

# SPECIAL REPORT



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Presented by the Health Care Law Team of Whyte Hirschboeck Dudek S.C.

## Automatic Renewal Clauses in “Business Contracts” Now Regulated

by Barbara J. Zabawa, J.D., M.P.H.

With very little fanfare, 2009 Wisconsin Act 192 created a law requiring businesses, including health care providers and insurers, to notify customers of automatic renewal or extension provisions in “business contracts.” The law also requires businesses to tell their customers how they may decline renewal or extension of a business contract. These requirements took effect for business contracts entered into, modified or renewed after May 1, 2011. To start off 2012 on the right foot, now is a good time to review your agreements to determine whether any renewal or extension provisions might be implicated. Businesses that fail to comply with the notice requirements will not be able to enforce their renewal or extension provisions and the business contract will terminate at the end of its current term. The statute also allows customers to bring counterclaims against “sellers” under certain circumstances.

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According to the legislative history, the legislature created the law, codified at Wis. Stat. § 134.49, to bring business contracts in line with residential lease requirements. In the residential lease arena, landlords may not enforce an automatic renewal or extension clause unless the landlord provides advance written notice of the renewal or extension. 2009 Wisconsin Act 192 created a similar provision for business contracts.

For purposes of the law, a business contract is a contract relating to the lease of business

equipment or for the provision of business services. The definition of business contract contains numerous exceptions. For purposes of health care clients, two important exclusions are for: (1) all contracts for the lease of medical equipment; and (2) contracts for “per use” business services or equipment leases that state within the contract a predetermined minimum payment of at least \$250,000.

Agreements for the provision of health care services that call for payment of less than the \$250,000 amount noted above will be covered, unless another exemption applies. Therefore, it appears that many agreements that relate to the provision of medical director services, claims administration or billing services, would be business contracts, and subject to the law’s requirements.

The notice requirement consists of both an “initial disclosure” about the automatic renewal or extension provision in the contract, and a “reminder notice” about the automatic renewal or extension provision. The initial disclosure provision requires the seller of the services to inform the customer about the renewal or extension either on a separate form when the customer enters into the business contract, or in a conspicuous manner in the contract. Wis. Stat. § 134.49(2)(a)(1) & (2). Under either method, the disclosure must contain certain elements, such as that the business contract will be renewed or extended, whether an increase in charges will apply under an automatic renewal or extension, what the customer must do to decline renewal or extension, and the date by which the customer must decline renewal or extension. Wis. Stat. § 134.49(2)(b).

For business contracts that have an automatic renewal or extension term of more than one year, sellers of services must provide a reminder notice about the automatic renewal provision. The reminder notice must contain similar elements as the initial disclosure. The statute provides certain additional rules about when and how the seller



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must provide the reminder notice. In addition, the statute voids a business contract provision that requires a customer to permit the seller to match any offer the customer receives from, or makes to, another seller after the end of the contract's stated term.

### Action Items

Business contracts that are entered into, modified or extended after May 1, 2011 must comply with Wisconsin's initial disclosure and reminder notice requirements. *To determine whether one of your important agreements is a business contract, and how to make it compliant with this law, please contact Barbara Zabawa at (608) 234-6075 or [bazabawa@whdlaw.com](mailto:bazabawa@whdlaw.com), or another member of the Health Care Law Team.*

### Meet & Greet

You're invited to an exclusive Meet & Greet with Wisconsin Department of Health Services Inspector General Alan White

When: Thursday, January 12, 2012

Time: 8:00 a.m. Continental Breakfast  
8:30-9:30 a.m. Meet & Greet

Where: WHD Madison Office  
33 East Main Street, Suite 300  
Madison, WI 53703

RSVP by January 9 to Kanoe Fish at [kfish@whdlaw.com](mailto:kfish@whdlaw.com) or 414-978-5358.

*Complimentary underground parking at 10 East Doty Street (Block 89). Park anywhere on the first level of the ramp. Bring ticket with you for validation.*



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