Draft Corrective Action Language with Stakeholder Comments

Draft Regulations	Comments
Evaluation and Corrective Action for Risk-Bearing Organizations This proposed action would amend Regulations 1300.75.4, 1300.75.4.4 and 1300.75.4.5 and adopt Regulations 1300.75.4.7 and 1300.75.4.8 of Title 28, California Code of Regulations, to read: **1300.75.4. Definitions.** (e) "Solvency Regulations" means California Code of Regulations, Title 28, Regulations 1300.75.4 through 1300.75.4. 8.	
(f) "Corrective action plan" (CAP) means a document containing requirements for correcting and monitoring an organization's efforts to correct any financial solvency deficiencies.	▪ After the word "deficiencies" insert "in the Grading Criteria" (CAHP & CAPO)
(g) "Grading Criteria" means the four criteria specified in Health and Safety Code Section 1375.4(b)(1)(A)(i), (ii), (iii), and (iv).	▪ Delete reference to "Grading Criteria" and insert "Grading Process" (CMA) ▪ After the word "means" insert "the mechanism to list how well a group meets the" (CMA) ▪ The grading process was not intended for public consumption and should include the concept of a grade, which takes into consideration the group's ability to meet the solvency standards. (CMA) ▪ Consideration should be given to the adoption of cash standard, with a phase-in mechanism, as an additional grading criterion. (General Discussion) ▪ Other solvency indicators relating to access, referrals, second opinions, treatment protocol changes and pharmaceutical restrictions should be added to the Grading Criteria. (Consumers Advocates)
1300.75.4.7. Organization Evaluation.	
(a) Every contract involving a risk arrangement between a plan and an organization shall require the organization to comply with the Department of Managed Health Care's, or its designated agent's, review process and determination of the organization's satisfaction of the Grading Criteria. The contract shall also require the organization, as part of this process, to do all of the following:	▪ The draft language of this section provides important consumer protections because it eliminates ambiguity regarding the respective parties' rights and responsibilities. (Consumer Advocates) ▪ Delete "Grading Criteria" and replace with "financial solvency standards" throughout section (CMA)

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(1) Permit the Department of Managed Health Care or its designated agent to perform any of the following activities:	
(A) Obtain and evaluate supplemental financial information pertaining to the organization when the organization fails to meet any of the Grading Criteria, experiences an event that materially alters the organization's ability to remain compliant with the Grading Criteria, or the Department's review process indicates that the organization has insufficient financial capacity to continue to accept financial risk for the delivery of health care services consistent with the requirements of section 1300.70(b)(2)(H)(1).	▪ Section (a)(1)(A) - Add "(i)" after the words, "organization when" (CAHP) ▪ Add "(ii) the organization" after the words, "Grading Criteria," (CAHP) ▪ Add "(iii)" after the word "or" (CAHP) ▪ Delete "or the Department's review process indicates that the organization has insufficient financial capacity to continue to accept financial risk for the delivery of health care services consistent with the requirements of section 1300.70(b)(2)(H)(1). (CMA)
(B) Prepare periodic progress reports describing the organization's overall performance in meeting the requirements of a Corrective Action Plan.	▪ After "the organization's" insert "and the health plans" (CMA)
(b) The Department of Managed Health Care or its designated agent shall review each organization's financial disclosures, at a minimum, on a quarterly basis to determine its compliance with the Grading Criteria. The review will be completed within 90 days following each reporting period due date, beginning no later than the year 2002. The Department shall prepare a public report of its review that shall indicate:	▪ Delete "Grading Criteria" and replace with "financial solvency standards" throughout section (CMA) ▪ After the words "review shall indicate" insert "a grade for meeting each financial solvency standard which shall be based on an RBO's ability to meet the standard in the future" (CMA)
1. The designation of "met" to be assigned for each grading criteria met by the organization;	
2. The designation of "not met" to be assigned for each grading criteria not met by the organization;	
3. The designation of "non-compliant" to be assigned to any organization that fails to substantially comply with the reporting obligations, including the submission of the financial survey reports specified in Section 1300.75.4.2.	▪ After the word "organization" insert "or health plan" (CMA)

Draft Regulations	Comments
4. The relative working capital of each organization, presented as a ratio of current assets divided by current liabilities;	▪ Delete entire section (CMA)
5. The relative tangible net equity of each organization, presented as a ratio of tangible net assets divided by total liabilities;	▪ Delete entire section (CMA)
6. Claims payment timeliness in a percentage format reflecting the amount of claims that the organization is paying on a timely basis;	▪ Delete entire section (CMA)
7. To the extent feasible, each financial item described in paragraphs 2 through 6 shall be presented for both the current and the four previous reporting periods; and	▪ The addition of trending results is good (CAPO) ▪ Delete entire section (CMA)
8. Comparative, aggregated data on all organizations and information that enable consumers to assess the organization's financial data consistent with Section 1300.75.4.4. NOTE: Authority cited: Sections 1344 and 1375.4, Health and Safety Code. Reference: Section 1375.4, Health and Safety Code.	▪ Delete entire section (CMA)
1300.75.4.8. Corrective Action. Every contract involving a risk arrangement between a plan and an organization shall require the plan and the organization to comply with a process administered by the Department of Managed Health Care or its designated agent for development and implementation of Corrective Action Plans (CAPs).	
(a) Beginning with the financial survey submission filed for the first quarter of calendar year 2002 and ending with the financial survey submission filed for the second quarter of calendar year 2003, organizations reporting working capital deficiencies and/or tangible net equity deficiencies not exceeding 20 percent for each deficiency, but meeting all other Grading Criteria, shall simultaneously submit a self-initiated standardized CAP, in an electronic format developed by the Department, both to the Department, or its designated agent, and to every plan with which the organization maintains a contract involving a risk arrangement, that meets the requirements of paragraphs 1 through 6 of subdivision (d) of this section. The self-initiated, standardized CAP shall be considered a final CAP.	▪ The adoption of the 20% deficiency standard is good. (CAPO) ▪ Delete "Grading Criteria" and replace with "financial solvency standards" throughout section (CAPO) ▪ After the phrase "self-initiated, standardized" insert "or customized" (CMA)

Draft Regulations	Comments
(1) Timetables specified in the self-initiated standardized CAP for correcting working capital or tangible net equity deficiencies shall not exceed 24 months.	▪ Delete “24 months” insert “five years” (CMA)
(b) An organization with deficiencies in any of the Grading Criteria that are not subject to a self-initiated standardized CAP as outlined in subdivision (a) above, shall develop a draft customized CAP that meets the requirements of subdivision (d) of this section and is developed in accordance with the process required by subdivision (e) of this section.	▪ In view of the number of deficiencies reflected in the first quarter results, consideration should be given to staggering the commencement of formal CAP process so that the health plans and the Department can limit the number of formal CAPs under consideration at any one time. The Department should be given the discretion to develop a manageable timetable to facilitate the orderly implementation of the formal CAP process. (General Discussion)
(c) Notwithstanding subdivisions (a) and (b) above, the Department of Managed Health Care or its designated agent may initiate a process for a customized CAP whenever the Department or its designated agent determines: (1) that an organization is non-compliant with its self-initiated standard CAP for more than 90 days; (2) an organization has experienced an event that materially alters the organization’s ability to remain compliant with the Grading Criteria, or (3) the Department’s review process indicates that the organization lacks sufficient financial capacity to meet its contractual obligations consistent with the requirements of section 1300.70(b)(2)(H)(1).	▪ Following “(1)” delete “that an organization is non-compliant with its self-initiated standard CAP for more than 90 days “ and insert the phrase “that, after the self-initiated standardized CAP has been in effect for 90 days, an organization is non-compliant with its self-initiated standard CAP” (CAHP) ▪ Rewrite to state “(2) an organization has experienced an event that the Department or its designated agent determines has materially altered the organization’s ability to remain compliant with the Grading Criteria” (CAHP) ▪ Standard for non-compliance referenced in (1) should be two (2) consecutive reporting periods to address capitation deduct situations (CAPO) ▪ Delete the following language “(1) that an organization is non-compliant with its self-initiated standard CAP for more than 90 days; (2)” and “, or (3) the Department’s review process indicates that the organization lacks sufficient financial capacity to meet its contractual obligations consistent with the requirements of section 1300.70(b)(2)(H)(1)” (CMA)
(d) All CAPs must include the following elements:	
(1) Identification of the Grading Criteria that the organization has failed to meet or any deficiency identified pursuant to subdivision (c) of this section;	▪ After the word “identified” insert the words “by the Department or its designated agent” (CAPO) ▪ Delete “Grading Criteria” and replace with “financial solvency standards” throughout section (CMA)

Draft Regulations	Comments
(2) The amount by which the organization has failed to meet the Grading Criteria or any deficiency identified pursuant to subdivision (c) of this section, if applicable, and the nature or cause of the deficiency;	▪ The word "amount" is too vague, since you cannot have an amount for some elements of paragraph C above. (CAPO) ▪ Delete phrase "any deficiency identified pursuant to subdivision (c) of this section, if applicable, and the nature or cause of the deficiency" (CMA)
(3) Identification of all plans with which the organization has contracts involving a risk arrangement;	
(4) A description of the specific actions the organization has taken or will take to correct any deficiency identified in paragraph (1) of this section. This description should include any representations made by contracting health plans to assist the organization in the implementation of its corrective action plan. The actions shall be appropriate and reasonable in scope and breath, depending upon the nature and degree of the deficiency;	▪ Insert the word "written" after the word "any" and before the word "representations" (CAHP) ▪ The inclusion of Plan representation at this juncture is misplaced, as the organization will not know what a health plan may do to "assist." (CAPO) ▪ Delete phrase "any representations made" and insert "specific actions required of" (CMA) ▪ Insert a new paragraph (5) to wit; "A description of the specific actions the plan has taken or will take to assist the organization to bring the organization into compliance with the standards. The actions shall be appropriate and reasonable in scope and breath, depending on the nature and degree of the deficiency." (CMA)
(5) A description of the timeframes for the actions to be taken to correct the deficiency, and a schedule identifying either a monthly or quarterly timeframe for the organization's filing of periodic progress reports with the Department or its designated agent and contracting health plans. The timeframes shall be appropriate and reasonable, depending upon the nature and degree of the deficiency;	▪ Following the words "appropriate and reasonable," insert the words "in scope and breath" for consistency. (CAPO) ▪ There is no need to specify a schedule for periodic reports (CAPO) ▪ After the words "to be taken" insert "by both the organization and the plans" (CMA)
(6) Identification of the name, title, telephone and facsimile numbers, postal and e-mail addresses for the person responsible at the organization for ensuring compliance with the final CAP and for persons responsible at the contracting health plans for monitoring compliance with the final CAP; and	▪ Limit the disclosure of monitoring health plan personnel to custom CAPs (CAPO)

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(7) If requested by the Department or its designated agent, a description of the organization's patient record retention and storage policies and procedures and the steps the organization has or will take to ensure that patient medical records are appropriately stored and maintained and will be readily available and transferable to patients in the event the organization ceases operations or the organization fails to meet its obligations set forth in the final CAP. Any such policies and procedures shall be consistent with existing laws relating to the responsibilities for the preservation and maintenance of medical records and the protection of the confidentiality of medical information.	▪ This wording can cause confusion because the medical groups may not always "own" the medical records. (CAPO) ▪ After the phrase "stored and maintained" insert "so that a health plan can take appropriate steps to ensure the appropriate transfer of medical records upon the written consent of enrollees" and then delete the remainder of the sentence (CMA)
(e) <u>Customized CAP Development:</u>	▪ Once the CAP development process is finalized it should be reviewed for consistency with existing state and federal anti-trust restrictions. (General Discussion)
(1) Within 30 calendar days of filing its quarterly financial survey report indicating a deficiency identified in subdivision (b) or within 60 days of a Departmental request pursuant to subdivision (c) of this section, the organization shall submit a draft CAP, as described in subdivision (d) of this section, in an electronic format developed by the Department, to every plan with which the organization has a contract involving a risk arrangement. The organization shall to the extent possible prepare a single CAP that addresses the concerns of all plans with which the organization maintains a contract that includes a risk arrangement.	▪ Delete the words "shall to the extent possible" and insert the word "may" (CMA) ▪ Delete the words "that addresses the concerns of" and insert "and submit it to " (CMA)
(2) Each plan shall have the opportunity to submit comments and recommended revisions to the draft CAP. The plan must submit its comments or recommended revisions to the organization in an electronic format within fifteen (15) calendar days of receipt of the draft CAP.	
(3) Within fifteen (15) calendar days of receipt of the plans' comments and recommended revisions to the draft CAP, the organization shall review and consider the comments and recommendations and, if necessary, meet with the plans (individually) to discuss differences. To the greatest extent possible, the CAP will be standardized to meet the concerns of all plans with which the organization has a contract that includes a risk arrangement.	▪ Delete the word "individually" (CAHP) ▪ Delete the words "To the greatest extent possible" (CMA) ▪ Delete the word "will" replace insert the word ""may" (CMA) ▪ Delete the words "to meet the concerns of" and insert "for" (CMA)

