

CR 90-232

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to subsidizing the costs of continuation coverage health insurance for certain persons with human immunodeficiency virus (HIV) infection were duly approved and adopted by this Department on April 11, 1991.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 11th day of April, 1991.



SEAL:

Gerald Whitburn, Secretary
Department of Health and Social Services

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ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
CREATING RULES

To create HSS 138, relating to subsidizing the costs of continuation coverage health insurance for certain persons with human immunodeficiency virus (HIV) infection.

Analysis Prepared by the Department of Health and Social Services

A person with a human immunodeficiency virus (HIV) infection may be unable to continue working or have to reduce hours of work because of an illness such as acquired immunodeficiency syndrome (AIDS) or a medical condition resulting from or related to the infection. If this happens, he or she may not be able to pay the premium for health care insurance continuation coverage. Section 146.88, Stats., as created by 1989 Wisconsin Act 336, makes subsidies available to pay the premiums for continuation coverage for affected individuals who meet eligibility requirements specified in the statute. The Department is required by rule to define family income, because under s. 146.88(3)(b), Stats., as created by Act 336, the individual's family income may not exceed 200% of the federal poverty income guidelines, and to establish procedures for making payments that ensure that the payments are actually used to pay premiums for continuation coverage.

These rules restate the statutory eligibility requirements for a subsidy, establish an application process, provide for notification of the Department's finding concerning eligibility, and establish conditions for payment and direct that payment be made to insurers.

The Department's authority to create these rules is found in s. 146.88(6), Stats. The rules implement s. 146.88, Stats.

SECTION 1. HSS 138 is created to read:

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Chapter HSS 138

SUBSIDY OF HEALTH INSURANCE CONTINUATION
COVERAGE PREMIUMS FOR PERSONS WITH
HIV INFECTION

- HSS 138.01 Authority and purpose
- HSS 138.02 Applicability
- HSS 138.03 Definitions
- HSS 138.04 Participation in the continuation coverage premium subsidy program
- HSS 138.05 Payment of continuation coverage premiums

HSS 138.01 AUTHORITY AND PURPOSE. This chapter is promulgated pursuant to s. 146.88, Stats., for the purpose of enabling the department to administer a program to subsidize health insurance premium costs for continuation coverage available to an individual who is unable to continue his or her employment or must reduce his or her hours because of an illness or medical condition arising from or related to HIV infection.

HSS 138.02 APPLICABILITY. This chapter applies to any individual with HIV infection who is eligible to participate in the subsidy program under this chapter, to the individual's employer, if the individual is currently employed, or former employer, if the individual is no longer employed, to the individual's insurer and to the department.

HSS 138.03 DEFINITIONS. In this chapter:

(1) "Continuation coverage" means coverage under a group health plan that is available under s. 632.897, Stats., 29 USC 1161 to 1168 or 42 USC 300bb-1 to 300bb-8 to a group member upon termination of the group member's employment or a reduction in his or her hours.

(2) "Department" means the Wisconsin department of health and social services.

(3) "Employee" means:

(a) An active or retired wage, commissioned or salaried earner whose services are or were utilized by the employer who is the group policyholder or sponsor of the group health plan and who provided health care coverage to the employee by virtue of the individual's employment; or

(b) A member of a union, trust or association where the union, trust or association is the group policyholder and where the member is entitled to health care coverage by virtue of the individual's membership in the union, trust or association.

(4) "Employer" means a group policyholder subject to s. 632.897, Stats., or the sponsor of a group health plan subject to 29 USC 1161 to 1168 or 42 USC 300bb-1 to 300bb-8, including a controlled group, partnership, or other arrangement under common control, an affiliated service group and employe leasing arrangements.

(5) "Family income" means the gross earnings of an employe and his or her spouse, including wages and salary, net income from non-farm self-employment, net income from farm self-employment, as well as unearned income including social security, dividends, interest income, income from estates or trusts, net rental income or royalties, public assistance, pensions or annuities, unemployment compensation, worker's compensation, maintenance or alimony, child support, family support and veterans' pensions.

(6) "Family size" means the number of individuals in a group of persons related by birth, marriage or adoption who reside together.

(7) "Federal poverty line" means the poverty income threshold by size of family unit for the current calendar year published as part of the poverty income guidelines by the U.S. department of health and human services in the federal register, pursuant to 42 USC 9902 (2).

(8) "Group health plan" means an insurance policy or a partially or wholly uninsured plan or program that provides hospital, medical or other health care coverage to members of a group.

(9) "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(10) "HIV infection" means the pathological state produced by a human body in response to the presence of HIV.

(11) "Insurer" has the meaning prescribed in s. 600.03(27), Stats.

(12) "Physician" has the meaning prescribed in s. 448.01(5), namely, an individual possessing the degree of doctor of medicine or doctor of osteopathy or an equivalent degree as determined by the medical examining board, and holding a license granted by the medical examining board.

(13) "Residence" means the concurrence of physical presence with intent to remain in a place of fixed habitation, with physical presence being prima facie evidence of intent to remain.

(14) "Substantial reduction in covered health care services" means benefit levels, out-of-pocket expenses, limitations or premiums that are not generally comparable to those of the group policy under which the person was insured when he or she became eligible for continuation coverage and are therefore less advantageous to the person than those of the group policy.

HSS 138.04 PARTICIPATION IN THE CONTINUATION COVERAGE PREMIUM SUBSIDY PROGRAM. (1) ELIGIBILITY. In order to participate in the continuation coverage premium subsidy program, a person shall satisfy all of the following requirements:

(a) Have residence in this state;

(b) Have a family income that does not exceed 200% of the federal poverty line for a family the size of the individual's family;

(c) Have an HIV infection;

(d) Except for the right to continued group coverage under s. 632.897, Stats., 29 USC 1161 to 1168 or 42 USC 300bb-1 to 300bb-8, have lost eligibility for group health coverage because employment is terminated or hours reduced due to an illness or medical condition arising from or related to the individual's HIV infection; and

(e) Is eligible for continuation coverage;

(f) Is not covered by a group health plan other than any of the following:

1. The group health plan under which the individual is eligible for continuation coverage; or

2. A group health plan that offers a substantial reduction in covered health care services from the group health plan under subd. 1;

(g) Is not covered by an individual health insurance policy other than an individual health insurance policy that offers a substantial reduction in covered health care services from the group health plan under par. (f)1;

(h) Is not eligible for medicare under 42 USC 1395 to 1395zz; and

(i) Is employed by an employer that employed at least 20 individuals on a typical business day during the preceding year, if the continuation coverage for which the subsidy is sought is available through that employer.

(2) APPLICATION PROCESS. (a) Any individual who satisfies the eligibility conditions under sub. (1) and wants to participate in the continuation coverage premium subsidy program shall complete and submit to the department an application form, DOH 4614, which shall provide the following information:

1. The individual's name and address;

2. Names of the individual's family members and their ages;

3. Family income information;

4. Name and address of the individual's present or immediate past employer through whom the individual has or had group health coverage and the name and address of the insurer or administrator of the group health plan under which the individual is or was covered;

5. Authorization, in writing, for the department to do all of the following:

a. Contact the individual's employer or former employer or the administrator of the group health plan under which the individual is covered to verify the individual's eligibility for continuation coverage and the premium and any other conditions of coverage, to make premium payments and for other purposes related to the administration of this chapter; and

b. Make any necessary disclosure to the individual's former employer or the administrator of the group health plan under which the individual is covered regarding the individual's HIV status;

6. Written certification from a physician of the following:

a. That the individual has an HIV infection; and

b. That the individual's employment has been terminated or his or her hours have been reduced because of an illness or medical condition arising from or related to the individual's HIV infection; and

7. Any other information that the department requires for purposes of determining eligibility under sub. (1) or evaluating the continuation coverage premium subsidy program.

