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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE 01-148

AN ORDER to create HFS 119.07 (6m) and table, relating to establishing a separate prescription drug coinsurance benefit, relating to the health insurance risk-sharing plan (HIRSP) with limits on HIRSP policyholder out-of-pocket expenses for covered prescription drugs.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

12-13-01 RECEIVED BY LEGISLATIVE COUNCIL.

01-15-02 REPORT SENT TO AGENCY.

RNS:JLK:ksm;tlu

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES  NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES  NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES  NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES  NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES  NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES  NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES  NO



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## RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 01-148

#### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### I. Statutory Authority

a. SECTION 9323 (15w) of 2001 Wisconsin Act 16 provides that Act 16's changes providing for the establishment of prescription drug coverage copayment amounts, coinsurance rates, and out-of-pocket limits first apply to policies under the Health Insurance Risk-Sharing Plan (HIRSP) that are issued or renewed after September 1, 2001.

In contrast, s. HFS 119.07 (6m) (a) and (c) provide that the 20% coinsurance for prescription drugs and for insulin and disposable medical supplies for the treatment of diabetes is effective January 1, 2002. There does not appear to be statutory authority for the January 1, 2002 effective dates.

Moreover, no effective date is specified for s. HFS 119.07 (6m) (b), which provides for an out-of-pocket limit for prescription drug costs. This implies that the out-of-pocket limit is effective when a policy is issued or renewed on or after September 1, 2001. Was this result intended?

b. Section HFS 119.07 (6m) (c) indicates that insulin and disposable medical supplies for the treatment of diabetes are subject to the 20% coinsurance in s. HFS 119.07 (6m) (a). However, s. HFS 119.07 (6m) (c) does not go on to state that insulin and disposable medical supplies for the treatment of diabetes are subject to either: (1) the \$25 per prescription maximum in s. HFS 119.07 (6m) (a); or (2) the out-of-pocket limit in s. HFS 119.07 (6m) (b). Were these omissions intentional?

*If the omissions were intentional*, it is unclear why s. HFS 119.07 (6m) (c) specifies that it is effective January 1, 2002 inasmuch as 20% was the coinsurance rate applicable to insulin and disposable medical supplies for the treatment of diabetes prior to that date. For that matter, if the omissions were intentional, it is unclear why s. HFS 119.07 (6m) (c) is necessary as it would not represent a change to current rules.

*If the omissions were not intentional*, s. HFS 119.07 (6m) (c) should be revised to clarify the applicability of the \$25 maximum per prescription and the applicability of the prescription out-of-pocket maximum to insulin. However, *if the omissions were not intentional*, there appears to be no statutory authority for including disposable medical supplies for the treatment of diabetes in a revised s. HFS 119.07 (6m) (c) because: (1) s. 149.14 (5) (e), Stats., allows differing copayment amounts, coinsurance rates, and out-of-pocket limits with respect to covered costs under s. 149.14 (3) (d), Stats. (that is, drugs requiring a physician's prescription), whereas disposable medical supplies are covered under s. 149.14 (3) (k), Stats.; and (2) s. 149.146 (2) (am) 5., Stats., allows differing copayment amounts, coinsurance rates, and out-of-pocket limits with respect to prescription drugs, whereas disposable medical supplies (such as those used for the treatment of diabetes) are not prescription drugs.

## 2. Form, Style and Placement in Administrative Code

a. Section HFS 119.07 (6m) (b) twice uses the term "shall not be required." The correct way to express this prohibition is either: "No policyholder may be required . . ." or "A policyholder may not be required . . ." [See s. 1.01 (2), Manual.]

b. In the title of the table, "HFS" should be inserted after "TABLE." A similar change is needed in s. HFS 119.07 (6m) (b).

