CHAPTER 648

REGULATION OF CARE MANAGEMENT ORGANIZATIONS

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Cross-reference: See definitions in ss. 600.03 and 628.02.

648.01 Definitions. In this chapter:

(1) "Care management organization" means an entity described in s. 46.284 (3m).

(2) "Department" means the department of health services.

(3) "Enrollee" has the meaning given in s. 46.2805 (3).

(4) "Permittee" means a care management organization issued a permit under this chapter.

History: 2009 a. 28.

648.03 Applicability of other laws. Notwithstanding s. 600.01 (1) (b) 10. a., ss. 600.01, 600.02, 600.03, and 600.12 apply to this chapter.

History: 2009 a. 28.

648.05 Permit. (1) PERMIT REQUIRED. After December 31, 2009, no care management organization may provide services to its enrollees without a permit under this chapter.

(2) APPLICATION. A care management organization applying for a permit shall submit all of the following information in the format required by the commissioner:

(a) The names, addresses and occupations of all controlling persons and directors and principal officers of the care management organization currently and for the preceding 10 years, unless the commissioner waives this requirement.

(b) Business organization documents, including articles and bylaws if applicable.

(c) A business plan approved by the department, including a projection of the anticipated operating results at the end of each of the next 3 years of operation, based on reasonable estimates of income and operating expenses.

(d) Any other relevant documents or information that the commissioner reasonably requires after consulting with the department.

(3) STANDARDS FOR ISSUING PERMIT. The commissioner may issue a permit to the care management organization if the commissioner finds, after consulting with the department, all of the following:

(a) All requirements of law have been met.

(b) All the directors and principal officers or any controlling person are trustworthy and competent and collectively have the competence and experience to engage in the proposed services and are not excluded from participation under 42 USC 1320a-7 or 42 USC 1320a-7a.

(c) The business plan is consistent with the interests of the care management organization's enrollees and the public.

(4) SUSPENSION OR REVOCATION. The commissioner may suspend or revoke a permit issued under this chapter if the commissioner finds, after consulting with the department, any of the following:

(a) The permittee violated a law or rule, including a rule establishing standards for the financial condition of care management organizations.

(b) The permittee is in a financially hazardous condition.

(c) The permittee is controlled or managed by persons who are incompetent or untrustworthy.

(d) The permittee conceals records from the commissioner.

(e) The permittee's business plan is not in the public interest or is not prudent.

(f) The permittee ceases to be certified by or maintain a contract with the department.

History: 2009 a. 28.

648.10 Powers and duties of the commissioner. The commissioner may do any of the following:

(1) Promulgate rules that are necessary to carry out the intent of this chapter, including, after consulting with the department, standards for the financial condition of care management organizations.

(2) Use the authority granted under ss. 601.41, 601.42, 601.43, 601.44, 601.61, 601.62, 601.63, and 601.64, including the authority to issue orders, to enforce this chapter and to ensure that a care management organization has sufficient financial resources.

History: 2009 a. 28.
Cross-reference: See also ch. Ins 57, Wis. adm. code.

648.15 Reports and replies. (1) REPORTS. The commissioner may require from any care management organization any of the following:

(a) Statements, reports, answers to questionnaires, and other information in whatever reasonable form the commissioner designates and at such reasonable intervals as the commissioner chooses, or from time to time.

(b) Full explanation of the programming of any data storage or communication system in use.

(c) Information from any books, records, electronic data processing systems, computers, or any other information storage system at any reasonable time in any reasonable manner.

(d) Statements, reports, audits, or certification from a certified public accountant or an actuary approved by the commissioner.

(2) FORMS. The commissioner, after consulting with the department, may prescribe forms for the reports under sub. (1) and specify who shall execute or certify such reports.

(3) ACCOUNTING METHODS. The commissioner, after consulting with the department, may prescribe reasonable minimum standards and techniques of accounting and data handling to ensure that timely and reliable information will exist and will be available to the commissioner.