Note: To obtain a copy of DOH 4614, write or phone the Wisconsin Division of Health, AIDS/HIV Program, P.O. Box 309, Madison, WI 53701, (608) 267-5287. The completed form should be returned to the same office.

(b) Any individual who does not satisfy sub. (1) (b), (d) or (e), may submit an application form, DOH 4614, that the department will hold until the individual satisfies all the requirements under sub. (1). The department may not contact the individual's employer or the administrator of the group health plan under which the individual is covered until the individual satisfies all the requirements under sub.(1) unless the individual authorizes the department, in writing, to make that contact and to make any necessary disclosure regarding the individual's HIV infection.

(3) NOTIFICATION OF DECISION. Within 20 working days after receipt by the department of the information described under sub. (2), the department shall determine whether or not the applicant satisfies the conditions under sub. (1) and do one of the following:

(a) If the applicant satisfies all the requirements under sub. (1), the department shall approve the application and notify the applicant in writing; or

(b) If the applicant does not satisfy a requirement under sub. (1), the department shall deny the application and notify the applicant, in writing, of the reasons for denial and of the right under sub. (5) to appeal the denial. If the denial is based upon inability to satisfy one or more of the requirements under sub. (1) (b), (d) or (e), the department shall include in the notice information that the department will hold the application until the applicant submits to the department written documentation that the requirement or requirements not met have been met, without need of the applicant to reapply.

(4) RIGHT TO REAPPLY. If the reasons listed by the department under sub. (3) (b) for denial change, an applicant may reapply.

(5) RIGHT TO APPEAL. In the event that the department denies an application, the applicant may request a hearing under ch. 227, Stats. The request for a hearing shall be submitted, in writing, to the department's office of administrative hearings and received by that office no later than 20 calendar days after the date of the letter of denial under sub. (3) (b).

Note: The mailing address of the Office of Administrative Hearings is P.O. Box 7875, Madison, WI 53707.

HSS 138.05 PAYMENT OF CONTINUATION COVERAGE PREMIUMS. (1) AMOUNT AND PERIOD OF SUBSIDY. (a) Except as provided in pars. (e) and (f), if an individual satisfies s. HSS 138.04 (1) and has been notified by the department under s. HSS 138.04 (3) (a) that the application has been approved, the department shall pay the full amount of each premium payment for continuation coverage that is due from the individual on or after the date of the notice of decision under s. HSS 138.04 (3).

(b) The department may not refuse to pay the full amount of each premium payment because the continuation coverage that is available to the individual who satisfies s. HSS 138.04 (1) includes coverage of the individual's spouse and dependents.

(c) Except as provided in par. (e), the department shall terminate payments when:

1. The individual's continuation coverage ceases;
2. The individual no longer satisfies s. HSS 138.04 (1); or
3. Upon the expiration of 18 months after the continuation coverage began, whichever occurs first.

(d) The department may not make payments under this section for premiums for a conversion policy or plan that is available to an individual under s. 632.897 (4) or (6), Stats., 29 USC 1162 (5) or 42 USC 300bb-2 (5).

(e) The obligation of the department to make payments under this section is subject to the availability of funds in the appropriation under s. 20.435 (1) (ak), Stats.


(f) The amount paid under par. (a) may not exceed the applicable premium as defined in 29 USC 1164 or 42 USC 300bb-4, as amended to April 7, 1986.

(2) PAYMENT OF PREMIUMS. The department shall make payment of premiums allowed under sub. (1) to the insurer, the administrator of an employer self-funded plan or the employer that provides the continuation coverage, or to the covered individual when the individual, in order to meet a premium due date, makes a payment after the department has approved his or her application, if the individual provides the department with proof that the payment was made.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Wisconsin Department of Health
and Social Services

Dated: April 11, 1991

By: 
Gerald Whitburn
Secretary

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