to Senior Care enrollees regardless of whether they are MA recipients or not--would you want these provisions to be changed as 07-0248 changes s. 49.475?
2. Pam has been separately requested by Sue to draft, and has drafted, 07-1140, which, among other things, adds to the disease aids programs s. 49.687 (6), which corresponds to s. 49.475, stats. Would either of you want this subsection to be changed as 07-0248 changes s. 49.475?
3. Also, as I previously explained, expanding the changes to s. 49.475, stats., that are under 07-0248 to the Well-Woman Program and to child support enforcement, entails other additional drafting--the child support enforcement language seems to involve simply a sharing of information DHFS receives with DWD.

*Debra A. Kennedy*

Managing Attorney

Legislative Reference Bureau

(608) 266-0137

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Kennedy, Debora

From: Pink, Michelle C - DOA  
Sent: Friday, January 05, 2007 8:10 AM  
To: Kennedy, Debora  
Subject: LRB Draft: 07-0248/1 Medical Assistance third-party liability

Good morning, Debora,

Another change to the third party liability draft.

Thank you.

Michelle

-----Original Message-----

From: Tricia LaPlant [mailto:laplat1@dhfs.state.wi.us]  
Sent: Friday, January 05, 2007 8:04 AM  
To: Pink, Michelle C - DOA  
Subject: Re: FW: LRB Draft: 07-0248/1 Medical Assistance third-party liability

Hi Michelle,

We have reviewed the new language and agree with all the changes with the exception of the one listed below. Please feel free to contact me if you have any questions. Thanks.

1. Under 49.475- WRITTEN AGREEMENT Section (a) - The language currently states "Identifies in detail the information to be disclosed."

We are recommending this be changed to the following: Identifies the detailed format of the information to be provided to the department.

>>> "Pink, Michelle C - DOA" <michelle.pink@wisconsin.gov> 12/20/06 10:33 AM >>>

Please review again and let me know if this has your approval or if further changes are needed. Thank you.

Michelle Pink

From: Schlueter, Ron [mailto:Ron.Schlueter@legis.wisconsin.gov]  
Sent: Wednesday, December 20, 2006 10:10 AM  
To: Pink, Michelle C - DOA  
Cc: Johnston, James - DOA; Hanaman, Cathlene - LEGIS; Palchik, Laurie A - DOA  
Subject: LRB Draft: 07-0248/1 Medical Assistance third-party liability

Following is the PDF version of draft 07-0248/1.