(4) REPLIES. Any officer or manager of a care management organization, any person controlling or having a contract under which the person has a right to control a care management organi-

zation, whether exclusively or otherwise, or any person with executive authority over or in charge of any segment of such a care management organization's affairs, shall reply promptly in writing or in another designated form, to any written inquiry from the commissioner requesting a reply.

(5) VERIFICATION. The commissioner may require that any communication made to the commissioner under this section be verified.

(6) IMMUNITY. In the absence of actual malice, no person shall be subject to damages in an action for defamation based on a communication to the commissioner required by law under this chapter or by the commissioner under this chapter.

(7) EXPERTS. The commissioner may employ experts to assist the commissioner in an examination or in the review of any transaction subject to approval under this chapter. The care management organization that is the subject of the examination, or that is a party to a transaction under review, including the person acquiring, controlling, or attempting to acquire the care management organization, shall pay the reasonable costs incurred by the commissioner for the expert and related expenses.

History: 2009 a. 28.

648.20 Examinations. (1) POWER TO EXAMINE. (a) To inform himself or herself about a matter related to the enforcement of this chapter, the commissioner may examine the affairs and condition of any permittee.

(b) So far as reasonably necessary for an examination under par. (a), the commissioner may examine the accounts, records, or documents so far as they relate to the permittee, of any of the following:

1. An officer, manager, employee, or person who has executive authority over or is in charge of any segment of the permittee's affairs.

2. A person controlling or having a contract under which the person has the right to control the permittee whether exclusively or with others.

3. A person who is under the control of the permittee, or a person who is under the control of a person who controls or has a right to control the permittee whether exclusively or with others.

(c) On demand, every permittee shall make available to the commissioner for examination any of its own accounts, records, documents, or evidences of transactions.

(d) On order of the commissioner any examinee under this chapter shall bring to the office for examination such records as the order reasonably requires.

(2) AUDITS OR ACTUARIAL OR OTHER EVALUATIONS. In lieu of all or part of an examination under sub. (1), or in addition to it, the commissioner may order an independent audit by certified public accountants or an actuarial or other evaluation by actuaries or other experts approved by the commissioner of any permittee. Any accountant, actuary, or other expert selected is subject to rules respecting conflicts of interest promulgated by the commissioner. Any audit or evaluation under this section is subject to s. 648.25, so far as applicable.

(3) ALTERNATIVES TO EXAMINATION. In lieu of all or part of an examination under this section, the commissioner may accept the report of an audit already made by certified public accountants or of an actuarial or other evaluation already made by actuaries or other experts approved by the commissioner, or the report of an examination made by another government agency in this state, the federal government, or another state.

(4) PURPOSE AND SCOPE OF EXAMINATION. An examination may but need not cover comprehensively all aspects of the permittee's affairs and condition. The commissioner shall determine the exact nature and scope of each examination, and in doing so shall take into account all relevant factors, including the length of time the permittee has been doing business, the length of time the permittee has been certified by the department, the nature of the business being examined, the nature of the accounting records available, and the nature of examinations performed elsewhere.

History: 2009 a. 28.

648.25 Conducting examinations. (1) ORDER OF EXAMINATION. For each examination under s. 648.20, the commissioner shall issue an order stating the scope of the examination and designating the examiner in charge. Upon demand, a copy of the order shall be provided to the examinee.

(2) ACCESS TO EXAMINEE. Any examiner authorized by the commissioner shall, for the purposes of the examination, have access at all reasonable hours to the premises and to any property of the examinee.

(3) COOPERATION. The officers, employees, and agents of the examinee shall comply with every reasonable request of the examiners for assistance in any matter relating to the examination. No person may obstruct or interfere with the examination in any way other than by legal process.

(4) CORRECTION OF BOOKS. If the commissioner finds the accounts or records to be inadequate for proper examination of the condition and affairs of the permittee or improperly kept or posted, the commissioner may employ experts to rewrite, post, or balance them at the expense of the permittee.

(5) REPORT ON EXAMINATION. The examiner in charge of an examination shall make a proposed report of the examination, including information and analysis ordered in sub. (1), together with the examiner's recommendations. Preparation of the proposed report may include conferences with the examinee or the examinee's representatives at the option of the examiner in charge. The commissioner shall serve the final examination report on the examinee.