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Draft Regulations	Comments
(4) Within sixty (60) calendar days of filing a quarterly financial survey report indicating a deficiency identified in subdivision (b) or within 90 days of a Departmental request pursuant to subdivision (c) of this section, the organization shall submit a preliminary CAP, in an electronic format developed by the Department, to the Department or its designated agent and to every plan with which the organization has a contract involving a risk arrangement. The preliminary CAP shall specify which plans have indicated agreement with the preliminary CAP. Within seven (7) calendar days of a request by the Director, the organization shall submit, in an electronic format, a copy of all prior comments and recommendations received from the plans with which the organization has a contract that includes a risk arrangement.	▪ Delete the phrases "(b) or within 90 days of a Departmental request pursuant to subdivision (c) of this section," & "and to every plan with which the organization has a contract involving a risk arrangement" (CMA)
(5) Within ten (10) calendar days of receipt of the preliminary CAP, any plan not in agreement may submit, in an electronic format, comments and proposed alternatives to the Department or its designated agent. Any plan submitting comments or proposed alternatives to the Department shall also provide a copy to the organization.	
(6) Within seven (7) calendar days of receipt of the nonconcurring plans' comments, the organization may submit responsive comments to the Department or its designated agent.	
(7) If not all plans agree with the preliminary CAP, the Department or its designated agent may hold meetings with the organization and the plans to attempt to reconcile the differences.	▪ After the word "preliminary" insert "standardized" (CMA)
(8) The Department or its designated agent shall approve, approve as amended, disapprove unless modified or disapprove the preliminary CAP within thirty (30) calendar days after receiving it from the organization. If the Department or its designated agent approves or approves with amendment the preliminary CAP, it shall be designated the final CAP. If the Department or its designated agent does not act upon the preliminary CAP within such time, it shall be deemed approved. If the Department or its designated agent disapproves unless modified or disapproves the CAP, the Director shall so notify the organization and the plans and provide the reasons for the disapproval unless modified or the disapproval.	
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(9) Within ten (10) calendar days of receipt of written notice that the Department or its designated agent disapproves unless modified or disapproves the preliminary CAP, the organization shall amend the preliminary CAP and resubmit it to the Department or its designated agent, and to every plan with which the organization maintains a contract involving a risk arrangement. The plans may submit comments and proposed alternatives to the Department or its designated agent, and to the organization, regarding a resubmitted CAP with which the plan does not agree within seven (7) calendar days of receipt of the resubmitted CAP from the organization. The organization may submit responsive comments to the Department or its designated agent, within seven (7) calendar days of receipt of comments from the nonconcurring plan(s). The Department or its designated agent shall approve or approve as modified the resubmitted CAP within thirty (30) calendar days after receiving it. The approved or approved as modified resubmitted CAP shall become the final CAP. If the Department does not act upon the resubmitted CAP within thirty (30) calendar days, it shall be deemed approved, and shall become the final CAP.	▪ Insert "A copy of the final CAP shall be provided to every health plan with which the organization maintains a contract involving a risk arrangement within seven calendar days of approval or deeming of approval." at the end of paragraph (9) (CAHP) ▪ After the words "designated agent" insert "and to the nonconcurring plans and then strike "and to every plan with which the organization maintains a contract involving a risk arrangement" (CMA) ▪ In situations where the organization and its contracting health plans cannot agree on a CAP, consideration should be given to requiring the contracting parties to submit to mediation/binding arbitration to resolve outstanding disputes. (General Discussion)
(10) A final CAP shall remain in effect until the organization demonstrates compliance with the requirements of the CAP or the CAP expires in accordance with its own terms.	▪ After the "organization" insert "and the plan" (CMA)
(f) <u>CAP Reporting</u>: (1) Each periodic progress report prepared pursuant to a CAP and submitted to the Department and all plans with which the organization has a contract involving a risk arrangement shall include a written verification stating that periodic progress report is true and correct to the best knowledge and belief of a principal officer of the organization, as defined by regulation 1300.45(o) of Title 28 of the California Code of Regulations.	▪ After the word "prepared" insert "by the organization and a plan" (CMA) ▪ After the word "Department" insert "and the particular plan to which the CAP applies" and then delete "and all plans with which the organization has a contract involving a risk arrangement" (CMA) ▪ After the words "officer of the organization" insert "and the plan" (CMA)
(2) In addition to the periodic progress reports specified in a CAP, every contract involving a risk arrangement between a plan and an organization shall require that: (A) the organization advise the plan and the Department or its designated agent in writing within five (5) calendar days if the organization is not in compliance with the requirements of a final CAP; and (B) the organization, upon the Department's request, provide additional documentation to the Department or its designated agent and the plan to demonstrate the organization's progress towards fulfilling the requirements of a CAP.	▪ After the word "if the organization" insert "or the plan" (CMA)

