

98-036 - HBS 138 - HEALTH INSUR. _____
PREMIUMS - AIDS PATIENTS



Tommy G. Thompson
Governor

Joe Leraan
Secretary



State of Wisconsin

Department of Health and Family Services

OFFICE OF LEGAL COUNSEL

1 WEST WILSON STREET
P.O. BOX 7850
MADISON WI 53707-7850

TELEPHONE: (608) 266-8428

May 13, 1998

The Honorable Brian Rude, President
Wisconsin State Senate
1 East Main, Suite 402
Madison, WI 53702

The Honorable Scott Jensen, Speaker
Wisconsin State Assembly
1 East Main, Suite 402
Madison, WI 53702

Re: Clearinghouse Rule 98-036

HSS 138, relating to subsidized health insurance premiums for certain persons with human immunodeficiency virus (HIV) infection.

Gentlemen:

In accordance with the provisions of s. 227.19(2), Stats., you are hereby notified that the above-mentioned rule is in final draft form. This notice and the report required by s. 227.19(3), Stats., are submitted herewith in triplicate.

The rule was submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

If you have any questions about the rule, please contact Richard Albertoni at 267-6875.

Sincerely,

Paul E. Menge
Administrative Rules Manager

cc. Gary Poulson, Deputy Revisor of Statutes
Senator Robert Welch, JCRAR
Representative Glenn Grothman, JCRAR
Richard Albertoni, Division of Health
Kevin Lewis, Secretary's Office

PROPOSED ADMINISTRATIVE RULES – HSS 138
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3), STATS.

Need for Rules

Sections 252.16 and 252.17, Stats., direct the Department to operate a program that provides subsidies to cover the cost of health insurance premiums for persons with human immunodeficiency virus (HIV) infection who, because of a medical condition resulting from that infection, must take an unpaid leave from their jobs or are unable to continue working or must reduce their hours of work. The Department has been operating this program since November 1990 under ch. HSS 138 rules.

This order revises ch. HSS 138 to incorporate changes made in the program by the 1997-99 Budget Act, 1997 Wisconsin Act 27. Act 27 amended s. 252.16, Stats., to change the program in the following ways for individuals who are unable to continue working or must reduce their hours of work:

- The Department is directed to pay the premium costs for any health insurance coverage for an eligible individual, whether group coverage or an individual policy, and not only, as formerly, for continuation coverage under a group health plan if available to the individual.

- Program participation is expanded from individuals in families with incomes up to 200% of the federal poverty line to individuals in families with incomes up to 300% of the poverty line, but individuals in families with incomes between 201% and 300% of the federal poverty line are expected to contribute toward payment of the insurance premium.

- The Department is directed to pay an individual's premiums for as long as the individual remains eligible for the program and not only, as formerly, for a maximum of 29 months.

The rule changes add rule definitions for dependent, individual health policy, Medicare, subsidy under s. 252.16, Stats., and subsidy under s. 252.17, Stats., and modify rule definitions for employe and group health plan; raise the maximum family income for eligibility for the program to 300% of the federal poverty line; permit an individual to be eligible if covered or eligible for coverage under either a group health plan or an individual health policy; delete the provision that prohibits Medicare-eligible individuals from participating in the program since a Medicare supplement policy is now considered a type of individual health policy; require eligible individuals whose family income exceeds 200% of the federal poverty line to contribute 3% of the annual policy premium toward payment of the premium; and delete the time limit of 29 months after which the Department's payments are to end.

All of the rule changes, except the changes to the definitions, apply only in the case of subsidies under s. 252.16, Stats., that is, for individuals who because of a medical condition related to HIV infection are unable to continue working or must reduce their hours of work.

Responses to Clearinghouse Recommendations

All comments of the Legislative Council's Rules Clearinghouse were accepted, except the following:

2.b. Comment: In HSS 138.05 (1) (a), subs. 1. and 2. should end with periods.

