Ins 3 Filed October 31, 1974
9:20 am GJP

STATE OF WISCONSIN )
) ss.
OFFICE OF THE COMMISSIONER OF INSURANCE)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, S. C. DuRose, Commissioner of Insurance and custodian of the official records of said office, do hereby certify that the annexed order amending and adopting rules relating to solicitation, underwriting and claims practices in accident and sickness insurance was issued by this office on October 31, 1974.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name in the City of Madison, State of Wisconsin, this 31st day of October, 1974.

S. C. DuRose
Commissioner of Insurance

STATE OF WISCONSIN
DEPARTMENT OF STATE
RECEIVED AND FILED
OCT 31 1974

ROBERT C. ZIMMERMAN
SECRETARY OF STATE

ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE

Amending and Adopting Rules

Pursuant to authority vested in the Commissioner of Insurance by section 601.41 (3), Wis. Stats., the Commissioner of Insurance hereby amends and adopts rules as follows:

Sections Ins 3.28 (title), Ins 3.28 (2), and Ins 3.28 (7) of the Wisconsin Administrative Code are amended to read and section Ins 3.31 of the Wisconsin Administrative Code is created to read:

Ins 3.28 Solicitation, underwriting and claims practices in individual and franchise accident and sickness insurance.

Ins 3.28 (2) SCOPE. This rule applies to the solicitation, underwriting and administration of any insurance issued by any insurer or fraternal benefit society under sections 204.31 or 204.32, Wis. Stats., except credit accident and sickness insurance under section 201.04 (4a), Wis. Stats., and to any contract, other than one issued on a group or group type basis as defined in Wisconsin Administrative Code section Ins 6.51 (3), issued by a plan subject to section 200.26, Wis. Stats. For the purpose of this rule, references to insurer, policy, and insurance agent or representative, also apply to organizations or associations operating non-profit plans, contracts, and persons within the scope of the rule, respectively.

Ins 3.28 (7) EFFECTIVE DATE. (a) Subsections (4), (5) (a), (b), (c), and (f) and (6) shall apply to all solicitation, underwriting, and claims activities, except under franchise insurance, relating to Wisconsin residents after March 1, 1974, except that paragraphs (6) (a) and (b) shall apply to policies issued after that date.

(b) Subsections (3) and (5) (d) and (e) shall apply to all solicitation, underwriting, and claims activities, except under franchise insurance, relating to Wisconsin residents after May 1, 1974.

(c) This rule shall apply to all solicitation, underwriting and claims activities under franchise insurance relating to Wisconsin residents after December 1, 1974, except that paragraphs (6) (a) and (b) shall apply to policies issued after that date and paragraphs (5) (d) and (e) shall apply to such activities after February 1, 1975.

Ins 3.31 Eligibility for and solicitation, underwriting and claims practices in group, blanket and group type accident and sickness insurance.

(1) PURPOSE. The purpose of this rule is to promote the fair and equitable treatment of Wisconsin residents in the solicitation, underwriting and administration of accident and sickness insurance and coverage issued by a plan subject to sections 185.981 or 200.26, Wis. Stats. Sections of Wis. Stats. interpreted or implemented by this rule include but are not limited to sections 201.045 (3), 601.01 (3) (b), 611.20 and 618.12 (1).

(2) SCOPE. This rule applies to the solicitation, underwriting and administration of insurance issued by an insurer under sections 204.321, or 204.322, Wis. Stats., except credit accident and sickness insurance under section 201.04 (4a), Wis. Stats., and coverage issued on a group basis or group type basis as defined in Wis. Adm. Code section Ins 6.51 (3) by a plan subject to sections 185.981, or 200.26, Wis. Stats. For the purposes of this rule, references to insurer, certificate, insurance agent or representative, enrollment form and enrollee also apply to organizations or associations operating non-profit plans, contracts, summaries of coverage, persons within the scope of the rule, individual applications and applicants, respectively.

(3) GROUP AND GROUP TYPE INSURANCE. An insurer issuing insurance under section 204.321, Wis. Stats., or group or group type coverage under section 185.981 or 200.26, Wis. Stats., shall,

(a) where the enrollment form contains questions relating to the medical history of the person or persons to be covered, be subject to the following:

1. Enrollment Form. An enrollment form shall provide to the effect that statements made by the enrollee in the enrollment form regarding the general medical history or general health of the proposed insured person which require an opinion or the exercise of judgment are representations or are to the best of the enrollee's knowledge and/or belief. Such form need not so provide with respect to statements regarding specifically named diseases, physical conditions, or types of medical consultation or treatment. Such forms shall not require the enrollee to state that he has not withheld any information or concealed any facts in completing the enrollment form; however, the enrollee may be required to state that his answers are true and complete.

2. Solicitation. An insurance agent or representative shall review carefully with the enrollee all questions contained in each enrollment form which he prepares and shall set down in each such form all material information disclosed to him by the enrollee in response to the questions in such form. This does not require that an insurance agent or representative prepare or assist in the preparation of each enrollment form.

