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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 19-025

#### 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 December 2014.]**

#### **1. Statutory Authority**

a. The agency cites to s. 600.01 (2), Stats., as authority for this rulemaking; however, it is not readily apparent how this statute provides authority for this rulemaking and the agency does not explain the relationship of this statute to its authority for this rulemaking in its explanation of authority to promulgate the proposed rule. The agency should explain why s. 600.01 (2) was listed as authority for this rulemaking.

b. The agency cites to s. 628.34, Stats., as authority for this rulemaking and in its explanation of authority explains that this statute, read in combination with the Commissioner’s general rulemaking authority under s. 601.41 (2) and (3), “authorize the Commissioner to establish minimum standards for intermediary records, which includes requiring intermediaries to update any name, e-mail or address changes”. Section 628.34, Stats., pertains to unfair marketing practices and s. 628.34 (12), allows the Commissioner to “define specific unfair trade practices by rule, after a finding that they are misleading, deceptive, unfairly discriminatory, provide an unfair inducement, or restrain competition unreasonably”. The agency should explain why s. 628.34, Stats., was cited as providing authority for the Commissioner to establish minimum standards for intermediary records.

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

a. The introductory clause lists s. Ins 6.59 (2) among the rules treated by this rulemaking. Section Ins 6.59 (2) is not treated in this rulemaking, so this reference should be removed from the

introductory clause. Additionally, the introductory clause indicates the rule creates s. Ins 6.595 (am); this reference should be corrected to reflect instead the creation of s. Ins 6.595 (1) (am).

b. Broadly, significant portions of current ch. Ins 28, related to SECTIONS 37 to 42 of the proposed rule, do not follow the format prescribed by the Manual. The agency should consider generally updating these provisions to conform to the format prescribed in s. 1.03 (3) and (4), Manual.

c. SECTION 48 of the proposed rulemaking, which refers to the effective date of emergency rules, is not necessary and can be removed. This proposed rulemaking was not promulgated under the emergency rulemaking procedures.

d. Throughout the proposed rule, the agency has replaced specific requirements with the general phrase “in a manner prescribed by the commissioner”. The agency should review throughout the proposed rule to ensure these changes do not authorize the commissioner to prescribe by policy what would otherwise require rulemaking.

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

Throughout the rule, the agency has removed notes that explain that a free copy of forms and applications referenced in the rules may be obtained from the agency or the agency’s website. Will the applicable forms and applications continue to be available from the agency? Is it necessary to specify where they may be obtained? [See, also, comment 2. d., above.]

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

a. In proposed s. Ins 6.58 (5) (b), the reference to “every even numbered year” is awkward because termination will be triggered if the payment is not made by February 15 of a particular year, not if the payment is not made by February 15 “of every even numbered year”. The department might instead consider revising proposed s. Ins. 6.58 (5) (a) to specify that the regulation fee is due by February 15 of each even numbered year and then replacing “of every even numbered year”, in proposed Ins. 6.58 (5) (b) with “of the year in which it is due”.

b. In SECTION 31 of the proposed rule, the department might consider replacing the “and” after “the District of Columbia” with “or”.