

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## *RULES CLEARINGHOUSE*

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## CLEARINGHOUSE RULE 95-015

### 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 October 1994.]**

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

a. The first paragraph of the “Notice of Hearing” indicates that a hearing will be held “to consider the repeal and recreation, and creation of ss. Ins 18.06 and 18.07, Wis. Adm. Code....” However, the rule concerns the renumbering of s. Ins 18.06, the creation of s. Ins 18.06 (2) and (3) and the repeal and recreation of s. Ins 18.07 (5) (b) and (bg) 1. and 2. The “Notice of Hearing” should be corrected to reflect this.

b. The first paragraph of the proposed order incorrectly indicates that the order is to “renumber Ins 18.06 (1), (2), (3) and Note; to repeal and recreate s. Ins 18.07 (5) (b) and (bg) 1. and 2. and to create s. Ins 18.06 (2), (3) and Note....” The paragraph should state that the order is to “renumber Ins 18.06; to repeal and recreate s. Ins 18.07 (5) (b) and (bg) 1. and 2.; and to create Ins 18.06 (2), (3) and Note....”

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

a. The following comments pertain to the first sentence in s. Ins 18.06 (3) which indicates that “[a]n insurer that makes an error in its assessment form reporting may file a corrected report with the plan”:

- (1) The word “reporting” should be deleted from the phrase “assessment form reporting” so that the term “assessment form,” which is referred to in s. Ins 18.06 (2), is consistently used. Similarly, the term “corrected report” should be changed to “corrected assessment form.”

- (2) The phrase “with the plan” should be changed to “with the office” in order to be consistent with s. Ins 18.06 (2) regarding where an assessment form is filed.
- (3) The first sentence indicates that filing a corrected report is optional. This appears to be inappropriate if the insurer discovers an error indicating that there was an **underpayment** of assessments. If filing an amended assessment form is mandatory in such cases, this should be clearly stated.

b. The following comments pertain to the second sentence in s. Ins 18.06 (3) which indicates that “[i]f the error resulted in an overpayment of assessments to the plan in the current or prior fiscal year, the board may credit or refund the insurer for the overpayment”:

- (1) The phrase “current...fiscal year” is unclear for two reasons. First, it is unclear when the “fiscal year” begins. For example, is it linked to the insurer’s fiscal year, is it a uniform date for all insurers, or does it begin on July 1 of each year? Second, it is unclear what “current” means. If it is meant to refer to the year in which the corrected assessment form is filed, this should be clearly stated.
- (2) The phrase “the board may credit or refund the insurer for the overpayment,” does not require the board to do either. The rule does not make clear on what basis the board may decide not to credit or refund an insurer. If it was intended that the board have such discretion, the rule should clarify the basis for the board’s determination. If, on the other hand, it was intended that the board has the choice of either crediting or refunding the insurer but must do one or the other, the phrase should be changed to “the board shall credit or refund the insurer for the overpayment.”

c. SECTION 4 of Clearinghouse Rule 95-15 provides that the rule-making order first applies to any health insurance risk-sharing plan policy issued or renewed after June 30, 1995. Although this provision may appear in the Administrative Register, the Office of the Commissioner of Insurance should consider placing the applicability provision in the body of s. Ins 18.07 for the benefit of a future rule reader.