WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 08-112

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

a. In the last sentence of the fifth paragraph of item 5. of the analysis, "ss. Ins 3.39" should be changed to "s. Ins 3.39."

b. Item 11. of the analysis states that the proposed rule does not have a significant impact on small businesses. This part of the analysis explains that no licensed insurers affected by the rule would qualify as a small business. Item 8. of the analysis also states that the insurers affected would not qualify as a small business. Item 10. of the analysis indicates that the proposed rule will not significantly impact the private sector.

However, the initial regulatory flexibility analysis indicates that the proposed rule may have a significant economic impact on small businesses, and the relating clause indicates that the rule affects small business. Further, the initial regulatory flexibility analysis indicates that the types of small businesses affected are "insurance agents, LSHO, Town Mutuals, Small Insurers, etc."

In contrast, items 8., 10., and 11. of the analysis do not mention insurance agents or the other entities referred to in the initial regulatory flexibility analysis.

The submission of the final proposed rule to the Legislature should take a consistent approach in providing information about the anticipated effect on small businesses.

c. In item a. of the initial regulatory flexibility analysis, the term represented by LSHO should be written out instead of using just the acronym. [See s. 1.01 (8), Manual.] In addition, use of the vague term "etc." in item a. should be avoided. [See s. 1.01 (9) (c), Manual.]

d. In s. Ins 3.39 (1) (b), "Advantage" should immediately follow the stricken material instead of preceding it. [See s. 1.06 (1), Manual.]

e. The second "paragraph" of s. Ins 3.39 (1) (b) should not be indented.

f. Section Ins 3.39 (1) (c) exists in current law. The rule shows s. Ins 3.39 (1) (c) as being all new underscored material, without showing the text in current s. Ins 3.39 (1) (c) as stricken. [See s. 1.06 (1), Manual.] If the intent is to delete the material in current s. Ins 3.39 (1) (c), it must be shown as stricken, followed by the underscored new material. If the intent is to amend s. Ins 3.39 (1) (c) to add the material shown as underscored, the material in current s. Ins 3.39 (1) (c) should be shown in plain print, followed by the underscored material. If the intent is to create a new paragraph, then it should not be designated as par. (c), unless the current par. (c) is renumbered.

g. Section Ins 3.39 (1) (c) uses the term "must be compliant" and the term "must comply." Both should be changed to "shall comply." [See s. 1.01 (2), Manual.] The entire rule should be reviewed with respect to inappropriate references to "must" rather than "shall." For example, see s. Ins 3.39 (18) (a) 1.

h. Prohibitions that are written as "shall not" should be changed to "may not." [See s. 1.01 (2), Manual.] The entire rule should be reviewed with respect to this problem. For example, see s. Ins 3.39 (4s) (a) 5., (17), and (30) (d).

i. Section Ins 3.39 (1) (c) refers to "s. 104 (c) of Medicare Improvements for Patients and Providers Act of 2008 (MIPPA)." It also refers to "s. 1882 (o) of the federal Social Security Act (42 U.S.C. Section 1395 et. seq.)." Both references should be changed to refer to the U.S. Code reference. A note may be included to refer to the name of the federal act. [See s. 1.07 (3) (a), Manual.]

A similar comment applies to s. Ins 3.39 (4s) (a) 18. and 20., (30) (c), and (30m) (c).

j. In SECTION 2, the material from s. Ins 3.39 (3) (intro.) should not be included as it is not being created.

k. In the first sentence of s. Ins 3.39 (3) (q), the period should not be underscored as it is not new material. [See s. 1.06 (1), Manual.]

l. Many provisions in the proposed rule include incomplete introductory language for the subunits that follow; thus, the relationship between the introductory language and the following subunits is often unclear. In general, introductory language should contain words like "all of the following:" or "any of the following:". [See s. 1.03 (2) (h), Manual.] (An example of appropriately drafted introductory language is s. Ins 3.39 (4s) (b) (intro.).)

The entire rule should be reviewed for this problem, including s. Ins 3.39 (4s) (intro.), (a) (intro.) and 21. (intro.), (c) (intro.), (e) (intro.), and (f) (intro.), (5m) (e) (intro.) (which apparently should refer to "any of the following:"), (g) (intro.), (h) (intro.), (i) (intro.), and (j) (intro.), (30m) (e) 1. (intro.), (i) 1. (intro.), (k) (intro.), and (p) (intro.), and (35) (a) (intro.).

Also, the lack of parallel structure in subunits creates confusion; the language in subunits preceded by introductory language should grammatically follow from the introductory language. For example, the subdivisions in s. Ins 3.39 (4s) (a) are drafted inconsistently, and the paragraphs following s. Ins 3.39 (4s) (intro.) have varying grammatical structures. The entire rule should be reviewed for this problem.

m. In s. Ins 3.39 (4s) (a) 1., the reference to "subs. (30m), respectively" should be changed to "sub. (30m)." [See 1.07 (2), Manual.]

n. In the fourth sentence of s. Ins 3.39 (4s) (a) 5., the phrase "as defined by s. 609.01 (2), Stats.," should be deleted since the term health maintenance organization is already defined for purposes of s. Ins 3.39 in s. Ins 3.39 (3) (L).

o. In s. Ins 3.39 (4s) (a) 7., the parentheses should be deleted, and the parenthetical material should be drafted as a separate sentence. [See s. 1.01 (6), Manual.]

