



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 08-032

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

a. Item 3 of the analysis essentially states that 2007 Wisconsin Act 20 requires the Office of the Commissioner of Insurance (OCI) to adopt the National Association of Insurance Commissioners (NAIC) 2000 and 2006 Long-Term Care Insurance Model Act and Model Regulations (NAIC Model), pursuant to the federal Deficit Reduction Act of 2005. However, Act 20 does not explicitly include such a requirement. Rather, s. 49.45 (31), Stats., created by Act 20, requires the Department of Health and Family Services (DHFS) (Department of Health Services or DHS on July 1, 2008) to submit an amendment to the state’s Medicaid plan to establish a long-term care partnership program and implement the program if the amendment to the state plan is approved at the federal level. Under the program, if a person receives benefits under a qualifying long-term care insurance policy, the benefits are excluded in certain calculations relating to Medicaid.

One of the criteria to be a qualifying policy is that a policy must meet some, but not all, provisions of the NAIC Model. However, if a policy does not comply with the designated NAIC Model provisions, it is not a qualifying policy and benefits are handled a different way for purposes of Medicaid. Act 20 did not require OCI to adopt the NAIC Model for all long-term care insurance policies. Act 20 did not provide that only qualifying policies could be sold in Wisconsin. While the proposed rule does not do so either, ss. Ins 3.455 and 3.46 apply some of the designated provisions of the NAIC Model to all long-term care policies--not just qualifying policies. To the extent that a provision in s. Ins 3.455 or 3.46 provides a minimum standard for a long-term care policy, s. 632.81, Stats., provides authority to the commissioner to establish the

standard, as long as the minimum standard is not inconsistent with the statutes. (However, it is noted that s. 632.81, Stats., is not cited as authority for the proposed rule.)

However, to the extent that a provision in s. Ins 3.455 or 3.46 is inconsistent with an existing statute, statutory authority to promulgate the provision is unclear, especially with respect to a non-qualifying policy.

For that matter, Act 20 does not make it clear that Wisconsin has adopted the NAIC Model at all for any long-term care policy. Section 49.45 (31), Stats., provides that if a policy meets certain criteria (including specified provisions in the NAIC Model), the commissioner must certify to DHS that the standards are met. On the other hand, if the standards are not met, the commissioner simply does not certify the policy.

Act 20 implies that it should be possible for the commissioner to certify at least some policies. However, to the extent that there is a conflict between existing statutes that were not amended by Act 20 and the designated provisions in the NAIC Model, the statutes are ambiguous on this point. Especially to the extent that an existing statute is more generous in providing a protection to a consumer than the NAIC Model, Act 20 does not state that the more specific statute no longer applies. Act 20 does not even imply that that is the case if long-term care insurance policies that are not qualifying policies are involved. The following provide examples:

- (1) Section Ins 3.455 (3) (i) provides that a person who has been continuously insured under a group policy for at least six months immediately prior to termination is entitled to a converted policy without evidence of insurability. However, s. 632.897 (2) (b), Stats., requires that certain persons who have been continuously covered under a group policy (which includes a long-term care insurance policy under s. 632.897 (1) (c) 1m., Stats.) be allowed to convert coverage after having been continuously covered for at least three months. Thus, it is unclear what statutory basis there is for the six-month provision in s. Ins 3.455 (3) (i), especially with respect to a non-qualifying long-term care insurance policy.
- (2) Section Ins 3.455 (7) (e) provides that the first premium for a policy that is a conversion from a group long-term care insurance policy must be paid as directed by the insurer not later than **31 days after termination** of coverage under the group policy. The conversion policy must then be issued effective on the day following the termination of the group coverage. However, s. 632.897 (4) (c), Stats., provides, in pertinent part, that if the first premium for the conversion policy is paid within **30 days after notice** of the termination of group coverage, then the conversion policy must be issued effective on the day following the termination of the group coverage. There is a difference between 31 days and 30 days. Also, there may be a difference in the date from which the measurement is made (although, under s. 632.897 (2) (c), Stats., those dates could be the same). It is unclear what statutory basis there is for the differences, especially with respect to a non-qualifying long-term care insurance policy.

- (3) Section Ins 3.46 (20) (a) sets forth grounds for contesting a long-term care insurance policy or certificate if the policy or certificate has been in effect for less than six months; s. Ins 3.46 (20) (b) sets forth separate grounds for contesting if the policy or certificate has been in force for at least six months but less than two years. In contrast, s. 632.76 (1), Stats., permits contesting a policy that has been in effect for less than two years--with no distinction made between the first six months and the next 18 months. Based on s. 632.76 (1), it is not clear that there is a statutory basis for the distinction made in s. Ins 3.46 (20) (a) versus s. Ins 3.46 (20) (b), especially with respect to a non-qualifying long-term care insurance policy.

Another example relates to a protection for insurers. Section 632.76, Stats., permits an insurer to contest a disability insurance policy on certain grounds during certain periods of time and to contest a policy at any point in time based on fraudulent misrepresentation. If long-term care coverage under a life insurance policy is involved, s. 632.46, Stats., would also permit rescission during certain periods of time for certain reasons and at any point in time based on fraudulent misrepresentation. Neither statute would prohibit recovery of the benefits paid if the policy were rescinded.