## 4. Adequacy of References to Related Statutes, Rules and Forms

a. The first paragraph of the order refers to SECTION 9123 (9w) of 2001 Wisconsin Act 16 as providing authority for the rule. However, SECTION 9123 (9w) simply provides authority for emergency rule-making. It is not necessary to cite this provision for the permanent rule. On the other hand, it may be useful to cite SECTION 9323 (15w) of 2001 Wisconsin Act 16, which contains the initial applicability provision for the changes.

b. It appears that s. HFS 119.07 (6m) (e) should include a reference to the deductible and covered costs not paid by HIRSP under s. 149.146 (2) (am) 1. to 3., Stats., in addition to s. 149.14 (5) (a) to (c), Stats.

c. In the table, is it possible to correlate the labels "PLAN 1, Option A"; "PLAN 1, Option B"; and "PLAN 2, Option B" to any existing provisions in ch. HFS 119? If so, any cross-reference would provide useful information.

Also, is there a "PLAN 2, Option A"? If not, it is confusing to refer to "PLAN 2, Option B".

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. Section HFS 119.07 (6m) (a) provides for 20% coinsurance up to a \$25 maximum for each “physician prescribed drug.” This suggests that a drug prescribed by, for example, an advanced practice nurse prescriber, under s. 441.16, Stats. is not included. Is this correct? Presumably, a drug prescribed by a physician assistant is included inasmuch as the definition of “physician” in s. 990.01 (28), Stats., includes a person holding a license or certificate of registration from the Medical Examining Board, which includes a physician assistant. However, if the definition in s. 990.01 (28), Stats., were used, drugs prescribed by other health care professionals with prescription authority would not be included. Is this correct? It may be useful to define “physician” for the purpose of s. HFS 119.07 (6m) (a) to avoid ambiguity.

b. In s. HFS 119.07 (6m) (e), the phrase “[a]ny coinsurance . . . do not count” should be changed to “[a]ny coinsurance . . . does not count”.

c. In the table, the hyphen in the two uses of “POLICY-HOLDER’S” should be deleted in order to be consistent with the remainder of ch. HFS 119.

**TRANSMITTAL TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE**

**PROPOSED RULES OF THE DEPARTMENT OF HEALTH AND FAMILY SERVICE**

**HFS 119, Wis. Adm. Code**

**Subject:** To establish a separate prescription drug coinsurance benefit relating to the Health Insurance Risk-Sharing Plan (HIRSP) with limits on HIRSP policyholder out-of-pocket expenses for covered prescription drugs.

**Statutory Authority:** Section 149.14 (5) (e), Stats., as amended by 2001 Wisconsin Act 16, and s. 149.146 (2) (am) 5., Stats., as created by 2001 Wisconsin Act 16 and s. 227.11 (2), Stats.

**Analysis: Reason for Rules, Intended Effects, Requirements**

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP health insurance coverage includes prescription drug coverage. Currently, two major issues affect HIRSP prescription drug coverage. The first issue is that pharmacies have difficulty determining the financial liability of HIRSP policyholders. The second issue is that the current system of HIRSP reimbursement to policyholders for prescription drug costs is financially burdensome to HIRSP policyholders. To resolve these issues, the department proposes to implement effective January 1, 2002, new coinsurance provisions for HIRSP's drug benefit that will clarify the financial liability of HIRSP policyholders for covered prescription drug costs and eliminate the process of reimbursing policyholders for prescription drug expenses by establishing policyholders' minimum and maximum out-of-pocket costs for covered prescription drugs.

The proposed rules will affect approximately 12,000 HIRSP policyholders statewide.

**Forms:** None

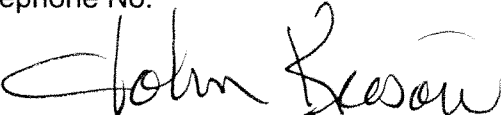
**Agency Procedure for Promulgation:**

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by the DHFS Secretary; and legislative standing committee review under s. 227.19, Stats., and emergency rule promulgation under s. 227.24, Stats.

