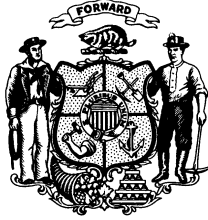


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CLEARINGHOUSE RULE 98-015

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.]

I. 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.”