



WISCONSIN LEGISLATIVE COUNCIL 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.]

1. 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.