**Names and Phone Numbers of Agency Contacts:**

Randy McElhose  
Division of Health Care Financing  
608-267-7127

**Date Sent to LC Clearinghouse:**

Authorized Signature/Telephone No.	Date
John Kiesow, 266-9622 	12-12-01

cc: Revisor of Statutes  
DOA

PROPOSED ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
CREATING RULES

To create HFS 119.07 (6m) and table, to establish a separate prescription drug coinsurance benefit relating to the Health Insurance Risk-Sharing Plan (HIRSP) with limits on HIRSP policyholder out-of-pocket expenses for covered prescription drugs.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP health insurance coverage includes prescription drug coverage. Currently, two major issues affect HIRSP prescription drug coverage. The first issue is that pharmacies have difficulty determining the financial liability of HIRSP policyholders. The second issue is that the current system of HIRSP reimbursement to policyholders for prescription drug costs is financially burdensome to HIRSP policyholders. To resolve these issues, the department proposes to implement effective January 1, 2002, new coinsurance provisions for HIRSP's drug benefit that will clarify the financial liability of HIRSP policyholders for covered prescription drug costs and eliminate the process of reimbursing policyholders for prescription drug expenses by establishing policyholders' minimum and maximum out-of-pocket costs for covered prescription drugs.

The proposed rules will affect approximately 12,000 HIRSP policyholders statewide.

The HIRSP Board of Governors on September 13, 2001, approved the coinsurance rate and out-of-pocket limits established in these rules, as required by s. 149.14 (5) (e) Stats., as amended by 2001 Wisconsin Act 16 and s. 149.146 (2) (am) 5, Stats., as created by 2001 Wisconsin Act 16.

ORDER

Pursuant to authority vested in the Department of Health and Family Services under s. 149.14 (5) (e), Stats., as amended by 2001 Wisconsin Act 16, and s. 149.146 (2) (am) 5., Stats., as created by 2001 Wisconsin Act 16 and s. 227.11 (2), Stats., and s. 9123 (9w) of 2001 Wisconsin Act 16, the Department of Health and Family Services hereby creates rules interpreting s. 149.14 (5) (e) and s. 149.146 (2) (am) 5., Stats., as created and amended by 2001 Wisconsin Act 16 as follows:

SECTION 1. HFS 119.07 (6m) and table are created to read:

HFS 119.07 (6m) PRESCRIPTION DRUG COINSURANCE COVERAGE. (a) Effective January 1, 2002, a policyholder shall pay a 20% coinsurance, based on the HIRSP allowed amount for each physician prescribed drug, up to a maximum of \$25 per prescription. *ini. appl.*

(b) A policyholder shall not be required to pay more than the maximum out-of-pocket amount for each prescription cost specified in par. (a) and shall not be required to pay more than the policyholder's annual out-of-pocket limit specified in table 119.07(6m).

(c) Effective January 1, 2002, insulin and disposable medical supplies for the treatment of diabetes are subject to the coinsurance specified in par. (a).

(d) This subsection does not apply to a policyholder for which HIRSP is a secondary payer.

(e) Any coinsurance paid under this subsection is separate from and do<sup>es</sup> not count toward the deductible and covered costs not paid by the plan under s. 149.14(5)(a) to (c), Stats.

*WJD*  
**TABLE 119.07(6m)**

**POLICYHOLDER'S DRUG COINSURANCE  
 ANNUAL OUT-OF-POCKET MAXIMUM**

PLAN	IF POLICY-HOLDER'S MEDICAL DEDUCTIBLE IS:	POLICY-HOLDER'S DRUG COINSURANCE ANNUAL OUT-OF-POCKET MAXIMUM IS:
PLAN 1, Option A	\$1,000	\$750
	\$800	\$600
	\$700	\$525
	\$600	\$450
	\$500	\$375
PLAN 1, Option B	\$2,500	\$1,000
PLAN 2, Option B	\$500	\$125

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

Wisconsin Department of Health and Family Services

Dated:

By: \_\_\_\_\_

Phyllis Dubé  
 Secretary

SEAL:



PROPOSED ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
CREATING RULES

These are emergency rules creating HFS 119.07 (6m), Wis. Admin. Code to establish for prescription drug coverage a drug benefit separate from the medical benefits for the Health Insurance Risk-Sharing Plan (HIRSP) as authorized by s. 149.14 (5) (e), Stats., as amended by 2001 Wisconsin Act 16, and s. 149.146 (2) (am) 5., Stats., as created by 2001 Wisconsin Act 16. Section 9123 (9w) of the Act authorizes the department to use the emergency rulemaking procedures under s. 227.24, Stats., to promulgate these rules, exempts the department from making a finding of emergency, and from providing evidence that promulgating these rules as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare.

