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State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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REPORT ON Section Ins 9.01 (5), (9m), (10m), and (13), 9.015, 9.07(1), Subchapter III (title), 9.20 (intro.), 9.25 (4), 9.32 (2) (a), (f) and (fm), 9.41 and 9.42 (1) and (5) (a), Wis. Adm. Code, relating to defined network plans, preferred provider plans, and limited service health organizations and affecting small business

Clearinghouse Rule No 06-083

Submitted Under s. 227.19 (3), Stats.

(The proposed rule-making order is attached.)

(a) A detailed statement of basis for the proposed rule and how the rule advances relevant statutory goals or purposes:

The proposed changes implements the intent of ch. 609, Stats., and are within the Commissioner's authority to promulgate rules relating to preferred provider plans, defined network plans, and limited service health organizations in order to ensure enrollee access to health care services and ensure continuity of health care while recognizing the differences between preferred provider plans and defined network plans.

Specifically, the proposed rule modifies subchapter III title to reflect that defined network, preferred provider and limited service health organization plans are regulated within that subchapter. The proposed rule includes a new applicability provision intended to clarify that the Commissioner's intent to eliminate the application of ch. Ins 9, Wis. Am. Code, to insurers that offer preferred provider plans that also meet the subject matter contained in s. 632.745 (11) (b) 2., Wis. Stats. In furtherance of the Commissioner's intent, the rule eliminates use of the term "limited scope plan" from provisions throughout ch. Ins 9, Wis. Adm. Code, and replaces the term with the appropriate type of plan that is regulated by the provision.

The proposed rule changes the provisions governing utilization practices prohibiting improper use of utilization review or prior authorizations. It is the intent of the Commissioner to enforce this provision following the expiration of the current rule suspension. The proposed rule eliminates

the specific requirements for preferred provider plan participating providers relating to hours of operation, waiting times, network location and availability of after hours care retaining only that access to participating providers be reasonably prompt and consistent with normal practices and standards in the area.

Finally the rule clarifies that the coverage of emergency medical services by nonparticipating providers need only be provided to enrollees at the level of reimbursement as participating providers when nonparticipating providers have treated the patient in accordance with the federal EMTALA law requiring stabilizing treatment. It is the intent of the Commissioner to enforce this provision following the expiration of the current rule suspension.

(b) Summary of the public comments and the agency's responses to those comments:

Comment: Clarify scope of ch. Ins 9 as it relates to health care plans that cover limited range of services, including dental and vision.

Response: The Commissioner included a new applicability provision to clarify that health care plans offering limited-scope vision or dental preferred provider plans are not subject to the regulation of ch. Ins 9, Wis. Adm. Code.

Comment: Modify the utilization review requirement.

Response: The Commissioner modified the provision as requested.

(c) An explanation of any modifications made in proposed rule as a result of public comments or testimony received at a public hearing:

The Office created s. Ins 9.015, an applicability provision that clarifies that limited-scope dental and vision plans that offer the product as a preferred provider plan are not subject to the requirements of ch. Ins 9 as requested and supported by Delta Dental.

The Office modified s. Ins 9.25 (4), to reflect the requested modification from the Wisconsin PPO Association.

(d) Persons who appeared or registered regarding the proposed rule:

Appearances For:

Amy Boyer, Delta Dental

Appearances Against: None

Appearances For Information:

Dan Schwartz, Wisconsin PPO Association

Registrations For: None

Registrations Against: None

Registrations Neither for nor against:

Paul Merline, Wisconsin Association of Health Plans
Dan Hayes, Wisconsin Radiological Society
Robert E. Phillips, MD, Marshfield Clinic
Jeremy Levin, Wisconsin Medical Society
Sabrina Fox, Wisconsin Dental Association
Karen Geiger, Anthem Blue Cross and Blue Shield
Kathryn Ambelang, WPS Insurance Corp.

Letters received:

Testimony from Dan Schwartz.

(e) An explanation of any changes made to the plain language analysis of the rule under s. 227.14(2) or to any fiscal estimate prepared under s. 227.14(4).

The plain language analysis now contains an explanation of the exemption from ch. Ins 9, Wis. Adm. Code, for insurers offering preferred provider plans that also meet the subject matter of s. 632.745 (11) (b) 2., Wis. Stat., includes the change of subchapter III title, and includes a note of clarification of the effective dates for the utilization review and emergency medical provisions due to JCRAR rule suspension.

(f) The response to the Legislative Council staff recommendations indicating acceptance of the recommendations and a specific reason for rejecting any recommendation:

All comments were complied with and corrected except the following:

1. Statutory Authority:

(1) The Office created s. Ins 9.015, which is consistent with JCRAR's objection clarifying that limited-scope dental and vision plans are not subject to ch. Ins 9, Wis. Adm. Code. The amendments removing the term "limited scope" and inserting "preferred provider plan or limited service health organization" are permissible as the subject matter of the amendment does not have the substantive effect of continuing to include the type of plan that was the focus of JCRAR's objection.

(3) The Office repealed the objected provision in its entirety and separately created a new provision that is substantively different than the provision objected to by JCRAR as the new provision relates coverage to federal requirement under EMTALA as was JCRAR's direction to the Office. To the extent the new provision is inconsistent with JCRAR's intent when it suspended this section, the Office will work with JCRAR to lift the suspension to the extent necessary.

(g) The response to the report prepared by the small business regulatory review board:

The small business regulatory review board did not prepare a report.

(h) Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis is Not Required because the rule will not have a significant economic impact on a substantial number of small businesses.

(i) Fiscal Effect

See fiscal estimate attached to proposed rule.

Attachment: Legislative Council Staff Recommendations