However, s. Ins 3.46 (20) (e) provides that if an insurer has paid benefits under a long-term care insurance policy or certificate, the benefit payment may not be recovered by the insurer in the event that the policy or certificate is rescinded. As drafted, s. Ins 3.46 (20) (e) would prohibit recovery if a policy is rescinded based on a permissible statutory grounds for contest (such as fraudulent misrepresentation). Under common law, an insurer may attempt to recover benefits paid in such a case, for example, based on the contract or a theory of unjust enrichment. While s. Ins 3.46 (20) (e) reflects a provision in the NAIC Model, there appears to be no statutory authority to apply it to all long-term care policies, especially those that an insurer is not seeking to have categorized as a qualifying policy.

b. Section 632.897 (4) (bm), Stats., provides that the commissioner, *by rule*, must specify minimum standards for an individual conversion policy if the policy being converted is a long-term care insurance policy. Section 632.897 (4) (bm), Stats., further specifies that an insurer provides reasonably similar coverage for purposes of this determination if the person is offered an individual conversion policy that complies with these rules.

Current s. Ins 3.455 (7) (c) is the rule promulgated by the commissioner about reasonably similar coverage. The amendment to s. Ins 3.455 (7) (c) would provide that reasonably similar coverage under a conversion long-term care insurance policy could also be whatever is “determined by the commissioner to be substantially equivalent.” Similar language is included in the definition of “converted policy” in s. Ins 3.455 (3) (j), and there are references to the commissioner’s determination in s. Ins 3.455 (7) (g) 2.

In addition, s. 632.81, Stats., permits the commissioner to establish minimum standards for long-term care insurance policies and to provide an exemption, *by rule*, from those minimum standards under certain circumstances.

It appears that the statutes require promulgation of a rule to establish the minimum standards, not an individualized case-by-case determination by the commissioner about substantial equivalency for purpose of determining if coverage is reasonably similar. If OCI disagrees, it seems that, at a minimum, it would be helpful if the rules specified: the process to request a determination; what factors will be used and how the factors are to be evaluated (beyond simply stating in s. Ins 3.455 (3) (j) what factors might be considered); what form the determination will be made in; and a reference to any process for appealing an adverse determination.

c. Section 628.348 (1), Stats., specifies that no person may solicit, negotiate, or sell long-term care insurance unless the person is a licensed intermediary and completes the initial training portion of the training program required under s. 49.45 (31) (c), Stats., by January 1, 2009. However, SECTION 19 provides that the changes take effect on the earlier of the first day of the month after publication or January 1, 2009. The latter date would not enable a person to complete all of the training before January 1, 2009, as is literally required by the statute (unless the statute is amended).

2. Form, Style and Placement in Administrative Code

a. The public hearing is scheduled for May 12, 2008. The report from the Clearinghouse is not due to the OCI until May 13, 2008. Under s. 227.15 (1), Stats., OCI may not hold a public hearing before May 14 unless OCI receives the Clearinghouse Report earlier. In the future, a request for expedited review should be made in advance before scheduling a public hearing before the due date for the report by the Clearinghouse.

b. In the treatment clauses within the rule, the "Section" or "Sections" that precede "Ins" should be deleted.

c. The treatment clause of SECTION 1 should refer to "(em) and (h) to (j)," rather than using the term "through." [See s. 1.01 (9) (d), Manual.] A similar comment applies to the treatment clause of SECTION 3 with respect to use of the word "through." In the treatment clauses of SECTIONS 10, 15, and 16, the dash should be changed to "to."

d. The definitions in the newly created paragraphs in s. Ins 3.455 (3) will not be in alphabetical order. [See s. 1.01 (7) (a), Manual.] This comment also applies to s. Ins 3.46 (3) (L) to (o).

e. The definitions in s. Ins 3.455 (3) (h) and (j) inappropriately include substantive provisions. [See s. 1.01 (7) (b), Manual.] For example, s. Ins 3.455 (3) (h) requires the commissioner to make a certain determination and specifies requirements on how to do so; and s. Ins 3.455 (3) (j) specifies how the commissioner is to make certain determinations and specifies what form a converted policy must be offered in. Also, "A" should be deleted from the terms being defined.

The entire rule should be reviewed for other definitions that should be changed to remove substantive provisions, including s. Ins 3.46 (3) (e) and (L) (last sentence).

In s. Ins 3.46 (3) (q), “mental or nervous disorder” is listed as a definition. However, it appears to be a substantive prohibition applicable to an insurer, rather than a definition. This approach should be revisited. A similar comment applies to the ostensible definition in s. Ins 3.46 (3) (v), which is actually phrased as a substantive requirement as to how an insurer should define certain terms.

Also, in s. Ins 3.46 (3) (L), the term “shall also include” should be changed to “includes” as it is part of a definition, not a requirement. In addition, in s. Ins 3.46 (3) (L), “shall not include” should be changed to “does not include” as it is part of a definition, not a prohibition.

f. Section Ins 3.455 (7) (d) is amended to create subd. 1. and to change the current subdivisions to subdivision paragraphs. These changes should not be made since that would result in only one subdivision in the paragraph. [See s. 1.03 (intro.), Manual.]

g. Section Ins 3.455 (7) (d) 1. (which should remain (7) (d) (intro.) (as noted above)), should include language such as “all of the following” to describe the relationship of the subunits which follow it. [See s. 1.03 (8), Manual.] In addition, all of the subunits should end with a period, rather than a comma or semicolon or the word “and” or “or.” [See s. 1.03 (intro.), Manual.] Section Ins 3.455 (7) (d) is internally inconsistent in that: one of its subunits ends in a semicolon; two end in a period; and the second of four items ends with a semicolon followed by the word and.”

The proposed rule is inconsistent on how it approaches introductory material leading to subunits and the punctuation of those subunits. While some provisions follow the correct format (for example, ss. Ins 3.46 (16) (b) 4. a. to d. and 3.465 (7) (a) (2) [sic]), other provisions do not. The entire rule should be reviewed to make these corrections, including ss. Ins 3.455 (7) (g), 3.46 (3) (j), (k) (intro.) and 1., and (u), (4) (m) (intro.), 2. d. to g., 6. (intro.), a., and b., (n) (the current subdivisions should be amended), and (r) 1. to 8., (8) (c) (intro.), (10) (f) (intro.), (14) (c) 2. (intro.), (d) (intro.) and 1. to 4., and (e) (intro.), (16) (c) 4. b., (23) (a) (intro.) and 1. and (e) 2., 3., and 6., (24) (c) 1. to 3. (especially with respect to 3. ending in “;or;”), and (25) (a) 1. a., and 3.465 (2) (second entry) (a), (4), (5) (intro.), and (7) (a) (3) [sic], and (d) (1) [sic].

h. In s. Ins 3.455 (7) (i), “shall not” should be changed to “may not.” [See s. 1.01 (2), Manual.] A similar comment applies to ss. Ins 3.46 (4) (m) 3. and (r) (intro.), (10) (f) 2., (14) (b), (23) (e) 8., and (26) (b), and 3.465 (4) (a) 1. c. v., and (7) (a) (2) [sic] b. and c. The entire rule should be reviewed for this problem.

Also, in ss. Ins 3.46 (10) (f) 1. and (24) (a) (intro.) (if correctly renumbered) and 3.465 (4) (a) 1. c. ii. (first use) and (7) (a) (2) [sic] d. and e., “must” should be changed to “shall.” In s. Ins 3.465 (4) (a) 1. c. ii. (second use), “must not” should be changed to “may not.” The entire rule should be reviewed for this problem.

i. The treatment clause of SECTION 4 indicates that s. Ins 3.46 (2) (a) (intro.) is being amended. There is no s. Ins 3.46 (2) (a) (intro.), rather there is simply s. Ins 3.46 (2) (a). Also, the text overstrikes all of s. Ins 3.46 (2) (a), rather than amending it. It appears that the intent is

to repeal s. Ins 3.46 (2) (a). If that is the case, it should simply be stated in a separate treatment clause. [See s. 1.06 (1), Manual.]

j. In s. Ins 3.46 (3) (d) 1., the name of the department should not be capitalized. [See s. 1.01 (4), Manual.]

k. In s. Ins 3.46 (3) (a), the reference to “s. HFS 89” should be changed to “ch. HFS 89.”

l. In s. Ins 3.46 (4) (c) 1. “shall not” should be changed to “does not.” [See s. 1.01 (2), Manual.] A similar comment also applies to: the last sentence of s. Ins 3.46 (9) (m); the first sentence of s. Ins 3.46 (20) (f); and s. Ins 3.46 (23) (e) 6. d.

m. Section Ins 3.46 (4) (j) does not follow the required format for showing amendments as words to be inserted are not shown as underscored (that is, all of the material after “delivered”). [See s. 1.06 (1), Manual.]

n. Section Ins 3.46 (4) (m) 2. b. does not follow the required format for showing amendments as a deleted word is not overstricken and an added word is not underscored. [See s. 1.06 (1), Manual.] Specifically, “or other” should be shown as “~~a~~ other”.

o. In s. Ins 3.46 (4) (m) 2. f., the use of “thereto” should be avoided. [See s. 1.01 (9) (c), Manual.]

p. The subdivisions in s. Ins 3.46 (4) (m) do not use a parallel structure that follows from s. Ins 3.46 (4) (m) (intro.). For example, some are listed items that follow the introductory language, and some are complete sentences, or partial sentences, in the case of subd. 8., that do not flow from the introductory language. This paragraph should be restructured.

q. In the first part of the treatment clause of SECTION 7, the reference to “Ins 3.46 (5) (a) (intro.)” should be changed to “Ins 3.46 (5) (a).” In addition, the text fails to indicate the change by showing the deleted material as overstricken and the added material as underscored. [See s. 1.06 (1), Manual.]

r. The last part of the treatment clause of SECTION 7 should state that s. Ins 3.46 (5) (b) 9. is being amended, not s. Ins 3.46 (5) (a) 9. Also, in that provision and throughout the rule, “such” should be avoided.

s. The treatment clause of SECTION 10 indicates that s. Ins 3.46 (10) (e) is being created, and language is included in the proposed rule. However, s. Ins 3.46 (10) (e) already exists with the same language shown. It should not be included in the proposed rule.

t. SECTION 12 of the rule repeals and recreates s. Ins 3.46 (14). Paragraph (g) refers to replacement of policies and certificates issued prior to June 1, 1991, a date that is used in current par. (j). Is that date still necessary in this rule?

u. In s. Ins 3.46 (14) (c) 1. b., further subunits should not be created. [See s. 1.03 (6), Manual.] The subunits should be subdivision paragraphs.

v. In s. Ins 3.46 (14) (c) 2., the additional subunits are designated as 1. and 2. They should be designated as subdivision paragraphs a. and b. [See s. 1.03 (6), Manual.]

w. In s. Ins 3.46 (16) (b) 3., the comma following “standards” should not be included as it is not in the current provision and should not be shown as if it were and then overstricken.

x. SECTION 14 specifies, in pertinent part, that s. Ins 3.46 (19) (c) 4. and (d) are being created. However, they already exist in current rules. If they are instead being repealed and recreated, this should be specified in the treatment clause. Also, “described” should replace “defined” since subd. 3. is not a definition. Section Ins 3.46 (19) (j) should be in a separate SECTION since it is being created. [See s. 1.04, Manual.]

y. In s. Ins 3.46 (19) (d) 4., (23) (e) 6. a., and (26) (1) [sic], the use of the term “thereafter” should be avoided. [See s. 1.01 (9) (c), Manual.]

