

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

**Ronald Sklansky**  
Director  
(608) 266-1946

**Richard Sweet**  
Assistant Director  
(608) 266-2982



**David J. Stute, Director**  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

## CLEARINGHOUSE RULE 95-204

### 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 October 1994.]**

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

a. In the plain language analysis, before the acronym “NAIC,” the term that the acronym represents should be spelled out.

b. Throughout the rule, the treatment clauses are drafted incorrectly. For example, in SECTION 1, the treatment clause should read “Ins 3.455 (9) is created to read:”. These revisions should be made throughout the rule.

c. Throughout the rule, “may not,” rather than “shall not,” should be used to express a prohibition. [See s. 1.01 (2), Manual.] This was done correctly in s. Ins 3.455 (9) (b) 1. and 2., but not in subd. 3. or pars. (a) and (c).

d. In s. Ins 3.46 (9) (c), the paragraph is given a title. This is inconsistent with the other paragraphs in that subsection, which do not have titles. However, if the title is kept, it should be underscored to comply with proper drafting format.

e. In s. Ins 3.455 (9) (e) and (f), “.... [revisor inserts date]” should be inserted after “effective date of this subsection.” [See s. 1.01 (9) (b), Manual.]

f. In s. Ins 3.46 (11m) (a) 2., the internal reference to “subparagraph 3. of this paragraph” should be changed to “subd. 3.”

g. In s. Ins 3.46 (15) (a), a description of the format for designating an additional person to receive notice is provided. Instead of outlining the components of this designation in the rule, would it be more appropriately placed in an appendix as a sample form?

h. In s. Ins 3.46 (15) (b), the term “person(s)” should not be used. The term “person” includes the plural.

i. In s. Ins 3.46 (15) (d) and (e), after the reference to par. (a), “, above” should be deleted as this is not necessary to clarify the internal reference to par. (a).

j. In s. Ins 3.46 (16) (b), proper list format should be used by rephrasing the introductory clause to say “(E)very insurer marketing a long-term care insurance policy shall do all of the following:”. Then, each listing should end with a period rather than a semicolon. Further, in the listing in s. Ins 3.46 (16) (c), the semicolons after par. (c) 1. a. and b. should be replaced by periods and the word “and” at the end of subpar. b. should be deleted.

k. In s. Ins 3.46 (17) (e), proper list format should be used by inserting the phrase “any of the following” at the end of the introductory clause and ending each listed item with a period. This change should be made throughout the rule. [See s. 1.03 (intro.), Manual.]

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

a. In the listing of statutes interpreted contained in the plain language analysis, the last statute cited should be s. 632.897, Stats.

b. In SECTION 3 of the rule, in s. Ins 3.46 (4) (b), the daily benefit limit in current law is \$30 per day, not \$80 per day as indicated in the rule. This should be revised.

c. In the internal reference in s. Ins 3.46 (4) (g) of the rule, the correct reference is to “sub. (17)”, not “s. (17) of this rule.”

d. In s. Ins 3.46 (9) (c), several errors are noted. First, the reference to “Appendix 8” appears to be erroneous. Is this meant to refer to Appendix 2? Second, the references to “par. (c) to (e)” would seem to refer to s. Ins 3.46 (9) (c) to (e). However, no such paragraphs exist. The agency should determine which paragraphs are being referred to here and correct this reference accordingly.

e. In s. Ins 3.46 (11m) (c), the reference to “section” should be changed to “subsection”.

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

a. In the plain language analysis, the word “standards” is misspelled in the first paragraph below the listing of statutes interpreted.

b. Section Ins 3.455 (9) (b) 1. states that for insureds age 80 and over, the premium charged may not increase more than 10% in the aggregate for any five-year period. Does this reference to any five-year period include the initial four years during which premiums are not permitted to increase under s. Ins 3.455 (9) (a)? This should be clarified in the rule. The same comment also applies to s. Ins 3.455 (9) (b) 2. and 3.

c. In SECTION 1 of the rule, “INS” should not be in all capital letters. Only the first letter should be capitalized. Further, there should be a period after the title to s. Ins 3.455 (9).