Response: No change. If that change were made, there would be two forms used for lists in HSS 138, the old form using a semicolon at the end of each item and the new form using a period at the end of each item. It is best for readers to be consistent in the form used for lists. Since some parts of HSS 138 with the old form for lists are not affected by the rulemaking order, our practice is not to convert to the new form until the entire chapter is repealed and recreated.

Public Hearings

The Department held 2 public hearings on the proposed changes to HSS 138. The hearings were in Madison and Milwaukee in April 1998. One person attended the Milwaukee hearing and commented on the proposed rule changes. No one attended the Madison hearing. One person commented in writing to the Department during the public review period that ended on April 28, 1998. The names of the public review participants and a summary of their comments and the Department's responses are included in an attachment to this document.

No changes were made in the proposed rules in response to comments received during public review.

Final Regulatory Flexibility Analysis

The rule changes will not directly affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. Chapter HSS 138 applies to certain persons with HIV infection and to the Department.

Response: Acknowledged

2. Comments on HSS 138.04(1)(d): ARCW believes expanding eligibility to include coverage of individual policies is an important improvement and supports it (Gifford). AIDS Network supports covering individual policies to help assure that clients have access to health care (Turnquist).

Response: Acknowledged

3. Comment on HSS 138.05(1)(c)(3): ARCW supports the elimination of the 29 month time limit on access to program benefits (Gifford).

Response: Acknowledged

4. Comment on HSS 138.05(1)(d): ARCW supports the initiation of the 3% annual premium contribution for people with incomes between 200% and 300% of the federal poverty level. ARCW believes the required contribution amount is reasonable and will not be a barrier to accessing health insurance through this program (Gifford).

Response: Acknowledged

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
REPEALING, RENUMBERING, AMENDING, REPEALING AND
RECREATING AND CREATING RULES

To repeal HSS 138.04 (1) (f) to (h); to renumber HSS 138.04 (1) (i) and 138.05 (1) (g); to amend HSS 138.01, 138.04 (1) (e), (2) (a) 4. and 5.a. and b. and (b) and (5), and 138.05 (1) (a) to (c), (e) and (f) and (2); to repeal and recreate HSS 138.03, 138.04 (1)(b) and (d) and 138.05 (1) (d); and to create HSS 138.05 (1) (g), relating to subsidized health insurance premiums for persons with human immunodeficiency virus (HIV) infection.

Analysis Prepared by the Department of Health and Family Services

Sections 252.16 and 252.17, Stats., direct the Department to operate a program that provides subsidies to cover the cost of health insurance premiums for persons with human immunodeficiency virus (HIV) infection who, because of a medical condition resulting from that infection, must take an unpaid leave from their jobs or are unable to continue working or must reduce their hours of work. The Department has been operating this program since November 1990 under ch. HSS 138 rules.

This order revises ch. HSS 138 to incorporate changes made in the program by the 1997-99 Budget Act, 1997 Wisconsin Act 27. Act 27 amended s. 252.16, Stats., to change the program in the following ways for individuals who are unable to continue working or must reduce their hours of work:

- The Department is directed to pay the premium costs for any health insurance coverage for an eligible individual, whether group coverage or an individual policy, and not only, as formerly, for continuation coverage under a group health plan if available to the individual.

- Program participation is expanded from individuals in families with incomes up to 200% of the federal poverty line to individuals in families with incomes up to 300% of the poverty line, but individuals in families with incomes between 201% and 300% of the federal poverty line are expected to contribute toward payment of the insurance premium.

- The Department is directed to pay an individual's premiums for as long as the individual remains eligible for the program and not only, as formerly, for a maximum of 29 months.

The rule changes add rule definitions for dependent, individual health policy, Medicare, subsidy under s. 252.16, Stats., and subsidy under s. 252.17, Stats., and modify rule definitions for employe and group health plan; raise the maximum family income for eligibility for the program to 300% of the federal poverty line; permit an individual to be eligible if covered or eligible for coverage under either a group health plan or an individual health policy; delete the provision that prohibits Medicare-eligible individuals from participating in the program since a Medicare supplement policy is now considered a type of individual health policy; require

eligible individuals whose family income exceeds 200% of the federal poverty line to contribute 3% of the annual policy premium toward payment of the premium; and delete the time limit of 29 months after which the Department's payments are to end.