z. In ss. Ins 3.46 (22), (23), and (25) and 3.465 (2) (first entry), the titles should be in solid capital letters. [See s. 1.05 (2) (c), Manual.] The entire rule should be reviewed for instances of this error. Also, in s. Ins 3.465 (2) (second entry), (3), (4), and (7), the bolding of the titles should be eliminated.

aa. In s. Ins 3.46 (22), par. (a) should not be created as the subsection has no subunits. [See s. 1.03 (intro.), Manual.]

bb. In s. Ins 3.46 (23) (a) 5., the reference to “par. (a)” should be changed to “this paragraph.” [See s. 1.07 (2), Manual.]

cc. In s. Ins 3.46 (23) (e) 3. a., the parentheses should be replaced by commas. [See s. 1.01 (6), Manual.]

dd. In s. Ins 3.46 (23) (e) 6. d., the reference to “Subparagraphs (a) through (c)” should be changed to “This subd. 6. a. to c.” [See s. 1.07 (2), Manual.] However, note that this paragraph does not follow from subd. 6. (intro.).

ee. In the first sentence of s. Ins 3.46 (24) (b), the reference to “currently” should be rephrased. [See s. 1.01 (9) (b), Manual.]

ff. The internal numbering in s. Ins 3.46 (26) is incorrect. For example, a subsection cannot have provisions numbered as subsections (1), (2), or (3). The entire subsection should be renumbered, and all cross-references and internal references corrected in accordance with the corrected numbering. [See s. 1.07 (2), Manual.]

gg. In s. Ins 3.46 (26) (a) (intro.) (if correctly renumbered), the reference to “par. (a) through (d)” should be changed to “this paragraph to par. (d).” [Section 1.07 (2), Manual.]

hh. In s. Ins 3.46 (26) (f), “subd.(a) 1.” should be changed to “par. (a) 1.” [Section 1.07 (2), Manual.]

ii. SECTION 16 indicates that Appendices (1) to (5) are repealed and recreated. However, SECTION 16 also includes the creation of Appendices (6) to (10) in s. Ins 3.46. A separate

SECTION and treatment clause should be inserted before the latter appendices indicating that they are being created.

jj. In the final bracketed language of item 9. of Appendix 1 of s. Ins 3.46, “should accompany” is unclear. If it is required, this should be changed to “shall accompany.” [See s. 1.01 (2), Manual.]

kk. In the Disclosure Statement in Appendix 2 of s. Ins 3.46, the reference to “and/or” should be rephrased. [See s. 1.01 (9) (a), Manual.]

ll. A title is required for s. Ins 3.465. [See s. 1.05 (1), Manual.]

mm. In s. Ins 3.465, there are two subsections numbered “(2).” This should be corrected, and the rule should be carefully reviewed to ensure that any cross-references to these provisions reflect the correct renumbering (for example, the citation in s. Ins 3.465 (2) (second entry) (a) 1.).

nn. The structure of s. Ins 3.465 (2) (first entry) (a) should be reviewed. It would be more appropriate to have language about incorporating the definitions in ss. Ins 3.455 and 3.46 in introductory language, with par. (a) being the first definition. For example, this could be restructured as “(2) DEFINITIONS. The definitions in ss. 3.455 and 3.46 also apply in this section. In addition, the following definitions apply in this section:”. Paragraph (a) would then define “automatic exchange.”

oo. In s. Ins 3.465 (2) (second entry), the reference to “section 6021 of the Deficit Reduction Act of 2005 (Pub L 109-171)” should be changed to a citation to the U.S. Code. Any desired reference to P.L. 109-171 may be included in a note. [See s. 1.07 (3) (a), Manual.]

pp. In s. Ins 3.465 (2) (second entry), par. (a) should be par. (b) and the introductory material should be par. (a).

qq. In s. Ins 3.465 (2) (second entry) (a) 3., the ampersand symbol should be changed to “and.”

rr. In s. Ins 3.465 (2) (second entry) (a) 4., the reference to “s. 3.465 Appendix 2” should be changed to “Appendix 2 of this section” or simply “Appendix 2.” [See s. 1.07 (2), Manual.]

ss. Section Ins 3.465 (4) (a) should be restructured to eliminate the following problems. First, it is inappropriate to create only one subdivision. [See s. 1.03 (intro.), Manual.] Second, subdivision paragraphs should not be further subdivided. [See s. 1.03 (7), Manual.] It is suggested that: what is now par. (a) 1. be included in par. (a) (intro.); that a., b., and c. be changed to subs. 1., 2., and 3.; and that i. to v. under subd. 3. be changed to subdivision paragraphs a. to e. Cross-references to any entry should be revised to reflect the corrected numbering.

tt. In s. Ins 3.465 (7) (a), the paragraph titles should be written with an initial capital letter and italicized. [See s. 1.05 (2) (d), Manual.]

uu. In s. Ins 3.465 (7) (a), the subdivision numbers should be written as 1., 2., etc., rather than (1), (2), etc. [See s. 1.03 (5), Manual.] In s. Ins 3.465 (7) (a) (3) (which should be 3.), the subdivision paragraph entries should be rewritten as a., b., etc., rather than 1., 2., etc. Also, other paragraphs in s. Ins 3.465 (7) incorrectly use the subsection numbering style for subdivisions. Cross-references to any entry should be revised to reflect the corrected re-numbering. For example, the cross-references in s. Ins 3.465 (7) (a) (3) [sic] 3. and (d) (1) [sic] (intro.) and e. should be revised.

vv. In s. Ins 3.465 (7) (a) (1) [sic], “s. 3.455 (9m)” should be changed to “s. Ins 3.455 (9m).” [See s. 1.07 (2), Manual.]

ww. SECTION 18 of the rule references various statutes regarding enforcement. However, SECTION 18 does not create this provision as a rule. If it is intended to be part of s. Ins 3.465, it should be included in SECTION 17.

3. Conflict With or Duplication of Existing Rules

a. Section Ins 3.55 (3) (cg) and (cm) should be amended to change cross-references to provisions in s. Ins 3.46 that have been renumbered.

b. It appears that an initial applicability provision should be included in order to specify when changes apply to policies, and in particular, when they apply to existing policies. For example, the exemption in current s. Ins 3.46 (2) (a) for group policies is being repealed. Does the change first apply to policies that are issued, renewed, or amended on the effective date? Or does it apply on the effective date? The entire rule should be reviewed with respect to this issue.

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

a. The letter of transmittal to the Clearinghouse twice indicates that the proposed rule will affect ss. Ins 3.455, 3.46, and 3.465, relating to long-term care insurance and long-term care insurance partnership policies. In contrast, the notice of rule-making hearing and private sector fiscal analysis indicate that the proposed rule will affect ss. Ins 3.455 and 3.46, relating to long-term care plans, including the plans qualifying for the Wisconsin long-term care insurance partnership programs. The text of the proposed order uses the same relating clause as the notice of rule-making hearing and fiscal analysis, but it also indicates that ss. Ins 3.41 and 3.55 are being amended (which is not the case, although the latter should be amended). The lack of consistency causes confusion.

b. The statutes interpreted provision in the analysis should include s. 49.45 (31), Stats., as that statute is being interpreted, rather than referring to it only as a “related statute.”

Also, it appears that s. 632.897, Stats., should be added to the list of statutes interpreted and statutory authority provisions in the analysis--as that statute deals with continuation and conversion of group long-term care insurance policies.

c. In s. Ins 3.46 (3) (k) 3., the reference to “s. 632.895, Stats.” should be to “s. 632.895 (3), Stats.”

d. In the first sentence of s. Ins 3.46 (4) (m) 6. (intro.), it appears that the reference to “This subdivision” should be changed to “This paragraph.” Also in s. Ins 3.46 (4) (m) 6. (intro.), “For purposes of this subparagraph” should be changed to “In this subdivision.”

e. Section Ins 3.46 (4) (m) 7. should be reviewed to determine if the reference to “This subsection” is accurate or if it should be changed to “Subdivision 6.”

f. In s. Ins 3.46 (9) (L) 1. (intro.), it appears that the reference to “s. 600.01 (23), Stats.” should be changed to “s. 600.03 (23), Stats.” Also, “group” should be changed to “group insurance policy” since that is the term defined in s. 600.03 (23), Stats.

g. In s. Ins 3.46 (20) (d) 2., “this section” should be changed to “this paragraph.”

h. In s. Ins 3.46 (20) (f), it appears that the two references to “this section” should be changed to “this subsection.”

i. Section Ins 3.46 (23) (e) 1. refers to “an association, as defined in s. 600.01 (1) (b) 3., Stats.” This is confusing as “association” is not defined in that statute.

j. In s. Ins 3.46 (24) (b), it appears that the reference to “this section” should be changed to “this subsection.”

k. In s. Ins 3.46 (24) (d), the reference to “this subsection” should be changed to “this paragraph.”

l. In s. Ins 3.46 (24) (e), the reference to “this section” should be changed to “this subsection.”

m. In s. Ins 3.46 (24) (f), the reference to “Subsection A above” should be changed to “par. (a).”

n. In s. Ins 3.46 (24) (g) and (h), it appears that the references to “this section” should be changed to “this subsection.” If this is not the case, the provisions should be placed in a different provision that is clearly more applicable to the entire section, rather than being placed in a subsection that refers to the availability of new services or providers.

o. In s. Ins 3.46 (25) (f), it appears that the reference to “This section” should be changed to “This subsection.”

p. Section 49.45 (31) (c) 1., Stats., indicates that DHFS/DHS and OCI must approve a training program (initial and ongoing) for individuals who sell long-term care insurance policies. Section Ins 3.46 (26) sets forth intermediary training requirements but does not refer to an approval process for the training program. Is there a more specific approval process or joint approval process that can be referred to?

q. In the final bracketed language of Item 10 of Appendix 1 of s. Ins 3.46, it appears that the reference to “Number 6” should be changed to “Number 9.”

r. Some of the references to the Internal Revenue Code refer to it “as amended” (such as s. Ins 3.465 (2) (first entry) (d)); other references (such as s. Ins 3.465 (2) (second entry) (a) 2.)

do not. Were the differences intended? If not, the entire rule should be reviewed to use a consistent approach.

s. In s. Ins 3.465 (2) (second entry) (a) 1., the reference to “subd. (2) (a)” and in s. Ins 3.465 (2) (second entry) (a) 5., the reference to “subd. (4)” are incorrect. As references to subsections, they should be to “sub.”, not “subd.” However, the provisions should be carefully reviewed in light of the renumbering that must occur with respect to the subsections in s. Ins 3.465.

t. In the note following s. Ins 3.465 (3) (a) and in s. Ins 3.465 (3) (d) and (6) (c), the form number should be included.

u. In s. Ins 3.465 (4) (b), it appears that the reference to “subd. (4) (a)” should be changed to “par. (a).”

v. In s. Ins 3.465 (7) (b) (6) [sic], the reference to “Appendix 13” should be changed to “Appendix 3.”

w. In s. Ins 3.465, Appendix 1, the reference to “Ins 3.65” should be changed to “Ins 3.465.”

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

a. In item 5 of the analysis, references to various provisions in the proposed rule should have “Ins” inserted between “s.” and the section number.

b. In the fourth paragraph of item 5 of the analysis, “the affect” should be changed to “the effect.” Also, “policy enforce” should be changed to “policy in force.”

c. In the first sentence of the fifth paragraph of item 5 of the analysis, “upgrade and down-grades” should be changed to “upgrades and downgrades.”

d. In the next-to-last sentence of the fifth paragraph of item 5 of the analysis, “previously been informed” should be changed to “previously have been informed.”

e. In the last sentence of the sixth paragraph of item 5 of the analysis, something is missing with respect to the phrase “and OCI assure the Department of Health and Family Services.”

f. In the second sentence of the last paragraph of item 5 of the analysis, “insurers both meet the requirements” is confusing as only one item is listed. Should “both” be changed to “to”? Or is there another item that should be listed?

g. In the last sentence of the last paragraph of item 5 of the analysis, “the may” should be changed to “the consumer may.”

h. In item 7 of the analysis discussing Illinois, “authorizing” should be changed to “authorizing.” Also, the last sentence discussing Illinois is missing a verb.

i. In item 7 of the analysis discussing Iowa, “3 hour on-going” should be changed to “3 hours of ongoing.”

j. In item 7 of the analysis discussing Michigan, the first sentence refers to the “200 version.” Was this the 2000 version or the 2006 version, or both?

k. In item 7 of the analysis discussing Minnesota, the third sentence is grammatically incorrect. Also, in the last sentence, “intermediaries demonstrate” should be changed to “intermediaries to demonstrate.” Also, “medial” should be changed to “medical.” In addition, the Minnesota entry discusses the 2000 NAIC Model Act and Law but does not discuss the 2006 NAIC Model Act and Law. What has Minnesota’s response been to that?

l. Item 8 of the analysis indicates that a “subcommittee” was used. It is not clear what committee the group was a “subcommittee” of.

m. In s. Ins 3.455 (3) (h) and (j), “managed care” should be changed to the defined term “managed-care plan.” Also, the reference to a “non-managed care plan” should be hyphenated as is the defined term. In addition, either an “a” should follow “between,” or the reference to “plan” should be pluralized.

n. In s. Ins 3.455 (3) (j), “policy form which” should be changed to “policy from which.”

o. In the last sentence of s. Ins 3.455 (7) (e), the comma should be deleted.

p. Section Ins 3.455 (7) (g) (intro.) is confusing in that it states that continuation of coverage or issuance of a converted policy “shall be mandatory,” with two exceptions. This suggests that the individual has no choice about deciding whether to continue coverage or convert. It appears that this should be rephrased in terms of an insurer’s duties.

In addition, “occur” should be changed to “occurs.”

Also, s. Ins 3.455 (7) (g) (intro.) is confusing because two requirements are listed, but they are separated by a comma (following “mandatory”) instead of the conjunction “and.”

More importantly, the juxtaposition of stating that the continuation of coverage or issuance of a converted policy “shall be mandatory” and shall “comply with s. 632.897, Stats.,” is confusing as there are instances in which s. 632.897 would not extend the continuation or conversion privilege--for example, when an employee is discharged for misconduct or a dependent child reaches the limiting age for coverage. This should be clarified.

q. In s. Ins 3.455 (7) (g) 2., the comma and semicolon should be deleted.

r. In s. Ins 3.455 (7) (i), “The converted” should be changed to “A converted.”

s. In s. Ins 3.46 (3) (a), a comma should precede “including.” Also, it is not clear where the “including” clause ends; specifically, it is not clear if the phrase “taking medications” is part of the “including” clause or if it separately modifies “persons,” that is, if there is a requirement that a person be unable to live independently and also be taking medications. Also, since the

phrase “is in compliance with s. HFS 89” is so far removed from “facility,” it would be useful to insert “that” before the “is in compliance” phrase.

t. Section Ins 3.46 (3) (e) is difficult to follow, especially given the mixed use of commas and semicolons. It would be preferable to create subdivisions in this paragraph so that the relationship of the separate elements is easier to understand. (Also, as noted above, the last sentence is a substantive requirement that should not be included in a definition.) In the last sentence, “that it has members at least 25% of its members” should be changed to “that at least 25% of its members.”

u. In s. Ins 3.46 (3) (g), it appears that the pamphlet “guide to long-term care” should instead be referred to as the “guide to long-term care insurance.” Otherwise, this suggests that information is available about the care itself, rather than about insurance coverage for the care. If this change is made in the definition, the provisions using the defined term should also be changed.

Also, in the “Shoppers’s Guide” provision in Appendix 3 of s. Ins 3.46, it appears that the reference should be to the “Guide to Long-Term Care Insurance,” rather than the “Guide to Long-Term Care.” The same comment applies to the second paragraph of Appendix 4 of s. Ins 3.46.

These changes would make the title consistent with the title specified in s. Ins 3.465 (5) (a) 1. b. and (c). If these are not made, then these provisions should be changed to be consistent.

v. Section Ins 3.46 (3) (i) refers to an organic brain disease “characterized by confusion, disorientation, apathy and stupor.” As worded, all four elements would be required. Is that the intent? Or should it be changed to “characterized by confusion, disorientation, apathy, or stupor”?

w. In s. Ins 3.46 (3) (u) 3., “Services are” should be changed to “Services that are” to be consistent with the introductory language.

x. Section Ins 3.46 (4) (c) 1. is unclear because “community care services,” “community care coverage,” and “continuing care retirement communities” are all undefined terms. (In contrast, “home health care services,” which is also used in that provision, is a defined term.)

y. In the first sentence of s. Ins 3.46 (4) (j), “use” should be “used.” Also, in the last sentence, “appropriately licensed, certified or register” should be changed to “appropriately licensed, certified, or registered.”

z. In s. Ins 3.46 (4) (m) 4., should the conjunction “and” be changed to “or” to make it consistent with all of the other listed items in s. Ins 3.46 (4) (m)?

aa. In the first sentence of s. Ins 3.46 (4) (m) 10. “the all” should be revised to eliminate one of the words.