In s. Ins 3.39 (36) (a) 4., the parentheses should be deleted, and the parenthetical material should be set off by commas.

p. In s. Ins 3.39 (4s) (a) 19., a period should replace the comma following "18".

q. Section Ins 3.39 (4s) (a) 21. (intro.) refers to "such coverages." In general, "such" should not be used in place of an article. [See s. 1.01 (9) (c), Manual.] The entire rule should be reviewed for this problem as the rule contains many references to "such."

r. Sections Ins 3.39 (4s) (b) 1. and 4., (c) 1., and (e) 1. should end with a period, rather than a semicolon. Also, at the end of s. Ins 3.39 (30m) (i) 1. a. and (r) 11., "; and" should be changed to a period. [See s. 1.03 (1) (b), Manual.]

s. In s. Ins 3.39 (4s) (b) 4. and 7., (d), (e) 2., and (f) 2. and (5) (intro.), a period should be inserted following "sub".

t. In s. Ins 3.39 (4s) (b) 7., "premiums therefore" should be changed to include more specific language. [See s. 1.01 (c), Manual.]

u. The treatment clause in SECTION 5 should also include the notation "(title)" since the title of s. Ins 3.39 (5) is also being amended. [See s. 1.05 (3) (a), Manual.] In addition, amendments to the title should be shown by strikethroughs and underscores. This means that the language "FOR POLICIES ISSUED AND EFFECTIVE PRIOR TO JUNE 1, 2010" should be shown as underscored. [See s. 1.05 (3) (b), Manual.]

v. The structure of s. Ins 3.39 (5m) should be revised. First s. Ins 3.39 (5m) (a) 1. indicates that the "following" standards apply. However, it is not clear what "standards" are

"following" as no standards are specified in s. Ins 3.39 (5m) (a) 1., and s. Ins 3.39 (5m) (a) 1. does not contain introductory language leading to subunits.

Second, the last sentence of s. Ins 3.39 (5m) (a) 2. includes introductory language. However, it is not followed by subdivision paragraphs that are subunits of s. Ins 3.39 (5m) (a) 2.

Third, s. Ins 3.39 (5m) (b) and (c) involve incomplete sentences that do not follow from any introductory language since s. Ins 3.39 (5m) (intro.) is not being created.

Fourth, s. Ins 3.39 (5m) (e) (intro.) refers to "the policy." However, because there is no introductory language preceding par. (e), it is unclear what "the policy" refers to.

Fifth, the subdivisions in s. Ins 3.39 (5m) (g), (h), (i), and (j) are not clearly linked to the language in s. Ins 3.39 (5m) (g) (intro.), (h) (intro.), (i) (intro.), and (j) (intro.), respectively.

w. In s. Ins 3.39 (5m) (d) 14., the parenthetical reference to "(AMA CPT)" does not appear to be needed.

x. In s. Ins 3.39 (5m) (g) 4., "thereafter" is unclear and should be eliminated. [See s. 1.01 (9) (c), Manual.] Also, "Consumer Price Index" should not be capitalized. [See s. 1.01 (4), Manual.] In addition, "twelve-month" should be changed to "12-month." [See s. 1.01 (5), Manual.]

y. The rule should be consistent with respect to how ordinals are written. For example, s. Ins 3.39 (5m) (h) 2. refers to "61st" and "90th." The first is the preferred drafting style. The entire rule should be reviewed for this problem.

z. In s. Ins 3.39 (5m) (h) 12. and (i) 12. and (30m) (n) (intro.), (q) 12., and (r) 12., "Secretary" should not be capitalized. [See s. 1.01 (5), Manual.]

aa. In s. Ins 3.39 (7) (a) (intro.), "subs. (4)" should be changed to "~~subs.~~ sub. (4)" to correct the error in the current rule.

bb. The treatment clause in SECTION 7 should indicate that "(7) (a) (intro.)" is being amended, rather than indicating that "(7) (a)" is being amended. Also, the semicolon at the end should be stricken and followed by an underscored colon.

cc. In s. Ins 3.39 (8) (c), "subs. (5), (5m), (7), and (30), (30m)" should be changed to "subs. (5), (5m), (7), ~~and~~ (30), and (30m)." [See s. 1.06 (1), Manual.]

dd. In the text of SECTION 9., the number "3.39 (15)" should precede the title. A similar comment applies to SECTION 11. The entire rule should be reviewed for instances of this error.

ee. In s. Ins 3.39 (18) (a) 3., a period should be inserted following "ch".

ff. In s. Ins 3.39 (24) (g), not all of the added language is shown as underscored. Specifically, "in any materials including advertisements as defined in s. [sic] 3.37 (5) (a)" should be underscored as it is being added. [See s. 1.06 (1), Manual.] Also, "s. 3.27 (5) (a)" should be changed to "s. Ins 3.27 (5) (a)." [See s. 1.07 (2), Manual.]

gg. The treatment clause in SECTION 12 should indicate that "3.39 (30) (a) 1. and 2., (b) (intro.), (c), and (j)" is being amended, rather than indicating that all of "3.39 (30)" is being amended.

Section Ins 3.39 (30) (d) should not be included in the treatment clause because no amendment is shown for s. Ins 3.39 (30) (d). Further, its text should not be included in the proposed order.

Also, no amendments are shown in the text for s. Ins 3.39 (30) (c). However, it should be listed in the treatment clause because there is an amendment to this provision. Specifically, "pursuant to this subsection" was changed to "pursuant to this subp." If this change is made, the old language should be over-stricken and the new language underscored. [See s. 1.06 (1), Manual.] On the other hand, the new language is incorrect, since "subp." is an incorrect citation. [See s. 1.07 (2), Manual.] It is not clear what change was intended. If any change is or is not made, the treatment clause and strike-throughs and underscoring should be adjusted accordingly.

hh. In s. Ins 3.39 (30m) (p), there are two subdivisions numbered 5. and two subdivisions numbered 6. This should be corrected.

ii. In s. Ins 3.39 (35), only one paragraph is created. At least two subunits at the same level must be created. [See s. 1.03 (1) (a), Manual.] Thus, what is drafted as (a) (intro.) should be numbered (35) (intro.), and what is drafted as (a) 1. to 6. should be numbered (a) to (f).

jj. In s. Ins 3.39 (35) (a) 1., the reference to "pars. (4s), (5m) and (30m)" should be changed to "subs. (4s), (5m), and (30m)." [See s. 1.07 (2), Manual.]

kk. The title to s. Ins 3.39 (36) (a) should be italicized. [See s. 1.05 (2) (d), Manual.] However, a title should not be included for paragraph (a) unless titles are also included for all of the paragraphs in s. Ins 3.39 (36). [See s. 1.05 (1), Manual.]

ll. The definitions in s. Ins 3.39 (36) (a) are not in alphabetical order. Specifically, subd. 1. is out of order. [See 1.01 (7) (a), Manual.]

mm. Section Ins 3.39 (36) (a) 5. uses the acronyms DNA and RNA. They should either be defined or the full phrase used. [See s. 1.01 (8), Manual.]

nn. The treatment clause of SECTION 14 indicates that s. Ins 3.39 Appendix 1 (intro.) is being amended. However, the amendments in the text are not shown; rather all of the text is underscored. New material should be underscored; language to be removed should be stricken; unamended text should be shown in plain print. [See s. 1.06 (1), Manual.] Thus, this provision should be revised.

oo. The treatment clause of SECTION 15 indicates that Appendices 2 and 3 are repealed. However, the treatment clause of SECTION 16 indicates that Appendices 2 and 3 are renumbered and created to read. SECTIONS 15 and 16 should be combined into one SECTION, with the treatment clause indicating that: "Ins 3.39 Appendices 2 and 3 are repealed and recreated to read:". [See s. 1.04, Manual.]

pp. The treatment clause of SECTION 18 should indicate that Appendices 4 and 5 are created to read. It is not necessary to refer to the renumbering, which occurred in a different treatment clause.

qq. In the Hospitalization row in the Medicare Part A Services and Supplies part of Appendix 6, the ampersands should be changed to "and."

rr. In the Medicare Benefits column in the Hospitalization row in the Medicare Part A Services and Supplies part of Appendix 6, "61st-90th" should be changed to "61st to 90th." [See s. 1.01 (9) (d), Manual.] A similar comment applies to several other entries in Appendix 6.

ss. SECTION 21 should include the title "EFFECTIVE DATE." [See s. 1.02 (4) (a), Manual.] Also, the second final period in that section should be deleted.

3. Conflict With or Duplication of Existing Rules

a. Section Ins 3.39 (30) (a) 1. indicates that s. Ins 3.39 (30) applies to Medicare select policies and certificates issued on or prior to June 1, 2010. Section Ins 3.39 (30m) (a) 1. indicates that s. Ins 3.39 (30m) applies to Medicare select policies and certificates issued on or after June 1, 2010.

These two provisions are inconsistent with regard to a policy or certificate actually issued on June 1, 2010. It appears that s. Ins 3.39 (30) (a) 1. should be amended to refer to policies or certificates issued prior to June 1, 2010.

b. Current s. Ins 3.39 (3) (w) defines Medicare supplement coverage as coverage that conforms to subs. (4), (5), (6), and (30). Should references to subs. (4s), (5m), and (30m) be added since those subsections are being created by the proposed order to also address Medicare supplement plans?

c. Current s. Ins 3.39 (3) (v) defines Medicare replacement coverage as coverage that conforms to subs. (4) and (7). Should a reference to sub. (4s) be added since that subsection is being created by the proposed order to also address Medicare replacement plans?

d. Current ss. Ins 3.13 (2) (j) 3. and 3.29 (7) (b) refer to Medicare supplement policies subject to s. Ins 3.39 (4), (5), and (6). Should references to s. Ins 3.39 (4s) and (5m) be added, since those subsections are being created by the proposed order to also address Medicare supplement policies?

It is assumed that, since ss. Ins 3.13 (2) (j) 3. and 3.29 (7) (b) do not currently refer to s. Ins 3.39 (30), a reference to s. Ins 3.39 (30m) was intentionally not added. Is that assumption correct?

e. Current s. Ins 3.29 (3) (a) refers to Medicare supplement policies subject to s. Ins 3.39 (4), (5), and (7). (Since s. Ins 3.39 (7) deals with Medicare replacement policies, rather than Medicare supplement policies, current s. Ins 3.39 (3) (a) should be reviewed for accuracy, that is, to determine whether the intended cross-reference should have been to s. Ins 3.39 (6), rather than s. Ins 3.39 (7).)

f. Should references to s. Ins 3.39 (4s) and (5m) be added to s. Ins 3.29 (3) (a), since those subsections are being created by the proposed order to also address Medicare supplement policies?

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

a. Section s. 628.38, Stats., is referred to twice in the second sentence of item 3. of the analysis. It should be referred to only once, that is, when describing the authority of the Office of the Commissioner of Insurance (OCI) to promulgate rules about disclosure requirements. Section 628.38, Stats., should not be referred to in the beginning of that sentence as a statute relating to Medicare supplement or Medicare replacement products.

b. In item 4. of the analysis, the reference to "Public Law 110-223" should be changed to "Public Law 110-233."

c. In the third sentence of the second paragraph of item 4. of the analysis, it appears that the phrase "to comply with the MIPPA and the NAIC requirements" should be changed to also refer to complying with GINA.

d. In s. Ins 3.39 (4s) (a) 7., should the reference to "s. Ins 3.13 (2) (c), (d) or (e)" be changed to "s. Ins 3.13 (2) (c), (d), and (e)"?

e. Section Ins 3.39 (4s) (b) 2. refers to "s. Ins 3.27, including ss. Ins 3.27 (5) (L), (9) (u), (v), (zh) 2. and 4." It creates confusion to add the "including" clause. If all of s. Ins 3.27 applies, then there is no reason to single out certain parts of it; to do so would create surplus language and ambiguity. If only parts of s. Ins 3.27 apply, then only those parts should be cited.

f. In the last sentence of s. Ins 3.39 (5m) (a) 1., "par. (5)" should be changed to "sub. (5)."

g. In the second sentence of s. Ins 3.39 (5m) (d) 6., it appears that the reference to "subd. 2." should be changed to "subd. 1." Also, a comma should follow that cross-reference as this is a compound sentence.

h. In the Note following s. Ins 3.39 (15), "par. (15)" should be changed to "sub. (15)." Also, the OCI form number should be inserted.

i. In s. Ins 3.39 (30) (j), the reference to "~~par~~subd.(i) of this ~~section~~par." is incorrect. First, "(i)" is a paragraph and should not be referred to as a subdivision. Second, the resulting reference of a paragraph to a paragraph would be incorrect. [See s. 1.07 (2), Manual.] Third, "of this section" is not included in the current rule. Thus, if it is going to be added, all of that language should be shown as underscored, rather than being shown partly as plain print and partly as stricken. Fourth, if the resulting change is intended to be "of this par.," that should be written as "of this paragraph."

However, it appears that the citation in current s. Ins 3.39 (30) (j) to "pursuant to par. (i)" is the correct cross-reference and that s. Ins 3.39 (30 (j) should not be amended. If that is the

case, the text of par. (j) should not be shown in the proposed rule, and it should not be included in the treatment clause.

j. In the last sentence of s. Ins 3.39 (30m) (e) 1. e., it appears that the reference to "This paragraph" should be changed to "This subd. 1. e." [See s. 1.07 (2), Manual.] However, if the intent was to refer to all of paragraph (e), then the provision should be moved to a separate subdivision in paragraph (e) so that it more clearly applies to the entire paragraph, instead of just to subdivision paragraph 1. e.

k. Section Ins 3.39 (30m) (i) 8. refers to the same type size as the designation required under "sub. (5m) (a)." However, s. Ins 3.39 (5m) (a) does not specifically refer to a type size. The correct cross-reference should be provided.

l. In the last sentences of both s. Ins 3.39 (30m) (m) 2. and (n) 2., it appears that "purposes of this paragraph" should be changed to "purposes of this subdivision."

m. In s. Ins 3.39 (36) (c) (intro.), "in (b)" should be changed to "in par. (b)."

n. In s. Ins 3.39 (36) (e), should the reference to "this section" be changed to "this paragraph" or "this subsection"?

o. Section Ins 3.39 (36) (f) indicates that certain activities will not be considered a violation. It would be helpful if the provision included a cross-reference about the provision that is not considered to have been violated, e.g., "a violation of this section."

p. In items (1), (2) (c), and (3) (b) under Notice in Appendix 2, the reference to "s. 600.03 (28p) a. and c., Stats." should be changed to "s. 600.03 (28p) (a) and (c), Stats."

q. In item (11). under the Medicare Supplement and Medicare Cost Premium Information provision in Appendix 2, the reference to something being listed in "subsection (11)" is unclear. There is no other item numbered (11) that is apparently being cross-referenced.

r. SECTION 17 renumbers Appendices 4 to 8 to Appendices 6 to 10. This means that all of the cross-references in other provisions to those appendices should also be amended to reflect the renumbering. These include the following:

- s. Ins 3.39 (7) (d) and (23) (d), which should be amended to refer to Appendix 7, rather than Appendix 5.
- s. Ins 3.39 (9) (b), which should be amended to refer to Appendix 10, rather than Appendix 8.
- s. Ins 3.39 (26) (b), which should be amended to refer to Appendix 9, rather than Appendix 7.
- s. Ins 3.39 (31) (a), which should be amended to refer to Appendix 8, rather than Appendix 6.

s. The parenthetical sentence at the beginning of Appendix 4 refers to "sub. (5m) (n) 1. and (o) 1." However, no such provisions exist. It appears that the intended reference is to "sub. (5m) (i) 1. and (j) 1."

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

a. In the initial regulatory flexibility analysis, paragraphs one to four and six are presumably internal instructions for OCI's own use in drafting and should not be included.

b. The relating clause for the proposed order refers to "Medicare supplement insurance." Since the proposed order also affects Medicare replacement insurance and since s. Ins 3.39 distinguishes Medicare replacement insurance from Medicare supplement insurance, it appears that the relating clause also should refer to Medicare replacement insurance.

