CR 86-225

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

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Randy Blumer, Deputy Commissioner of Insurance and custodian of the official records of said office, do hereby certify that the annexed order amending and creating rules relating to benefits for home health care coverage under disability insurance policies was issued by this office on March 23, 1987.

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 23rd day of March, 1987.

Randy Blumer

Randy Blumer
Deputy Commissioner of Insurance

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MAR 23 1987
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Revisor of Statutes
Bureau

STATE OF WISCONSIN
RECEIVED AND FILED
MAR 23 1987
DOUGLAS LA FOLLETTE
SECRETARY OF STATE

6-1-87

ORDER OF THE COMMISSIONER OF INSURANCE

CREATING A RULE

To amend Ins 3.39 (5) (a) 3. i., (b) 3. f., (c) 3. e. and (d) 3. g. and to create Ins 3.54 relating to benefits for home health care coverage under disability insurance policies.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

This rule interprets ss. 628.34 (1) and (12), 631.20 and 632.895 (1) and (2) and s. 631.20, Stats. The purpose of the rule is to clarify that Medicare supplement policies as well as other disability insurance policies must provide coverage for 40 home care visits in the base policy. In addition, the rule establishes standards for policy form language regarding home care benefits and minimum standards for administration of home care claims.

Pursuant to the authority vested in the Commissioner of Insurance by s. 601.41 (3), Stats., the Commissioner of Insurance hereby creates a rule interpreting ss. 631.20, 628.34 (1) and (12) and 632.895 (1) and (2), Stats.

SECTION 1. Ins 3.39 (5) (a) 3. i., (b) 3. f., (c) 3. e. and (d) 3. g. are created to read:

Ins 3.39 (5) (a) 3. i. Home care benefits as required under s. 632.895 (1) and (2), Stats., and s. Ins 3.54.

(b) 3. f. Home care benefits as required under s. 632.895 (1) and (2), Stats., and s. Ins 3.54.

(c) 3. e. Home care benefits as required under s. 632.895 (1) and (2), Stats., and s. Ins 3.54.

(d) 3. g. Home care benefits as required under s. 632.895 (1) and (2), Stats., and s. Ins 3.54.

SECTION 2. Ins 3.54 is created to read:

Ins 3.54 HOME HEALTH CARE BENEFITS UNDER DISABILITY INSURANCE POLICIES. (1) PURPOSE. This section implements and interprets ss. 628.34 (1) and (12), 631.20 and 632.895 (1) and (2), Stats., for the purpose of facilitating the administration of claims for coverage of home health care under disability insurance policies and the review of policy forms. The commissioner of insurance shall disapprove a policy under s. 631.20, Stats., if that policy does not meet the minimum requirements specified in this section.

(2) SCOPE. This section applies to disability insurance policies.

(3) DEFINITIONS. In this section:

(a) "Disability insurance policy" means a disability insurance policy as defined under s. 632.895 (1) (a), Stats., which provides coverage of expenses incurred for in-patient hospital care.

(b) "Home health aide services" mean nonmedical services performed by a home health aide which:

1. Are not required to be performed by a registered nurse or licensed practical nurse; and

2. Primarily aid the patient in performing normal activities of daily living.

(c) "Home care visits" means the period of a visit to provide home care, without limit on the duration of the visit, except each consecutive 4 hours in a 24-hour period of home health aide services is one visit.

(d) "Medically necessary" means that the service or supply is:

1. Required to diagnose or treat an injury or sickness and shall be performed or prescribed by the physician;

2. Consistent with the diagnosis and treatment of the sickness or injury;

3. In accordance with generally accepted standards of medical practice; and

4. Not solely for the convenience of the insured or the physician.

(4) MINIMUM REQUIREMENTS. (a) All disability insurance policies including, but not limited to, medicare supplement or replacement policies, shall provide a minimum of 40 home care visits in a consecutive 12-month period for each person covered under the policy and shall make available coverage for supplemental home care visits as required by s. 632.895 (2) (e), Stats.

(b) An insurer shall review each home care claim under a disability insurance policy and may not deny coverage of a home care claim based solely on medicare's denial of benefits.

(c) An insurer may deny coverage of all or a portion of a home health aide service visit because the visit is not medically necessary, not appropriately included in the home care plan or not necessary to prevent or postpone confinement in a hospital or skilled nursing facility only if:

1. The insurer has a reasonable, and documented factual basis for that determination; and

2. The basis for the determination is communicated to the insured in writing.

(d) In determining whether a home care claim, including a claim for home health aide services, is reimbursable under a disability insurance policy, an insurer may apply claim review criteria to determine that home is an appropriate treatment setting for the patient and that it is not reasonable to expect the patient to obtain medically necessary services or supplies on an outpatient basis, subject to the requirements of s. 632.895 (2) (g), Stats.

(e) An insurer shall disclose and clearly define the home care benefits and limitations in a disability insurance policy, certificate and outline of coverage. An insurer may not use the terms "homebound" or "custodial" in the sections of a policy describing home care benefits, exclusions, limitations, or reductions.

(f) In determining whether a home care claim under a disability insurance policy involves medically necessary part-time or intermittent care, an insurer shall give due consideration to the circumstances of each claimant and may not make arbitrary decisions concerning the number of home care visits within a given period which the insurer will reimburse. An insurer may not deny a claim for home care visits without properly reviewing and giving due consideration to the plan of care established by the attending physician under s. 632.895 (1) (b), Stats. An insurer may use claim review criteria based on the number of home care visits in a period for the purpose of determining whether a more thorough review of a home care claim or plan is conducted.

(g) An insurer may use claim review criteria under par. (d) or (f) only if the criteria and review process do not violate s. Ins 6.11. An insurer shall comply with s. 628.34 (1), Stats., when communicating claim review criteria to applicants, insureds, providers or the public.

EFFECTIVE DATE. This section applies to disability insurance policies issued or renewed on or after the first day of the second month commencing after its publication.

Dated at Madison, Wisconsin, this 23rd day of March, 1987.

Randy Blumer

Randy Blumer
Deputy Commissioner of Insurance

226R5
02/09/87

The State of Wisconsin
Office of the Commissioner of Insurance

Thomas P. Fox
Commissioner
(608) 266-3585

DATE: March 23, 1987

TO: Gary Poulson

FROM: Mary Grossman, Director
Office of Policy Analysis

SUBJECT: Ins 3.39 and 3.54, Clearinghouse No. 86-225

Enclosed are two copies of an Order of the Commissioner of Insurance amending and creating Ins 3.39 and 3.54 relating to benefits for home health care coverage under disability insurance policies.

MG:LH:ams
Enclosure
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