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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 19-036

#### 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.]**

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

a. In the rule summary’s listing of statutory authority, consider revising the citations to be more precise. For example:

- (1) The citation to s. 601.41, Stats., could more precisely cite to sub. (3) of that section.
- (2) The citation to s. 628.34, Stats., could more precisely cite to sub. (12) of that section.
- (3) The citation to s. 632.73, Stats., could more precisely cite to subs. (2m) and (3) (b) of that section.
- (4) The citation to s. 632.76, Stats., could more precisely cite to sub. (2) (b) of that section.

b. In the rule summary, if a preliminary hearing and comment period was held on the scope statement for the proposed rule, a heading and entry should be inserted to provide a summary of the public comments received and a description of how the feedback was taken into account in drafting the proposed rule. [s. 227.14 (2) (a) 3m., Stats.]

c. In SECTION 9 of the proposed rule, the text of s. Ins 3.39 (2) (c) 1. should not be shown. It is properly repealed in its entirety in SECTION 10 of the proposed rule. [ss. 1.057 and 1.06 (1) (b), Manual.]

d. In SECTION 19 of the proposed rule, the definition for the term “Medicare cost policy” should be renumbered to appear in alphabetical order.

e. In SECTION 21 and in other instances in the proposed rule, the reference to the Social Security Act should not be capitalized. [s. 1.01 (4), Manual.]

f. In SECTION 30 of the proposed rule, consider revising the renumbering to s. Ins 3.39 (4d), rather than reusing the current s. Ins 3.39 (4m) for the renumbering from s. Ins 3.39 (4s). Reusing a previously existing number can cause confusion. [s. 1.03 (5), Manual.]

g. In SECTIONS 31 to 33 of the proposed rule, it appears that the affected provisions should be identified as originating in s. Ins 3.39 (4s), rather than s. Ins 3.39 (4m), and should be grouped with the provisions from sub. (4s) that are renumbered and amended in SECTION 30 of the proposed rule.

h. In SECTION 37 of the proposed rule, the treatment clause should be revised to state that s. Ins 3.39 (5m) (a) 1. is renumbered to s. Ins 3.39 (5m) (a) 1. (intro.), in order to identify both “3.39” and the new introductory material. The rule caption’s listing of provisions treated in the proposed rule should also be revised to include this provision among the provisions that are renumbered and amended, rather than among the provisions amended.

i. In the treatment clause for SECTION 38 of the proposed rule, the designation “3.39” should be inserted. Also, this SECTION creates a new subpar. a., but there do not appear to be any other subdivision paragraph units to accompany subpar. a. When a unit is divided into smaller units, at least two subunits must be created. Were additional subunits intended to be created? If so, those should be inserted. Otherwise, the subdivision paragraph should be incorporated into its parent subdivision and the renumbering to “(intro.)” in SECTION 37 as noted in the previous comment would not be needed.

j. In the treatment clause for SECTION 39 of the proposed rule, the designation “(intro.)” should be inserted. The rule caption’s listing of provisions treated in the proposed rule should also be updated accordingly.

k. In SECTION 49 of the proposed rule, in the title for s. Ins 3.39 (8), the period at the end of the title should be shown as it is in current rule.

l. In SECTION 53 of the proposed rule, the citation to 42 U.S.C. s. 1395 should not be enclosed in parentheses. Rather, the citation should be set apart with commas or described in a note. [s. 1.01 (6), Manual.] Also, if the abbreviation “ss” after the citation is intended to mean that it includes the following sections, the abbreviation “et seq.” is more commonly used.

m. In SECTION 54 of the proposed rule, the final period should not be underscored.

n. In the treatment clause for SECTION 39 of the proposed rule, the designation “(intro.)” should be inserted after “(f)”. The rule caption’s listing of provisions treated in the proposed rule should also be updated accordingly.

o. In SECTION 64 of the proposed rule, are any amendments intended for s. Ins 3.39 (26) (a) (intro.)? Any intended amended material should be shown with strike-throughs and underscoring. Otherwise, if no amendments are intended, the text of that provision should be removed.

p. In SECTION 72 of the proposed rule, s. Ins. 3.39 (31) (a) (intro.), the word “following” should be inserted before the word “information”, and the provision should end in a colon rather than a period.

q. In SECTION 90 of the proposed rule, the title for s. Ins 3.55 (5) should be shown even though it is not amended. [s. 1.05 (3) (c), Manual.]

r. In SECTION 93 of the proposed rule, the phrase “in the Wisconsin Administrative Register” should be inserted after the word “publication”. Also, the citation to s. 227.22, Stats., should more precisely cite to sub. (2) (intro.) of that section.

