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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 16-023

#### 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 December 2014.]**

#### 1. Statutory Authority

a. The first sentence of s. Ins 17.35 (4) (a), as treated by the proposed rule, includes a clause describing the content of s. Ins 17.35 (2) (d). The cross-reference to sub. (2) (d) is sufficient; it is unnecessary to summarize the content of s. 17.35 (2) (d). If the summary is retained, note that it should begin with “which” rather than “that” and that it is inaccurate. Subsection (2) (d) requires a policy to include “indemnity limits of *not less than* the amounts specified in s. 655.23 (4), Stats.”. [Emphasis added.] Instead of “not less than”, the text of the proposed rule uses the phrase “up to the limits”. Use of the phrase “up to the limits” in s. Ins 17.35 (4) (b) should also be reviewed.

b. In s. Ins 17.35 (4) (a), use of the phrases “as defined at...” should be avoided. Are these terms defined in other manners elsewhere in ch. Ins 17? It appears the definitions of the terms “policy” and “group policy” [referring to a “group insurance policy” as defined in s. 600.03 (23), Stats.] could be defined in a separate provision relating to definitions, either in s. Ins 17.35, if applicable only to that section of the code, or in s. Ins 17.001, if applicable throughout ch. Ins 17.

c. In s. Ins 17.35 (4) (a), use of the phrase “but not limited to,” should be avoided. [s. 1.01 (9) (f), Manual.]

d. Generally, the current combination of the proposed rule’s effective date and initial applicability provision raises several concerns. First, unlike a legislative act, it is unusual to include an initial applicability provision solely in a clearinghouse rule. As presently drafted, it is unclear where, if at all, this provision would be published in the administrative code. The agency

should consider incorporating this content into a provision of the rule that will be included in the administrative code. Second, the initial applicability provision suggests that the current code would apply to policies issued before July 1, 2017. However, beginning on the effective date of the rule, s. Ins 17.35 (4) will be repealed and recreated, removing from the code the provision applicable to policies issued before July 1, 2017. Thus, the agency could instead create provisions numbered s. Ins 17.35 (4) (b) 1. and 2. that would apply to policies issued on or after July 1, 2017, and could renumber and amend s. Ins 17.35 (4) as sub. (4) (a) to clarify that it applies to policies issued before July 1, 2017.

e. The effective date provision of the proposed rule should use the style prescribed in s. 1.02 (4), Manual.

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

In s. Ins 17.35 (4) (a), the reference to “s. 655.23 (4), Stat.,” should be written as “s. 655.23 (4), Stats.”.

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

In s. Ins 17.35 (4) (a), should “have” replace “has” in the phrase “that has the effect of requiring...”? It appears the subject of that phrase is “all provisions”.