(6) COPIES FOR BOARD. The permittee shall furnish copies of the final examination report to each member of its board or governing body.

(7) REPORT AS EVIDENCE. In any proceeding by or against the permittee or any officer or agent of the permittee the final examination report shall be admissible as evidence of the facts stated in the report. In any proceeding commenced under this chapter, the final examination report shall be admissible as evidence of the facts stated in the report. In any proceeding by or against the examinee, the facts asserted in any final examination report properly admitted in evidence shall be presumed to be true in the absence of contrary evidence.

History: 2009 a. 28.

648.27 Costs. (1) COSTS TO BE PAID BY CARE MANAGEMENT ORGANIZATIONS. Permittees shall pay the reasonable estimate of costs of examinations under s. 648.20, of review of applications under s. 648.05, and of analysis and financial monitoring of care management organizations by the commissioner and the department, including overhead and fixed costs, by a system of regular annual billings.

(2) DETERMINATION OF COSTS. Annually, the commissioner shall determine the estimated costs under sub. (1) for the commissioner and the department. The commissioner shall serve a request for payment on each permittee allocating the cost to each permittee in an amount that the commissioner determines reflects the permittee's proportionate share of projected enrollment in the department's annual contracting period.

(3) PAYMENT DEADLINE. The permittee shall pay the amount

determined by the commissioner within 30 days of service of the request for payment under sub. (2).

History: 2009 a. 28.

648.30 Nondisclosure of information. (1) TYPES OF INFORMATION. The office may refuse to disclose and may prevent any other person from disclosing any of the following:

(a) Testimony, reports, records, and information that are obtained, produced, or created in the course of an inquiry under s. 648.15.

(b) Testimony, reports, records, and information that are obtained, produced, or created in the course of an examination under s. 648.20.

(c) Testimony, reports, records, communications, and information that are obtained by the office from, or provided by the office to, any of the following, under a pledge of confidentiality or for the purpose of assisting or participating in monitoring activities or in the conduct of any inquiry, investigation, or examination:

1. The National Association of Insurance Commissioners.

2. An agent or employee of the National Association of Insurance Commissioners.

3. The insurance commissioner of another state.

4. An agent or employee of the insurance commissioner of another state.

5. An international, federal, state, or local regulatory or law enforcement agency, including the department.

6. An agent or employee of an agency described in subd. 5.

(2) WAIVER AND APPLICABILITY OF THE PRIVILEGE. Section 601.465 (2m) (a) to (d) applies to the privilege under sub. (1).

History: 2009 a. 28.

648.35 Enforcement procedure. (1) INJUNCTIONS AND RESTRAINING ORDERS. The commissioner may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction or by temporary restraining order any violation of this chapter, any rule promulgated under this chapter, or any order issued under s. 648.10 (2). The commissioner need not show irreparable harm or lack of an adequate remedy at law in an action commenced under this subsection.

(2) ORDERS. The commissioner shall issue any orders under the procedures described in s. 601.63 and shall hold any hearings under the procedures described in s. 601.62.

(3) COMPULSIVE FORFEITURES. If a person does not comply with an order issued under s. 648.10 (2) within 2 weeks after the commissioner has given the care management organization notice of the commissioner's intention to proceed under this subsection, the commissioner may commence an action for a forfeiture in such sum as the court considers just, but not exceeding $5,000 for each day that the violation continues after the commencement of the action until judgment is rendered. No forfeiture may be imposed under this subsection if at the time the action was commenced the care management organization was in compliance with the order, nor for any violation of an order occurring while any proceeding for judicial review of the order was pending, unless the court in which the proceeding was pending certifies that the claim of invalidity or nonapplicability of the order was frivolous or a sham. If after judgment is rendered the care management organization does not comply with the order, the commissioner may commence a new action for a forfeiture and may continue commencing actions until the person complies. The proceeds of all actions under this subsection, after deduction of the expenses of collection, shall be paid into the common school fund of the state.