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

Cross-references to provisions for which the numbering is revised in response to these comments should be reviewed and updated as necessary.

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

a. In SECTION 3 and in other instances of the proposed rule, the terms “Medicare supplement” and “Medicare cost” should not be used as stand-alone terms. This creates ambiguity because these are undefined terms that may be confused with “Medicare supplement policy” (defined in statute), “Medicare supplement coverage” (defined in the administrative code), or “Medicare cost policy” (defined in the proposed rule).

b. References in the proposed rule to “Medicare supplement or Medicare cost insurance” should also be revised to avoid creating ambiguity. For example, if this is intended as a reference to two defined terms, it could be revised to refer to a “Medicare supplement policy or Medicare cost policy”, or to “Medicare supplement coverage or Medicare replacement coverage”.

c. SECTIONS 6 and 8 of the proposed rule refer to a “Medicare cost policy” as defined in s. 600.03 (28p) (a) and (c), Stats. However, that provision defines a “Medicare replacement policy”, and not a “Medicare cost policy”. Consider revising the phrase “as defined in” to the phrase “as described in”, or making any other appropriate revision to align the terminology. Also, the reference to pars. (a) and (c) is confusing because it leaves out par. (b), which is a part of the statutory definition. Paragraph (b) refers to Medicare+choice plans which are now known as Medicare Advantage plans (defined in the administrative code). Are Medicare Advantage plans intended to be excluded? Lastly, these references are in conflict with SECTION 19 of the proposed rule, which defines the term “Medicare cost policy” in a different way. Consider revising the terms for consistency.

d. In SECTION 23 of the proposed rule, references to a “Medicare supplement individual policy” and “Medicare cost individual policy” should be revised to avoid creating ambiguity, as these are not defined terms. The provision could be revised to refer to an “individual Medicare supplement policy” or an “individual Medicare cost policy”.

e. In SECTION 24 of the proposed rule, the reference to a Medicare select policy is potentially ambiguous because it is redundant. Under the rule, any Medicare select policy is by definition a Medicare supplement policy.

f. In SECTION 24 and in other instances throughout the proposed rule, the reference to a “Medicare supplement policy or certificate” is redundant. Under the statutory definition of a “Medicare supplement policy”, the term already includes certificates. Is this intended to refer just to a Medicare supplement policy (which includes certificates)? Or is it supposed to refer to “Medicare select policy or Medicare select certificate”? Also, if the references to “policy or certificate” are retained in the rule, they should be used consistently throughout the text. Various provisions in the text refer to “policy or certificate” in one instance and then later refer only to “the policy”, which creates additional ambiguity.

g. In SECTION 26 of the proposed rule, each reference to a “Medicare supplement or certificate” is confusing. This is not a defined term and each instance should be revised to adequately identify to what the provisions apply.

h. In SECTION 29 and in other instances throughout the proposed rule, the reference to Medicare select policies, following a reference to Medicare supplement coverage, is potentially ambiguous because it is redundant. Under the rule, any Medicare select policy is by definition a Medicare supplement policy.

i. SECTION 45 of the proposed rule refers to a “Medicare cost issuer” as defined in s. 600.03 (28p) (a) and (c), Stats. However, that provision defines a “Medicare replacement policy”, and not a “Medicare cost issuer”. Consider revising the provision to refer to “an issuer of a Medicare replacement policy as defined in”, or making any other appropriate revision to align the terminology. Also, the reference to pars. (a) and (c) is confusing because it leaves out par. (b), which is a part of the statutory definition. Paragraph (b) refers to Medicare+choice plans which are now known as Medicare Advantage plans (defined in the administrative code). Are Medicare Advantage plans intended to be excluded?

j. In SECTION 71 of the proposed rule, in s. Ins 3.39 (30t) (k) (intro.), the final sentence should be revised for a better grammatical insertion of the phrase “include all of the following”. For example, the “and” after “settlement” could be revised to a comma, a comma could be inserted after “arbitration procedures”, and the word “shall” or “may” could be inserted before “include all of the following”. Additionally, the final sentence should end in a colon rather than a period. These comments also apply to the corollary provision in s. Ins 3.39 (30) (k) (intro.), which could be amended in the proposed rule.

k. In SECTION 71 of the proposed rule, s. Ins 3.39 (30t) (s) (intro.), consider revising the introductory language. In particular, the “designation” in subd. 1. is not a type of “coverage” as indicated in the introduction.