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CLEARINGHOUSE RULE 98–108

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 September 1998.]

2. Form, Style and Placement in Administrative Code

a. Section 149.20, Stats., requires that in promulgating any rule under ch. 149, Stats., the Department of Health and Family Services (DHFS) must consult with the Board of Governors for the Health Insurance Risk-Sharing Plan (HIRSP). Reference to this consultation process should be included in the analysis of the rule.

b. In s. HFS 119.03, the phrase ", and shall be referred to in this chapter as the plan" should be deleted. Both "HIRSP" and "plan" are defined terms in s. HFS 119.04.

c. In s. HFS 119.06 (1), the phrase "shall not" should be changed to "may not." [See s. 1.01 (2), Manual.] This comment also applies to s. HFS 119.07 (2).

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

a. The fiscal estimate and analysis refer only to 1997 Wisconsin Act 27. A reference to 1997 Wisconsin Act 237 also could be added.

b. Section HFS 119.05 (2) specifies that exclusions from eligibility are those set forth in s. 149.12 (2) and (3), Stats. It appears that a reference to the exclusion in s. 149.12 (1m), Stats., also should be included inasmuch as the exception for s. 149.12 (1m), Stats., also is referred to in s. 149.12 (1) (intro.), Stats.

c. Section HFS 119.05 (3) (b) refers to "the federal consolidated omnibus budget reconciliation act of 1985, as amended" (COBRA). While the type of continuation coverage

referred to in this paragraph is commonly called "COBRA coverage," the reference should be to the U.S. Code provision. [See s. 1.07 (3), Manual.] A note could be added to refer to COBRA. The department should review s. 252.16 (1) (a), 1995 Stats., which was repealed in the 1997-98 Legislative Session, but which provides the U.S. Code cite for continuation coverage.

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

a. The Supplemental Application for Premium and Deductible Reduction form should be updated, for example: by referring to income in 1997 or 1998, rather than 1996; by referring to DHFS rather than the Office of the Commissioner of Insurance; and by updating obsolete references to "AFDC" and "general relief."

In addition, under the "Household Income" provision in item 2. of the form, the phrase "return last calendar" should be changed to "return for the last calendar year."

b. In the first paragraph of the analysis, a hyphen should be inserted in the phrase "Risk Sharing."

c. The second paragraph of the analysis states that "HIRSP provides for a 20% coinsurance contribution by plan participants up to an annual out-of-pocket maximum of $2,000 (which includes the $1,000 deductible) per individual and $4,000 per family for major medical and $500 per individual for Medicare supplement." The following comments apply:

(1) With respect to the $2,000 maximum, this statement does not make clear what happens if the deductible is reduced from $1,000 for low-income policyholders.

(2) With respect to the $4,000 and $500 maximums, this statement does not make clear if the deductible is or is not included.

(3) This statement does not specify that it does not apply to individuals covered under a HIRSP policy with a $2,500 deductible under s. HFS 119.07 (6) (d).

d. In the second paragraph of the analysis, the last sentence indicates that there is a lifetime limit "for all illnesses." However, injuries also are covered under HIRSP and are subject to this limit. It would be preferable to state that there is a lifetime limit of $1 million payment per covered individual.

e. Both the first and fourth paragraphs of the analysis use the term "Health Insurance Risk-Sharing Plan" and give the acronym "HIRSP." This should be done only in the first paragraph. After that, the acronym should be used. This also means that only the acronym should have been used in the fifth paragraph of the analysis.

f. In the third paragraph of the analysis, "reduced" is misspelled in the second line.

g. The last major change noted in the analysis indicates that the assessments and payment rate are for the period July 1, 1998 to "approximately" December 31, 1998. This is

inconsistent with s. HFS 119.15 (2) and (3) which indicate that the assessments and rates will be effective through December 31, 1998.

h. In s. HFS 119.04 (2), the term "allowed amount" is unclear. Is it intended to be the same as "covered expenses" which are discussed in the rule? If so, the latter term should be substituted.

i. Several references are made in the rule to the "policyholder," a term that is not defined. Can this be replaced by "plan participant," a term that is defined? For example, see s. HFS 119.04 (2) and (5).

j. In s. HFS 119.04 (3), the space following the first quotation mark should be deleted.

k. In s. HFS 119.04 (5), the definition of "deductible" appears to be inaccurate. Taken literally, it conceivably includes the coinsurance amount. As an alternative interpretation, because of the reference to the amount "which HIRSP otherwise would pay," it also could be interpreted as applying only 80% of the covered expenses toward the deductible. Rather than referring to an amount which HIRSP otherwise would pay, it may be preferable to refer to the amount of covered expenses before HIRSP payments begin.

l. In s. HFS 119.04 (7), a period should be inserted at the end.

m. Section HFS 119.04 (1s) defines "medicaid" and this term is used in s. HFS 119.13. However, "medical assistance" is used in s. HFS 119.05 (5). The department should use one term consistently; "medical assistance" is the term generally used in the statutes and the department's rules.

n. In s. HFS 119.04 (17), it would be useful to set off the phrase "other than a group certificate" with commas. Also, it appears that the word "prescribe" should be changed to "describe."

o. In s. HFS 119.06 (1), the phrase "when it is determined" is vague because it is unclear who is making this determination. If the commissioner makes this determination, this should be specified by substituting the phrase "when the commissioner determines."

p. Section HFS 119.06 (4) provides that if an insurer makes an error that results in an overpayment, the insurer "shall, at any time," file a corrected assessment form. In light of the fact that there is no deadline for filing, it seems more appropriate to permit, but not require, the insurer to file a corrected assessment, that is, it seems more appropriate to substitute the phrase "may, at any time,".

q. Section HFS 119.07 (6) (d) states the premium for a major medical policy with a $2,500 deductible. This apparently is the choice of coverage alternative policy referred to in s. 149.146, Stats. Section 149.146 (2) (a), Stats., provides that, except as specified by DHFS, the terms of coverage under s. 149.14, Stats., do not apply to the alternative policy.

Section HFS 119.07 (6) indicates that the coinsurance must comply with various statutes, but none of the cited statutes specify the coinsurance rate or the out-of-pocket maximum, if any,

for this alternative policy. DHFS should specify the terms of this alternative policy in the rule or refer to where the policy terms are specified.

r. In the title of s. HFS 119.07 (6) (d), "$2500" should be changed to "$2,500" to be consistent with the rule text.

s. In s. HFS 119.07 (6) (e), "534 and 537" should be changed to "534 or 537."

t. In s. HFS 119.08 (3) (c), the word "companies" is unclear. Is it meant to refer to "insurers"? If so, the defined term "insurers" should be substituted.

u. The last sentence of s. HFS 119.12 (2) is unclear. If the intent is that an annual application must be made for the reductions, this should be specifically stated by adding the phrase "for the reductions" at the end of the sentence.

v. Section HFS 119.12 (4) should state when a schedule F is required, rather than stating that one may also be needed.

w. In s. HFS 119.12 (5) (a) (intro.), "wmay" should be changed to "may."

x. In s. HFS 119.12 (5) (a) 2. (intro.), ", as follows:" should replace the period.

y. Section HFS 119.14 (3) (b) provides that the grievance committee's decision is final, unless the DHFS secretary deems a different decision is in the best interests of the state. The rule does not make clear whether there is a right to appeal a decision to the secretary and, if so, how this is done or what the deadline is for doing so.