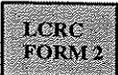


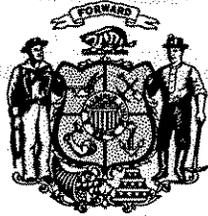
99-147

WISCONSIN LEGISLATIVE COUNCIL STAFF



**RULES CLEARINGHOUSE**

**Ronald Sklansky**  
Director  
(608) 266-1946



**Jane R. Henkel, Acting Director**  
Legislative Council Staff  
(608) 266-1304

**Richard Sweet**  
Assistant Director  
(608) 266-2982

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

---

**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 99-147**

AN ORDER to create Chir 4.06, relating to utilization reviews.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

10-15-99 RECEIVED BY LEGISLATIVE COUNCIL.

11-12-99 REPORT SENT TO AGENCY.

RS:DD:jal;rv

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES  NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES  NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES  NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES  NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES  NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES  NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES  NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

Ronald Sklansky  
Director  
(608) 266-1946

Richard Sweet  
Assistant Director  
(608) 266-2982



Jane R. Henkel,  
Acting Director  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

## CLEARINGHOUSE RULE 99-147

### 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.]**

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

Should "utilization review" be defined, or is its meaning sufficiently understood by those affected by the rule? If not defined, consideration might be given to explaining the term in the analysis.

**STATE OF WISCONSIN  
CHIROPRACTIC EXAMINING BOARD**

---

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : CHIROPRACTIC EXAMINING BOARD  
CHIROPRACTIC EXAMINING BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE 99-147)**

---

TO: Fred Risser  
President of the Senate  
Room 220 South, State Capitol  
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the CHIROPRACTIC EXAMINING BOARD is submitting in final draft form rules relating to utilization reviews.

If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

---

**STATE OF WISCONSIN  
CHIROPRACTIC EXAMINING BOARD**

---

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE  
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 99-147  
CHIROPRACTIC EXAMINING BOARD: (s. 227.19 (3), Stats.)**

---

**I. THE PROPOSED RULE:**

The proposed rule, including the analysis and text, is attached.

**II. REFERENCE TO APPLICABLE FORMS:**

No new or revised forms are required by these rules.

**III. FISCAL ESTIMATES:**

These rules will have no significant impact upon state or local units of government.

**IV. STATEMENT EXPLAINING NEED:**

In this proposed rule-making order the Chiropractic Examining Board defines utilization review as an activity within the scope of practice of chiropractic and ensures that utilization reviews of chiropractic are performed by qualified persons familiar with Wisconsin law. This rule clarifies that a utilization review of a chiropractor's records of analysis, diagnosis, and treatment constitutes the practice of chiropractic and requires that the review be performed by a licensed chiropractor.

**V. NOTICE OF PUBLIC HEARING:**

A public hearing was held on November 18, 1999. Written comments were received from the following:

Russell A. Leonard, Executive Director, Wisconsin Chiropractic Association, Madison, WI

Barbara Levy, Legislative Director, Health Insurance Association of America, Washington, D.C.

Wisconsin Association of Life and Health Insurers, Madison, WI

Eric Englund, President, Wisconsin Insurance Alliance, Madison, WI

Julie A. Daggett, Director of Government Affairs, Wisconsin Association of Health Plans, Madison, WI

**VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

The recommendation suggested in the Clearinghouse Report was accepted in whole. The rule was amended both to comply with the Clearinghouse Report recommendation and in response to written comments received.

**VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:**

These rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

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3/1/01

STATE OF WISCONSIN  
CHIROPRACTIC EXAMINING BOARD

---

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : CHIROPRACTIC EXAMINING BOARD  
CHIROPRACTIC EXAMINING BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE 99-147)

---

PROPOSED ORDER

An order of the Chiropractic Examining Board to create Chir 4.06, relating to utilization reviews.

Analysis prepared by the Department of Regulation and Licensing.

---

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats.

Statutes interpreted: s. 446.01 (2), Stats.

In this proposed rule-making order the Chiropractic Examining Board defines utilization review as an activity within the scope of practice of chiropractic and ensures that utilization reviews of chiropractic are performed by qualified persons familiar with Wisconsin law. This rule clarifies that a utilization review of a chiropractor's records of analysis, diagnosis, and treatment constitutes the practice of chiropractic and requires that the review be performed by a licensed chiropractor.