Also, s. Ins 3.46 (4) (m) 10. provides that, subject to the policy provisions, “any plan of care required under the policy...may not require insurer approval.” It appears that “may not” should be “does not.”

In addition, in s. Ins 3.46 (4) (m) 10., it appears that “from discussions” should be changed to “from having discussions.”

bb. In s. Ins 3.46 (4) (r) 2. and 3., “Requiring” should be changed to “Requiring that” in order to preserve the parallel structure of the subdivisions.

cc. In the treatment clause in SECTION 9, “, and” should be added before “(m).”

dd. In s. Ins 3.46 (9) (L) 1. (intro.), “by obtained” should be changed to “be obtained.”

ee. In s. Ins 3.46 (10) (h), it appears that “set” should be changed to “set out.”

ff. In s. Ins 3.46 (10) (j), “expect” should be changed to “except.”

gg. In s. Ins 3.46 (11) (a) 4., “shall certify” should be changed to “is required to certify.”

hh. Section Ins 3.46 (14) (c) 1. (intro.) refers to a “long-term care insurance policy” and also refers to a “long-term care policy.” While these terms have different definitions, was a difference intended in this provision?

ii. In s. Ins 3.46 (14) (c) 1. a., “including health” should be changed to “including a health.” Also, “contract, health” should be changed to “contract or health.”

jj. In s. Ins 3.46 (16) (b) 4. (intro.), “The insurer shall report” should be changed to “Report” in order to make this subdivision consistent with the introductory language and other subdivisions.

kk. In s. Ins 3.46 (16) (b) 4. d., “those” should be changed to “applicants.”

ll. In the last sentence of s. Ins 3.46 (19) (d) 4., the references to “tenth year following” and “second year following” are ambiguous. Do they refer to the end of a calendar year or a period that ended 12 months after the policy was issued? Also, in the last sentence of that provision, “of end” should be changed to “of the end.”

mm. In s. Ins 3.46 (20) (a), a comma should be inserted following “months.” In s. Ins 3.46 (20) (b) (and (c)), a comma should be inserted following “years.”

nn. Section Ins 3.46 (20) (d) 1. is unclear as it begins: “No A long-term care insurance policy...”

Also, the sentence will be confusing if there are double negatives. In the last part of that sentence, should the phrase “if the compensation to the field issuer is not based on” be changed to “unless the compensation to the field issue is based on.”

oo. In s. Ins 3.46 (20) (d) 2., “a policy or certificate” should be deleted since the defined term is not a noun.

pp. In s. Ins 3.46 (20) (f), “the insured” should be changed to “an insured.” Also, “these policies” should be changed to “the policy.” Further, a period should be inserted following “s” in the statutory citation.

qq. In s. Ins 3.46 (21) (a), reference is made to an “intermediary” and also is made to the “agent.” They appear to be referring to the same individual. If so, consistent use of one term will help reduce ambiguity.

rr. In s. Ins 3.46 (23) (intro.), the meaning of “health care service plan” is unclear as it is not defined.

ss. In Ins 3.46 (23) (a) 4., the reference to “qualified long-term care insurance contracts” should be changed to either use the defined term from s. Ins 3.46 (3) (m) or else refer to “qualified long-term care insurance contracts as defined in s. Ins 3.465 (2) (d)” since the term that is used in s. Ins 3.46 (23) (a) 4. is not defined in s. Ins 3.46.

tt. Section Ins 3.46 (23) (a) 6. provides that “[i]f the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the commissioner....” Does the commissioner approve programs in other states? Or is this intended to refer to the commissioner in another state?

uu. Section Ins 3.46 (23) (a) 7. and Appendix 1 in s. Ins 3.46 use the term “long-term care health insurance policies and certificates.” That is not a defined term in s. Ins 3.46.

vv. Section Ins 3.46 (23) (b) (intro.) indicates that certain acts and practices are prohibited. However, it does explicitly state what types of policies the prohibition applies to, as does s. Ins 3.46 (23) (a).

ww. In s. Ins 3.46 (23) (c), “long-term care product” should be changed to refer to “long-term care insurance product,” in order to use the defined term “long-term care insurance.”

xx. Section Ins 3.46 (23) (e) 2. (intro.) and c. both refer to the “insurance department.” It appears that this should be changed to refer to the “office of the commissioner of insurance.”

Also, in s. Ins 3.46 (23) (e) 7., it appears that the reference to “the state insurance department” should be changed to the “office of the commissioner of insurance.”

yy. In s. Ins 3.46 (23) (e) 6. a., the mixture of plural (“policies”) and singular (“its”) is confusing.

zz. Section Ins 3.46 (23) (e) 7. refers to a group policy or certificate being issued to an “association.” While a policy may be issued to an association, it is not clear that a certificate would be issued to the association itself. Would it be more accurate to refer to a certificate being issued to a member of an association?

aaa. In s. Ins 3.46 (23) (e) 8., “The insurer” should be changed to “An insurer.”

bbb. In s. Ins 3.46 (24) (b), the reference to “on claim” is confusing. The sentence also refers to “in claim status.” Is a difference intended?

ccc. In s. Ins 3.46 (24) (f), it appears that “or” should be inserted preceding “professional.” Also, a comma should be inserted in the last sentence following “(e).”

ddd. Section Ins 3.46 (25) (a) 2. refers to “the insurer” and also refers to “the carrier’s.” Unless a different meaning is intended, one term should be selected and used consistently to avoid ambiguity.

eee. In s. Ins 3.46 (25) (e), the reference to “about to lapse” is unclear.