3. Underwriting. a. An insurer shall make provision for adequate underwriting personnel and procedures so as to process without undue delay each enrollment form for insurance received by it.

b. An insurer shall give due consideration to all statements in each enrollment form for insurance submitted to it and shall duly evaluate the proposed insured person before issuing evidence of coverage for such person.

c. An insurer which issues evidence of coverage for a person without having resolved patently conflicting or incomplete statements in the enrollment form for the coverage, or fails to consider information furnished to it, in connection with the processing of such enrollment form shall not use such statements or information to void the coverage or to deny a claim.

d. An insurer shall furnish to the certificate holder or subscriber a notice in the form of a sticker or other form to be attached to the first page of the certificate or amendment, or furnish to the group policyholder or other such entity within 10 days after the issuance or amendment of coverage for delivery to the certificate holder or subscriber a notice in the form of a letter or other form, such notice to contain substantially the following:

IMPORTANT NOTICE

CONCERNING STATEMENTS IN THE ENROLLMENT FORM

FOR YOUR INSURANCE

Please read the copy of the enrollment form attached to this notice or to your certificate or which has been otherwise previously delivered to you by the insurer or group policyholder. Omissions or misstatements in the enrollment form could cause an otherwise valid claim to be denied. Carefully check the enrollment form and write to the insurer

within 10 days if any information shown on the form is not correct and complete or if any requested medical history has not been included. The insurance coverage was issued on the basis that the answers to all questions and any other material information shown on the enrollment form are correct and complete.

e. An insurer shall file with the Commissioner a description of the procedure it will follow and the form or forms it will use to meet the requirements of subdivision 3.d. of this paragraph (a).

f. An insurer which, after evidence of coverage for a person has been issued, receives information regarding such person which would reasonably be considered a sufficient basis to void or reform such person's coverage, shall effect such voiding or reformation within a reasonable time, or the insurer shall be held to have waived its rights to such action.

g. An insurer may use statements in an enrollment form as a defense to the claim or to void or reform coverage only if it has complied with the requirements of subdivision 3.d. of this paragraph (a).

4. Claims Administration. a. If the existence of a disease or physical condition was duly disclosed in the enrollment form for coverage in response to the questions therein, the insurer shall not use the pre-existence defense, under coverage providing such a defense, to deny benefits for such disease or condition unless such disease or condition is excluded from coverage by name or specific description effective on the date of loss.

b. If an enrollment form contains no question concerning the proposed insured person's health history or medical treatment history and regardless of whether it contains a question concerning the proposed insured person's general health at the time of enrollment the insurer may use the pre-existence defense, under coverage providing such a defense, only with respect to losses incurred within twelve months from the effective date of the person's coverage, unless the disease or physical condition causing the loss is excluded from coverage by name or specific description effective on the date of loss.

c. An insurer shall not void coverage or deny a claim on the ground that the enrollment form for such coverage did not disclose certain information considered material to the risk if the form did not clearly require the disclosure of such information.

(b) be subject to the following:

1. A claim shall not be reduced or denied on the grounds that the disease or physical condition resulting in the loss had existed prior to the effective date of coverage, under coverage providing such a defense, unless the insurer has evidence that such disease or physical condition, as distinguished from the cause of such disease or physical condition, had manifested itself prior to such date. Such manifestation may be established by evidence of medical diagnosis or treatment of such disease or physical condition prior to the effective date, or the existence of symptoms of such disease or physical condition prior to the effective date which would cause an ordinarily prudent person to seek diagnosis, care, or treatment.

2. Coverage which contains wording which requires the cause of the disease or physical condition, as distinguished from the disease or physical condition itself, to originate after the effective date of coverage shall be administered in accordance with subparagraph 1 of this paragraph (b).

3. An insurer shall not exclude or limit benefits, using the pre-existence defense, a waiting period, a benefit maximum or other policy limitation, where the claimant's medical records indicate a reasonable basis for distinguishing between a condition or conditions which necessitated the hospital confinement or the medical or surgical treatment for which claim is made or which resulted in the disability for which the claim is made and a concurrently existing condition or conditions which did not contribute to the need for the confinement or treatment or did not contribute to the disability.

(c) where the group or group type plan is issued to trustees of a fund as described by section 204.321 (1) (c), Wis. Stats., use the plan's provisions regarding individual eligibility for coverage and individual termination of coverage to deny liability for or to defend against a claim only if the certificate issued pursuant to the plan, under an appropriate caption or captions, includes the applicable requirements regarding an individual's eligibility for coverage and the conditions under which an individual's coverage terminates under the plan.

(4) BLANKET INSURANCE. An insurer issuing insurance under section 204.322, Wis. Stats., shall

(a) include in an enrollment form used in connection with such insurance no question relating to the medical history or other matter concerning the insurability of the person or persons to be insured and

(b) be subject to the following: 1. A claim shall not be reduced or denied on the grounds that the disease or physical condition resulting in the loss had existed prior to the effective date of coverage, under coverage providing such a defense, unless the insurer has evidence that such disease or physical condition, as distinguished from the cause of such disease or physical condition had manifested itself prior to such date. Such manifestation may be established by evidence of medical diagnosis or treatment of such disease or physical condition prior to the effective date or the existence of symptoms of such disease or physical condition prior to the effective date which would cause an ordinarily prudent person to seek diagnosis, care, or treatment.

2. Coverage which contains wording which requires the cause of the disease or physical condition, as distinguished from the disease or physical condition itself, to originate after the effective date of coverage shall be administered in accordance with subparagraph 1. of this paragraph (b).

3. An insurer shall not exclude or limit benefits, using the pre-existence defense, a waiting period, a benefit maximum, or other policy limitation, where the claimant's medical records indicate a reasonable basis for distinguishing between the condition or conditions which necessitated the hospital confinement or the medical or surgical treatment for which claim is made or which resulted in the disability for which claim is made and a concurrently existing condition or conditions which did not contribute to the need for the confinement or treatment or did not contribute to the disability.

(5) EFFECTIVE DATE. This rule shall apply to all solicitation, underwriting, and claims activities relating to Wisconsin residents after December 1, 1974, except that subdivisions (3) (a) 4. a. and b. shall apply to coverage issued after said date and subdivisions (3) (a) 3.d., e. and g. shall apply to such activities after February 1, 1975.

Dated at Madison, Wisconsin, this 31st day of October, 1974.

S. C. DuRose
Commissioner of Insurance

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