



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 01-072

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.]

2. Form, Style and Placement in Administrative Code

- a. A title should be inserted for s. Ins 6.60. [See s. 1.05 (1), Manual.]
- b. In s. Ins 6.60 (1) (intro.), the title should be deleted unless titles are created for all of the other subsections of this section. [See s. 1.05 (1), Manual.]
- c. In s. Ins 6.60 (1) (intro.), “In this chapter:” should be changed to “In this section:”.
- d. In s. Ins 6.60 (1) (a) and (b), the underlining under the paragraph numbers should be eliminated. [See s. 1.06, Manual.]
- e. As a general comment on form, there are many lengthy sentences, including items that contain a series within a series. Several of these provisions could be clarified by using semicolons to separate items in a series when the items in the series themselves contain items in a series. Another approach that may be useful in making some of the provisions more understandable is the use of a colon followed by a list. For example, s. Ins 6.60 (2) (a) could be rewritten as follows:

(a) Effecting or attempting to effect a personal financial transaction with a customer unless any of the following apply:

1. The customer is a relative of the agent as defined in s. 13.62 (12g), Stats.

2. The customer is a person residing in the agent's household at the time of the transaction.
3. The transaction is a bona fide arm's length business transaction where the customer is either qualified to understand and assess the transaction or has been advised or represented by a qualified individual regarding the transaction.

Note that no quotation marks should be used around "relative." Also, should ", who is not the agent or affiliate," be inserted after "qualified individual"?

f. In s. Ins 6.60 (2) (c), there are references to several federal acts. When citing a federal law, the U.S. Code reference should be used. [See s. 1.07 (3) (a), Manual.] If the agency wishes to include a reference to a public law or named federal act, this could be done in a note.

This comment also applies to s. Ins 6.60 (3), which includes several references to "the Federal Employee Retirement Income Security Act ("ERISA")." In addition, it is not necessary to name the act on numerous occasions and include the acronym following each reference. The agency might consider including a definition of "ERISA" in the definitions subsection by referencing the U.S. Code and then just using the acronym in the text of the rule.

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

a. In s. Ins 6.60 (3) (b), the reference to "s. 601.03 (27), Stats.," should be changed to "s. 600.03 (27), Stats."

b. In the analysis, the statutory authority provision includes a citation to s. 601.42, Stats. This statute does not appear to be relevant to the proposed rule.

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

a. Section Ins 6.60 (1) (b) indicates that "agent" has the meaning given in s. 628.02, Stats. However, "agent" is not defined in that statute. Should this be changed to: "'Agent' means an intermediary as defined in s. 628.02 (1)."?

b. In s. Ins 6.60 (1) (c), was the limitation of "customer" to a "natural person" intended? For example, could the "customer" be a trust or small business?

c. In the next-to-last line of s. Ins 6.60 (1) (d), "s." should be inserted preceding "Ins 6.61." Also, a comma should be inserted following "Ins 6.61."

d. Section Ins 6.60 (2) (intro.) would be easier to read if the penalty for the unfair trade practice (i.e., making it cause for denial of the license application or license suspension, revocation, or limitation) were included in a separate subsection. This was done in s. Ins 6.60 (4) for the violations listed in s. Ins 6.60 (3).

e. In s. Ins 6.60 (2) (intro.) and (a), “Stats.” should be set off by commas unless it is used at the end of a sentence.

f. In s. Ins 6.60 (2) (a) and (b), should the references to “agent” be amended to refer to “agent or affiliate” since the prohibitions are unfair trade practices by an “agent or affiliate”?

g. In s. Ins 6.60 (2) (c), the references to “Ch.” should be changed to “ch.”.

h. In s. Ins 6.60 (2) (d), use of the term “representing” on the first line is confusing. It appears that this paragraph would be more readable if it were changed as follows:

Making misleading statements to a customer regarding or otherwise misrepresenting one’s qualifications or services. This includes using terms such as financial, investment, or retirement in conjunction with terms such as planner, planning, or consulting when, under the circumstances, the statements, representations, or use of these terms do not accurately describe the nature of the services offered or the qualifications of the person offering the services.

i. Section Ins 6.60 (2) (e) and (3) (intro.) refer to health coverage that is offered by an unauthorized insurer or insurer not licensed in this state and that is “purported” to be authorized under, or exempt from state regulation under, ERISA. “Purported” to be authorized under ERISA implies, but does not in fact require, that the information be false. It appears that these penalties should apply only if the health coverage is not in fact authorized or exempt from state regulation under ERISA. This should be clarified. For example, should these provisions be changed to “falsely purported” or “inaccurately purported”?

j. In s. Ins 6.60 (3) (intro.), should the phrase “the agent knows that” be changed to “the agent knows or should know that”? This question arises since s. 618.39 (1), Stats., includes a prohibition if the person “knows or should know.”

k. In s. Ins 6.60 (3) (intro.), in the first line, “solicits the sale” should be changed to “solicits the sale of.”

l. In s. Ins 6.60 (4) (b), should “or” replace “and”?