---

TEXT OF RULE

SECTION 1. Chir 4.06 is created to read:

**Chir 4.06 Utilization review.** (1) A utilization review of a chiropractor's records of analysis, diagnosis, and treatment constitutes the practice of chiropractic and may only be performed by a person who meets all of the following:

- (a) Is currently licensed under s. 446.02, Stats.
- (b) Has practiced for at least 2 years in Wisconsin.
- (c) Has at least 10 years of continuous clinical chiropractic experience.

(2) A person performing a utilization review shall do all of the following:

- (a) Sign the utilization review and provide his or her name and contact address.

(b) List in his or her report all documentation reviewed in performing the review.

(c) State a reasonable explanation of the factual basis for the review's conclusion.

-----  
(END OF TEXT OF RULE)  
-----

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated \_\_\_\_\_

Agency \_\_\_\_\_

Chairperson  
Chiropractic Examining Board

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

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2/26/01



Wisconsin Chiropractic Association  
521 E. Washington Avenue  
Madison, WI 53703  
Tel. (608) 256-7023 • Fax (608) 256-7123

January 5, 2001

Dale Strama D.C., Chair  
Chiropractic Examining Board  
PO Box 8935  
Madison, WI 53708

Dear Dr. Strama:

Thank you for the board's invitation to appear at your January 18, 2001 meeting to discuss "standards for persons performing utilization reviews of chiropractic treatment." Unfortunately, a prior commitment will not allow me to attend the board's January meeting.

The subject of unprofessional "independent medical exams" has been of great concern to the WCA for a number of years. Our attempt to remedy abuse in this area through a legislative change was defeated several years ago after a massive lobbying effort by the insurance industry. Last year however, the legislature passed and the Governor signed a bill that offers patients significant relief from improper reviews.

Effective with the issuing of rules by the Insurance Commissioner, patients that have \$250 or more of their chiropractic care denied based on the insurer's opinion that the care was "not medically necessary" will have the right to an independent review by an organization selected by the patient.

The insurance commissioner will have to certify that an independent review organization is not affiliated with any of the following:

- ⊖ A health benefit plan
- ⊖ A national, state or local association of health benefit plans
- ⊖ An affiliate of a trade association of health benefit plans
- ⊖ A national, state, or local association of health care providers
- ⊖ An affiliate of a trade association of health care providers

In addition the independent review organization that does the actual work may not have a material professional, familial, or financial interest with any of the following:

- ⊖ The insurer that issued the health benefit plan that is the subject of the review.
- ⊖ Any officer, director or management employee of the insurer that is the subject of the review.
- ⊖ The doctor that provided the services that are the subject of the review, or his or her practice group or practice association.
- ⊖ The facility at which the treatment was provided.

The doctor that does the review for the independent review organization will have to satisfy all of the following requirements:

- € They must be an expert in treating the condition that is the subject of the review and knowledgeable about the treatment that is the subject of the review through current, actual clinical experience.
- € They must have a chiropractic license if they are reviewing the work of a chiropractor.
- € They must hold a current certification by a recognized American specialty board in the area or areas appropriate to the subject of the review (this clause may or may not apply to chiropractors).
- € Must have no history of disciplinary sanctions.

With the passage of this law, we are not sure that additional rule making in this area is currently necessary. However, if additional rule making is contemplated, we would recommend the following qualification standards:

#### **Experience Requirement**

To insure that reviews are performed by experienced chiropractors, the rules should state that all reviewers must have at least 10 years of clinical experience prior to serving as a reviewer.

#### **Specialty Requirement**

A chiropractic reviewer should be required to be diplomate eligible in a program requiring at least 300 hours of postgraduate credit hours and that has approved by a college of chiropractic, the American Chiropractic Association or the International Chiropractic Association.

#### **Submitted Documentation**

Too often, reviews are not properly performed because the reviewer does not receive all of the treating chiropractor's documentation. To avoid conflicts, the chiropractor preparing the review should be required to list all of the documentation received from the insurer. This will allow the patient and their chiropractor the opportunity to insure that the insurer has in fact submitted all of the clinical documentation that was part of the grievance procedure.

#### **Signed review**

The patient and the treating chiropractor should be provided with the name and contact address of the chiropractor performing the review. This will ensure that a chiropractor, in fact, performed the review in conformance with Wi. Stat. 632.87.

#### **Statutory Consistency**

To insure that the review is completed under the requirements of Wi stat. 632.875 (2), a reference should be made to the rule to Wi. Stat. 632.875 (2) (g) that requires the chiropractor to provide the patient and the treating chiropractor with a written statement that contains "A reasonable explanation of the factual basis and of the basis in the policy, plan or contract or in applicable law for the insurer's restriction or termination of coverage."

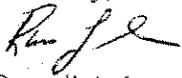
We would further recommend that the phrase "reasonable explanation" be defined in a manner that

- Allows the patient and his or her chiropractor to clearly understand what was missing from the doctor's clinical documentation that precluded care from being approved. If a reviewer receives documentation that is illegible, the treating chiropractor and the patient will be told specifically what corrections must be made to the documentation.
- Quotes the policy language that excludes the service or item from coverage.
- Describes the reference or source the reviewer has relied upon to make their decision.

The definition should clearly state that "not medically necessary" is not a reasonable explanation.

If the board would like to discuss these ideas in further detail, I would be pleased to attend your February meeting.

Sincerely,



Russell A. Leonard  
Executive Director

000031



Health Insurance Association of America

December 2, 1999

Department of Regulation and Licensing  
Office of Administrative Rules  
P.O. Box 8935  
Madison, WI 53708

Dear Sir or Madam:

Thank you for allowing me the opportunity to submit comments on proposed Regulation Chir 4.06, relating to utilization review, on behalf of the Health Insurance Association of America (HIAA). HIAA is the nation's most prominent trade association representing the private health care system. Its members provide health, long-term care, disability, dental, and supplemental coverage to more than 123 million Americans.

HIAA has concerns regarding the proposed regulation. The proposed regulation would require physicians who perform utilization review of a chiropractor's records of analysis diagnosis and treatment to be licensed as chiropractors for a period of at least two years. However, OAG 95-79, dated October 22, 1979, specifically permits a physician to "advise a patient whether or not continued chiropractic care is necessary." The Attorney General concludes, "a physician is given the latitude to perform services within his or her authority, whether those services overlap with professional services properly performed by chiropractor, or other health care professional...by so doing, physicians are not engaging in the unauthorized practice of chiropractic."

Our first concern with the regulation is that it is unnecessary. Requiring physicians, who have a much broader scope of training in the health sciences than chiropractors, to be licensed as chiropractors in order to perform utilization review of chiropractic is unnecessary. Physicians, by virtue of their education and training, should be considered duly qualified to perform utilization review of a chiropractor's records and analysis.

The proposed regulation is also administratively taxing. Our members will be forced to train and license their medical director's as chiropractors, and potentially hire chiropractors for the sole purpose of performing utilization review. Additionally, some carriers may have a licensed chiropractor on staff in another state, but this regulation would prohibit such chiropractors from performing utilization review since they must be licensed in Wisconsin.

Thank you again for providing HIAA with the opportunity to submit comments on proposed Regulation Chir. 4.06. We would be happy to work with the Department of Regulation and Licensing to address the concerns outlined in this letter. If you have any questions or comments, please contact me at (202) 824-1635 or at [blevy@hiaa.org](mailto:blevy@hiaa.org).

Sincerely,

A handwritten signature in cursive script that reads "Barbara".

Barbara Levy  
Legislative Director

cc: Ron Hermes, Esq.

WISCONSIN ASSOCIATION OF  
**WALHI**  
LIFE AND HEALTH INSURERS

December 2, 1999

To: Office of Administrative Rules  
From: Wisconsin Association of Life and Health Insurers  
Re: Chiropractic Utilization Review Comments

On behalf of the Wisconsin Association of Life and Health Insurers, I would like to express our opposition to the proposed chiropractic examining board rule relating to utilization review of chiropractic services. As we understand it, the rule proposes to delineate utilization review as "the practice of chiropractic" and that any utilization review procedures must be performed by Wisconsin licensed chiropractors who have been licensed for at least two years.

The proposed rule causes significant conflict of interest within the state of Wisconsin by only providing that in-state chiropractors can review the services performed by other in-state chiropractors. In many instances, it is both legitimate and prudent to have out-of-state licensed chiropractors review the treatment of in-state chiropractors in order to provide an unbiased opinion, as well as some assurance that any future chiropractor reviews will not be reciprocated.

In addition, it has been stated and outlined in many instances in the past that utilization review does not constitute the practice of medicine, in this case, the practice of chiropractic. Utilization review is widely viewed as an insurance decision, and is both a cost containment and quality control mechanism. The quality control benefits are vital to patients' interests to obtain the highest quality of care. As a pure insurance coverage decision, the issue of elevating utilization review to the level of practicing medicine is ludicrous.

In addition, authorities finding that utilization review decisions are not the practice of medicine, focus on the benefits that the practice provides. For instance, it can be noted that the policy prevents unnecessary treatment, in turn, keeping health care costs down. Defining utilization review as the practice of chiropractic will increase costs and limit accessibility to health care. Because these decisions involve coverage and reimbursement determinations only, they do not prohibit a patient from receiving care. In fact, it can be pointed out that the decision to forego treatment is often the result of the consultation between a physician and a patient.

Lastly, medical directors and those responsible for utilization review are directly given the responsibility for clinical protocols, quality assurance activities and utilization management of health plans. This rule attempts to usurp the powers of the medical director, a licensed physician, from their scope of practice. To highlight the absurdity of the proposed rule, one could argue that the rule prevents a utilization review administrator or medical director from reviewing chiropractic treatments and authorizing payment of such treatment. This highlights the fact that this is clearly a business and contractual decision and not an issue of the practice of chiropractic.

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# WISCONSIN INSURANCE ALLIANCE

44 EAST MIFFLIN STREET • SUITE 305  
MADISON, WISCONSIN 53703  
(608) 255-1749  
FAX (608) 255-2178  
wial@execpc.com  
www.wisinsal.org

Eric Englund  
President

December 2, 1999

Mark Afable  
Chairperson  
American Family Insurance  
Charles Stern  
Vice-Chairperson  
Wisconsin Mutual Insurance  
Andy Franken  
Secretary/Treasurer  
Wausau Insurance Companies

Department of Regulation and Licensing  
Office of Administrative Rules  
Post Office Box 8935  
Madison, WI 53708

#### Members:

RE: Proposed Creation of Chir 4.06 Relating to Utilization Reviews

American Family Insurance  
American Standard Insurance  
Badger Mutual Insurance  
Capitol Indemnity Corporation  
Church Mutual Insurance  
CUNA Mutual Insurance Group  
Dairyland Insurance  
1st Auto & Casualty  
General Casualty Insurance  
Germantown Mutual Insurance  
GRE Insurance Group  
Heritage Insurance  
IDS Property Casualty Insurance  
Integrity Mutual Insurance  
Jewelers Mutual Insurance  
Manitowoc Cty. Mutual Insurance  
Maple Valley Mutual Insurance  
Milwaukee Insurance Group  
Milwaukee Mutual  
Old Republic Surety Company  
Partners Mutual Insurance Company  
Progressive Northern Ins. Cos.  
Retail Lumbermens Mutual Insurance  
Rural Mutual Insurance Company  
Secura Insurance  
Sentry Insurance  
Sheboygan Falls Insurance  
Society Insurance  
United Wisconsin Insurance  
Waukesha Co. Mutual Insurance  
Wausau Insurance Companies  
WEA Insurance Group  
West Bend Mutual Insurance  
Wilson Mutual Insurance  
Wisconsin American Mutual  
Wisconsin Assoc. of Mutual Ins. Cos.  
Wisconsin Mutual Insurance

Gentlepeople:

This letter will supplement our registration in opposition to the captioned rule at the 11/18/99 public hearing.

We believe the rule is in contravention to the underlying statutes. We specifically call your attention to section 632.87(3)(b)1, Stats. The proposed rule is clearly in contravention to that statute for a number of reasons including the following:

1. The statute allows action by peer review committees which must only "include" a licensed chiropractor. The rule is contrary to the statute and mandates only chiropractic review.
2. The statute does not define a licensed chiropractor as being one licensed in the state of Wisconsin. The rule is contrary to the statute and limits the chiropractor to a Wisconsin license.
3. The statute does not define a licensed chiropractor as being someone who has been licensed for a period of at least two years.

The rule is also in contravention to section 804.10, Stats. The right of parties in tort litigation to undertake independent medical examinations is well settled. Not knowing the definition of a "utilization review", it appears possible to suggest that such a "review" might be an independent medical examination emanating from section 804.10. The statute imposes no constraint similar to those under proposed Chir 4.06. Assuming that proposed Chir 4.06 would apply to an independent medical examination arising from a tort claim, the rule is clearly in contravention to that statute.

#### Associate Members:

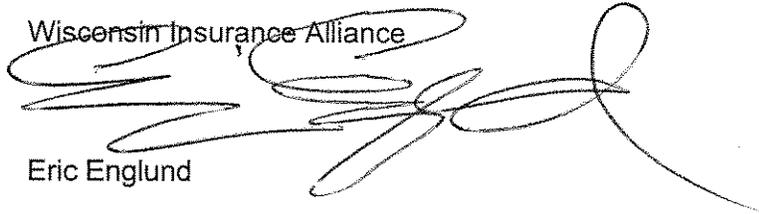
AAA/Michigan/Wisconsin  
Allstate Insurance  
Farmers Insurance  
Liberty Mutual  
Nationwide Indemnity  
Rockford Mutual Ins. Co.  
State Auto Ins. Cos.  
State Farm Insurance  
St. Paul Companies  
Viking Insurance Company

The law is well settled in Wisconsin that administrative rules may not be contrary to underlying statutes. Proposed Chir 4.06 is contrary to the statutes cited above and for those reasons should not be approved.

Respectfully submitted,

Wisconsin Insurance Alliance

Eric Englund

A handwritten signature in black ink, appearing to read 'Eric Englund', is written over the printed name. The signature is stylized with several loops and a long horizontal stroke at the end.

## Wisconsin Association of Health Plans

William L. Carr  
President

Nancy J. Wenzel  
Executive Director

December 2, 1999

To: Members, Chiropractic Examining Board

From: Julie A. Daggett  
Director of Government Affairs

RE: **Clearinghouse Rule (CR) 99-147, Chiropractic Utilization Review**

Wisconsin health plans strongly object to the proposed modifications in CR 99-147 related to chiropractic utilization review. Wisconsin health plans urge you to withdraw CR 99-147 in its entirety.

- CR 99-147 is in direct conflict with current Wisconsin law (s. 632.87(3)(b)1.). That provision specifically allows for the review of a chiropractor's recommendation by non-chiropractors. The law states that a chiropractor's recommendation may be reviewed by a licensed chiropractor or by a peer review committee that includes a licensed chiropractor.

CR 99-147 is also in conflict with an Attorney General's opinion (OAG 95-79), requested by the Chiropractic Examining Board, which clearly concludes that Wisconsin law provides that physicians may advise their patients whether or not continued chiropractic care is necessary and that physicians have full authority to treat the sick.

Therefore, any effort to restrict chiropractic utilization review to chiropractors is in conflict with Wisconsin Statutes.

- There is no rationale for limiting the performance of chiropractic utilization reviews to chiropractors licensed in Wisconsin. There is no evidence that chiropractors licensed in other states and in good standing are not qualified to perform utilization reviews. Limiting the process to in-state chiropractors, in fact, creates a serious conflict of interest.

Thank you for the opportunity to submit comments on CR 99-147. Please call me at 608-255-8599 with any questions.

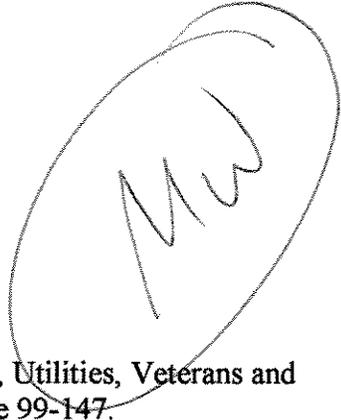
# Wisconsin Association of Health Plans

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APR 02 2001

April 2, 2001

TO: Senator Rod Moen  
FROM: Nancy J. Wenzel   
RE: Clearinghouse Rule 99-147



I am writing to request that the Senate Committee on Health, Utilities, Veterans and Military Affairs hold a public hearing on Clearinghouse Rule 99-147.

The Wisconsin Association of Health Plans believes that this rule requires legislative scrutiny for the following reasons:

- The rule is inconsistent with the statute (s. 632.875, Wis. Stats.) it is apparently intended to implement. The Legislature considered and rejected a proposal to require that persons performing chiropractic reviews provide their name and address. The proposed rule [s. Chir 4.06 (2) (a)] attempts to thwart legislative intent by imposing this requirement through the Administrative Code.
- The rule attempts to revisit the debate on independent external review legislation and usurp the authority of the Office of the Commissioner of Insurance to promulgate rules to implement the independent external review process. The statutes [s. 632.835 (4) (a)] give the Insurance Commissioner the authority to certify independent review organizations, which must "demonstrate to the satisfaction of the commissioner that (they are) unbiased." The statutes [s. 632.835 (6)] further require that independent review organizations be free of conflicts of interest.
- S. 632.835 (6m) establishes the statutory qualifications of clinical peer reviewers used by independent review organizations. Proposed ss. Chir 4.06 (1) (b) and (c) are inconsistent with s. 632.835 (6m) (b), which requires clinical peer reviewers to be licensed but does not require Wisconsin licensure. A Wisconsin licensure requirement may significantly reduce the number of organizations that are eligible to be certified as independent review organizations and may pose a problem for health plans that operate in border areas.

- Proposed s. Chir 4.06 (1) defines utilization review as “the practice of chiropractic.” The rule’s definition is a major expansion of the term as contemplated by the statutes [s. 446.01 (2)]:

“The practice of chiropractic means: (a) To examine into the fact, condition or cause of departure from complete health and proper condition of the human; to treat without the use of drugs as defined in s. 450.01 (10) or surgery; to counsel; to advise for the same for restoration and preservation of health or to undertake, offer, advertise, announce or hold out in any manner to do any of the aforementioned acts, for compensation, direct or indirect or in expectation thereof; **and** (b) To employ or apply chiropractic adjustments and the principles or techniques of chiropractic science in the diagnosis, treatment or prevention of any of the conditions described in s. 448.01 (10).

The statutes clearly do not support the inclusion of utilization review in the definition of the practice of chiropractic. **Chiropractic utilization review is not the practice of chiropractic. It is a review of chiropractic practices.**

- Proposed s. Chir 4.06 (1) (c) would require that any person who performs a chiropractic utilization review have 10 years of continuous clinical chiropractic experience. This requirement seems incongruous. It is saying that a newly licensed chiropractor with minimal or no clinical experience is authorized to actually treat patients, but not to review paper work to assess medical necessity or appropriateness of treatment. From a patient safety standpoint, this requirement sends an unusual message, to say the least.

It is clear that the proposed rule raises legitimate issues of statutory authority. The Wisconsin Association of Health Plans urges you to hold a public hearing so these issues are given full consideration before enactment of the rule.

Please do not hesitate to contact me at 608-255-8599 if you have any questions or would like additional information.



**Wisconsin Chiropractic Association**

521 E. Washington Avenue  
Madison, WI 53703  
Tel. (608) 256-7023 • Fax (608) 256-7123

APR 06 2001

**BOARD OF DIRECTORS**

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Russell A. Leonard  
Executive Director

April 4, 2001

Senator Rod Moen, Chair  
Senate Committee on Health, Utilities, Veterans and Military Affairs  
PO Box 8953  
Madison, WI 53708

Dear Senator Moen:

The Wisconsin Chiropractic Association has had the opportunity to review Clearinghouse Rule 99-147 dealing with the utilization review of chiropractic claims.

The WCA anticipates that the passage of the "independent review" legislation will address the most serious abuses that occur with the review of chiropractic claims. As a result, we do not support this rule.

Sincerely,

  
Russell A. Leonard  
Executive Director

*Rod -  
Hearing on  
this Weds.  
- MW  
Thanks!*

# WISCONSIN INSURANCE ALLIANCE

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## MEMORANDUM

Eric Englund  
President

Ted Nickel  
Chairperson  
Church Mutual Insurance

Kip Kobussen  
Vice-Chairperson  
General Casualty Insurance Company

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Secretary/Treasurer  
Partners Mutual Insurance Company

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**TO:** Senate Committee on Health, Utilities, Veterans  
and Military Affairs

**FROM:** Eric Englund

**DATE:** April 9, 2001

**RE:** Clearinghouse Rule 99-147 – Chiropractic “Utilization Review”

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We appear in opposition to this rule.

Our objections are three-fold:

- 1) “Utilization review” is not defined
- 2) Assuming that the term “utilization review” entails the independent evaluation of chiropractic treatment then the application of the rule to property and casualty coverage exceeds the scope of existing statute.
- 3) The rule places irrational and unsubstantiated restrictions on the pool of individuals who can provide a necessary service.

### WHAT IS UTILIZATION REVIEW?

On its face, the rule provides no definition for utilization review. In fact, the Legislative Council Rules Clearinghouse Report questioned whether “utilization review” should be defined. Does it include a review of chiropractic records in auto insurance files? Does it apply to a computerized review matching treatments against predetermined standards? Does it include screening done by a nurse or some other non-chiropractor who has a responsibility to count the number of visits and the charges for each visit? Is it meant to apply to first party property and casualty insurance coverage such as medical pay, uninsured motorist and/or underinsured motorist? Does it apply to third party property and casualty coverage?

The term “utilization review” is neither defined nor has a meaning sufficiently understandable to property and casualty insurers.

## THE RULE APPEARS TO EXCEED THE SCOPE OF STATUTORY AUTHORITY

Assuming that the rule is meant and/or might be interpreted to apply to property and casualty coverage, the rule appears to exceed statutory authority. Section 632.875 of the Wisconsin Statutes sets forth parameters for independent evaluations relating to chiropractic treatment. Assuming that such "independent evaluations" might be included in the scope of definition of "utilization review," we call to this committee's attention Section 632.875 (5) which specifically excludes from the scope of the statute both worker's compensation insurance (see Section 632.875 (5) (a)) and other lines of property and casualty insurance except disability insurance (see Section 632.875 (5) (b)). Section 632.875(5)(b) specifically states that "disability insurance" does not include uninsured motorist coverage, underinsured motorist coverage or medical payment coverage.

Administrative agencies do not have the authority to exceed statutory mandate. The Wisconsin Legislature has spoken in Section 632.875 by defining independent evaluations and specifically excluding from the scope of that definition property and casualty insurance coverage.

## IRRATIONAL RESTRICTIONS

The rule is clearly meant to restrict review in a manner which does not appear to have any rational basis in law or fact. Why must a chiropractor have two years of practice in Wisconsin as a condition to providing this service? Why must a chiropractor have at least 10 years of continuous clinical chiropractic experience? Why must the content of the review be specified? Why does the rule effectively reduce the pool of reviewers and concentrate the process in the hands of the few?

## CONCLUSIONS

For the reasons stated above, we strenuously object to the rule as proposed.

99-147



WISCONSIN STATE SENATE

**RODNEY C. MOEN**

SENATOR - 31ST DISTRICT

Senator Peggy Rosenzweig, Member  
Senate Committee on Health, Utilities  
and Veterans and Military Affairs  
Room 305, 100 N. Hamilton

State Capitol, P.O. Box 7882, Madison, Wisconsin 53707-7882 Phone: (608) 266-8546 Toll-free: 1-877-ROD-MOEN

**To:** Members, Senate Committee on Health, Human Services, Aging, Corrections,  
Veterans and Military Affairs

**Info:** Laura Rose, Legislative Council

**From:** Senator Rod Moen, Chair

**Re:** Paper Ballot Motions

**Date:** April 12, 2001

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Attached please find a paper ballot motion recommending modifications to Clearinghouse Rule 00-091, relating to licensing of emergency medical technicians-paramedic and approval of emergency medical technicians-paramedic operational plans. Also attached is a paper ballot motion recommending that the Chiropractic Examining Board withdraw Clearinghouse Rule 99-147, relating to utilization reviews.

Please return your ballots to my office by 10:00 AM on Monday, April 16, 2001. If you have any questions, please do not hesitate to contact me.

MOTION: CLEARINGHOUSE RULE 99-147, RELATING TO UTILIZATION REVIEWS.

**Move adoption of the following motion:**

Moved: That the Senate Committee on Health, Utilities and Veterans and Military Affairs recommend that the Chiropractic Examining Board withdraw Clearinghouse Rule 99-147. If the Chiropractic Examining Board does not withdraw the Clearinghouse Rule 99-147 by 5:00 pm on May 1, 2001, then the committee objects to the promulgation of the rule on the grounds set forth in Chapter 227.19(4)(d)(5) and moves that Clearinghouse Rule 99-147 be referred to the Joint Committee on the Review of Administrative Rules for appropriate action.

Aye  
 No

Signature: \_\_\_\_\_

*Scott Fitzgerald*

Date: \_\_\_\_\_

*16 April 81*

MOTION: CLEARINGHOUSE RULE 99-147, RELATING TO UTILIZATION REVIEWS.

**Move adoption of the following motion:**

Moved: That the Senate Committee on Health, Utilities and Veterans and Military Affairs recommend that the Chiropractic Examining Board withdraw Clearinghouse Rule 99-147. If the Chiropractic Examining Board does not withdraw the Clearinghouse Rule 99-147 by 5:00 pm on May 1, 2001, then the committee objects to the promulgation of the rule on the grounds set forth in Chapter 227.19(4)(d)(5) and moves that Clearinghouse Rule 99-147 be referred to the Joint Committee on the Review of Administrative Rules for appropriate action.

Aye  
 No

Signature: Frank Meyer

Date: 4/16/01

MOTION: CLEARINGHOUSE RULE 99-147, RELATING TO UTILIZATION REVIEWS.

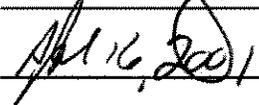
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Aye  
 No

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

MOTION: CLEARINGHOUSE RULE 99-147, RELATING TO UTILIZATION REVIEWS.

**Move adoption of the following motion:**

Moved: That the Senate Committee on Health, Utilities and Veterans and Military Affairs recommend that the Chiropractic Examining Board withdraw Clearinghouse Rule 99-147. If the Chiropractic Examining Board does not withdraw the Clearinghouse Rule 99-147 by 5:00 pm on May 1, 2001, then the committee objects to the promulgation of the rule on the grounds set forth in Chapter 227.19(4)(d)(5) and moves that Clearinghouse Rule 99-147 be referred to the Joint Committee on the Review of Administrative Rules for appropriate action.

Aye

No

Signature: \_\_\_\_\_

*R.C. Moran*

Date: \_\_\_\_\_

*4-18-01*

MOTION: CLEARINGHOUSE RULE 99-147, RELATING TO UTILIZATION REVIEWS.

**Move adoption of the following motion:**

Moved: That the Senate Committee on Health, Utilities and Veterans and Military Affairs recommend that the Chiropractic Examining Board withdraw Clearinghouse Rule 99-147. If the Chiropractic Examining Board does not withdraw the Clearinghouse Rule 99-147 by 5:00 pm on May 1, 2001, then the committee objects to the promulgation of the rule on the grounds set forth in Chapter 227.19(4)(d)(5) and moves that Clearinghouse Rule 99-147 be referred to the Joint Committee on the Review of Administrative Rules for appropriate action.

Aye

No

Signature: \_\_\_\_\_

*Judy Robson*

Date: \_\_\_\_\_

*4-16-01*

MOTION: CLEARINGHOUSE RULE 99-147, RELATING TO UTILIZATION REVIEWS.

**Move adoption of the following motion:**

Moved: That the Senate Committee on Health, Utilities and Veterans and Military Affairs recommend that the Chiropractic Examining Board withdraw Clearinghouse Rule 99-147. If the Chiropractic Examining Board does not withdraw the Clearinghouse Rule 99-147 by 5:00 pm on May 1, 2001, then the committee objects to the promulgation of the rule on the grounds set forth in Chapter 227.19(4)(d)(5) and moves that Clearinghouse Rule 99-147 be referred to the Joint Committee on the Review of Administrative Rules for appropriate action.

Aye

No

Signature: \_\_\_\_\_

*Roger Breshe*

Date: \_\_\_\_\_

*4/12/01*

MOTION: CLEARINGHOUSE RULE 99-147, RELATING TO UTILIZATION REVIEWS.

**Move adoption of the following motion:**

Moved: That the Senate Committee on Health, Utilities and Veterans and Military Affairs recommend that the Chiropractic Examining Board withdraw Clearinghouse Rule 99-147. If the Chiropractic Examining Board does not withdraw the Clearinghouse Rule 99-147 by 5:00 pm on May 1, 2001, then the committee objects to the promulgation of the rule on the grounds set forth in Chapter 227.19(4)(d)(5) and moves that Clearinghouse Rule 99-147 be referred to the Joint Committee on the Review of Administrative Rules for appropriate action.

Aye

No

Signature:

Mary A. Lajick

Date:

April 16, 2001

MOTION: CLEARINGHOUSE RULE 99-147, RELATING TO UTILIZATION REVIEWS.

**Move adoption of the following motion:**

Moved: That the Senate Committee on Health, Utilities and Veterans and Military Affairs recommend that the Chiropractic Examining Board withdraw Clearinghouse Rule 99-147. If the Chiropractic Examining Board does not withdraw the Clearinghouse Rule 99-147 by 5:00 pm on May 1, 2001, then the committee objects to the promulgation of the rule on the grounds set forth in Chapter 227.19(4)(d)(5) and moves that Clearinghouse Rule 99-147 be referred to the Joint Committee on the Review of Administrative Rules for appropriate action.

Aye

No

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*[Handwritten Signature]*  
4-16-01

MOTION: CLEARINGHOUSE RULE 99-147, RELATING TO UTILIZATION REVIEWS.

**Move adoption of the following motion:**

Moved: That the Senate Committee on Health, Utilities and Veterans and Military Affairs recommend that the Chiropractic Examining Board withdraw Clearinghouse Rule 99-147. If the Chiropractic Examining Board does not withdraw the Clearinghouse Rule 99-147 by 5:00 pm on May 1, 2001, then the committee objects to the promulgation of the rule on the grounds set forth in Chapter 227.19(4)(d)(5) and moves that Clearinghouse Rule 99-147 be referred to the Joint Committee on the Review of Administrative Rules for appropriate action.

Aye

No

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*[Handwritten Signature]*  
*[Handwritten Date: April 12, 2001]*