The HIRSP Board of Governors on September 13, 2001, approved the coinsurance rate and out-of-pocket limits established in these rules, as required by s. 149.14 (5) (e) Stats., as amended by 2001 Wisconsin Act 16 and s. 149.146 (2) (am) 5, Stats., as created by 2001 Wisconsin Act 16.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan for the purpose of making health insurance coverage available to medically uninsured residents of the state. HIRSP health insurance coverage includes prescription drug coverage. Currently, two major issues affect HIRSP prescription drug coverage. The first issue is that pharmacies have difficulty determining the financial liability of HIRSP policyholders. The second issue is that the current system of HIRSP reimbursement to policyholders for prescription drug costs is financially burdensome to HIRSP policyholders. To resolve these issues, the department proposes to implement effective January 1, 2002, new coinsurance provisions for HIRSP's drug benefit that will clarify the financial liability of HIRSP policyholders for covered prescription drug costs and eliminate the process of reimbursing policyholders for prescription drug expenses by establishing policyholders' minimum and maximum out-of-pocket costs for covered prescription drugs.

The proposed rules will affect approximately 12,000 HIRSP policyholders statewide.

ORDER

Pursuant to authority vested in the Department of Health and Family Services under s. 149.14 (5) (e), Stats., as amended by 2001 Wisconsin Act 16, and s. 149.146 (2) (am) 5., Stats., as created by 2001 Wisconsin Act 16 and s. 227.11 (2), Stats., and s. 9123 (9w) of 2001 Wisconsin Act 16, the Department of Health and Family Services hereby creates rules interpreting s. 149.14 (5) (e) and s. 149.146 (2) (am) 5., Stats., as created and amended by 2001 Wisconsin Act 16 as follows:

SECTION 1. HFS 119.07 (6m) and table are created to read:

HFS 119.07 (6m) PRESCRIPTION DRUG COINSURANCE COVERAGE. (a) Effective January 1, 2002, a policyholder shall pay a 20% coinsurance, based on the HIRSP allowed amount for each physician prescribed drug, up to a maximum of \$25 per prescription.

(b) A policyholder shall not be required to pay more than the maximum out-of-pocket amount for each prescription cost specified in par. (a) and shall not be required to pay more than the policyholder's annual out-of-pocket limit specified in table 119.07(6m).

(c) Effective January 1, 2002, insulin and disposable medical supplies for the treatment of diabetes are subject to the coinsurance specified in par. (a).

(d) This subsection does not apply to a policyholder for which HIRSP is a secondary payer.

(e) Any coinsurance paid under this subsection is separate from and do not count toward the deductible and covered costs not paid by the plan under s. 149.14(5)(a) to (c), Stats.

**TABLE 119.07(6m)**

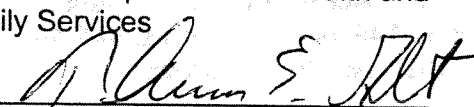
**POLICYHOLDER'S DRUG COINSURANCE  
ANNUAL OUT-OF-POCKET MAXIMUM**

PLAN	IF POLICY-HOLDER'S MEDICAL DEDUCTIBLE IS:	POLICY-HOLDER'S DRUG COINSURANCE ANNUAL OUT-OF- POCKET MAXIMUM IS:
PLAN 1, Option A	\$1,000	\$750
	\$800	\$600
	\$700	\$525
	\$600	\$450
	\$500	\$375
PLAN 1, Option B	\$2,500	\$1,000
PLAN 2, Option B	\$500	\$125

The rules contained in this order shall take effect as emergency rules on January 1, 2002.

Wisconsin Department of Health and  
Family Services

Dated: December 14, 2001

By:   
Phyllis Dubé  
Secretary

SEAL: