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CLEARINGHOUSE RULE 00–169

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.]

1. Statutory Authority

a. Sections 632.83 (1) and 632.835 (1) (c), Stats., define the term "health benefit plan" in two different ways. Section Ins 18.01 (7) defines the term "health benefit plan" as a combination of the statutory definitions and includes specifically "Medicare + Choice, Medicare supplement and replacement plans." The statutory definitions should be used with respect to their applicable subjects; that is, the definition in s. 632.83, Stats., should be used with respect to internal grievance procedure requirements and the definition in s. 632.835, Stats., should be used with respect to independent review of adverse and experimental treatment determinations. Reference to Medicare plans only should be used if those plans can be included in the phrase "any hospital or medical policy or certificate" as used in s. 632.745 (11) (a), Stats.

b. Section Ins 18.02 (1) (a) and (8), refer to an "expedited grievance procedure." Presumably, the authority for requiring an expedited grievance procedure is derived from s. 632.83 (2) (a), Stats., which provides that every insurer must establish and use an internal grievance procedure that is approved by the commissioner. However, the rule should make clear that the expedited grievance procedure may be avoided under s. 632.835 (2) (d) 2., Stats., which provides that the internal grievance procedure is not necessary when an independent review organization determines that the health condition of an insured is such that requiring the insured to use the internal grievance procedure before proceeding to independent review would jeopardize the life or health of the insured or the insured's ability to regain maximum function.

c. Section Ins 18.02 (2) (c) provides that a notice to an insured must contain a statement that the grievance or independent review process need not be exhausted in order for an insurer to use some other unstated procedures. The rule should make clear that s. 632.835 (2) (c), Stats., generally provides that an insured must exhaust the internal grievance procedure before the insured may request an independent review. [See also s. Ins 18.04.]

d. Under s. 632.835 (5) (a), Stats., the commissioner is required to promulgate rules which include six specific items. Included are standards for determining whether an independent review organization is unbiased and standards addressing conflicts of interest by independent review organizations. [See s. 632.835 (5) (a) 2. and 6., Stats.] There appear to be no provisions in the rules addressing these requirements.

e. Section Ins 18.10 (1) (i) states that expedited review shall in no case take longer than 72 hours from the time of review. However, s. 632.835 (3), Stats., describes the length of time within which an independent review organization must undertake an expedited review. The statute provides different time periods in the event that following the ordinary procedure would jeopardize the life or health of the insured or the insured's ability to regain maximum function. Under that provision, the insurer must submit the information required within one day after receiving the notice of the request for independent review. The independent review organization must request any additional information within two business days within receiving the information and the insurer shall, within two days after receiving a request, submit any information requested or an explanation of why the information is not being submitted. Finally, the independent review organization must make its decision within 72 hours after the expiration of the time limits that apply in the matter. Allowing only a maximum of 72 hours from the time of the request conflicts with the statute.

2. Form, Style and Placement in Administrative Code

a. SECTION 1 of the rule should read: "Ins 9.33 is repealed." The treatment clause of SECTION 2 should read: "Chapter Ins 18 is created to read:". A chapter title should be created and the three following subchapters should be created: Definitions, Grievance Procedures and Independent Review Organizations.

b. Since s. Ins 18.01 includes all of the definitions in s. 632.835, Stats., the introduction simply should read: "In this chapter:".

c. In s. Ins 18.01 (4) (b), the phrase "would subject the insured" should be replaced by the phrase "the insured may be subject."

d. In s. Ins 18.01 (6), the phrase "as defined in this chapter" is unnecessary and should be deleted.

e. In s. Ins 18.01 (11) (e) 7., it appears that the word "above" should be replaced by the phrase "in this paragraph."

f. In s. Ins 18.02 (6), par. (b) should conclude with a period.

g. In ss. Ins 18.02 (8) and 18.10 (2) (e), the word "through" should be replaced by the word "to."

h. In s. Ins 18.10 (4), par. (e) does not follow grammatically from the introduction and should be placed elsewhere in the rule.

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

a. Section Ins 18.01 (8) should provide a more specific cross-reference.

b. Section Ins 18.10 (1) (h) refers to s. 632.835 (2) (e), Stats. The citation is incorrect.

c. Section Ins 18.12 refers to a form. The agency should ensure that the requirements of s. 227.14 (3), Stats., are met.

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

a. In the second sentence of the second paragraph in the analysis, the comma after the word "includes" should be deleted and a comma should be inserted after the word "insurers."

b. Section Ins 18.01 (4) (c) does not seem to add anything to the definition and probably should be deleted.

c. In s. Ins 18.01 (11) (f), the word "shall" should be replaced by the word "does." Also, what does the phrase "significant extent" mean?

d. In s. Ins 18.01 (12), a comma should be inserted after the word "by."

e. Section Ins 18.02 (2) (c) begins with an incomplete sentence. Presumably, the sentence refers to other alternative procedures. What are these alternative procedures? [See, also, sub. (3) (b).]

f. In s. Ins 18.04, "impose" should be inserted prior to "other requirements."

g. In s. Ins 18.10 (1) (i), the second sentence is an incomplete sentence.

h. Section Ins 18.10 (3) (a) is awkward and should be rewritten.

i. Section Ins 18.10 (4) appears to be a restatement of s. 632.835 (6m), Stats. Why is the statutory language not used? For example, compare s. Ins 18.10 (4) (d) to s. 632.835 (6m) (d).

j. Why do the provisions of the rule, such as ss. Ins 18.10 (1) (e) and 18.14 (2) (e) and (i), not refer to experimental treatment determinations?

k. Section Ins 18.16 (5) provides that an independent review organization may not bill the insured for the cost of the review. Perhaps a note should be included stating that s. 632.835 (3) (a) requires an insured to pay a $25 fee to an independent review organization and that the fee may be refunded if the insured prevails in a proceeding.