



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 16-024

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.]

2. Form, Style and Placement in Administrative Code

a. The introductory clause for the proposed rule should be corrected to specifically enumerate the provisions treated in the rule. Each provision that the rule treats should be separately enumerated, and should be organized by the treatment given. [s. 1.02 (1), Manual.]

b. In s. Ins 17.50 (2) (e), the agency refers to par. (am) as “sub. par. (am)”. The inclusion of “sub.” should be deleted, because the proper term for the subunit is “par. (am)”. [s. 1.03 (1) (Example), Manual.]

c. The amendment of s. Ins 17.50 (g) should be removed, because the amendment is redundant to the revised definition of the word “provider” in s. Ins. 17.50 (2) (e).

d. In s. Ins 17.50 (4) (L), the word “statement” should not be underscored, because it is part of the current rule and is not new material. Also, the period at the end of the sentence should not be underscored as the period should be preserved in the material being amended. [s. 1.06 (1) (a) and (4), Manual.]

e. In s. Ins 17.50 (4) (m), the period at the end of the sentence should not be underscored as the period should be preserved in the material being amended. [s. 1.06 (4), Manual.]

f. SECTION 4 of the proposed rule proposes to amend the title of s. Ins 17.50 (6), but the proposed rule does not accurately transcribe the existing text of the title within the text of the proposed rule. The title of s. Ins 17.50 (6) in the current rule is “FUNDING REQUIREMENTS; PROHIBITIONS.”, however, the semicolon and the word “PROHIBITIONS” are not shown in the text

of the proposed rule. The full text of the title should be shown, and, if it is the intent to delete any part of the title, that material should be shown with a strike-through. [s. 1.05 (3) (b), Manual.]

g. All of the material in proposed s. Ins 17.50 (6) (c) (intro.) is new and should be treated in a separate SECTION of the proposed rule as the creation of a new provision. [s. 1.055, Manual.]

h. Because the treatment of s. Ins 17.50 (6) (c) (intro.) should be treated separately in its own SECTION of the proposed rule, the treatment of sub. (6) (title) in SECTION 4 of the proposed rule should also be separated into its own SECTION. Section Ins 17.50 (6) (c) (intro.) is an intervening subunit that is affected by a different treatment from sub. (6) (title) and par. (c) 1. [s. 1.04 (2) (b), Manual.]

i. The treatment clause for SECTION 4 of the proposed rule states that this SECTION amends s. Ins. 17.50 (6) (d). However, par. (d) of s. Ins 17.50 (6) is not shown in the text of the proposed rule. The reference to par. (d) should either be removed from the treatment clause, or the text with any intended amended material should be shown.

j. In s. Ins 17.50 (6m), the designation for par. (a) should be removed, because no other paragraphs are created in that subsection. [s. 1.03 (1), Manual.]

k. In SECTION 6 of the proposed rule, the phrase “in the Wisconsin Administrative Register” should be inserted after the word “publication”. [s. 1.02 (4) (a) (Example), Manual.]

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

a. The agency could consider adding s. 655.001 (14), Stats., to the list of statutes interpreted, because that statute also refers to “affiliated health care providers”.

b. In the rule summary’s section titled “Explanation of OCI’s authority to promulgate the proposed rule”, the agency states: “Section 655.23 (3) (b), Wis. Stats., requires the commissioner to establish self-insurer qualifications and conditions for insuring for claims including claims arising from employees that are not fund participants.”. Does the agency instead mean to attribute this requirement to s. 655.23 (3) (a), Stats.?

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

a. In s. Ins 17.50 (2) (am), the definition of “affiliated health care providers” is overly complicated and contains substantive non-definitional material. As the definition is currently drafted, it is difficult to discern what criteria must be satisfied for two or more health care providers to meet the definition of affiliated health care providers. The agency should consider the following comments:

- The phrase “two or more health care providers” could be revised to “two or more persons”.
- The word “contained” should be revised to “described”.
- It is not clear what is meant by the phrase “that are ... legal entities”. Does the agency mean “separate” legal entities?

- The phrase “nor by being a common controlling entity will it be deemed to be a health care provider” is a substantive provision and should be removed. [s. 1.01 (7) (b), Manual.]
- The phrase “which itself need not be a health care provider” could be revised to “whether or not the common controlling legal entity itself is a health care provider as defined in s. 655.001 (8), Stats.”.
- It is not clear whether the final clause regarding incomes that are consolidated in audited financial statements is intended to be a substantive requirement with which affiliated health care providers must comply, or whether the clause is a description of one of the elements that must be met in order for providers to be “affiliated”. This should be clarified.
- The agency could consider looking to the definition of “affiliate” in s. 600.03, Stats., as a model for how the definition of “affiliated health care providers” might be more clearly drafted.
- The agency could also consider separating certain components of the definition into separate subunits. See s. 600.03 (23c), Stats., for an example of a definition that is structured in this manner.

b. In s. Ins 17.50 (4) (intro.), why is the phrase “as applicable” added? Are there requirements within this subsection that might not be applicable to all providers that intend to establish a self-insured plan? If the intent is to acknowledge the specific applicability that is provided within certain paragraphs, the phrase “as applicable” is not needed, as the specific applicability is already stated within those paragraphs.

c. In s. Ins 17.50 (4) (L), it appears that the phrase “on a consolidated basis” is intended to modify the phrase “all affiliated providers” rather than “generally accepted accounting principles”, and should be moved accordingly. Also, the phrase “affiliated providers” should be revised to “affiliated health care providers” in order to consistently use the defined term. Lastly, the agency should add the phrase “, if applicable,” after the phrase “that includes”. For example, the paragraph could be phrased as follows:

The provider’s most recent audited annual financial statement prepared under generally accepted accounting principles that includes, if applicable, in a consolidated statement, all affiliated health care providers covered under the self-insured plan.