(4) FORFEITURES AND CIVIL PENALTIES. (a) *Restitutionary forfeiture.* Whoever violates an order issued under s. 648.10 (2) that is effective under s. 601.63, any section of this chapter, or any rule relating to this chapter shall forfeit to the state twice the amount of any profit gained from the violation, in addition to any other forfeiture or penalty imposed.

(b) *Forfeiture for violation of order.* Whoever violates an order issued under s. 648.10 (2) that is effective under s. 601.63 shall forfeit to the state not more than $1,000 for each violation. Each day that the violation continues is a separate offense.

(c) *Forfeiture for violation of statute or rule.* Whoever violates, intentionally aids in violating, or knowingly permits a person over whom he or she has authority to violate a section of this chapter or a rule promulgated under this chapter shall forfeit to the state not more than $1,000 for each violation. If the section or rule violated imposes a duty to make a report to the commissioner, each week of delay in complying with the duty is a new violation.

(d) *Procedure.* The commissioner may order any person to pay a forfeiture imposed under this subsection, which shall be paid into the common school fund. If the order is issued without a hearing, the affected person may demand a hearing through procedures described under s. 601.62 (3) (a). If the person fails to request a hearing, the order is conclusive as to the person's liability. The scope of review for forfeitures ordered is that specified under s. 227.57. The commissioner may cause an action to be commenced to recover the forfeiture. Before an action is commenced, the commissioner may compromise the forfeiture.

(5) CRIMINAL PENALTY. Whoever intentionally violates or intentionally permits any person over whom he or she has authority to violate or intentionally aids any person in violating any section of this chapter, any rule promulgated to administer this chapter, or any order issued under s. 648.10 (2) that is effective under s. 601.63 is guilty of a Class I felony, unless a specific penalty is provided elsewhere in the statutes. Intent has the meaning expressed under s. 939.23.

History: 2009 a. 28.

648.45 Affiliates of permittee. (1) INFORMATION. A permittee and a person attempting to acquire or having control of a permittee, shall report to the commissioner the information concerning the permittee, its affiliates, and the person attempting to acquire control of the permittee that the commissioner requires by rule. The commissioner may promulgate rules prescribing the timing of reports under this subsection, including requiring periodic reporting and the form and procedure for filing reports.

(2) REPORT FOR AFFILIATES. The permittee may report on behalf of all affiliated entities if it provides all the information that would be required if each affiliate reported separately.

(3) CONSENT TO JURISDICTION. Every permittee shall promptly submit to the commissioner a statement from each of its affiliates that the affiliate agrees to be subject to the jurisdiction of the commissioner and the courts of this state for the purposes of this chapter. A governmental unit is not subject to this requirement. The commissioner may exempt other affiliates from this subsection.

(4) INFORMATION ORDER. The commissioner may, by order, require any permittee or any person attempting to acquire or having control of the permittee, to report information under sub. (1) or other information to the commissioner.

(5) TRANSACTIONS WITH AFFILIATES. Neither a permittee nor an affiliate of the permittee may enter into a transaction between the permittee and affiliate unless all of the following apply:

(a) The transaction at the time it is entered into is reasonable and fair to the interests of the permittee.

(b) The books, accounts, and records of each party to the

transaction are kept in a manner that clearly and accurately discloses the nature and details of the transaction and, in accordance with generally accepted accounting principles, permits ascertainment of charges relating to the transaction.

(c) The permittee's financial condition following any dividends or distributions to shareholders or a person having control of the permittee is reasonable in relation to the permittee's outstanding liabilities and is adequate to its financial needs.

(d) The transaction complies with any other standard that the commissioner, after consulting with the department, prescribes by rule.

(6) TRANSACTIONS SUBJECT TO DISCLOSURE. (a) *Affiliated transactions to be reported.* 1. The commissioner, after consulting with the department, may promulgate rules requiring a permittee, a person attempting to acquire or having control of a permittee, and affiliates of a permittee to report a transaction or a group or series of transactions, if all of the following are satisfied:

a. The transaction is between a permittee and a person attempting to acquire or having control of the permittee or an affiliate of the permittee, or the transaction directly or indirectly benefits the person or affiliate.

b. The transaction is, or the group or series of transactions are, material to the permittee.

