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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 07-108

#### 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.]**

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

a. Throughout s. Ins 2.19, introductory clauses which lead into subunits are not appropriately structured. For example, s. Ins 2.19 (4) (a) (intro.) does not include the phrase “any of the following:” and s. Ins 2.19 (5) (l) does not include the phrase “does all of the following:” as directed by s. 1.03 (8), Manual. Also note that par. (l) should be changed to par. (L) to avoid confusion with the numeral for one.

Moreover, the subunits in s. Ins 2.19 often, but not always, are followed by a semicolon with the use of the conjunction “and” or “or” before the last subunit. The subunits should instead end with a period. [See s. 1.03 (intro.), Manual.] The need for “and” or “or” will be eliminated if “all of the following” or “any of the following”, respectively, are used in the introductory clause.

The entire rule should be reviewed for these two problems.

Some subunits are separated by a period as directed in s. 1.03 (intro.), Manual, but the introductory clause does not make clear the relationship of the subunits. For example, it appears that s. Ins 2.19 (6) (b) (intro.) and the introductory clause in each paragraph in s. Ins 2.19 (7) should add language such as: “any of the following:”.

b. In s. Ins 2.19 (4) (a) 5., 6., and 7. a., (5) (a) and (j), and (7) (b) 1., a parenthetical reference to an acronym is included. If an acronym is to be used, it should be included as a definition. [s. 1.01 (8), Manual.]

c. In s. Ins 2.19 (4) (a) (intro.), the term “shall not” should be avoided. [s. 1.01 (2), Manual.] In this case, it would appear to be more appropriate to change the term to “does not”. A similar comment applies to use of the term “shall not” twice in s. Ins 2.19 (4) (c).

d. In s. Ins 2.19 (4) (a) 7. a., the reference to the “Employee Retirement and Income Security Act (ERISA)” should be changed to the U.S. Code reference. A reference to the federal act could be included in a note. [s. 1.07 (3) (a), Manual.] Also, there is no “and” in the name of the federal act.

e. Definitions are to be arranged alphabetically. [s. 1.01 (7) (a), Manual.] Therefore, s. Ins 2.19 (5) (e) and (f) should be reversed.

f. In s. Ins 2.19 (5) (g), is subd. 2. a subset of subd. 1.? If so, subd. 2. could be deleted and subd. 1. could be combined with par. (g) (intro.).

g. In s. Ins 2.19 (5) (L) (intro.), “fund” should not be capitalized as uses of the defined term in s. Ins 2.19 are not capitalized. [s. 1.01 (4), Manual.]

h. In s. Ins 2.19 (6) (a) 1., the phrase “door to door” is set off in quotation marks. This is a defined term in s. Ins 2.19 (5) (c). It should not be set off in quotation marks.

A similar comment applies to the word “MyPay” in s. Ins 2.19 (7) (a) 1.

i. In s. Ins 2.19 (6) (a) 2., the words “mass” and “captive” are set off in quotation marks. The use of these quotation marks is inappropriate as it suggests that there is some nonstandard specialized meaning for each term, but the rule provides no definition. (Moreover, if the rule did define a term, it would be inappropriate to set off the term by use of quotation marks.)

A similar comment applies to “Savings” and “Checking” in s. Ins 2.19 (7) (a) 3. and to “costs nothing” and “free” in s. Ins 2.19 (7) (c) 2.

j. In s. Ins 2.19 (6) (a) 8., the term “Armed Forces” at the end should be changed to the defined term “United States Armed Forces.”

k. A title is not part of the substance of the rule itself. [s. 1.05 (1), Manual.] Therefore, although the title of s. Ins 2.19 (6) indicates that it is listing practices that are not appropriate on a military installation, s. Ins 2.19 (6) (b) does not include this limitation. (Section Ins 2.19 (6) (a) (intro.) does not apply to s. Ins 2.19 (6) (b).) Therefore, it appears that s. Ins 2.19 (6) (b) (intro.) should be changed to: “No insurer or insurance producer may do any of the following on a military installation:”.

l. All of the paragraphs in s. Ins 2.19 (7) have the following as introductory language: “No insurer or insurance producer may:” (The one exception is s. Ins 2.19 (7) (d) (intro.) which inappropriately refers to “No insurer or insurance producer regarding may:”.) Since all of the paragraphs have (or are intended to have) the same introductory language, it is inappropriate to divide s. Ins 2.19 (7) into paragraphs as proposed. Rather, s. Ins 2.19 (7) (intro.) could be created to provide that: “No insurer or insurance producer may do any of the following

regardless of location.” and then the proposed subdivisions would become paragraphs and the proposed subdivision paragraphs would become subdivisions.

m. In s. Ins 2.19 (7) (a) 2. a., the reference to the “Truth in Savings Act” could be included in a note. [s. 1.07 (3) (a), Manual.]

n. In s. Ins 2.19 (7) (a) 3., “Leave and Earnings Statement,” “Savings,” and “Checking” should not be capitalized. [s. 1.01 (4), Manual.]

o. In s. Ins 2.19 (7) (a) 3., the reference to “sub. (7) (a) 2.” should be changed to “subd. 2.” [See s. 1.07 (2), Manual.]