fff. Section Ins 3.46 (26) (1) [sic] (intro.) requires “ongoing training” every 24 months thereafter. In contrast, s. Ins 3.46 (26) (1) [sic] (a) 2. requires “on-going training” to be completed “biennially.” Because there may be a difference between “biennially” and “every 24 months,” the provision should consistently refer to 24 months after the initial training, as required by ss. 49.45 (31) (c) 2. and 628.348 (1), Stats. Also, there should be consistency with regard to the use of hyphenation with respect to “ongoing.” (The term used in those statutes is not hyphenated.)

ggg. In s. Ins 3.46 (26) (3) [sic], a comma should be inserted in the first sentence preceding “including.”

hhh. In item 7 (a) of Appendix 1 of s. Ins 3.46, “do” should be eliminated.

iii. In item 10 (b) of Appendix 1 of s. Ins 3.46, “provider” should be changed to “providers.”

jjj. In the final bracketed language of item 10 of Appendix 1 of s. Ins 3.46, the comma following “provisions” should be deleted.

kkk. In item 15 of Appendix 1 of s. Ins 3.46, if the form is intended for sales in Wisconsin, should the reference to the “state senior health insurance assistance program” specifically name the program in Wisconsin? A similar comment applies to the last paragraph of Appendices 1 and 2 of s. Ins 3.465, which refers to “your Senior Health Insurance Information Program.”

Also, a similar comment applies to the references in the “Counseling” provision in Appendix 3 of s. Ins 3.46 which refer to “our state’s insurance counseling program” and “your state department of aging.”

A similar comment applies to the reference to “Your state insurance department” in the second paragraph of Appendix 4 of s. Ins 3.46.

lll. In the third sentence of the first paragraph of Appendix 2 of s. Ins 3.46, the comma following “expensive” should be deleted.

mmm. In the Questions Related to Your Income section in Appendix 2 of s. Ins 3.46, it is unclear if the annual income questions pertain to the individual alone or to the individual and his or her family. Also, it is unclear if the 7% of income statement relates to pre-tax or after-tax income. In addition, the reference to “annual cost of care” should be changed to “annual cost of long-term care.”

nnn. In the Questions Related to Your Savings and Investments section in Appendix 2 of s. Ins 3.46, the first question refers to the “value of all of your assets (savings and investments).” It is not clear how personal property is to be considered.

ooo. It appears that the title of Appendix 3 of s. Ins 3.46 should be changed from “Things you Should know Before you Buy Long-Term Care” to add “Insurance” at the end. Also, the inconsistent capitalization should be corrected.

ppp. It also appears that the title of Appendix 4 of s. Ins 3.46 should be “Long-Term Care Insurance Suitability Letter,” rather than “Long-Term Care Suitability Letter.”

qqq. In the last paragraph of Appendix 5 of s. Ins 3.46 preceding the example, a comma should be inserted following “option” and preceding “your.”

rrr. Appendix 9 to s. Ins 3.46 is confusing as the instructions indicate that the form is to report “denials,” which is defined as not including claims not paid because of failure to meet the waiting period or because of an applicable preexisting condition. However, the form then requires that data be submitted about claims not paid because of failure to meet the waiting period and because of an applicable preexisting condition.

sss. Section Ins 3.465 (2) (second entry) (a) 6., should be reworded to use the same structure as the other subunits in that provision and to grammatically follow from the introductory language (for example, “Not base underwriting criteria on whether....”

ttt. In s. Ins 3.465 (3) (a), “and” should be inserted following “Stats.,”.

uuu. In s. Ins 3.465 (3) (b), “submit ... form with” should be changed to “submit... form to.” Also, the references to filing with and submitting with in s. Ins 3.465 (3) (c) are confusing.

vvv. In s. Ins 3.465 (4) (a) 1. a. and b., “Provides and maintains” should be changed to “Provide and maintain.” In s. Ins 3.465 (4) (a) 1. a., “contain” should be changed to “contains.” Also, in s. Ins 3.465 (4) (a) 1. c., “meets” should be changed to “meet.”

www. Section Ins 3.465 (4) (a) 1. c. iii. is confusing. The semicolon seems misplaced. Is it intended to be a colon that introduces three items in a series? If so, the last item in the series should be restructured to be parallel to the first two items.

xxx. In s. Ins 3.465 (4) (b), the semicolon should be deleted.

yyy. Section Ins 3.465 (5) (c) specifies that the disclosure notice should be delivered at the time of solicitation. However, it does not specify when the booklet and guide must be delivered.

zzz. In s. Ins 3.465 (7) (a) (2) [sic] a., “are eligible” should be changed to “is eligible.”

aaaa. In s. Ins 3.465 (7) (a) (2) [sic] e., the references to “their” and “they” should be changed to reflect that these reference are to the “insured,” which is in singular form.

bbbb. In s. Ins 3.465 (7) (b) (1) [sic], “existing policy or certificateholders” should be changed to “existing policyholders or certificateholders.” Also, “of at least February 8, 2006 or prior” could be more simply stated as “before February 9, 2006.”

cccc. In s. Ins 3.465 (7) (d) (2) [sic], it appears that the comma preceding “within” should be changed to “or.” Also, it would be easier to follow if a list form were used to describe the individuals in the first sentence.

dddd. In the third paragraph of Appendix 2 to s. Ins 3.465 and in the fifth paragraph of Appendix 3 to s. Ins 3.465, “states Medicaid” should be changed to “state Medicaid.”

eeee. In the seventh paragraph of Appendix 2 to s. Ins 3.465, is it correct to state in Wisconsin that “Medicaid eligibility requirements may vary by county”?

ffff. In the next-to-last paragraph of Appendix 3 to s. Ins 3.465, “treatment of you policy” should be changed to “treatment of your policy.”