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Clearinghouse Rule 10-097**PROPOSED ORDER OF THE STATE OF WISCONSIN,
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF BANKING
ADOPTING RULES**

2 The Wisconsin Department of Financial Institutions, Division of Banking proposes an order to
3 renumber ss. DFI—Bkg 74.01(3) and DFI—Bkg 74.01(4); and create ss. DFI—Bkg 74.01(3),
4 DFI—Bkg 74.01(5), DFI—Bkg 74.01(6) and DFI—Bkg 74.18, relating to the exemption of
5 health care billing companies from the definition of a collection agency.

Analysis Prepared by the Wisconsin Department of Financial Institutions, Division of Banking

Statute(s) interpreted: s. 218.04(1)(a), Stats.

Statutory authority: ss. 218.04(7)(d), and 227.11(2), Stats.

Related statute or rule: s. 256.01(3), Stats., provides the definition of “ambulance service provider” as used in this rule.

Explanation of agency authority: Pursuant to s. 218.04, Stats., the department regulates collections agencies.

Summary of proposed rule: The objective of the rule is to renumber ss. DFI—Bkg 74.01(3) and DFI—Bkg 74.01(4); and create ss. DFI—Bkg 74.01(3), DFI—Bkg 74.01(5), DFI—Bkg 74.01(6) and DFI—Bkg 74.18, relating to the exemption of health care billing companies from the definition of a collection agency. The purpose of the rule is to provide definitions and requirements regarding this exemption. Pursuant to 2009 Wisconsin Act 404, the legislature has determined that the definition of a collection agency as set forth in s. 218.04(1)(a) does not include health care billing companies. The rule provides definitions related to this exemption. The rule also sets forth the criteria to qualify for an exemption as a health care billing company and certain requirements for the health care billing company to meet regarding the exemption.

Summary of and preliminary comparison with existing or proposed federal regulation: 29 CFR s. 825.125 provides the definition of “health care provider” as used in this rule.

Comparison with rules in adjacent states: Illinois, Michigan, Minnesota and Iowa do have comparable rules.

Summary of factual data and analytical methodologies: Because the department regulates collection agencies for the state, the division could also rely on extensive staff expertise and experience in drafting regulations for these entities. The department is also experienced with health care billing companies as collection agencies because, until the enactment of 2009 Wisconsin Act 404, the department licensed these companies as collection agencies.

Analysis and supporting documentation used to determine effect on small business: The rule removes health care billing companies from state regulation. The rule also provides clarity in setting forth the criteria to qualify for an exemption as a health care billing company and the requirements for the health care billing company to meet regarding the exemption. The rule therefore does not have a significant economic impact on small business.

Agency Contact Persons

To obtain a copy of the proposed rule or fiscal estimate at no charge, to submit written comments regarding the proposed rule, or for questions regarding the agency's internal processing of the proposed rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@wisconsin.gov. A copy of the proposed rule may also be obtained and reviewed at the Department of Financial Institution's website, www.wdfi.org. Written comments must be received by the conclusion of the department's hearing regarding the proposed rule.

For substantive questions on the rule, contact Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707-7876.

Pursuant to the statutory authority referenced above, the Department of Financial Institutions, Division of Banking adopts the following:

6 SECTION 1. DFI—Bkg 74.01(3) and DFI—Bkg 74.01(4) are renumbered DFI—Bkg
7 74.01(4) and DFI—Bkg 74.01(7).

8 SECTION 2. DFI—Bkg 74.01(3), DFI—Bkg 74.01(5) and DFI—Bkg 74.01(6) are created
9 to read:

10 **DFI—Bkg 74.01(3)** “Ambulance service provider” has the meaning set forth in s. 256.01(3),
11 Stats.

12 **DFI—Bkg 74.01(5)** “Health care billing company” in s. 218.04(1)(a), Stats., means a person
13 that meets all of the requirements of s. DFI-Bkg 74.18.

14 **DFI—Bkg 74.01(6)** “Health care provider” has the meaning set forth in 29 CFR s. 825.125.

15 SECTION 3. DFI—Bkg 74.18 is created to read:

16 **Rule 74.18 Health care billing companies. (1) EXEMPTION.** A person collecting, or
17 attempting to collect, debtor accounts for a health care provider or an ambulance service provider
18 shall be exempt from licensing as a collection agency under s. 218.04, Stats., only if the person
19 meets all of the requirements set forth in sub. (2) and only if any and all of the accounts received
20 by the person for collection are received from a health care provider or an ambulance service
21 provider and are not in default when received by the person.

22 **(2) REQUIREMENTS.**

23 (a) Any account forwarded to the health care billing company by the health care provider or
24 ambulance service provider shall not be in default at the time it was received by the health care
25 billing company.

26 (b) All payments received by the health care billing company for or from a debtor, in partial or
27 full payment of debtor's account with the health care provider or ambulance service provider,
28 shall be deposited promptly and directly into the health care provider's or ambulance service
29 provider's account in a financial institution. The health care billing company shall have deposit
30 authority only on such accounts.

31 (c) All billing statements, invoices, letters, and any and all other written communication sent
32 from a health care billing company to a debtor of the health care provider or ambulance service
33 provider shall be sent in the name of the health care provider or ambulance service provider.

34 (d) All communication between the health care billing company and the debtor shall be in
35 writing unless the debtor initiates the contact.

36 (e) A health care billing company shall not do any of the following:

37 1. Report a debtor's account to a credit reporting agency.

38 2. Forward a debtor's account to a collection agency without written authorization from the
39 healthcare provider or ambulance service provider that forwarded the account to the health care
40 billing company.

41 3. Authorize legal action against any debtor.

42 4. Engage in any practice prohibited by s. DFI-Bkg 74.16.

43 **Effective date.** This rule shall take effect on the first day of the month following
44 publication in the *Wisconsin Administrative Register* as provided in s. 227.22 (2) (intro.), Stats.

Dated: _____ Agency: _____
