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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 10-149

#### 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 September 2008.]**

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

- a. In s. Ins 3.37 (3) (intro.), the stricken “A” should not also be underscored.
- b. In s. Ins 3.37 (3) (intro.), “2007” should be underscored both times it appears as new text. Also “section subsection” should replace “subsection”.
- c. In s. Ins 3.375 (3) (b), “academy” and “actuaries” should be capitalized.
- d. In s. Ins 3.375 (3) (b), (4) (b), and (5) (a), “Stats.” should replace “Stat.”.
- e. In s. Ins 3.375 (3) (f), after “s. 632.89 (3)”, “, Stats.” should be inserted.
- f. In s. Ins 3.375 (6) (b) 2., the numbering of the subdivision paragraphs is “1.”, “2.”, and “3.”, but it appears that it should be “a.”, “b.”, and “c.”, to mirror subd. 1.

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

- a. In s. Ins 3.37 (2m): the reference to s. 632.89, Stats., should more specifically cite sub. (1); the reference to s. Ins 3.375 should more specifically cite sub. (3); and “Ins” should be inserted between “s.” and “3.375”. Also, the definitions from s. Ins 3.375 (3) could be moved to this section, in order to provide those definitions earlier in the chapter, and then revise that section to refer back to s. Ins 3.37 (2m).

b. In s. Ins 3.375 (2) (a), “as defined in s. 632.745 (24), Stats.,” should be deleted; see the definition in sub. (3) (c).

c. In s. Ins 3.375 (3) (e), “2590 §” should be deleted.

d. In s. Ins 3.375 (4) (c) and (5) (a):

- The reference to “29 CFR 2590 subpart C” is very broad. That subpart is very extensive and includes other provisions that appear to be unrelated to mental health parity, such as standards of care for mothers and newborns. This citation should be more specific.
- Likewise, the reference to s. 2707 of P.L. 111-148 is very broad, and may be inaccurate. That public law is the entire Patient Protection and Affordable Care Act; SECTION 2707 of that law is the Medicaid emergency psychiatric demonstration project, which appears to be unrelated to this rule. This citation should be corrected or made more specific. Also, it should be noted that this public law is apparently not yet incorporated into the U.S. Code, but when it is codified, the citation should be corrected to reference the U.S. Code.

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

a. In SECTION 5 of the analysis, in the fourth paragraph, “in violation” should replace “volatile”. Also, the entire sentence needs to be reviewed since it seems to be grammatically incorrect.

b. In s. Ins 3.37 (3m): “insured” should replace “funded”; and “subsection” should replace “subs.” Also, “at least the amount of” should be inserted after “provide”, in order to mirror the language of sub. (3), and to clarify that the required coverage is a floor.

c. In s. Ins 3.375 (3) (f), (6) (a) and (b) 1. and 2., “may” should replace “can”.

d. In s. Ins 3.375 (4), it would make more sense to delete the numbering “(a)”; delete pars. (b) and (c) that are duplicated in sub. (5) (a) and (b); insert “individual health benefit plans” in both sentences of sub. (5); and insert “group health benefit plans and self-insured governmental health plans” in sub. (4).

e. In s. Ins 3.375 (6) (a) 1. and (b) 1. a., “shall” should replace “must”.

f. In s. Ins 3.375 (6) (b) (intro.), should it be clarified that an insurer will have a qualified actuary determine eligibility for the exemption at the request of an employer, rather than as an automatic requirement? Adding the phrase, “At the request of an employer”, would mirror the language in par. (a) of this subsection, and would clarify that an exemption determination is an election and not a requirement under s. 632.89 (3c), Stats. Likewise, in s. Ins 3.375 (6) (b) 2. [1.], the mandatory “shall” is used, although the exemption determination is an election and not a requirement.

g. Should the phrasing of s. Ins 3.375 (6) (b) 2. [3.] mirror the language in par. (b) 1. a. of this subsection? If so, “provide the actuary’s determination” should replace “make the determination available”, and “45” should replace “15”. If not, “for a copy” should be inserted at the end of the first sentence. The second option would make sense if it is clear that the determinations are already in hand, and the employer is simply requesting a copy of the

determination, rather than first requesting that the determination be performed, which appears to be the process in par. (b) 1. a. of this subsection.

h. Section Ins 3.375 (7) (a) uses the term “eligible employee”, but that term is not defined in the section. A definition for “eligible employee” should be added to s. 3.375 (3), referencing that definition given in s. 632.745 (5), Stats.

i. In s. Ins 3.375 (7) (a), “may” should replace “will”. Also in this paragraph, “request and” should be deleted, as no other sections require that an employer or benefit plan request the exemption. If approval by the agency is required, the rule should specify the process for requesting and obtaining approval for all exemption types.

j. In s. Ins 3.375 (7) (b) (intro.), “benefits” should be singular. Similarly, in sub. (4) (a), “An insurer” should replace “Insurers” or “their” should replace “its”; in sub. (4) (b), in the first line, “an” should be deleted or “plan” should replace “plans”.

k. In s. Ins 3.375 (7) (b) 3., “also” should be deleted.