d. In s. Ins 3.455 (9) (d), the commissioner is allowed to “amend the provisions in par. (b) in appropriate circumstances.” Does this mean that the rule will actually be amended through the rule-making process, or will the commissioner be allowed to approve increases beyond those in par. (b) in the listed cases? This should be clarified.

e. In s. Ins 3.455 (9) (d) (intro.), “but not limited to” should be replaced by “the following.” Then, each listing should end with a period.

f. Section Ins 3.455 (9) (f) would read more clearly if these groups and individuals were listed rather than strung together in a paragraph.

g. In s. Ins 3.46 (3) (cm), the phrase “long-term care memory” should be “long-term memory.” Also, “term” should follow “short-”; this change should also be made in s. Ins 3.46 (17) (a) 3.

h. In s. Ins 3.46 (4) (t), the words “lapse” and “termination” are used. Are these terms intended to mean the same thing? A lapse generally implies a failure to pay a premium or renew a policy. Termination seems to imply an action by an insurer. This should be clarified. Also, “5” should replace “five (5).”

i. In s. Ins 3.46 (4) (t), fourth line, “and” should follow “capacity.” Further, in the seventh line, after the word “capacity,” “to be used in evaluating an application for reinstatement” should be inserted to clarify what the standard of proof applies to.

j. Section Ins 3.46 (9) (c) does not fit with current s. Ins 3.46 (9) (intro.). Proposed s. Ins 3.46 (9) (c) should be rephrased to dovetail with the current rule.

k. In s. Ins 3.46 (11m) (a), the (intro.) should end with a colon.

l. In s. Ins 3.46 (11m) (a) 2., the phrase “same benefits” may be deleted and the words in parentheses should be included without parentheses. Further, after the word “frequency,” the phrase “of benefits” should be inserted.

m. In s. Ins 3.46 (11m) (a) 3., the term “nonforfeiture credit” is introduced. Is this intended to mean something different than a “nonforfeiture benefit”? If not, one term should be used consistently.

n. In s. Ins 3.46 (11m) (b), the phrase “in premium-paying status” and “paid up status” seem to mean the same thing. If this is true, one of these phrases should be deleted. Further, in that paragraph, the word “may” should replace “will.”

o. In s. Ins 3.46 (15) (a) (intro.), “by the third party” should replace “on the third party.”

p. In s. Ins 3.46 (16) (g), before the reference to Appendix 4, the phrase “the sample letter in” should be inserted. Further, this paragraph directs the insured to use some other method to verify the applicant’s “intent.” Is the intent of the applicant being verified, or is it something more concrete, such as the applicant’s financial status? If the financial status of the applicant is what is being verified, this should be clearly stated.

q. In s. Ins 3.46 (16) (h), data is kept on the number of individuals who chose to “confirm” after receiving a suitability letter. What is being confirmed here? This should be clarified.

r. In s. Ins 3.46 (17) (a) 1., “includes” should replace “means at least.”

s. In s. Ins 3.46 (17) (a) 4., a comma should be inserted after the word “hygiene” and the parentheses should be removed.

t. In s. Ins 3.46 (17) (a) 6., the parentheses should be removed. Throughout the rule, parentheses should not be used. [See s. 1.01 (6), Manual.]

u. In s. Ins 3.46 (17) (c) 2., the phrase “deficiencies in the ability to perform” should be inserted prior to “activities of daily living.”

v. In s. Ins 3.46 (17) (d), is the “determination of when benefits are payable” the same as the phrase “to trigger covered benefits” in the prior paragraph? If so, phrases should be used consistently.

w. In s. Ins 3.46 (17) (f), the word “professionals” could cover a very broad category of people. Are only professional physicians, nurses and social workers allowed to perform these assessments or any type of “professional”? This should be clarified.

x. In SECTION 5 of the rule, in the treatment clause, the word “and” should be inserted prior to the number “4”.

y. In Appendix 3, in the drafting note to the “Long-Term Care Insurance” section, it should be clarified which bullet should be deleted and which second sentence of which bullet should be deleted.

z. In Appendix 4, in the first drafting note, after the word “paragraph,” the phrase “and bracketed sentences in that paragraph” should be inserted.

aa. in SECTION 6, should “, renewed” be inserted after “solicited”?