Draft Regulations	Comments
1300.75.4.4. Confidentiality	
(f) Corrective Action Plans information:	
(1) All supplemental financial information, draft and preliminary CAPs including supporting documentation, and all CAP compliance reports, submitted to the Department or its designated agent shall be maintained as confidential and proprietary and shall not be released to any party other than the organization and the plans which are subject to it.	▪ Public disclosure of information regarding financial solvency of risk-bearing organizations is necessary to establish accountability and to protect the public. We oppose this section as drafted because it is too narrow and fails to adequately protect consumers. The Director should retain the discretion to release information contained in CAPs as necessary to inform and protect the public. (Consumer Advocates) ▪ Department should require that information submitted to health plans be retained by the plans on a confidential basis. (General Discussion)
(2) The final CAP document, except for disclosures made pursuant to section 1300.75.4.8(d)(4), shall be deemed public information and available for public inspection.	▪ Delete paragraph (2) in its entirety. (CMA)
1300.75.4.5. Plan Compliance	
(a) Every plan that maintains a risk arrangement with an organization shall have adequate procedures in place to ensure the following:	▪ This section as written fails to adequately describe the plans' duties and responsibilities with regard to the risk arrangements it maintains. Additional drafting would be appropriate. (Consumer Advocates)
(1) That plan personnel review all reports and financial information made available pursuant to Health and Safety Code Section 1375.4 and these Solvency Regulations, as part of the plan's responsibility to evaluate and ensure the financial viability of its arrangements consistent with section 1300.70(b)(2)(H)(1) of these regulations;	▪ After the word "regulations" insert " and in a manner that does not adversely affect the integrity of the contract negotiation process' (CMA)
(2) That the plan shall not assign or add any additional enrollees to the risk arrangement with an organization, without the prior approval of the Director, when the Department notifies the plan that any one of the following has occurred:	▪ The limitations on assigning new enrollees for non-compliance represents a good balance between protecting continuity of care and providing sufficient incentives for cooperation between the organization and the plan. (Consumer Advocates) ▪ Delete section in its entirety (CMA)