All of the rule changes, except the changes to the definitions, apply only in the case of subsidies under s. 252.16, Stats., that is, for individuals who because of a medical condition related to HIV infection are unable to continue working or must reduce their hours of work.

The Department's authority to repeal, renumber, amend, repeal and recreate, and create these rules is found in s. 252.16 (6), Stats., as affected by 1997 Wisconsin Act 27, and 252.17 (6), Stats. The rules interpret ss. 252.16 and 252.17, Stats., as affected by 1997 Wisconsin Act 27.

SECTION 1. HSS 138.01 is amended to read:

HSS 138.01 AUTHORITY AND PURPOSE. This chapter is promulgated pursuant to ss. 252.16(6) and 252.17(6), Stats., for the purpose of enabling the department to administer a program to subsidize health insurance premium costs ~~for coverage under a group health plan for an individual who takes unpaid medical leave or for continuation coverage available to an individual who is unable to continue his or her employment or must reduce his or her hours because of an illness or medical condition arising from or related to HIV infection.~~

SECTION 2. HSS 138.03 is repealed and recreated to read:

HSS 138.03 DEFINITIONS. In this chapter:

(1) "COBRA" means the federal consolidated omnibus budget reconciliation act of 1986, PL 99-272.

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

(3) "Dependent" means a spouse, an unmarried child under the age of 19 years, an unmarried child who is a full-time student under the age of 21 years and who is financially dependent upon the parent, or an unmarried child of any age who is medically certified as disabled and who is dependent upon the parent.

(4) "Employee" means any of the following:

(a) An active or retired wage, commissioned or salaried earner whose services are or were utilized by the employer who provided health care coverage to the individual by virtue of the individual's employment.

(b) A member of a union, trust or association where the member is entitled to health care coverage by virtue of the individual's membership in the union, trust or association.

(5) "Employer" means a group policyholder subject to s. 632.897, Stats., or the sponsor of a group health plan subject to 29 USC 1161 to 1168 or 42 USC 300bb-1 to 300bb-8, including a controlled group, partnership or other arrangement under common control, an affiliated service group and employe leasing arrangements.

(6) "Family income" means the gross earnings of an employe and his or her spouse, including wages and salary, net income from non-farm self-employment, net income from farm self-employment, as well as unearned income including social security, dividends, interest income, income from estates or trusts, net rental income or royalties, public assistance, pensions or annuities, unemployment compensation, workers compensation, maintenance or alimony, child support, family support and veterans pensions.

(7) "Family size" means the number of individuals in a group of persons related by birth, marriage or adoption who reside together.

(8) "Federal poverty line" means the poverty income threshold by size of family unit for the current calendar year published as part of the poverty income guidelines by the U.S. department of health and human services in the federal register, pursuant to 42 USC 9902(2).

(9) "Group health plan" means an insurance policy or a partially or wholly uninsured plan or program that provides hospital, medical or other health care coverage to members of a group whether or not dependents of the members are also covered. The term includes a medicare supplement policy, as defined in s. 600.03(28r), Stats., but does not include a medicare replacement policy, as defined in s. 600.03(28p), Stats., or a long-term care insurance policy, as defined in s. 600.03(28g).

(10) "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(11) "HIV infection" means the pathological state produced by a human body in response to the presence of HIV.

(12) "Individual health policy" means an insurance policy or a partially or wholly uninsured plan or program that provides hospital, medical or other health coverage to an individual on an individual basis and not as a member of a group, whether or not dependents of the individual are also covered. The term includes a medicare supplement policy as defined in s. 600.03(28r), Stats., but does not include a medicare replacement policy, as defined in s. 600.03(28p), Stats., or a long-term care insurance policy, as defined in s. 600.03(28g), Stats.

