WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 10-023

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.]

1. Statutory Authority

a. Section 632.835, Stats., regulates independent review of coverage denial determinations made by an insurer that issues a health benefit plan. The term "coverage denial determination" clearly is defined to mean an adverse determination, an experimental determination, a pre-existing condition exclusion denial determination, or the rescission of a policy or certificate and, with the exception of the word "rescission," all of these "determinations" are separately defined in the statute. In contrast, s. Ins 18.01 (2) and (10) add the following concepts to the term "coverage denial determination":

(1) A policy reformation or modification of the terms of a policy.

(2) Withdrawal of the insurance coverage back to the initial date of coverage.

(3) A change in a premium rate by more than 25% from the premium in effect during the period of contestability.

Given the specificity of the definitions in s. 632.835, Stats., and their applicability to the independent review process, what statutory authority exists for applying the independent review process to the new activities described above? The agency cites s. 628.34 (12), Stats., in part as statutory authority for the rule. If the agency is making the claim that the activities described above amount to unfair trade practices that somehow fall under the jurisdiction of the independent review process, the agency should clearly articulate its reasoning in its report to the

Legislature. Similarly, if the agency has found that a premium increase greater than 25% is a constructive rescission of a policy ("rescission" usually meaning to annul or to void), this rationale also should be clearly explained to the Legislature.

2. Form, Style and Placement in Administrative Code

a. In SECTION 2 of the rule preface, the parenthesis before 632.835 should be deleted.

b. In the title for SECTION 3 of the rule preface, "OCI" should first be written out, and followed by the notation ("OCI").

c. In SECTION 5 of the rule preface, second paragraph, the correct statutory reference is "s. 632.835 (8) (b), Stats."

d. In s. Ins 18.10 (4m), the second par. (c) should be renumbered as par. (d).

e. Since the definitions in s. Ins 18.01 apply to the entire chapter, s. Ins 18.10 (4s) is unnecessary and should be deleted.

f. In SECTION 5, the treatment clause should be corrected to read: "18.11 (2) (intro), (a) (intro)…."

g. In SECTION 18, the effective date should be revised to read: "first day of the month commencing after the date of publication.

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

a. In s. Ins 18.11 (2) (b) 2., the notation "par." should be replaced by the notation "sub."

b. Sections Ins 18.12 (1) (e) 7. and 18.13 (1) (a) refer to s. Ins 3.36 (3) (c). The latter provision does not appear to exist in the Administrative Code.

c. In SECTION 17, the notation "s." should be replaced by the notation "ss."

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

a. In SECTION 7 of the rule preface, second line of the paragraph regarding Illinois, "insured" should be plural. The citation at the end of the paragraph regarding Michigan should end in a period. Also, to be consistent with the other states, it would be helpful to provide a sentence at the end of the paragraph regarding Michigan stating whether the law includes external review for pre-existing condition denials or rescission determinations. The first sentence of the paragraph regarding Minnesota should say "provides," rather than "provider." Also, in the paragraph regarding Minnesota, what does "utilization review" mean in this context?

b. In SECTION 8 of the rule preface, after listing the months of September and December, the year 2009 should be referenced.

c. SECTION 9 of the rule preface, after the first sentence, should indicate what years were reviewed.

d. In ss. Ins 18.01 (2m) and 18.10 (4e), the phrase "as defined in" should be replaced with "given in."

e. In s. Ins 18.01 (2m), the phrase beginning "a policy reformation or change in premium charged" is confusing. This could be clarified by deleting the clause "based upon underwriting or claims information."

f. In s. Ins 18.01 (10), "a" should be inserted between "offering" and "health."

g. A "period of contestability" appears to be a common, understood phrase (*e.g.*, it is used in s. Ins 18.01 (2m) and (10)). To have consistent use of this phrase, it should replace "time of the dispute" in s. Ins 18.10 (4) (d), and "period of coverage in dispute" in s. Ins 18.10 (4m) (c).

h. In s. Ins 18.01 (4) (intro.), the phrase "dissatisfaction with" should be inserted before the phrase "any of the following."

i. In s. Ins 18.10 (4) (d) 3., the phrase "current edition" should be deleted. If needed, the introduction could be clarified to state that all of the compendia should be the current editions in publication during the period of contestability. Or, preferably, each reference source could explicitly include its publication year or edition number, with the listing to be updated as any future publications are approved by the commissioner as reference sources. Likewise, the reference to "the most current version" of the American Journal of Jurisprudence in s. Ins 18.10 (4m) should be made consistent with the publication phrasing adopted in s. Ins 18.10 (4) (d) 3., if the current language is retained.

j. Section Ins 18.10 (4m) (b) should be rewritten to read: "A federal court having jurisdiction in this state." This phrasing will apply decisions of federal district courts in Wisconsin, the U.S. Court of Appeals for the 7th Circuit, and the U.S. Supreme Court.

k. The difference in applicability for s. Ins 18.11 (2) (a) 1. and 2. is unclear. The revisions in 2009 Wisconsin Act 28 to s. 632.835 (9), Stats., appear to still apply to adverse and experimental treatment determinations, although this reference is removed in the proposed rule change. Finally, in subd. 1., the word "a" should be deleted.

l. In s. Ins 18.11 (2) (a) 5., what are the options to the insured after receiving notice that the independent review organization determination is not binding?

m. In s. Ins 18.11 (2) (b) 1., the phrase "comply with par. (a) and shall" should be inserted after the phrase "an insured shall."

n. In s. Ins 18.11 (2) (b) 2., the phrase "and shall" should be inserted before the phrase "state that the insured."

o. The title for s. Ins 18.11 (4) should be in solid capital letters, without bold font.

p. In s. Ins 18.11 (4) (b), what does the term "enrollment eligibility" mean in this context? Does it include rescission or reformation?

q. The titles for s. Ins 18.12 (1) (b) 1. and 2. should be enclosed in quotation marks.

r. In s. Ins 18.12 (4) (b) and (c), is it likely that more than one attorney or actuary would be assigned to each review? The references could be revised to the singular: "require that a legal reviewer assigned to conduct independent reviews be an attorney," and "require that an actuary be assigned."

s. It appears that the creation of s. Ins 18.12 (6) (bm) would be better placed by creating a new sub. (4m) or (6m), titled "ATTORNEYS AND ACTUARIES." Subsection (6) provides exclusively for the position of director. Also, the second sentence of this subsection could be deleted. Section Ins 18.12 (4) already provides for a review and verification of qualifications. It is unclear what it would mean to "oversee aspects of quality assurance" and "expertise" of the attorney or actuary. It is unnecessary to parallel the director's duty to oversee quality assurance and credentialing programs in sub. (6) (c).

t. The title for s. Ins 18.13 should be in bold font, capitalizing only the first letter of the first word of the title. Also, in sub. (2), the phrase "the dispute includes" is unnecessary and should be deleted.

u. In s. Ins 18.16 (2) (em), the notation "(2)" should be added to the numbering. Also, the phrase ", or the respective firm or actuarial entity," should replace the phrase "or the respective firm,".

v. Due to the repeal of s. Ins 18.18 (5), the reference, in sub (6), to the filing fee required under sub. (5) should also either be repealed or amended to explicitly state that the charge will be no more than $25, to the insurer (not the insured).