WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 06-083

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 January 2005.]

1. Statutory Authority

Section 227.26, Stats., provides that the Joint Committee for Review of Administrative Rules (JCRAR) may suspend an existing rule. JCRAR then introduces a bill supporting the suspension. If the bill is introduced after February 1 of an even-numbered year, then, unless the bill is adversely disposed of, JCRAR must introduce the bill again on the first day of the next regular session of the Legislature. If either bill is adversely disposed of, then the rule goes into effect. However, until that time, the rule remains suspended.

On March 1, 2006, JCRAR suspended portions of ch. Ins 9 and then introduced 2005 Assembly Bill 1178 and 2005 Senate Bill 687 to prohibit the Office of the Commissioner of Insurance from promulgating certain rules related to limited-scope dental or vision plans and preferred provider plans. Neither bill has been adversely disposed of. Because the bills were introduced after February 1, 2006, JCRAR must introduce new bills in January 2007. If JCRAR does so, the suspension remains in effect unless and until the bills are adversely disposed of in the 2007-08 Legislative Session. While a rule is in suspended status, an agency may not promulgate a new rule that is the substantive equivalent of the suspended rule.

Several aspects of Clearinghouse Rule 06-83 (CR 06-83) are inconsistent with JCRAR's objection as follows:

(1) JCRAR objected to the definition of "limited-scope plan" in s. Ins 9.01 (10m) and the inclusion of limited-scope plans in ss. Ins 9.01 (5), (9m), and (13), 9.07, 9.20 (intro.), 9.41, and

9.42 (1) and (5) (a). Therefore, the inclusion of limited-scope plans has been suspended in those provisions.

CR 06-83 repeals the definition of "limited-scope plan" and then amends ss. Ins 9.01 (5), (9m), and (13); 9.20 (intro.), 9.41; and 9.42 (1) and (5) (a) to eliminate the term "limited-scope plan" in each of these provisions. However, each of these provisions then adds a reference to preferred provider plans and limited service health organizations.

All limited-scope plans (defined in s. Ins 9.01 (10m) as a health care plan providing limited-scope dental or vision benefits under a separate policy, certificate, or contract of insurance in accordance with s. 632.745 (11) (b) 9., Stats.), come under the definition of either: (a) a preferred provider plan under s. 609.01 (4), Stats. (a health care plan (as defined in s. 609.01 (1m), Stats.), that makes available without referral and on an uncapitated basis coverage of a limited range of health care services, regardless of whether the services are performed by a participating or nonparticipating provider); or (b) a limited service health organization under s. 609.01 (3) Stats. (a health care plan that makes available on a capitated basis a limited range of health care services performed by participating providers).

Thus, even though CR 06-83 amends ss. Ins 9.01 (5), (9m), and (13); 9.20 (intro.); 9.41, and 9.42 (1) and (5) (a) to eliminate the term "limited-scope plan," because each of these provisions is also amended to add reference to a preferred provider plan and limited service health organization, the substantive effect of the proposed amendments is to continue to include limited-scope plans in these provisions. This appears to be contrary to JCRAR's objection which suspended inclusion of limited-scope plans in these provisions.

(2) JCRAR objected to and suspended all of s. Ins 9.25 (4).

CR 06-83 would amend s. Ins 9.25 (4) to delete a part but also retain a part of s. Ins 9.25 (4). Retaining any part of s. Ins 9.25 (4) is contrary to JCRAR's objection. However, this is not a matter of concern if the agency's intent is to propose that if and when the suspension expires, only the first sentence of s. Ins 9.25 (4) will survive.

(3) JCRAR objected to and suspended all of s. Ins 9.32 (2) (f). One of the items included in 2005 Assembly Bill 1178 and 2005 Senate Bill 687 was a prohibition against promulgating a rule relating to a preferred provider plan that "imposes requirements relating to coverage of emergency services rendered by a nonparticipating provider and the rate at which the insurer offering the preferred provider plan must pay the nonparticipating provider." [Proposed s. 609.20 (3) (c).]