In addition, it appears that various provisions in the analysis and in the proposed order should refer not only to Medicare supplement insurance but also to Medicare replacement insurance. While in some cases the omission of a reference to Medicare replacement insurance may have been intentional, the following items referring only to Medicare supplement insurance should be reviewed to determine whether the omission of a reference to Medicare replacement insurance was intentional: (1), the third paragraph of item 5. of the analysis; (2) the last sentence in item 5. of the analysis; and (3) s. Ins 3.39 (18) (intro.).

c. In the first sentence of the first paragraph of item 4. of the analysis, the comma following "Commissioners" should be deleted.

d. The first sentence of the first paragraph of item 4. of the analysis indicates that the Centers for Medicare and Medicaid Services (CMS) delegated the function of implementing the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). However, the sentence does not specify to whom this function was delegated.

e. In the first sentence of the second paragraph of item 4. of the analysis, "states insurance" should be changed to "state's insurance."

f. In the second sentence of the second paragraph of item 4. of the analysis, "several of Model Acts" should be changed to "several NAIC Model Acts." Also, the meaning of "frequently" is unclear. In addition, in the last sentence of that paragraph, the meaning of "current requirements" is unclear.

g. The second, third, and fourth paragraphs of item 5. of the analysis refer to "the office" without any prior reference as to what this means. Subsequent provisions in the analysis refer to "OCI." The analysis should be consistent in its references, preferably by initially referring to "the Office of the Commissioner of Insurance (OCI)" and then consistently referring later to "OCI."

h. The second paragraph of item 5. of the analysis refers to "the repeal of Appendices currently numbered 2 and 3." It should instead refer to "the repeal and recreation of Appendices 2 and 3."

i. The third paragraph of item 5. of the analysis indicates that Wisconsin is a "waived state." Because that term is not likely to be clear to some persons reviewing the proposed rule, the concept should be briefly explained.

j. In the last sentence of the third paragraph of item 5. of the analysis, "with that has" should be changed to either "with" or "that has."

k. The second sentence of the fourth paragraph of item 5. of the analysis indicates that "the office has had such benefit for over 3 years and will retain the benefit into the June 1, 2010 benefits." First, it appears that it would be more accurate to indicate that OCI has required this benefit, rather than indicating that OCI has itself had this benefit. Second, the reference to "such" should be changed to "this." Third, the reference to "the June 1, 2010 benefits" should be changed to refer to policies that become effective on or after June 1, 2010.

l. The fourth paragraph of item 5. of the analysis refers to "preventative." Provisions in s. Ins 3.39 refer to "preventive." One term should be selected and used consistently.

m. In the last paragraph of item 5. of the analysis, "disclosures benefits" should be changed to "disclosure of benefits."

n. The structure of the last sentence in item 5. of the analysis is confusing.

o. In the second sentence of item 6. of the analysis, "period to time" should be changed to "period of time."

p. In the last sentence of item 8. of the analysis, "per Medicare beneficiaries" should be changed to "per Medicare beneficiary."

q. In the last sentence of item 9. of the analysis, the verb "meet" should be changed to "meets" to be consistent with the subject "none." A similar comment applies to the last part of the third sentence of item 11. of the analysis.

r. In the last sentence of s. Ins 3.39 (1) (a), a comma should be inserted following "products" and preceding "including."

s. In s. Ins 3.39 (1) (c), the word "Further" should be deleted. Also, "gaps" should not be set off in quotation marks as if it were a term that has a special meaning. If it has a special meaning, then the term should be defined. A similar comment applies to the phrase "guaranteed renewable," which is set off in quotation marks in s. Ins 3.39 (4s) (a) 5.

t. In s. Ins 3.39 (1) (ce), it appears that three "to…" clauses should be set off by semicolons, and the other intervening semicolon should be deleted. Thus, it appears that the first clause should be revised to read: "to bill, charge, or collect a deposit, remuneration, or compensation from;".

u. In s. Ins 3.39 (4s) (a) 1., "statues" should be changed to "statutes."

v. The use of the word "respectively" in the last sentence of s. Ins 3.39 (4s) (a) 1. is confusing. Inclusion of the word "respectively" likely would be interpreted as meaning that for

the two different types of policies referred to--the first requirement applies to the first type of policy mentioned and the second requirement applies to the second type of policy mentioned. That is, it could be read as specifying that a Medicare cost policy cannot be issued without prior approval from the Commissioner and that a Medicare select policy cannot be issued without compliance with s. Ins 3.39 (30m). This would not impose a prior Commissioner approval requirement with respect to a Medicare select policy. Is that the intent? If not, the sentence should be revised.

w. In s. Ins 3.39 (4s) (a) 2., "shall not define" should be changed to "does not define" in order to maintain the parallel structure of that sentence.

x. The proposed rule sometimes refers to the "insurer" and sometimes refers to the "issuer." "Issuer" is defined for purposes of s. Ins 3.39 in s. Ins 3.39 (3) (p); "insurer" is not defined in s. Ins 3.39. Unless a difference is intended, one term should be selected and used consistently.

For example, s. Ins 3.39 (4s) (a) 5. is confusing as it refers in the second sentence to the "insurer" and refers in the fourth sentence to the "issuer." The entire rule should be reviewed for this inconsistency, including references to "insurer" in s. Ins 3.39 (4s) (f) (intro.), (17), (18) (a) (intro.) and 1. and (b), (30m) (t), and (35) (a) (intro.), 1., 3., and 6.

y. Many provisions in the proposed rule refer to a policy or certificate. However, some provisions refer only to a policy and omit reference to a certificate. This is sometimes done in an inconsistent manner which creates ambiguity. For example, s. Ins 3.39 (4s) (intro.) and (a) (intro.) refer to a policy or certificate; the first part of s. Ins 3.39 (4s) (a) 7. refers only to a policy; the middle part of s. Ins 3.39 (4s) (a) 7. refers to a policy or certificate; and the last part of s. Ins 3.39 (4s) (a) 7. refers only to a policy.

