



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 02-118

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 2002.]

2. Form, Style and Placement in Administrative Code

a. Section Ins 3.39 (4) (a) 18p. is amended to delete the requirement that payment of premiums is a prerequisite to the reinstatement of coverage. Is this a significant change that should be noted in the analysis?

b. In s. Ins 3.39 (4) (a) 18p. and many other provisions in the rule, reference is made to a certain section of the Social Security Act. In the Wisconsin Administrative Code, the convention (for other than the Internal Revenue Code) is to cite the U.S. Code reference. [See s. 1.07 (3) (a), Manual.]

c. In s. Ins 3.39 (34) (a) 2., the references to “shall not” should be changed to “may not.” [See s. 1.01 (2), Manual.]

d. In current s. Ins 3.39 (34) (b) (intro.), “paragraphs” should be changed to “subdivisions.” Also, all of the subunits in par. (b) should end with periods rather than colons. For example, subd. 3. (intro.) should state “The individual is enrolled with any of the following:” and all of the subdivision paragraphs should end with periods.

e. In s. Ins. 3.39 (34) (c) 1. b., “receives” should replace “received” for consistency with subd. 1. a.

f. In s. Ins 3.39 (34) (d), the number should not be shown in bold print.

g. SECTION 11 contains an initial applicability provision. It should be worded as “This rule first applies to policies issued or renewed on January 1, 2003.” [See s. 1.02 (3m), Manual.]

3. Conflict With or Duplication of Existing Rules

a. SECTION 5 repeals s. Ins 3.39 (34) (b) 2. f. and fm. However, there is a reference to “subpars. a. to f.” in s. Ins 3.39 (34) (b) 2. (intro.). The latter provision must also be changed if s. Ins 3.39 (34) (b) 2. f. is repealed.

b. Section Ins 3.39 (34) (b) 1. refers to the plan ceasing to provide “some or all” supplemental health benefits. In contrast, s. Ins 3.39 (34) (c) 1., which is intended to implement s. Ins 3.39 (34) (b) 1., refers to cessation of “all” supplemental health benefits. It appears that the inconsistency between “some or all” and “all” should be remedied.

c. Section Ins 3.39 (34) (d) 1. refers to “enrollment with an organization or provider described in par. (b) 5. a.” and also refers to “another such organization or provider.” In contrast, s. Ins 3.39 (34) (b) 5. a. refers to an organization, a provider, and a “Medicare Select policy.” Was the omission of a reference to the Medicare Select policy in s. Ins 3.39 (34) (d) 1., intentional?

The same comment regarding omission of reference to a “policy” applies to s. Ins 3.39 (34) (d) 3., which also refers to an organization or provider described in s. Ins 3.39 (34) (b) 5. a.

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

a. In the “statutes interpreted” section of the analysis, the reference to “s. 600.01 (28r)” should be changed to “s. 600.03 (28r).”

b. In s. Ins 3.39 (34) (c) 2., “par. (b) 2., 3., 5., or 6.” should be substituted for the citation given. Similar changes should be made elsewhere in the rule.

c. In s. Ins 3.39 (34) (d) 3., it appears that the reference to “under this section” should be changed to “under this paragraph.”

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

a. In the first sentence of the second paragraph of the analysis, “switch” should be changed to “switching”; “so not” should be changed to “so as not”; and “current or delay” should be changed to “current and delay.”

b. In the third paragraph of the analysis, “the later of two dates” should be followed by a colon, rather than a semicolon. Also, the two dates referred to should be inserted using the same structure, rather than separate incomplete sentences. This provision would be easier to understand if the two dates were separated into items (1) and (2).

c. In the fourth paragraph of the analysis, the comma following the first reference to s. Ins 3.39 (34) (b) should be deleted. Also, in the last sentence, “provides” should be changed to “provide.”

Also, the fourth paragraph is confusing in that it refers to modifications to s. Ins 3.39 (34) (c), but the third paragraph has already referred to s. Ins 3.39 (34) (c) as being newly created. It would be useful to clarify in the fourth paragraph that it is discussing current s. Ins 3.39 (34) (c), that is, before renumbering.

d. In s. Ins 3.39 (34) (b) 3. a., the term “Medicare cost” is set off in parentheses following the reference to s. 1876 of the Social Security Act. In contrast, in s. Ins 3.39 (34) (b) 5. a., the term “Medicare cost” is set off in commas following the same reference. In the latter, it

appears to be a separate item in the series. In the former, it appears to be a clarification of a term. The inconsistency should be remedied unless it is intentional. Also, parenthetical material should not be used in rules. Finally, "Medicare" should follow "ø".

e. In s. Ins 3.39 (34) (c) 1. a., "; or," should be replaced by a period.

f. In contrast to the structure of other comparable provisions, s. Ins 3.39 (34) (c) 3. a. does not explain when the guaranteed issue period ends. Is it the intention that it ends on the date that is 63 days after the date of the notice?

Also, is "earlier" intended in subd. 3. (intro.)? What if the notice is given at a much later date than the termination of coverage? The consequence could be that the individual's guaranteed issue time period will begin (and may even have ended) long before the individual knew that it had begun.

Should the subdivision be written as follows?

Ins 3.39 (34) (c) 3. In the case of an individual described in par. (b) 4. a., the guaranteed issue period begins on the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy, or other similar notice, and ends 63 days after the later of the following:

- a. The date that the notice is received.
- b. The date that the applicable coverage is terminated.

g. In s. Ins 3.39 (34) (d) 1., the comma following the second reference to "par. (b) 5. a." should be deleted. The same comment applies to s. Ins 3.39 (34) (d) 2. with respect to the second reference to "par. (b) 6."

h. In s. Ins 3.39 (34) (d) 1. and 2., it appears that the language "or deemed to be so described, pursuant to this paragraph" is superfluous in that s. Ins 3.39 (34) (d) is simply explaining when a subsequent enrollment is an initial enrollment for purposes of par. (b) 5. and 6.

If it is necessary to retain this language, then it appears that the references to "this paragraph" should be changed to "this subdivision." [See s. 1.07 (2), Manual.] Also, if it is necessary to retain this language, consideration should be given as to whether it is also advisable to change the reference in s. Ins 3.39 (34) (a) 1. from "individuals described in par. (b)" to "individuals described in par. (b) or (d)."

i. Section Ins 3.39 (34) (d) 1. indicates that the subsequent enrollment shall be deemed to be an initial enrollment described in s. Ins 3.39 (34) (b) 5. Is this referring to the initial subsequent enrollment under s. Ins 3.39 (34) (b) 5. a.? If so, it appears that it would be helpful to change s. Ins 3.39 (34) (d) 1. so that the last reference to "par. (b) 5." is "par. (b) 5. a."