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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 06-118

#### 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 January 2005.]**

#### 1. Statutory Authority

Section 609.35, Stats., provides that a preferred provider plan (PPP) that does not “cover the same services” when performed by a nonparticipating provider that it covers when those services are performed by a participating provider is subject to certain specified statutory requirements. Section Ins 9.25 sets forth criteria to determine if a PPP is covering the same services for purposes of s. 609.35, Stats., so that it can be determined whether the PPP is subject to these specified statutory requirements. However, s. Ins 9.25 (8) essentially provides that s. Ins 9.25 will never apply to a PPP policy issued prior to January 1, 2007.

It does not appear that the Commissioner has authority to exempt PPP policies issued prior to January 1, 2007 from s. 609.35, Stats., and it is possible to interpret Clearinghouse Rule 06-118 as not attempting to do so. The result of such an interpretation is that, although s. Ins 9.25 does not explain what covering the same services means for PPP policies issued prior to January 1, 2007, s. 609.35, Stats. (which has been in effect since September 1, 2001), continues to apply to those policies. This means that, in the absence of a rule explaining what it means for a PPP to be covering the same services if a PPP policy was issued prior to January 1, 2007, a court will make this determination if a legal action is brought.

Is this the interpretation intended? If not, the statutory authority for s. Ins 9.25 (8) is not clear.

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

The purpose of SECTION 3 of the rule is not clear. It states that “This section” may be enforced under various cited statutes. To what does “This section” refer? It makes no reference to any provision of the administrative code and its wording is not going to be placed in the administrative code. If the intent is to alert readers as to the enforcement powers of the agency, this could be noted in the analysis.

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

a. Items 1. and 2. of the Analysis state that s. 628.34 (12), Stats., is being interpreted and provides statutory authority for the proposed rule. Section 628.34 (12), Stats., permits the Commissioner of Insurance to promulgate a rule defining an unfair trade practice if there is a finding that the practice is misleading, deceptive, unfairly discriminatory, provides an unfair inducement, or restrains competition unreasonably. Clearinghouse Rule 06-118 does not state that the Commissioner has made such a finding.

Moreover, Clearinghouse Rule 06-118 simply changes the applicability date to exempt certain PPPs from ss. Ins 9.25 and 9.27. This does not appear to be related to defining an unfair trade practice. Thus, it appears that the reference to s. 628.34 (12), Stats., should be deleted in both places.

b. Item 1. of the Analysis indicates that s. 632.85, Stats., is being interpreted. Section 632.85, Stats., relates to coverage without prior authorization for treatment of an emergency medical condition. However, ss. Ins 9.25 and 9.27, which are the only provisions affected by Clearinghouse Rule 06-118, do not appear to pertain to that issue. Thus, it appears that the reference to s. 632.85, Stats., should be deleted.

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

a. Item 5. of the Analysis indicates that the proposed rule “clarifies” the applicability dates for ss. Ins 9.25 and 9.27. However, it would be more accurate to state that the proposed rule “changes” the applicability dates for ss. Ins 9.25 and 9.27.

Clearinghouse Rules 05-059 and 06-083 included initial applicability provisions affecting s. Ins 9.25, and Clearinghouse Rule 05-059 included initial applicability provisions affecting s. Ins 9.27. Under both, for PPP policies issued prior to January 1, 2007, ss. Ins 9.25 and 9.27 would have first applied when the policy was renewed on or after January 1, 2008. In contrast, Clearinghouse Rule 06-118 will provide that for PPP policies issued prior to January 1, 2007, ss. Ins 9.25 and 9.27 will not apply, even upon renewal. It would be useful to explain this change in the Analysis.

b. In Item 8. of the Analysis, “the Joint Committee for Review of Administrative Rules” should be substituted for “JCRAR.”

c. In s. Ins 9.25 (8), a period should be inserted following the first reference to “2007”.