2. Transactions that are material to a permittee for the purposes of subd. 1. include management contracts, service contracts, and cost-sharing arrangements. The commissioner, after consulting with the department, may prescribe by rule standards for determining whether a transaction is material under this subsection.

3. No permittee, person attempting to acquire or having control of a permittee, or affiliate of the permittee may enter into a transaction required to be reported to the commissioner under this subsection unless the permittee, person, and affiliate report the transaction to the commissioner in the form and by the date before the effective date of the transaction that are prescribed by the commissioner by rule, after consulting with the department. The commissioner may not require the transaction to be reported earlier than 30 days before the effective date of the transaction.

(b) *Disapproval.* The commissioner may, within the period prescribed in par. (a) 3., disapprove any transaction reported under par. (a) if the commissioner finds, after consulting with the department, that it would violate the law or would be contrary to the interests of enrollees of the permittee, the department, or the public.

(c) *Transactions prohibited.* No permittee, person attempting to acquire or having control of the permittee, or affiliate of the permittee may enter into a transaction that is not reported as required under par. (a) or that is disapproved by the commissioner under par. (b).

(d) *Voidable transactions.* If a permittee, person attempting to acquire or having control of the permittee, or affiliate enters into a transaction in violation of this section, the permittee may void the transaction, obtain an injunction, and recover from the person or affiliate the amount necessary to restore the permittee to its condition had the transaction not occurred. The commissioner may order a permittee to void the transaction, to commence an action against the person or affiliate, or to take other action.

(e) *Required financial conditions.* The commissioner, after consulting with the department, may promulgate rules for determining adequacy of financial condition under this section.

(f) *Exemption if permittee reports.* Paragraph (a) does not apply to a person attempting to acquire or having control of, or an affiliate of, a permittee, if the permittee reports on behalf of the person or on behalf of the affiliate, and the transaction is not disapproved by the commissioner under par. (b).

(7) DIVIDENDS AND DISTRIBUTIONS. (a) A permittee may not pay a dividend or distribution, and an affiliate of a permittee may not accept a dividend or distribution, unless the permittee reports the dividend or distribution to the commissioner at least 30 days before payment and the commissioner does not disapprove the dividend or distribution within that period.

(b) The commissioner, after consulting with the department, may promulgate rules under this section that do any of the following:

1. Prescribe the form and content of and procedure for filing reports under this subsection.

2. Exempt dividends or distributions from the reporting requirement under par. (a) under conditions that the commissioner determines will not jeopardize the financial condition of the permittee.

(c) A permittee may declare a dividend or distribution that is conditioned upon the permittee's compliance with this subsection. A declaration of a dividend or distribution under this subsection does not confer rights to the proposed recipient of the dividend or distribution unless this subsection is complied with and is void if the dividend or distribution is disapproved by the commissioner under par. (a).

(d) In addition to any other remedies available, a permittee may recover from the recipient any dividend or distribution paid in violation of this subsection.

(8) DUTIES OF OFFICERS AND DIRECTORS. (a) No director or officer of a permittee or of an affiliate of a permittee may permit, participate in, or assent to a transaction or payment or acceptance of a dividend or distribution prohibited under this chapter.

(b) An officer or director of a permittee or of an affiliate of a permittee who knows, or reasonably should know, that the permittee or affiliate has entered into a transaction or paid a dividend or distribution that violates this chapter shall report the transaction, dividend, or distribution to the commissioner in writing within 30 days after attaining that knowledge. Section 648.15 (6) applies to a report under this section, and the report is confidential unless the commissioner finds it necessary to disclose the report for the purpose of enforcing this chapter.

History: 2009 a. 28; 2011 a. 257 s. 56.

648.50 Management changes. (1) APPROVAL REQUIRED. No proposed plan of merger or other plan for acquisition of control of a permittee may be executed unless the commissioner, after consulting with the department, approves the plan.

