



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 09-096

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

- a. The terms defined in s. Ins 3.75 (2) (b) and (c) are out of alphabetical order.
- b. In s. Ins 3.75 (3) (a) 1., and elsewhere in the rule, references to the effective date of the rule do not conform to proper drafting style and should be changed. See s. 1.01 (9) (b), Manual for proper style. In addition, should s. Ins 3.75 (4) (a) specify how many days in advance of the date of discontinuance the employer must provide notice of discontinuance to a terminated insured?
- c. In s. Ins 3.75 (3) (a) 1. and 2., it appears to be unnecessary to set forth two different group policy discontinuance dates, since the rule does not differentiate in the treatment of individuals depending on the date on which the group policy under which they were insured is terminated.
- d. Section Ins 3.75 (2) (b) (intro.), (3) (a) (intro.) and (3) (d) (intro.) should be modified to conform to proper style for drafting introductory material, which requires the use of a phrase such as “all of the following” or “one of the following” in the portion of a rule that leads into the subunits. Further, s. Ins 3.75 (2) (b) 1. should end with a period, rather than “; or”. See s. 1.03 (1) (b) and (2) (h), Manual.
- e. The analysis to the rule is inadequate and should be rewritten. It should contain sufficient detail to enable the reader to understand the content of the rule and it should be written

in plain simple English. See s. 1.02 (2) (c), Manual. Further, the statement in the analysis that the proposed rule will “consider” continuation coverage election options is inappropriate. A rule may authorize or require action by a person, agency, or other entity; a rule does not “consider” options. Further, it is unclear whether the proposed rule is intended to fully implement the provisions of SECTION 9126 of 2009 Wisconsin Act 11; in any event, it appears that it does not achieve this.

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

a. The reference to s. 631.36, Stats., in s. Ins 3.75 (3) (d) 2., should be replaced with a reference to the specific portion of the statute that authorizes termination of coverage due to non-payment of a required premium.

b. The references to “this rule”, in s. Ins 3.75 (5) (c) and (d) and (7), should be changed to refer to specific rule provisions. See s. 1.07 (1), Manual.

c. Throughout the rule, references to the federal act or P.L. 111-5 should be changed to include the U.S. Code citation.

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

a. It appears that several of the terms used in the rule should be defined, perhaps by reference to the definitions used in s. 632.897 (1), Stats., or by use of the terms used and defined in SECTION 9126 of 2009 Wisconsin Act 11. These terms include “insurer”, “insurance intermediaries”, “group policy”, “employer”, and “dependent”. In addition, the definition of “terminated insured” in s. Ins 3.75 (2) (b) is unworkable because the defined term is used as part of the definition. The rule should also define and differentiate between “continued coverage”, “continuation of coverage”, and an “individual conversion policy”.

b. Why is the word “otherwise” used in s. Ins 3.75 (1)? It appears to be superfluous.

c. Is there any difference between an individual who is eligible for premium assistance under the federal act and assistance eligible individual? Both of these terms are used in s. Ins 3.75 (3) (c). In addition, if these terms refer to different types of individuals, must a person be both eligible for premium assistance under the federal act and be an assistance eligible individual in order to be eligible for continuation of coverage under the rule?

d. Are there any conditions under which an insurer may terminate continuation of coverage, other than those listed in s. Ins 3.75 (3) (d)? If an insurer terminates continuation of coverage for any of the reasons listed in s. Ins 3.75 (3) (d), must the insurer provide a right to an individual conversion policy under s. Ins 3.75 (3) (f)?

e. The notice requirement applicable in the case of termination of continuation of coverage is unclear. Section Ins 3.75 (3) (f) requires an insurer to provide notice of the right to an individual conversion policy in “the notice required under sub. (4)”. However, the notice required under sub. (4) is a notice of the discontinuance of a group policy and the right to continuation of coverage, not notice of the right to an individual conversion policy.

f. The phrase “including par (d)”, as used in s. Ins 3.75 (4) (b), does not make sense in the context of the sentence. It appears that the intent of the phrase is to place a duty on an

employer to include some sort of explanation in the notice it must provide to terminated insureds. However, par. (d) sets forth requirements that apply to insurance intermediaries.

g. The phrase “the group policy”, as used in s. Ins 3.75 (1), and elsewhere in the rule, is vague. This phrase should be replaced with a more precise term that indicates that the policy referred to is one under which an terminated insured was previously insured.

h. In s. Ins 3.75 (3) (b), “are” should be changed to “were”. Also, “himself or herself” should replace “themselves”.

i. Section Ins. 3.75 (4) (a) states that an employer is not required to provide notice, prior to discontinuance of a group policy, of the right to elect continuation of coverage to a terminated insured who is not an assistance eligible individual or is not entitled to elect coverage for an assistance eligible individual. How is an insurer able to determine, at the time a policy is discontinued, whether a terminated insured is an assistance eligible individual or is entitled to elect coverage for an assistance eligible individual? Does an employer have all the information necessary to make this determination? Is it possible that an employer may be incorrect on this issue, or that the issue of assistance eligibility may be open to debate or appeal?

j. Will a penalty be assessed against an employer or insurer that fails to provide the notice required under s. Ins 3.75 (4) (a) or (c)? Does the rule ensure that a terminated insured will not lose his or her right to continuation coverage due to the failure of the employer or insurer to provide the required notice?

k. What is a required continuation coverage period that occurs prior to the date of election, referred to in s. Ins 3.75 (5) (b)? Where is this requirement established? Section Ins 3.75 (5) (b) should contain a reference to the rule or statutory provision that establishes this requirement. If continuation coverage is required without the need for election by the terminated insured, does a terminated insured have a right to elect not to be covered or charged for the coverage?

l. The first two sentences of s. Ins 3.75 (5) (d) appear to contradict one another.