CR06-83 would repeal and recreate s. Ins 9.32 (2) (f) in such a way that it relates to a preferred provider plan's coverage of emergency medical services and imposes requirements relating to how nonparticipating providers are compensated for emergency medical services. This appears to be inconsistent with JCRAR's objection. Again, this is not a matter of concern if the agency only intends to enforce this provision following the expiration of the rule suspension. [If this is the case, then it would be appropriate to include a note to the rule describing the agency's intention regarding the future enforcement of ss. Ins 9.25 (4) and 9.32 (2) (f).]

2. Form, Style and Placement in Administrative Code

a. In ss. Ins 9.20 (intro.), 9.41, and 9.42 (1) and (5) (a), the new underscored word "plan," is added immediately preceding overstricken deleted material. However, new underscored material must always immediately follow overstricken deleted material. [See s. 1.06 (1), Manual.]

b. Provisions to be deleted should be shown as overstricken. [See s. 1.06 (1), Manual.] In s. 9.25 (4), the last fragmentary sentence "~~may not use utilization management techniques, including prior authorization requirements or similar methods, to deny access to nonparticipating providers.~~" is not in the current rule text and should be deleted in its entirety.

c. In s. Ins 9.42 (1), the reference to "Stats. Applicable" should be changed to "Stats., applicable" to reflect the current rule.

d. The first sentence of current s. Ins 9.42 (1) includes the phrase "compliance with ss. 609.22, 609.24, 609.30, 609.32, 609.34, 609.36, and 632.83, Stats." The proposed amendment to s. Ins 9.42 (1) refers only to 'compliance with "ss. 609.22, 609.34, 609.36, and 632.83, Stats.'" However, the proposed rule does not reflect that there is any amendment of the current rule with respect to the statutes cited. If an amendment is made, it should be shown with overstriking deletions and underscoring additions. [Section 1.06 (1), Manual.]

Moreover, if this amendment is made in s. Ins 9.42 (1), it would appear to create an inconsistency with other provisions in s. Ins 9.42 which refer to all seven statutory sections.

3. Conflict With or Duplication of Existing Rules

Given the expanded scope of s. Ins 9.20 (intro.) applying subch. III of ch. Ins 9 to defined network plans, preferred provider plans, and limited service health organizations, it appears that the title of subch. III (which refers only to defined network plans) should be amended. For that matter, consideration should be given to amending the title to ch. Ins 9 which currently refers only to defined network plans.

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

a. In Item 5. of the analysis, the word "to" should be inserted before the word "prohibit" in the second listed item.

b. In the third paragraph of Item 7. of the analysis describing Illinois law, the word "a" preceding the word "individual" should be replaced by the word "an;" the word "are" preceding the word "provided" should be replaced by the word "is"; and the word "must" preceding the word "include" should be replaced by the word "to." In the quoted notice, on the top of page 4, the word "are" probably should be replaced by the word "area." Finally, in the fourth paragraph, the first sentence should read: "Illinois statute … procedures for a quality assessment program … that require plans to have a procedure …."

c. In the last paragraph of Item 7 of the Analysis describing Minnesota law, "who are" should be changed to "who is" and the word 'participating" should be replaced by the word "participate."

d. In the last paragraph of Item 7. of the analysis describing Michigan law, the word "organization" in the first sentence should be replaced by the word "organizations."

e. In Item 11 of the analysis, "rule will effect on" should be changed to either "rule will affect" or "rule will have an effect on."

f. Section Ins 9.42 (1) indicates, in pertinent part, that all insurers offering a defined network plan, preferred provider plan, or limited service health organization, except to the extent otherwise exempted under ch. Ins 9 or by statute, are responsible for compliance with s. 609.22, 609.34, 609.36, and 609.83, Stats. (See the comment above regarding which statutes are cited as it appears that other statutes should be included as they are in current s. 9.42 (1) and in other subsections of s. Ins 9.42.)

While the statement may be technically accurate because it refers to statutory exemptions, this provision is confusing because it appears that a limited service health organization is never subject to s. 609.22, 609.34, or 609.36, Stats. (or to s. 609.24, 609.30, or 609.34, Stats., which were omitted without showing an amendment to s. Ins 9.42 (1)). It may be useful to delete reference to limited service organizations in that sentence and create a separate sentence referring to limited service health organizations and the specific statute that they are responsible for complying with. (However, see the comment in Section 5., above, regarding including limited-scope plans in s. Ins 9.42.)