

CR 09-095

ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE CREATING A RULE

To create Ins 3.34, Wis. Adm. Code,

Relating to coverage of dependents to age 27.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

1. Statutes interpreted:

ss. 600.01, 628.34 (12), 632.885, Stats.

2. Statutory authority:

ss. 600.01 (2), 601.41 (3), 601.42, 628.34 (12), Stats.

3. Explanation of OCI's authority to promulgate the proposed rule under these statutes:

The commissioner is authorized by s. 601.41, Stats., to propose rules in accordance with s. 227.11 (2), Stats., in order for the commissioner to administer and enforce the insurance statutes. Since passage of 2009 Wis. Act 28, the commissioner has been made aware of dramatic differences in interpretation and approaches to implementation that necessitate rule making.

4. Related statutes or rules:

None.

5. The plain language analysis and summary of the proposed rule:

The proposed rule interprets and implements the requirements of s. 632.885, Stats., by clarifying and defining eligibility criteria and providing guidance as to how insurers and self-insured health plans are to determine an adult child's eligibility for coverage. The proposed rule clarifies that the mandate applies to individual and group health insurance, limited-scope health insurance including vision and dental plans as well as self-insured health plans. The rule also clarifies that this mandate does not apply to certain insurance products including long-term care and Medigap policies as those products provide coverage only for the named insured. Further, as described in the applicability provisions of 2009 Wis. Act 28, the rule states when the mandate first applies, including the initial applicability for collectively bargained health plans.

The proposed rule provides clarity through definitions of "premium contribution" and "premium amount." The commissioner received the greatest volume of inquiries seeking guidance on how the premium comparison was to be conducted. The proposed rule simplifies and guides insurers and self-insured plans on exactly what is to be compared for this element of eligibility determination.

Guidance is provided regarding to whom an offer of coverage for an eligible adult child is to be given and reinforces the statutory provision that it is only the applicant or the insured who determines whether or not an eligible dependent is added to his or her health plan. The rule further informs insurers and self-insured plans on

prohibited practices that would unduly restrict an otherwise eligible dependent from coverage contrary to the intent of the statute.

Specifically the rule provides specific guidance to insurers offering individual health insurance products as compared to insurers or self-insured health plans offering group health insurance coverage. Insurers offering individual health insurance may rate, may utilize pre-existing condition waiting periods and may apply elimination riders to an eligible adult child but may not impose such limitations as coverage would be rendered illusory. Insurers offering group health benefit plans and self-insured health plans must comply with s. 632.746, Stat., with regards to pre-existing condition waiting periods and application of creditable coverage. The rule also requires insurers and self-insured health plans to treat an eligible adult child as a new entrant and provide annually at least a 30-day enrollment period when first eligible.

Finally, the rule clarifies s. 632.885 (2) (a) 3. and (b) 3., Stats. An adult child is an eligible adult child when the child is between the ages of 17 and 27, is not married and who is not eligible for his or her employer sponsored coverage or whose employer does not offer health insurance to its employees. An adult child who has been called to federal active duty is an eligible adult child when a full-time student, less than 27 years of age when called to active duty. The rule clarifies that the adult child will have up to 12 months after completing active duty to apply for full-time student status at an institution of higher education, and that if the adult child is called more than once in four years of the first call to active duty, insurers and self-insured health plans may only use the adult child's age at the time first call to active duty in order to determine eligibility.

6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There is no existing regulation directly related to this new mandate. The US Senate and House of Representatives are currently debating health insurance reform and at this time the office is aware that some of the proposals will be revised to contain similar requirements for extending coverage to adult children, but none have passed as of this date.

7. Comparison of similar rules in adjacent states as found by OCI:

Illinois: 215 ILCS 5/356z.12 provides parents with the option of keeping unmarried dependents on their health care insurance up to age 26. Parents with dependents who are veterans can keep dependents on the plans up to age 30. The veterans must be unmarried, must be Illinois residents, and must have received a discharge other than dishonorable. Veterans do not have to be enrolled as full-time students.

Iowa: Iowa Code § 509.3 and Iowa Code § 514E.7 requires that health insurance providers continue to cover unmarried children under their parents' coverage provided that the child: 1) is under the age of 25 and a current resident of Iowa, 2) is a full-time student, or 3) has a disability. Iowa Code § 509A.13.B, effective July 1, 2009, allows reenrollment of the same children in previously existing coverage under certain circumstances.

Michigan: No comparable regulations found. Michigan Code § 500.3406g prohibits the denial of enrollment on certain grounds for plans offering dependent coverage, and § 500.3406h addresses the eligibility of parents for dependent coverage and the health coverage of children through noncustodial parents. § 500.2264 provides an exception for the termination of dependent coverage at specified age if a child is incapable of self-support due to mental or physical disability.

Minnesota: Minnesota Chapter 62E.02 Defines "dependent" as a spouse or unmarried child under age 25, or a dependent child of any age who is disabled.

Ohio: (information only) Ohio Rev. Code § 1751.14, as amended by 2009 OH H 1 allows an unmarried, dependent child who is an Ohio resident or a full-time student to remain on parent's insurance up to age 28, or without regard to age if they are incapable of self-sustaining employment due to disability.

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

The commissioner reviewed existing interpretation of terms used within the new mandate that are used in other areas of the statutes and administrative code for consistency. Further the commissioner considered the intent of the mandate and proposed rules that furthered that intent.

9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:

Although there are some limited-scope health insurers that may meet the definition of a small business, the affect on the insurers will not be significant since insurers will be able to assess and collect premium for the inclusion of the eligible adult child or may apply limitations on coverage. Intermediaries, some of whom may meet the definition of a small business will need to become familiar with this regulation but will not significantly effect those persons.

10. See the attached Private Sector Fiscal Analysis.

See attached.

11. A description of the Effect on Small Business:

This rule will have little or no effect on small businesses.

12. Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110
Email: inger.williams@wisconsin.gov
Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474
Mail: PO Box 7873, Madison, WI 53707-7873

13. Place where comments are to be submitted and deadline for submission:

The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

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The proposed rule changes are:

SECTION 1. Ins 3.34 is created to read:

Ins 3.34 (1) PURPOSE. This section implements s. 632.885, Stats.

(2) APPLICABILITY. (a) This section applies to disability insurance policies as defined at s. 632.895 (1) (a), Stats., that are issued or renewed on or after January 1, 2010, including individual health and group health benefit plans. It applies to limited –scope plans including vision and dental plans but does not include hospital indemnity, income continuation, accident-only benefits, long-term care and Medigap policies. This section also applies to self-insured health plans as defined at s. 632.745 (24), Stats.

(b) For a disability insurance policy covering employees who are affected by a collective bargaining agreement this coverage under this section first applies as follows:

1. If the collective bargaining agreement contains provisions consistent with this law or that are silent on dependent eligibility, coverage under this section first applies the earliest of any of the following; the date the disability insurance policy is issued or renewed on or after January 1, 2010, or the date the self-insured health plan is established, modified, extended or renewed on or after January 1, 2010.

2. If the collective bargaining agreement contains provisions inconsistent with this law, the coverage under this section first applies on the date the health policy is first issued or renewed or a self-insured health plan is first established, modified, extended, or renewed on or after the earlier of the date the collectively bargained agreement expires, or the date the collectively bargained agreement it is modified, extended or renewed.

(3) DEFINITIONS. In this section and for purposes of applying s. 632.885, Stats.:

(a) "Adult child" means a child of the applicant, enrollee or insured who meets the eligibility requirements of s. 632.885 (2), Stats., as applicable.

(b) "Premium contribution" means the amount the adult child is required to pay for coverage under the adult child's employer-sponsored group health benefit plan or self-insured health plan.

(c) "Premium amount" means the additional amount the applicant or insured is required to pay for inclusion of the adult child under the applicant's or insured's health insurance policy or self-insured plan.

(4) PREMIUM DETERMINATION. To determine whether an adult child meets the eligibility standard in s. 632.885 (2) (a) 3., Stats., the insurer or self-insured health plan must use only the following:

(a) The amount of the adult child's premium contribution.

(b) The amount of the applicant's or insured's premium amount.

(5) OFFER OF COVERAGE. (a) On or after January 1, 2010, an insurer and self-insured health plan shall offer coverage to an adult child of an applicant or insured as a new entrant when the applicant or insured requests enrollment of the adult child no later than 30 days after the date the adult child first becomes eligible according to this section. It is solely the applicant's or insured's decision whether or not to add eligible adult children to the plan to the extent permitted by law.

(b) Insurers and self-insured health plans may not limit or otherwise restrict the offer of coverage to an eligible adult child by requiring any of the following:

1. The eligible adult child to have been previously covered as a dependent.
2. The eligible adult child to reside in this state.
3. The eligible adult child to demonstrate that he or she had previous creditable coverage.

4. The insured or applicant to have requested coverage for an eligible adult child the first time the child was eligible for coverage.

(c) Insurers offering individual disability insurance may individually rate the eligible adult child and apply preexisting condition waiting periods consistent with s.632.76 (2) (ac) 2., Stats., and may apply elimination riders to the eligible adult child, but may not do either of the following:

1. Deny coverage to an eligible adult child when the applicant or insured requests coverage.

2. Otherwise limit coverage if such limitation results in coverage that is illusory.

(d) Insurers offering group disability insurance policies and self-insured health plans shall comply with all of the following:

1. May not deny coverage of an eligible adult child when coverage is requested by the applicant or insured.

2. Shall apply portability rights to an eligible adult child so long as the adult child has not had a break in creditable coverage longer than 62 days.

3. Shall comply with s. 632.746, Stats., as applicable.

4. May request documentation of the adult child's creditable coverage for determining portability. The pre-existing condition waiting period applicable to the eligible adult child shall be applied to the adult child in the same manner as applied to any other applicant or eligible dependent.

(6) ELIGIBLE ADULT CHILD. (a) For purposes of this section and implementation of s. 632.885 (2), Stats., an adult child is eligible for coverage as a dependent if either of the following is met:

1. For an adult child who has not been called to federal active duty in the national guard or in a reserve component of the U.S. armed forces, either of the following:

a. An adult child who meets s. 632.885 (2) (a) 1., 2. and 3., Stats.

b. An adult child who meets s. 632.885 (a) 1. and 2., Stats., and who is not eligible for his or her employer sponsored coverage or whose employer does not offer health insurance to its employees is an eligible adult child.

2. For an adult child who has been called to federal active duty in the national guard or in a reserve component of the U.S. armed forces and who meet s. 632.885 (2) (b) 1., 2., 3., and 4., Stat., all of the following:

a. The adult child must apply to an institution of higher education as a full-time student within 12 months from the date the adult child has fulfilled his or her active duty obligation.

b. When an adult child is called to active duty more than once within a four-year period of time, the insurer and self-insured health plan must use the adult child's age when first called to active duty for determining eligibility under this section.

SECTION 2. This section may be enforced under s. 601.41, 601.64, 601.65, or 628.10, Stats., or ch. 645, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

SECTION 3. These changes will take effect on the first day of the month after publication, as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this ____ day of _____, 2010.

Sean Dilweg
Commissioner of Insurance

**Office of the Commissioner of Insurance
Private Sector Fiscal Analysis**

for Section Ins 3.34 relating to coverage of dependents to age 27 and
affecting small business

This rule change will have no significant effect on the private sector regulated by OCI.