(13) "Insurer" has the meaning prescribed in s.600.03(27), Stats.

(14) "Medicare" means coverage under part A or B of Title XVIII of the federal social security act, 42 USC 1395 to 1395zz.

(15) "Physician" has the meaning prescribed in s. 448.01(5), Stats., namely, an individual possessing the degree of doctor of medicine or doctor of osteopathy or an equivalent

degree as determined by the medical examining board, and holding a license granted by the medical examining board.

(16) "Residence" means the concurrence of physical presence with intent to remain in a place of fixed habitation, with physical presence being prima facie evidence of intent to remain.

(17) "Subsidy under s. 252.16, Stats." means a subsidy to pay all or part of the premium costs of health insurance coverage for a person with HIV infection who because of the HIV infection is unable to continue working or must reduce hours of work.

(18) "Subsidy under s. 252.17, Stats." means a subsidy to pay the premium owed for costs of health insurance coverage for a person with HIV infection who because of the HIV infection is on unpaid medical leave from his or her employment.

(19) "Unpaid medical leave" means an unpaid leave from employment for an employe who has a serious health condition, as defined in s. 103.10(1)(g), Stats., which makes the employe unable to perform his or her employment duties.

SECTION 3. HSS 138.04(1)(b) and (d) are repealed and recreated to read:

HSS 138.04(1) (b) 1. For a subsidy under s. 252.16, Stats., have a family income that does not exceed 300% of the federal poverty line for a family the size of the individual's family;

2. For a subsidy under s. 252.17, Stats., have a family income that does not exceed 200% of the federal poverty line for a family the size of the individual's family;

(d) Have health insurance coverage under a group health plan or an individual health policy, or is eligible for health insurance coverage under a group health plan or an individual health policy;

SECTION 4. HSS 138.04(1)(e) is amended to read:

HSS 138.04(1)(e) Is on unpaid medical leave if the person is seeking a subsidy for group health plan premiums while on unpaid medical leave ~~or is eligible for continuation coverage if the person is seeking a subsidy for continuation coverage premiums; and~~

SECTION 5. HSS 138.04(1)(f) to (h) are repealed.

SECTION 6. HSS 138.04(1)(i) is renumbered 138.04(1)(f).

SECTION 7. HSS 138.04(2)(a) 4. and 5.a. and b. and (b), and (5) are amended to read:

HSS 138.04 (2) (a) 4. Name and address of the individual's present or immediate past employer through whom the individual has or had ~~group~~ health coverage and the name and address of the insurer or administrator of the ~~group~~ health plan under which the individual is or was covered;

5.a. Contact the individual's employer or former employer or ~~the administrator of the group health plan under which the individual is covered~~ health insurer to verify that the individual is on an unpaid medical leave or to verify the individual's eligibility for continuation coverage the individual's employment status, the individual's eligibility for health insurance coverage and the premium and any other conditions of coverage, to make premium payments and for other purposes related to the administration of this chapter; and

b. Make any necessary disclosure to the individual's employer or former employer or health insurer or ~~the administrator of the group health plan under which the individual is covered~~ regarding the individual's HIV status;

(b) Any individual who does not satisfy sub. (1) (b), (d) or (e), may submit an application form, DOH 4614, that the department will hold until the individual satisfies all the applicable requirements under sub. (1). The department may not contact the individual's employer ~~or the administrator of the group health plan under which the individual is covered,~~ former employer or health insurer until the individual satisfies all the applicable requirements under sub.(1) unless the individual authorizes the department, in writing, to make that contact and to make any necessary disclosure regarding the individual's HIV infection.

(5) RIGHT TO APPEAL. In the event that the department denies an application, the applicant may request a hearing under ch. 227, Stats. The request for a hearing shall be submitted, in writing, to the ~~department's office of administrative hearings~~ department of administration's division of hearings and appeals and received by that office no later than 20 calendar days after the date of the letter of denial under sub. (3)(b).

