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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 04-079

#### 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 2002.]**

#### 1. Statutory Authority

a. Under s. 227.15 (1), Stats., an agency may not hold a public hearing on a proposed rule until the Clearinghouse Report is received. Based on the receipt date, the Clearinghouse Report was due no later than August 12, 2004. Therefore, a public hearing should not have been scheduled before that date. The commissioner has scheduled a hearing for August 11, 2004. To assist the commissioner in avoiding a conflict with the statutes, the Clearinghouse has expedited review.

b. Section 632.835 (1) (a) 4., Stats., relates to adverse determinations and requires that “the amount of the reduction or the cost or expected cost of the denied or terminated treatment or payment exceeds, or will exceed during the course of the treatment,” the adjusted dollar amount that is being established under s. Ins 18.105 pursuant to s. 632.835 (5) (c), Stats., before independent review may be requested. Section 632.835 (1) (b) 4., Stats., relates to experimental treatment determinations and requires the “cost or expected cost of the denied treatment or payment” to exceed this adjusted dollar amount before independent review may be requested.

Section Ins 18.105 refers to the adjusted dollar amount of the “cost, expected cost, or payment for treatment or course of treatment” that must be met in order to request independent review in accordance with s. 632.835 (1) (a) 4. and (b) 4., Stats. In its last sentence, s. Ins 18.105 also states that this amount will be used for adverse and experimental treatment determinations.

In contrast to the statutes, for adverse determinations, s. Ins 18.105 does not refer to the amount of the reduction or to the amount of the expected cost of denied or terminated treatment.

(For adverse determinations, for example, the amount of the reduction (not the cost of treatment) should exceed the adjusted dollar amount.) The statutory language relating to adverse determinations should be included in s. Ins 18.105. Also, the statutory language for experimental treatment determinations should match the language in the statutes. It would be preferable to use separate language for adverse determinations and experimental treatment determinations since the statutory provisions for them differ.

c. A similar comment applies to what should be s. Ins 18.12 (1) (b) 4. in SECTION 3. That provision deals with both adverse determinations and experimental treatment determinations but refers only to the “cost of treatment or course of treatment” exceeding the minimum amount. It should include the language from the statutes relating to both adverse determinations and experimental treatment determinations, preferably separately since the language is not identical.

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

a. In ss. Ins 18.10 (2) (d) and 18.12 (1) (b) 4., the reference to “s. 18.105” should be changed to “s. Ins 18.105.” [Section 1.07 (2), Manual.]

b. In s. Ins 18.105, the reference to “s. 632.835 (1) (a) 4. and (1) (b) 4., Stats.” should be changed to “s. 632.835 (1) (a) 4. and (b) 4., Stats.”

c. In SECTION 3 and in the first line of the text, the references to “Ins 18.12 (b) (4)” should be changed to “Ins 18.12 (1) (b) 4.” [See, also, the rule’s relating clause.]

d. In what should be shown as s. Ins 18.12 (1) (b) 4., all of the subdivision should be reproduced with the changes shown, not just part of the subdivision. [Section 1.06 (1), Manual.]

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

a. In the relating clause, hearing notice, and analysis, it would be useful to add the phrase “under a health benefit plan” so that the public is advised as to the context in which the independent review may be requested.

b. In the last sentence of item 8 of the rule preface, “There will be” should be changed to “The.”

c. In the last sentence of item 9 of the rule preface, “effected” should be changed to “affected.”

d. In the last sentence of item 11 of the rule preface, “with which” should be changed to “which.”

e. In s. Ins 18.10 (2) (d), the period following “(5) (c)” should be changed to a comma, that is, “ $\frac{1}{2}$ ”.

f. Section Ins 18.10 (2) (d) confusingly indicates that “Subject to s. 632.835 (5) (c)” the minimum amount is \$250, “or” as adjusted annually and posted in accordance with s. Ins 18.105.

If this “or” language is retained, it should be changed to refer to the greater of the two amounts. However, the rule would be easier to understand if s. Ins 18.10 (2) (d) were amended to simply refer to the amount published under s. Ins 18.105 as follows: “~~Subject Pursuant~~ to s. 632.835 (5) (c)...course of the treatment, ~~\$250~~ the amount published in accordance with s. Ins 18.105.”

g. Similarly, s. Ins 18.12 (1) (b) 4. refers to whether the cost of treatment or course of treatment is at least \$250, “or” as adjusted annually and posted in accordance with s. Ins 18.105. Again, if this “or” language is retained, it should be changed to refer to the greater of the two amounts. However, the rule would be easier to understand if s. Ins 18.12 (1) (b) 4., simply referred to “at least ~~\$250~~ the amount published in accordance with s. Ins 18.105.”

h. Section Ins 18.105 indicates that the commissioner must publish the dollar amount “on or *about* December 1 of each year.” (Emphasis added.) However, item 5 of the analysis indicates that it must be published “on or *before* December 1 of each year.” (Emphasis added.) This discrepancy should be reconciled.

i. In the first sentence of s. Ins 18.105, it would be useful to refer to the “consumer price index rate for urban consumers as determined by the U.S. Department of Labor” to avoid ambiguity as to how this amount rate is established.

j. In the first sentence of s. Ins 18.105, the reference to “January 1” should be changed to “the following January 1.” Also, it would be easier to understand if the sentence were broken into two sentences. For example, the first sentence could end after “s. 632.835 (5) (c), Stats.” The next sentence could read: “This adjusted dollar amount shall be met in order for...Stats.”

k. In all of the sections affected by the proposed rule, does the adjusted dollar amount that will go into effect each January 1 for the following year apply to when the treatment is received (if it has already been received) or when the request for review is filed? For example, if an adverse determination reduction of \$260 occurred in December for a service provided in November when the minimum amount was \$255 but the minimum amount changed January 1 to \$265, can the request be filed in January? This should be clarified.