The entire rule should be reviewed to determine whether both a policy and certificate, or only a policy, should be referred to. A similar comment applies with respect to references to policyholder and certificate holder.

Examples of provisions to review include s. Ins 3.39 (4s) (a) 20., (c) 2., (e) (intro.), (30m) (k) 2., (q) 9., 10., and 11., (r) 10. and 11., (35) (a) 1. and 4., and (36) (a) 6. a. to c., (b), and (c) 2.

z. In s. Ins 3.39 (4s) (a) 8., "with and changes" should be changed to "with any changes."

aa. In s. Ins 3.39 (4s) (a) 10., "printing" should be changed to "printed in."

bb. In s. Ins 3.39 (4s) (a) 11. "10-point" should be changed to "10-point type." Also, it appears that, unless a reference to120-point type was intended, "120-point" should be changed to "12-point type."

cc. In s. Ins 3.39 (4s) (a) 15., "and that" should be changed to "and provides that."

dd. In s. Ins 3.39 (4s) (a) 19., the comma following "subd. 18" should be changed to a period. Also, "has loses" should be changed to "loses." In addition, the phrase "as of the date of

termination of the entitlement" (or a variation of that) is used three times. It appears that it should be included only once.

ee. In s. Ins 3.39 (4s) (a) 20., "under as group" should be changed to "under a group." Also, that subdivision specifies that a policy "shall provide, and contain within the policy." It is unclear what meaning "contain within the policy" has, since a requirement that a policy provide something presumably means that the language must be in the policy. If the phrase is merely repetitive, it should be deleted to avoid surplus language and ambiguity.

ff. In s. Ins 3.39 (4s) (a) 22., the references to "for under age 65" and "for age 65 and above" should be changed to refer to individuals who are those ages.

In s. Ins 3.39 (4s) (c) 3., "statutory mandated" should be changed to "statutorily mandated." Second, is that term intended to be all statutes described by s. 601.423, Stats., or specific statutes? This should be clarified. Third, s. Ins 3.39 (30m) (k) (intro.) uses the term "Wisconsin mandated benefits." If the terms are intended to have the same meaning, one term should be selected and used consistently to avoid ambiguity.

gg. Section Ins 3.39 (5) (intro.) would be clearer if the additional language immediately followed "policy or certificate."

hh. In s. Ins 3.39 (5m) (a) 1., "as Medicare supplement policy" should be changed to "as a Medicare supplement policy."

ii. In s. Ins 3.39 (5m) (d) (intro.), the comma following "coverages" should be deleted. Also, the colon should follow the close quotation mark, instead of preceding it.

jj. In s. Ins 3.39 (5m) (d) 9., "under Part B" should be changed to "under Medicare Part B."

kk. Section s. Ins 3.39 (5m) (e) 5. is confusing as it refers to a "co-payment or coinsurance" and then, in the last part, refers to a designation as a "co-payment," without reference to coinsurance. The specific dollar amounts mentioned appear to be more akin to a co-payment, not coinsurance. Should coinsurance be referred to? If so, should it also be referred to in the last part of the provision?

Also, s. Ins 3.39 (5m) (e) 5. should end with a period.

ll. In s. Ins 3.39 (5m) (e) 6., "Medicare's Part B" should be changed to "Medicare Part B."

mm. The proposed rule is inconsistent with respect to whether "co-payments" or "copayments" is hyphenated. Compare, for example, s. Ins 3.39 (5m) (e) 5. and 7. Also, the proposed rule is inconsistent with respect to whether "coinsurance" or "co-insurance" is hyphenated. Compare, for example, s. Ins 3.39 (5m) (i) 2. and 3. One approach should be used consistently.

nn. Section Ins 3.39 (5m) (e) 7. is confusing with respect to the concept of "coverage" versus the concept of "benefits." The first sentence refers to "coverage for benefits obtained

outside the United States." It appears that it would be more appropriate to refer to "coverage for services obtained outside the United States" since the benefit itself is not obtained outside the United States. Also, the third sentence indicates that "Coverage shall pay…." It appears that it would be more appropriate to indicate that benefits for covered services must be at least 80% of the billed charges (as further described).

oo. In the first sentence of s. Ins 3.39 (5m) (g) 3., it is not clear that the term "set deductible" differs from the term "deductible." Unless a different meaning is intended, the term "deductible" should be used.

Also, in the last sentence, "payment any deductible" should be changed to "payment for any deductible."

In s. Ins 3.39 (5m) (g) 4., the bracketed language "[$1900] should be changed to omit the brackets. This comment also applies to s. Ins 3.39 (5m) (h) 12. and (i) 12.

pp. In the second sentence of s. Ins 3.39 (17), "shall include only" should be changed to "may include only."

qq. In s. Ins 3.39 (18) (a) 1., it is not clear what "consent" is being referred to.

rr. In s. Ins 3.39 (24) (g), "'Medicare Wrap Around' and" should be changed to "'Medicare Wrap Around,'" since the final item in the series precedes "words."

ss. In s. Ins 3.39 (30m) (b) 5. and 6. and (36) (a) 6. (intro.), the comma following the defined term should be deleted.

tt. In s. Ins 3.39 (30m) (f) 1. "after 30 days" is unclear. If it is to be measured from 30 days after filing, the phrase "after 30 days" should be changed to "30 days after filing."

uu. In the first sentence of s. Ins 3.39 (30m) (i) 3., should a reference to copayments be added?

vv. Section Ins 3.39 (30m) (k) (intro.) requires a Medicare select issuer to have and use procedures for hearing complaints and resolving grievances, but that requirement applies only with respect to "Wisconsin mandated benefits." However, ss. 632.83 and 632.835, Stats., provide for an internal grievance procedure and independent review of adverse determinations that is not limited to "mandated benefits." Also, s. Ins 3.55 requires a benefit appeals process that applies to Medicare supplement policies (which, presumably includes a Medicare select policy, which is a type of Medicare supplement policy).

First, it is not clear whether the grievance procedure outlined in s. Ins 3.39 (30m) (k) is intended to supersede the processes described in ss. 632.83 and 632.835, Stats., and s. Ins 3.55. If so, it does not appear that there is statutory authority to limit the requirement in s. Ins 3.39 (30) (k) (intro.) to a grievance procedure only for mandated benefits.

Second, it is not clear what "Wisconsin mandated benefits" means in this context. Does it apply to all statutes described by s. 601.423, Stats., or to specific statutes?

Third, is the term "Wisconsin mandated benefits" intended to have a different meaning than the phrase "statutory mandated provisions," which is used in s. Ins 3.39 (4s) (c) 3.?

ww. Section Ins 3.39 (30m) (m) 1. and (n) 1. provides that, under certain circumstances, a Medicare select issuer must make available to an individual insured the opportunity to purchase "a Medicare supplement policy or certificate offered by the issuer, which has comparable or lesser benefits and which does not contain a restricted network provision." It is not clear whether: (1) the issuer must have available a comparable or lesser Medicare supplement policy or certificate; or (2) the issuer must offer a comparable or lesser Medicare supplement policy only if the issuer has such a policy or certificate available. This should be clarified.

xx. The relationship between s. Ins 3.39 (30m) (n) (intro.) and its subdivisions 1. and 2. is unclear. It appears that language should be added to s. Ins 3.39 (30m) (n) (intro.) such as: "If the secretary makes this determination, then all of the following apply:".

yy. Section Ins 3.39 (30m) (o) provides that a Medicare select issuer shall comply with "reasonable requests for data made by state or federal agencies." Who decides what is "reasonable"?

zz. In the last sentence of s. Ins 3.39 (30m) (p) 6. (first entry), "part B" should be "Part B."

aaa. Section Ins 3.39 (5m) (g) 4. refers to a specified deductible amount that is adjusted annually by the U.S. Secretary of Health and Human Services to reflect the change in the consumer price index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of $10. In contrast, s. Ins 3.39 (5m) (h) 12. and (i) 12., and (30m) (q) 12. and (r) 12. refer to adjusting the out-of-pocket limitation from a specific amount to an amount indexed each year by the "appropriate inflation adjustment" specified by the U.S. Secretary of Health and Human Services.

The latter provisions are vague when compared to s. Ins 3.39 (5m) (g) 4. If the same result is intended, then the latter provisions should be changed to duplicate the more explicit language in s. Ins 3.39 (5m) (g) 4.

bbb. In s. Ins 3.39 (30m) (q) and (r), most of the subdivisions refer to "as described in subd. 12." However, some of the subdivisions refer to "as described under subd. 12." It would be preferable to select one drafting approach and use it consistently.

ccc. In the last sentence of s. Ins 3.39 (30m) (s), "amendments, shall" should be changed to "amendments and shall."

ddd. In s. Ins 3.39 (35) (a) 1., "existing offering" should be changed to "existing."

eee. In s. Ins 3.39 (35) (a) 4., "event of the exchange" should be changed to "event of an exchange." Also, a comma should be inserted after "schedule."

fff. In s. Ins 3.39 (35) (a) 6., "apply pre-existing" should be changed to "apply a pre-existing."

ggg. Section Ins 3.39 (36) (a) (intro.) defines certain terms for s. Ins 3.39 (36) and also "for use in policies or certificates." This sentence does not make clear which policies or certificates the provision applies to.

hhh. In s. Ins 3.39 (36) (a) 1., "person action for" should be changed to "person acting for."

iii. In s. Ins 3.39 (36) (a) 6. d., does "Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits" include marketing? If so, is it the intent that that marketing be included in the definition of "underwriting purposes"?

jjj. In s. Ins 3.39 (36) (c) 1., "of the policy" should be changed to "of a policy."

kkk. In s. Ins 3.39 (36) (d), a period should be inserted following "par" in the phrase "par (b)." Also, it appears that "members and to" should be changed to "members to" or "members or to"—depending on what meaning is intended.

lll. In s. Ins 3.39 (e), "a payment determinations" should be changed to "a payment determination."

mmm. In item 7. under the Medicare Supplement and Medicare Cost Premium Information provision in Appendix 2, it appears that "beginning the first 60 days of a trip" should be changed to "during the first 60 days of a trip."

nnn. The appendices are inconsistent as to how coverage for blood is explained. For example, in Appendix 3, for the Hospital Supplement Part A, the entry for "Blood; First 3 pints" indicates that the policy pays for "First 3 pints." In contrast, the Part B Benefits in Appendix 3, the entry for "Blood; First 3 pints" indicates that, after a deductible, the policy pays for "All costs." There does not appear to be a difference, but the inconsistency creates confusion.

ooo. In the first column of Part B Benefits in Appendix 3, the period following "MEDICAL EXPENSES" and the period following the text in that block should be deleted (unless a period is added to all the other blocks). All of the appendices should be reviewed for inconsistent exclusion or inclusion of periods at the end of material in the blocks.

Also, the text in the blocks is inconsistent with respect to capitalization. For example, see the first entry under SERVICES in the first column in Appendix 4. In that case, "General" should not be capitalized. All of the appendices should be reviewed to make sure that capitalization is consistent.

ppp. In the second and third sentences of the first full paragraph of Appendix 4, it may be less confusing to the reader if the phrase "annual limit" were changed to "annual out-of-pocket limit." A similar comment applies to the first full paragraph of Appendix 5.

qqq. The parenthetical sentence at the beginning of Appendix 5 refers to "subs. (30m)." This should be changed to "sub. (30m)."

rrr. In the last sentence of the first full paragraph of Appendix 5., a comma should be inserted preceding "and" as this is a compound sentence.

sss. In the second column in the second row in the Medicare Select Part A part of Appendix 5, "additional 365_days" should be changed to "additional 365 days."

ttt. In the Policy Pays column under the Home Health Care entry under the Medicare Select Part B part of Appendix 5, the reference to "365 necessary visits for medically necessary services" is unclear. This suggests that coverage is for visits that are not only medically necessary but are also necessary under some other unspecified criteria.

uuu. The spacing of the last two or three entries in the first Medicare Benefits column in the Hospitalization row in the Medicare Part A Services and Supplies part of Appendix 6, compared to the second Medicare Benefits column in that table, is confusing because the same topics are not aligned across from each other.

Also, the last entry in the first Medicare Benefits column is shown as being amended to change "$0 beyond additional 365 days" to simply add "the" preceding "additional." If that is the only change, the material should not be shown as stricken with the same language shown as underscored new material. Rather, the new word "the" could be shown as underscored.

vvv. The third entry in the second Medicare Benefits column in the Hospitalization row in the Medicare Part A Services and Supplies part of Appendix 6 will result in language that is "All but $__ a day for 91st." The remainder of that entry is stricken. This is a confusing and incomplete description of the benefit.

www. In the first sentence of the last full paragraph of Appendix 6, "AND" should be inserted preceding "ONLY."

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

a. The second sentence of the first paragraph of item 4. of the analysis indicates that the "GINA law requires states to adopt necessary changes by September 24, 2009." This statement is inconsistent with GINA, which requires compliance with GINA requirements by May 21, 2009, but also provides that states will not be considered out of compliance until July 1, 2009. (The latter fact is correctly noted in item 6. of the analysis.)

In contrast to item 4. of the analysis, s. Ins 3.39 (36) (intro.) imposes the GINA requirements on issuers beginning on May 21, 2009. Thus, item 4. of the analysis should be corrected.

b. The second sentence of the first paragraph of item 4. of the analysis indicates that the GINA law requires states to have regulations in place for MIPPA by June 1, 2010. This appears to be an incorrect statement for two reasons. First, it appears that MIPPA, not GINA, requires the regulations for MIPPA to be in place. Second, it appears that September 24, 2009 is the date required by MIPPA for the MIPPA regulations to be in place, with those regulations to apply to policies issued on or after June 1, 2010. In contrast to the analysis, the proposed rule does apply

the MIPPA regulations to policies issued on or after June 1, 2010. Thus, the analysis should be corrected.

c. The title of s. Ins 3.39 (4) is being amended to apply to Medicare supplement and Medicare replacement policies issued or effective prior to June 1, 2010. However, titles are not part of the substantive law. [See s. 990.001 (6), Stats.] The text of s. Ins 3.39 (4) (intro.) imposes requirements on disability insurance policies or certificates that relate their coverage to Medicare or are structured, advertised, solicited, delivered, or issued for delivery prior to June 1, 2010 as a Medicare supplement or Medicare replacement policy, except as explicitly allowed in s. Ins 3.39 (5), (7), and (30). If the intent is that this applies only to policies that are issued or effective prior to June 1, 2010, it should be stated in the text of s. Ins 3.39 (4), not just in the title.

A similar comment applies to s. Ins 3.39 (4s).

Also, while the title of s. Ins 3.39 (4s) is being created to apply to Medicare supplement and Medicare replacement policies issued or effective on or after June 1, 2010, the text of s. Ins 3.39 (4), in pertinent part, prohibits a disability insurance policy or certificate that is ***advertised or solicited prior to June 1, 2010*** as a Medicare supplement or Medicare replacement policy unless it meets certain requirements or except as explicitly allowed in s. Ins 3.39 (5), (7), and (30). In contrast, under s. Ins 3.39 (4s), a disability insurance policy or certificate that relates its coverage to Medicare or is structured, advertised, solicited, delivered, or issued for delivery on or after June 1, 2010 as a Medicare supplement or Medicare replacement policy must meet certain requirements or be explicitly allowed in s. Ins 3.39 (5m) and (30m).

Thus, according to s. Ins 3.39 (4), a Medicare supplement or Medicare replacement policy provided for in s. Ins 3.39 (5m) or (30m) could not be advertised or solicited prior to June 1, 2010, even if the policy would not be effective until on or after June 1, 2010.

This appears to be inconsistent with the NAIC Model Act, which apparently would allow "2010 standardized plans" to be advertised and marketed prior to June 1, 2010, though they cannot have an effective date prior June 1, 2010. [Also see memo from Commissioner Dilweg to NAIC Members (October 7, 2008), Section 1, question 27. The memo is available at http://www.hapnetwork.org/assets/pdfs/hen/naic-medigap-standards.pdf.]

Also s. Ins 3.39 (30m) (q) (intro.) indicates that Medicare Select 50% Cost-Sharing Plans "offered" (rather than "issued") on or after June 1, 2010 must contain certain elements. This also appears to be inconsistent with the NAIC Model Act.

d. Section Ins 3.39 (36) prohibits an issuer of a Medicare supplement policy or certificate from taking certain actions on the basis of genetic information about an individual. Should Medicare replacement policies also be included?