(2) GROUNDS FOR APPROVAL. The commissioner shall approve the plan under this section if the commissioner finds, after a hearing, that it would not violate the law or be contrary to the interests of the public, the department, or the enrollees.

(3) INFORMATION REQUIRED. A permittee shall report to the commissioner any changes in directors or principal officers after a permit is issued, together with biographical data on the new director or officer that the commissioner requires by rule.

History: 2009 a. 28.

648.55 Commissioner's summary orders. (1) The commissioner, after consulting with the department, may make and serve an order on a permittee, requiring it to stop providing services under the department contract, or to take corrective measures, without notice and before hearing, if it appears to the commissioner that irreparable harm to the property or business of the permittee or to the interests of its enrollees or the public, will occur unless the commissioner acts with immediate effect and one of the following applies:

(a) The permittee is not in compliance with a rule establishing standards for the financial condition of care management organizations.

(b) Grounds exist to suspend or revoke the permittee's permit.

(2) An order issued under this subsection is effective immediately.

(3) The permittee has the rights provided under s. 601.62. The commissioner may serve upon the permittee notice of hearing under the procedures under s. 601.62 simultaneously with service of the order under sub. (1).

(4) The commissioner may keep proceedings under this section confidential.

History: 2009 a. 28.

648.65 Enrollee immunity. (1) IMMUNITY. An enrollee of a care management organization is not liable for health care, service, equipment, or supply charges that are covered under the care management organization's contract with the department.

(2) PROHIBITED RECOVERY ATTEMPTS. No person may bill, charge, collect a deposit from, seek compensation from, file or threaten to file with a credit reporting agency with respect to, or have any recourse against an enrollee or any person acting on the enrollee's behalf, for any health care, service, equipment, or supply charges for which the enrollee or person acting on his or her behalf is not liable under sub. (1).

(3) IMMUNITY NOT AFFECTED. The immunity of an enrollee under subs. (1) and (2) is not affected by any of the following:

(a) A breach or default on an agreement by the care management organization or the failure of any person to compensate the provider.

(b) The insolvency of the care management organization or any person contracting with the care management organization or the commencement or the existence of conditions permitting the commencement of insolvency, delinquency, or bankruptcy proceedings involving the care management organization or other person, regardless of whether the care management organization or other person has agreed to compensate, directly or indirectly, the provider for health care, services, equipment, or supplies for which the enrollee is not liable under sub. (1)

(c) The inability of the provider or other person who is owed compensation for health care, services, equipment, or supplies to obtain compensation from the care management organization.

History: 2009 a. 28.

648.75 Insolvency funding. (1) DEPOSIT REQUIRED. A permittee shall deposit an amount established by the contract with the department, and not less than $250,000, using the procedures under s. 601.13.

(2) RELEASE OF DEPOSIT. A deposit under this section may be released only with the approval of the commissioner, after consulting with the department, by the procedures under s. 601.13 (10) and only in one of the following circumstances:

(a) To pay an assessment under sub. (3).

(b) To pay creditors of the permittee according to the priority determined by the department if the permittee is insolvent, dissolves, or is subject to an insolvency proceeding, including a bankruptcy proceeding.

(3) ASSESSMENT. The department may assess an amount from each permittee's deposit for the purpose of funding arrangements for, or to pay expenses related to, services for enrollees of an insolvent or financially hazardous permittee. The department's assessment shall be allocated to each permittee's deposit in an amount that reflects the permittee's proportionate share of projected enrollment in the department's annual contracting period. The commissioner may authorize release, and the department of administration shall pay to the department the assessed amount for the purposes of this subsection.

(4) RESTORATION. A permittee shall restore its deposit that is subject to an assessment under sub. (3) within 30 days after the assessment, unless the office, after consulting with the department, authorizes a longer period, which shall not exceed 2 years.

(5) RECOVERY. The department may recover, and may file a claim or bring civil action to recover, from the insolvent or financially hazardous permittee any amount that the department assesses and pays under sub. (3). Any amount recovered shall be restored to each permittee's deposit in the same proportion as the assessment.

History: 2009 a. 28.