p. In s. Ins 2.19 (7) (a) 8., “State” should not be capitalized. [s. 1.01 (4), Manual.]

q. In s. Ins 2.19 (7) (e) 4., the reference to “Section 10 of the ‘Military Personnel Financial Services Protection Act,’ Pub. L. No. 109-290, p. 16” should be changed to the appropriate U.S. Code reference. A reference to the federal act could be included in a note. [s. 1.07 (3) (a), Manual.] (Even so, the reference to “p. 16” is confusing.)

r. In s. Ins 2.19 (7) (f) 2. a., the phrase “and/or” is inappropriate. [s. 1.01 (9) (a), Manual.]

s. In s. Ins 2.19 (7) (f) 4., “but not limited to” should be deleted.

t. In s. Ins 2.19 (7) (f) 3. b., “will consider” should be changed to “shall consider” as it appears to be a mandatory action. In the next sentence, “will” should be changed to “shall.” [s. 1.01 (2), Manual.]

u. In s. Ins 2.19 (7) (f) 3. b., “one (1) to ten (10)” should be changed to “one to 10.” [s. 1.01 (5), Manual.]

v. In SECTION 2, the title should be changed to “INITIAL APPLICABILITY.” The text should be changed to: “This rule first applies to sales that are solicited on the effective date of this rule.” [s. 1.02 (3m), Manual.]

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

a. The statutes interpreted and statutory authority sections of the analysis list s. 628.347, Stats. Under current law, that section relates to suitability of annuity sales to senior consumers. It is noted that s. Ins 2.19 (3) does not refer to this statute. If s. 628.347, Stats., provides authority for the proposed rule, it should be included in both provisions. If not, it should be deleted from the analysis.

b. In s. Ins 2.19 (7) (a) 2., the reference to “this section” should be changed to “this subdivision.” (However, see the comment above regarding possible renumbering in sub. (7).)

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

a. In the second paragraph of Item 5. of the analysis, “National Association of Insurance Commissioner” should be changed to “National Association of Insurance Commissioners.”

b. In the third paragraph of Item 5. of the analysis, the second sentence should be followed by a period--either immediately before or immediately following the citation to “(s. 628.34, Stats.).”

c. In the last sentence of the third paragraph of Item 5. of the analysis, it appears that “prohibits a practice” should be changed to “prohibits the practice.”

A similar comment applies to s. Ins 2.19 (5) (j) in which “is a Defense” should be changed to “means the Defense.”

d. In s. Ins 2.19 (5) (h), a comma should be inserted between “and” and “unless” to set off the “unless” clause.

e. In the title to s. Ins 2.19 (6), a comma should be inserted following “MISLEADING.”

f. In s. Ins 2.19 (6) (a) 4., it would be useful to change “or other” to “or in other” to avoid any ambiguity about the locations to which the prohibition of solicitation by the installation commander applies.

g. In s. Ins 2.19 (7) (a) 2. (intro.), “Knowingly receiving” should be changed to “Knowingly receive.”

h. In s. Ins 2.19 (7) (a) 2. a., “there under” should be one word.

i. In s. Ins 2.19 (7) (a) 7., “attendance to any event” should be changed to “attendance at any event.”

j. In s. Ins 2.19 (7) (b) 1., it appears that “In” should not be capitalized in the “Master of Science In Financial Services” designation. It also appears that “Masters of Science Financial Planning” should be changed to “Master of Science in Financial Planning.”

k. In s. Ins 2.19 (7) (b) 2., the comma following “U.S. Government” should be deleted.

l. In s. Ins 2.19 (7) (c) 2., “misrepresenting” should be changed to “misrepresent.”

m. Section Ins 2.19 (7) (d) (intro.) provides that: “No insurer or insurance producer regarding may:”. It is unclear what “regarding” refers to.

n. In s. Ins 2.19 (7) (d) 1., “dependents” should be changed to “dependents of a service member.”

o. In s. Ins 2.19 (7) (d) 3., “issuing” should be changed to “issue.” Also, “shall take effect” should be changed to “will take effect.”

p. In s. Ins 2.19 (7) (e) 5. (intro.), “failing” should be changed to “fail.”

q. Section Ins 2.19 (7) (f) includes a prohibition against recommending a certain type of life insurance product “unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.” Was the omission of the “insurance producer” having such reasonable grounds intentional? (It is noted that s. Ins 2.19 (7) (f) (intro.) refers both to the insurer and insurance producer.)

r. The structure of s. Ins 2.19 (7) (f) 2. is grammatically inconsistent with s. Ins 2.19 (7) (f) (intro.). The subdivision begins as part of the prohibition but then switches to a statement about presumed unsuitability. It should be restructured to be grammatically correct.

s. If the names of various types of benefits are to be capitalized in s. Ins 2.19 (7) (f) 2. b., it appears that “TRICARE Healthcare benefits” should be changed to “TRICARE Healthcare Benefits.”

t. In s. Ins 2.19 (7) (f) 3. b., “ending at age 100, policy maturity or final expiration” is unclear. Should it be changed to “ending at the earliest of age 100, policy maturity or final expiration”?

u. In SECTION 2, the space should be deleted before the period.