CHAPTER 619
RISK-SHARING PLANS

48.01 Mandatory risk-sharing plans. (1) MANDATORY PLANS. (a) Establishment of plans. If the commissioner finds after a hearing that in any part of this state automobile insurance, property insurance, health care liability insurance, liability insurance but not to include coverage for risks that are determined to be uninsurable, worker’s compensation insurance, insurance coverage for foster homes, or insurance coverage for group homes is not readily available in the voluntary market, and that the public interest requires that availability, the commissioner may by rule either order that the plan set up branch service offices or take other appropriate steps to ensure that service is available.

(b) Purposes and contents of risk-sharing plans. The plan promulgated or prepared under par. (a) shall:

1. Give consideration to the need for adequate and readily accessible coverage, to alternative methods of improving the market affected, to the preferences of the insurers and agents, to the inherent limitations of the insurance mechanism, to the need for reasonable underwriting standards, and to the requirement of reasonable loss prevention measures;

2. Establish procedures that will create minimum interference with the voluntary market;

3. Spread the burden imposed by the facility equitably and efficiently within the industry; and

4. Establish procedures for applicants and participants to have grievances reviewed by an impartial body.

(c) Persons required to participate. 1. Each plan, except a health care liability insurance plan, a foster home protection insurance plan, or a group home protection insurance plan, shall require participation by all insurers doing any business in this state of the types covered by the specific plan and all agents licensed to represent such insurers in this state except that the commissioner may exclude classes of persons for administrative convenience or because it is not equitable or practicable to require them to participate in the plan.

2. Each health care liability insurance plan shall require participation by all insurers insuring persons in this state under policies described in subchs. I or III of ch. 632 and all agents licensed to represent such insurers in this state except that the commissioner may exclude classes of persons for administrative convenience or because it is not equitable or practicable to require them to participate in the plan.

5. A group home protection insurance plan shall require participation by all insurers insuring persons in this state under policies described in subchs. I or III of ch. 632 and all agents licensed to represent such insurers in this state except that the commissioner may exclude classes of persons for administrative convenience or because it is not equitable or practicable to require them to participate in the plan.

(d) Voluntary participation. The plan may provide for optional participation by insurers not required to participate under par. (c).

(e) Classifications and rates. Each plan shall provide for the method of classifying risks and making and filing rates applicable thereto.

(2) BASIS OF PARTICIPATION. The plan shall specify the basis of participation of insurers and agents and the conditions under which risks must be accepted.

(3) DUTY TO PROVIDE SERVICE. Every participating insurer and agent shall provide to any person seeking coverages of kinds available in the plans the services prescribed in the plans, including full information on the requirements and procedures for obtaining coverage under the plans whenever the business is not placed in the voluntary market.

(4) COMMISSION. The plan shall specify what commission rates shall be paid for business placed in the plans.

(5) PROVISION OF MARKETING FACILITIES. If the commissioner finds that the lack of cooperating insurers or agents in an area makes the functioning of the plan difficult, the commissioner may order that the plan set up branch service offices or take other appropriate steps to ensure that service is available.

(6) TRANSITION. The existing assigned risk plan set up under s. 204.51 (2), 1967 stats., and the existing rejected risk plan set up under s. 205.15, 1967 stats., shall continue unless changed in accordance with this chapter.

(7) HEALTH CARE LIABILITY POLICY LIMITS. (a) Primary coverage plans. Health care liability insurance plans established under this paragraph shall provide minimum coverage to insureds in the amount of not less than $200,000 for each occurrence and $600,000 for all occurrences in any one policy year for occurrences before July 1, 1987, $300,000 for each occurrence and $900,000 for all occurrences in any one policy year for occurrences on or after July 1, 1987, and before July 1, 1988, $400,000 for each occurrence and $1,000,000 for all occurrences in any one policy year for occurrences on or after July 1, 1988, and before July 1, 1997, and $1,000,000 for each occurrence and $3,000,000 for all occurrences in any one policy year for occurrences on or after July 1, 1997, for the protection of persons who are legally entitled to recover damages from the insured for errors, omissions or neglect in the performance of the insured’s professional services. If an insured has excess limits liability coverage or such coverage is available to the insured, the coverage provided under such plans shall be equal to the minimum level of such excess limits coverage. If the insured does not have excess limits liability coverage and such coverage is not available to the insured, the commissioner may establish minimum levels of coverage higher than the minimum limits specified in this paragraph for such plans.

(b) Supplemental liability coverage plans. Health care liability insurance plans of the kind authorized under par. (a) may be
established by the commissioner under this paragraph to provide coverage to supplement primary coverage provided by insurers authorized under ch. 611 or 618. Such plans may be in an amount no greater than $100,000 for each occurrence and $300,000 for all occurrences in any one policy year, but the total combined primary and supplemental coverage may not exceed the limits established by s. 655.23 (4).

(8) HEALTH CARE LIABILITY POLICY PROVISIONS. Health care liability insurance plans established under this chapter may include liability coverages normally incidental to health care liability insurance if such coverage is not readily available in the voluntary market.

(8m) PREMIUM ASSESSMENT. Health care liability plans established under this chapter shall pay a fee equal to 2 percent of net premiums collected to the department of administration for services from state agencies not otherwise charged to the plan.

(9) FOSTER HOME PROTECTION INSURANCE. In this section "foster home protection insurance" means insurance coverage to protect persons who receive a license to operate a foster home under s. 48.62 (1) against the unique risks, determined by the commissioner, to which those persons are exposed. If the persons have insurance that covers any of those risks, the foster home protection insurance may insure against any or all of the other risks, and may provide additional or excess limits coverage for any or all of those risks.

(10) GROUP HOME PROTECTION INSURANCE. In this section "group home protection insurance" means insurance coverage to protect persons who receive a license to operate a group home as provided in s. 48.625 against the unique risks, determined by the commissioner, to which such persons are exposed. If the persons have insurance which covers any of these risks, the group home protection insurance may insure against any or all of the other risks, and may provide additional or excess limits coverage for any or all of these risks.

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(9) Neither the state nor the board of governors shall be liable for any obligation of the plan or of the injured patients and families compensation fund under s. 655.27. The board of governors and members of any committee or subcommittee thereof shall be immune from civil liability for acts or omissions while performing their duties under this section and s. 655.27.

(10) If the commissioner makes a finding under s. 619.01 (1) (a) with respect to health care providers other than those described in sub. (1), the commissioner may, with the approval of the board established under sub. (3), promulgate rules permitting those health care providers to obtain coverage under s. 619.01 from the plan established under this section.

(11) Upon dissolution of the plan under this section, any assets in excess of incurred liabilities shall be paid to the general fund.


Cross-reference: See also ch. Ins 17, Wis. adm. code.

The Wisconsin Health Care Liability Insurance Plan is not required to provide liability coverage to health care professionals who lose coverage as a result of insurer liquidation. A health care provider’s sole recourse for loss caused by insurer liquidation is through the Wisconsin Insurance Security fund under ch. 646. Faber v. Musser, 207 Wis. 2d 132, 557 N.W.2d 808 (1997), 95–0968.