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(A) The organization has failed to substantially comply with the reporting obligations specified in section 1300.75.4.2 by failing to file any of the required periodic financial information disclosures or by failing to include significant portions of required information on any of the required periodic financial information disclosures;	▪ Delete section in its entirety (CMA)
(B) The organization has refused to permit the activities of the Department of Managed Health Care or its designated agent, as specified in Health and Safety Code Section 1375.4 or in these Solvency Regulations, or	▪ Delete section in its entirety (CMA)
(C) The organization has failed to substantially comply with the requirements of a final CAP as determined by the Department.	▪ Delete section in its entirety (CMA)
The prohibition on assignments required by this paragraph shall not apply to dependents of enrollees who are already under the risk-arrangement with the organization or to enrollees who selected the organization during an open enrollment or other selection period prior to the effective date of the prohibition on the assignment of additional enrollees. Unless the organization remedies its non-compliance within 30 days of the notification by the Department to the plan, the prohibition on the assignment of additional enrollees shall take effect thirty (30) days after the date of Department's notification to the plan and shall remain in effect unless and until the Department notifies the plan that the organization's non-compliance has been remedied.	▪ Delete section in its entirety (CMA)
(3) That, once a final CAP is approved for an organization and so long as the organization remains compliant with the requirements of the final CAP, a plan shall not terminate an organization's contract for deficiencies in the Grading Criteria identified in or that are the subjects of the final CAP, unless approved by the Director. Notwithstanding this restriction, nothing in these regulations shall limit or impair the Director's authority to require a plan to reassign or transfer plan enrollees to alternate providers on an expedited basis to avoid imminent harm to enrollees consistent with Sections 1367 and 1391.5 of the Health and Safety Code.	▪ Paragraph (3), in particular the first sentence should be deleted (CAHP) ▪ Delete reference to "Grading Criteria" and insert "Grading Process" (CMA) ▪ After the words "imminent harm" insert "to enrollees" (CMA) ▪ At the end of paragraph insert " Existing relationships between treating physicians and patients should be maintained to the extent possible and in accordance with state law." (CMA) ▪ If an organization is compliant with its CAP, the plans' right to terminate the provider contract should be limited as proposed. To allow otherwise would result in unfair leverage exerted by a single plan resulting in unnecessary disruption of the patient-physician relationship. (Consumer Advocates)

Draft Regulations	Comments
(4) That the plan complies with the corrective action process and cooperates in the implementation of a final CAP (including but not limited to contingency plans for continuous delivery of health care services to plan enrollees served by the organization.	
(5) That the plan shall advise the Department or its designated agent in writing within five (5) calendar days of becoming aware that a contracting organization is not in compliance with the requirements of a final CAP.	▪ Add the following sentence, "That the organization shall advise the Department or its designated agent in writing within five (5) calendar days of becoming aware that a contracting plan is not in compliance with the requirements of a final CAP." (CMA)
(b) Every contract involving a risk arrangement between a plan and an organization shall provide that an organization's failure to substantially comply with any of the contractual requirements required by these Solvency Regulations shall constitute a material breach of the risk arrangement contract. A plan shall not waive any contractual requirements required by these solvency regulations. Waiver by a plan of any contractual requirements required by these solvency regulations shall constitute grounds for disciplinary action.	▪ Following the words "substantially comply with" delete the words "any of" (CAHP) ▪ Last sentence is redundant of paragraph "(e)" below. (CAHP) ▪ After the word "organization's" insert "or a plan's" (CMA) ▪ At the end of the paragraph add, "Waiver by a plan of any contractual requirements by these solvency regulations shall constitute grounds for disciplinary action." (CMA)
(c) On or before May 15, 2002, and annually thereafter with its Plan Annual Survey, every plan that maintains a contract with an organization that includes a risk arrangement shall file with the Department of Managed Health Care a contingency plan that contains the general policies and procedures employed by the plan when the plan terminates a contract with an organization or when a contracting organization ceases operations.	▪ The Department should consider adoption of the CMA's Recommended Continuity of Care Protocols. (CMA)
(d) Within 30 days of notification pursuant to section 1300.75.4.5(a)(2)(C) of this regulation, a plan shall submit to the Department of Managed Health Care a specific contingency plan for the deficient organization which provides for the continuity of care for plan enrollees served by the organization.	
(e) Any failure of a plan to comply with the requirements of Health and Safety Code Section 1375.4 and these Solvency Regulations shall constitute grounds for disciplinary action against the plan.	▪ After "Section 1375.4," insert ", the CAP," (CMA)

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(f) The Director may seek and employ any combination of remedies and enforcement procedures provided under the Act, to enforce Health and Safety Code Section 1375.4 and these Solvency Regulations. AUTHORITY: NOTE: Authority cited: Sections 1344 and 1375.4, Health and Safety Code. Reference: Section 1375.4, of the Health and Safety Code.	▪ After the word "Director," insert "and the organization" (CMA)