Note: The mailing address of the Division of Hearings and Appeals is P. O. Box 7875, Madison, WI 53707.

SECTION 8. HSS 138.05(1)(a) to (c) are amended to read:

HSS 138.05 PAYMENT OF HEALTH INSURANCE PREMIUMS. (1) AMOUNT AND PERIOD OF SUBSIDY. (a) Except as provided in pars. (e), (f) and (g) and (h), if an individual satisfies s. HSS 138.04(1) and has been notified by the department under s. HSS 138.04 (3)(a) that the application has been approved, the department shall ~~pay the full amount of each premium payment for coverage under a group health plan during an unpaid medical leave or for continuation coverage that is due from the individual~~ take one of the following actions, as appropriate, on or after the date of the notice of decision under s. HSS 138.04(3) (a):

1. For a subsidy under s. 252.17, Stats., the department shall pay the premium amount owed by the individual for coverage under a group health plan during an unpaid medical leave;

2. For a subsidy under s. 252.16, Stats., the department shall pay the full amount of the premium due for health insurance coverage for an individual whose family income does not exceed 200% of the federal poverty level; and

3. For a subsidy under s.252.16, Stats., the department shall pay the full amount of the premium, subject to an annual premium contribution assessment under par. (d), due for health insurance coverage for an individual whose family income exceeds 200% but does not exceed 300% of the federal poverty line.

(b) The department may not refuse to pay ~~the full amount of each a premium payment~~ because the ~~group~~ health plan coverage ~~during an unpaid medical leave or continuation coverage~~ that is available to the individual who satisfies s. HSS 138.04(1) includes coverage of the individual's dependents.

(c) Except as provided in par. (e), the department shall terminate payments when:

1. The individual's unpaid medical leave ~~or continuation coverage~~ ceases;

2. The individual no longer satisfies s. HSS 138.04(1); or

3. Upon the expiration of 29 months after the unpaid medical leave or continuation coverage began, whichever occurs first or termination of the individual's health insurance coverage.

SECTION 9. HSS 138.05(1)(d) is repealed and recreated to read:

HSS 138.05(1)(d) Upon approval of an application for a subsidy under s. 252.16, Stats., the department shall annually assess a premium contribution to be paid by eligible individuals whose family income exceeds 200% but does not exceed 300% of the federal poverty line. The amount of the contribution shall equal 3% of the annual policy premium. The annual policy premium shall be determined by annualizing the first monthly premium that is due for the benefit year.

SECTION 10. HSS 138.05(1)(e) and (f) are amended to read:

HSS 138.05(1)(e) The obligation of the department to make payments under this section is subject to the availability of funds in the appropriation under s. 20.435 ~~(1)(ak)~~ (5)(am), Stats.

(f) ~~The~~ For COBRA continuation coverage policies, the amount paid under par. (a) may not exceed the applicable premium as defined in 29 USC 1164 or 42 USC 300bb-4, as amended to April 7, 1986.

SECTION 11. HSS 138.05 (1) (g) is renumbered 138.05 (1) (h).

SECTION 12. HSS 138.05 (1) (g) is created to read:

HSS 138.05 (1) (g) For non-COBRA policies, the amount paid under par. (a) may not exceed the amount of the premium of the most cost-effective policy available to the individual.

SECTION 13. HSS 138.05 (2) is amended to read:

HSS 138.05 (2) PAYMENT OF PREMIUMS. The department shall make payment of premiums allowed under sub. (1) to the insurer, the administrator of an employer self-funded plan or the employer that provides ~~the group health plan insurance coverage during an unpaid medical leave or the continuation coverage,~~ or to the covered individual when the individual, in order to meet a premium due date, makes a payment ~~after the department has approved his or her application,~~ directly to the insurer or employer if the individual and provides the department with proof that the payment was made.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and Family Services

Dated:

By: _____

Joseph Leean

Secretary

SEAL: