

98-015 - ZMS 3.70 AIRSP



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE



Tommy G. Thompson  
Governor

Randy Blumer  
Commissioner (Acting)

June 1, 1998

121 East Wilson Street  
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(608) 266-3585

[http://badger.state.wi.us/agencies/oci/oci\\_home.htm](http://badger.state.wi.us/agencies/oci/oci_home.htm)

HONORABLE ROBERT WELCH  
SENATE CO-CHAIRPERSON  
JOINT COMM FOR REVIEW OF ADM RULES  
1 EAST MAIN ST RM 201  
MADISON WI 53702


Re: Rule, Section Ins 3.70, Wis. Adm. Code, relating to aggregating creditable coverage for the state health insurance risk-sharing plan pursuant to s. 149.10(2t)(a) Stats.

Clearinghouse Rule No. 98-015

Dear Senator Welch:

I am enclosing a copy of this proposed rule, which has been submitted to the presiding officers of the legislative houses under s. 227.19 (2), Wis. Stat. A copy of the report required under s. 227.19 (3), Wis. Stat., is also enclosed.

Best Regards,

  
Randy Blumer  
Commissioner of Insurance

RB:SM

Attachment: 1 copy rule & legislative report

*END*



*END*

PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE

CREATING A RULE

To create Ins. 3.70 relating to aggregating creditable coverage for the state health insurance risk-sharing plan pursuant to s.149.10 (2t) (a) Stats.

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ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 149.115, 601.41 (3) Stats.

Statutes Interpreted: ss. 149.115 & 149.10 (2t) (a) Stats.

This change is mandated by 1997 Wisconsin Act 27 which, among other things, transferred the responsibility of the state health insurance risk sharing plan ("HIRSP") to the department of health and family services as of January 1, 1998. The HIRSP statutes were renumbered from Chapter 619 to Chapter 149 Stats. and amended in ways that require promulgation of new rules. Responsibility for promulgation of most of these rules was placed with the department and, in fact, the HIRSP rules, formerly CH. INS. 18 were transferred to the department and renumbered CH. DFS 119 on April 1, 1998. However s. 149.115 requires the commissioner after consultation with the department to promulgate rules with respect to the term "creditable coverage" and requires that those rules comply with section 2701 (c) of P.L. 104-191, the federal health insurance portability and accountability act ("HIPAA"). HIPAA supercedes portions of state law, is manifested in much of Act 27 and originated the term "creditable coverage". Following passage of HIPAA the federal health and human services administration promulgated their own rules concerning, among other things, methods of counting creditable coverage. 1997 Wisconsin Act 27 requires the commissioner to promulgate rules concerning



LRB or Bill No./Adm. Rule No.
Amendment No. if Applicable

FISCAL ESTIMATE  
DOA-2048 N(R10/94)

- ORIGINAL       UPDATED  
 CORRECTED     SUPPLEMENTAL

Subject

AGGREGATING CREDITABLE COUNTRYSIDE FOR THE STATE HIRSP PURSUANT

Fiscal Effect

State:  No State Fiscal Effect

TO \$149.10 (2E) (a) STARS.

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

Decrease Costs

Local:  No local government costs

1.  Increase Costs  
 Permissive       Mandatory  
2.  Decrease Costs  
 Permissive       Mandatory

3.  Increase Revenues  
 Permissive       Mandatory  
4.  Decrease Revenues  
 Permissive       Mandatory

5. Types of Local Governmental Units Affected:  
 Towns       Villages       Cities  
 Counties       Others \_\_\_\_\_  
 School Districts       WTCS Districts

Fund Sources Affected

- GPR    FED    PRO    PRS    SEG    SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Long-Range Fiscal Implications

NONE

Agency/Prepared by: (Name & Phone No.) *OCI*  
*STEVE MUELLER 267-2833*

Authorized Signature/Telephone No.

*Randy Blume*

Date

*2/4/98*

ISCAL ESTIMATE WORKSHEET

1995 Session

Stalled Estimate of Annual Fiscal Effect  
JA-2047 (R10/94)

ORIGINAL  UPDATED  
 CORRECTED  SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

Amendment No.

Subject

*AGGRAVATING CREDITABLE COVERAGE FOR THE STATE HIRSP PURSUANT*

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

*TO \$149.10 (2E) (6) STATE*

Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
State Costs by Category		
State Operations - Salaries and Fringes	\$ 0	\$ - 0
(FTE Position Changes)	( FTE)	(- FTE)
State Operations - Other Costs		
Local Assistance		
Aids to Individuals or Organizations		
<b>TOTAL State Costs by Category</b>	<b>\$ 0</b>	<b>\$ - 0</b>
State Costs by Source of Funds		
	Increased Costs	Decreased Costs
GPR	\$ 0	\$ - 0
FED		
PRO/PRS		
SEG/SEG-S		
State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$ 0	\$ - 0
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
<b>TOTAL State Revenues</b>	<b>\$ 0</b>	<b>\$ - 0</b>

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
CHANGE IN COSTS	\$ 0	\$ 0
CHANGE IN REVENUES	\$ 0	\$ 0

Prepared by: (Name & Phone No.)

*STEVE MUELLEN 267-2833*

Authorized Signature/Telephone No.

*Stanley Blum*

Date

*2/4/98*



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REPORT ON Section Ins 3.70, Wis. Adm. Code,  
relating to aggregating creditable coverage for the  
state health insurance risk-sharing plan pursuant to  
s. 149.10(2t)(a) Stats.

Clearinghouse Rule No 98-015  
Submitted Under s. 227.19 (3), Stats.  
The proposed rule-making order is attached.

(a) Statement of need for the proposed rule

This change is mandated by 1997 Wisconsin Act 27 which, among other things, transferred the responsibility of the state health insurance risk sharing plan ("HIRSP") to the department of health and family services as of January 1, 1998. The HIRSP statutes were renumbered from Chapter 619 to Chapter 149 Stats. and amended in ways that require promulgation of new rules. Responsibility for promulgation of most of these rules was placed with the department and, in fact, the HIRSP rules, formerly CH. INS. 18 are expected to be transferred to the department and renumbered CH. DFS 119 on March 1, 1998. However s. 149.115 requires the commissioner after consultation with the department to promulgate rules with respect to the term "creditable coverage" and requires that those rules comply with section 2701 (c) of P.L. 104-191, the federal health insurance portability and accountability act ("HIPAA"). HIPAA supercedes portions of state law, is manifested in much of Act 27 and originated the term "creditable coverage". Following passage of HIPAA the federal health and human services administration promulgated their own rules concerning, among other things, methods of counting creditable coverage. Therefore this rule simply incorporates the federal rule to satisfy the legislative mandate that the commissioner promulgate rules that specify how creditable coverage be aggregated (counted) under HIRSP.

(b) Modifications made in proposed rule based on testimony at public hearing:

On April 1, 1998 the revisor renumbered all of former Ins. 18 to HFS 119. Because of wording in s.149.10(2t)(a) this particular rule must remain with the commissioner and has been renumbered in this final version as Ins. 3.70 to avoid having a rule chapter for only one rule. All other HIRSP rules are now under the authority of the department.



(c) Persons who appeared or registered regarding the proposed rule:

Appearances For:

Bob Wood, 600 Hamilton, Stoughton WI, Wisconsin Physicians Service Corp.

Appearances Against:

none

Appearances For Information:

Kathy Rogers, Director, HIRSP, Department of Health, Department of Health & Family Services, 1 West Wilson, Madison WI

Registrations For:

Bob Wood

Registrations Against:

none

Registrations Neither for nor against:

Randy McElhose, Department of Health, Department of Health & Family Services, 1 West Wilson, Madison WI

Peter Kammer, 22 East Mifflin #701, Madison WI, Wisconsin Association of HMO's

Letters received:

None as of 5/28/98

(d) Response to Legislative Council staff recommendations

As suggested by legislative council the analysis now contains language stating that the commissioner consulted with the department regarding this rule.

Section 149.115, Stats. requires the commissioner to promulgate rules that specify how creditable coverage is to be aggregated and to promulgate rules that determine the creditable coverage to which s.149.10(2t)(b) & (d) Stats. applies. Legislative council noted that OCI had not done the latter. Section 149.10(2j)(a) Stats. describes "creditable coverage". We decline to limit the application of s.149.10(2t)(b) & (d) Stats. to less than the kinds of creditable coverage already described. To do so might conflict with federal law and is unnecessary. The plan administrator agrees.

The federal rule which this rule incorporates allows for a standard and an alternate method of counting (Wisconsin uses the term "aggregating") creditable coverage. Legislative council suggested that OCI specify one or the other method. OCI intends that this rule follow exactly the federal language cited in this rule. The federal rule allows each group health plan or issuer to select the alternate method only for certain categories of benefits and to use that method consistently. Federal law controls. We see no need to change the federal rule. The HIRSP plan administrator has been implementing this rule since February 1998 and report that it is working properly.

The remaining legislative council comments were complied with or made unnecessary through the renumbering of this rule to Ins. 3.70 Wis. Adm. Code and the renumbering of the remainder of Ins. 18 to HFS 119 with corrected statutory references.

(e) Regulatory flexibility analysis

1. None of the methods specified under s. 227.14 (2), Stats., for reducing the rule's impact on small businesses were included because all must be treated equally and thus it is not possible to have different rules for one segment of the population.
2. No issues were raised by small businesses during the hearing on the proposed rule.
3. The proposed rule does not impose any additional reporting requirements on small businesses.
4. The proposed rule does not require any additional measures or investments by small businesses.
5. No methods specified under s. 227.114 (2), Stats., are included in the proposed rule.
6. No methods specified under s. 227.114 (2), Stats., are included in the proposed rule.

(f) Fiscal Effect

See fiscal estimate attached to proposed rule.

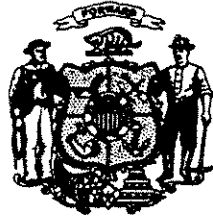
Attachment: Legislative Council Staff Recommendations  
June 1, 1998

WISCONSIN LEGISLATIVE COUNCIL STAFF



***RULES CLEARINGHOUSE***

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 98-015**

AN ORDER to create Ins 18.05 (5), relating to aggregating creditable coverage for the state health insurance risk-sharing plan under s. 149.10 (2t) (a), Stats.

Submitted by **OFFICE OF THE COMMISSIONER OF INSURANCE**

02-05-98 RECEIVED BY LEGISLATIVE COUNCIL.

02-27-98 REPORT SENT TO AGENCY.

RS:JLK:jt;ksm

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

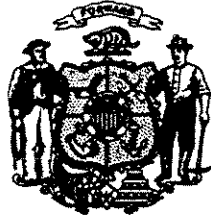
Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

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## CLEARINGHOUSE RULE 98-015

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### 1. Statutory Authority

Effective January 1, 1998, s. 149.115, Stats., requires the Commissioner of Insurance (Commissioner), in consultation with the Department of Health and Family Services (DHFS), to promulgate rules that specify how creditable coverage is to be aggregated for purposes of s. 149.10 (2t) (a), Stats., and that determine the creditable coverage to which s. 149.10 (2t) (b) and (d), Stats., applies. Section 149.115, Stats., also specifies that these rules must comply with s. 2701 (c) of P.L. 104-191.

Because this rule is promulgated after January 1, 1998, the analysis should state that the Commissioner consulted with DHFS and should provide brief background information about the consultation process.

While the rule discusses aggregating creditable coverage, it does not discuss determining the creditable coverage to which s. 149.10 (2t) (b) and (d), Stats., applies. Does the Commissioner, in consultation with DHFS, intend to promulgate a rule determining the creditable coverage to which s. 149.10 (2t) (b) and (d), Stats., applies?

Section Ins 18.05 (5) states only that the method of aggregating creditable coverage must comply with 45 C.F.R. s. 146.113 (a) (3), which provides as follows:

For purposes of reducing any preexisting condition exclusion period, as provided under s. 146.111 (a) (1) (iii), a group health plan, and a health insurance issuer offering group health insurance

coverage, determines the amount of an individual's creditable coverage by using the standard method in paragraph (b), *except that* the plan, or issuer, *may* use the alternative method under paragraph (c) with respect *to any or all* of the categories of benefits described under paragraph (c) (3). [Emphasis added.]

45 C.F.R. s. 146.113 (c) (3) provides as follows:

The alternative method for counting creditable coverage may be used for any of the following categories of benefits: (i) Mental health. (ii) Substance abuse treatment. (iii) Prescription drugs. (iv) Dental care. (v) Vision Care.

Section Ins 18.05 (5) does not make clear whether the Health Insurance Risk-Sharing Plan has elected to use the standard method or the alternative method for counting creditable coverage. If the intention is to use the standard method, the rule should state this explicitly rather than simply referring to 45 C.F.R. s. 146.113 (a) (3). If the intention is to use the alternative method, the rule should state this explicitly and should make clear which categories of benefits the alternative method will be used for.

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

a. Because s. Ins 18.05 (5) is being created rather than amended, it should not be underscored.

b. Because all of the other subsections in s. Ins 18.05 have titles, a title also should be included for s. Ins 18.05 (5). [See s. 1.05 (1), Manual.]

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

a. Because all of the other references in ch. Ins 18 are to various provisions in ch. 619, Stats., the reference to s. 149.10 (2t) (a), Stats., in s. Ins 18.05 (5), may be confusing to a reader who does not have ready access to the analysis. Unless the necessary changes in the statutory references throughout the remainder of ch. Ins 18 are accomplished through rule-making, the Revisor of Statutes should be asked to use the authority under s. 13.93 (2m) (b) 7., Stats., to correct the statutory references throughout the remainder of ch. Ins 18 when ch. Ins 18 is renumbered ch. DFS 119. If it is anticipated that this rule will be promulgated prior to the renumbering of ch. Ins 18, an explanatory note following s. Ins 18.05 (5) may be useful.

b. In s. Ins 18.05 (5), the reference to "s. 149.10 (2t) (a)" should specify that it is to "s. 149.10 (2t) (a), Stats."