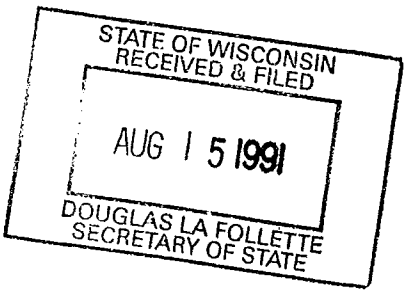
CR 91-57



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

I, John W. Torgerson, Deputy Commissioner of Insurance and custodian of the official records of this Office, certify that the attached rule-making order affecting s. Ins 3.40, Wis. Adm. Code, relating to coordination of benefits under two or more group health plans, was issued by this Office on August 15, 1991.

I further certify that I have compared this copy with the original on file in this Office and that it is a true copy of the whole of the original.

Dated at Madison, Wisconsin, this 15 day of AUGUST 1991.

John Torgerson

John W. Torgerson
Deputy Commissioner of Insurance

22716T3

11-1-91

ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE

REPEALING, RENUMBERING, RENUMBERING AND AMENDING, AMENDING, REPEALING AND RECREATING, AND CREATING A RULE

To repeal Ins 3.40 (12) (b) (title) and (intro.), (c) and (d), (13) (title) and (b) to (f), (18) (a) and (20) and 3.40 (APPENDIX A) (IV), title following (A), ALTERNATIVE 2, (B) (intro.), (i) and (ii) and ALTERNATIVE 3 (B); to renumber Ins 3.40 (20) NOTE and 3.40 (APPENDIX A) (III) (B) (v); to renumber and amend Ins 3.40 (13) (a) and (18) (b); to amend Ins 3.40 (2), (3) (b), (c) and (k), (6) (b) and (c), (7) (b), (11) (b) 2, (12) (a) and (b), (14) and (18) (title) and 3.40 (APPENDIX A) (III) (B) (i) and (IV) (B); to repeal and recreate Ins 3.40 (APPENDIX A) (V); and to create Ins 3.40 (11) (b) 5m and 3.40 (APPENDIX A) (III) (B) (iv) NOTE and (v), relating to coordination of benefits under 2 or more group health plans.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 601.41 (3) and 631.23 (2), Stats.

Statutes Interpreted: s. 631.23 (1), Stats.

This rule incorporates changes that the national association of insurance commissioners (NAIC) made to the model coordination of benefits (COB) guidelines, clarifies how the disclosure provisions of the current rule

relate to the confidentiality provisions of state law and clarifies that state and federal laws concerning medicare and medical assistance supersede this rule.

COB is a mechanism designed to coordinate benefits when a person is covered by 2 or more group health plans so that all plans covering the person together do not pay more than 100% of allowable expenses. The COB guidelines constitute an orderly way to assure that insurers pay claims on a timely basis and, at the same time, prevent the insured from profiting from a sickness, which would happen if 2 insurers paid the same claim.

COB consists of a set of rules that define which plan is primary and pays first and which plan is secondary and pays after the primary plan has paid. The primary plan never pays more than it would have paid were there no other coverage. The secondary plan pays the balance of all or a portion of the allowable expenses that were not covered in full by the primary plan, but it never pays more than it would have paid had it been primary. These rules are used throughout the nation by both insured and employer self-funded plans.

In 1986, OCI repealed and recreated its COB rule to incorporate significant changes that the NAIC had made to the guidelines. When the NAIC originally adopted the guidelines in the 1970s, it required insurers that coordinated benefits to coordinate at no less than 100% of allowable expenses. The NAIC modified the guidelines in the mid-1980s to allow insurers to coordinate at less than 100% in an effort to reduce health care costs and to allow insured plans to compete with employer self-funded plans. Only a few states adopted these revised guidelines which had resulted more in cost shifting to insureds than in containing costs. Wisconsin is now one of only 3 states that still allow policies to coordinate at less than 100%. Few

insurers doing business in the state incorporated these provisions into their policies. The NAIC has revised its model regulation to repeal the provision allowing coordination at less than 100%.

For these reasons, this rule repeals the alternatives that allow coordinating at less than 100% and conforms Wisconsin rules to the current NAIC COB guidelines.

In addition, the rule incorporates other language adopted by the NAIC to clarify when a group policy is primary to medicare and how to coordinate benefits when a person is covered by 2 plans, one of which is continuation coverage. It also clarifies that a policy cannot declare itself excess to medicare or medical assistance if otherwise prohibited by law and narrows the circumstances in which an insurer can release information about an insured. The rule also amends the model COB provision that an insurer can include in a policy to reflect these rule changes.

SECTION 1. Ins 3.40 (2), (3) (b), (c) and (k), (6) (b) and (c) and (7) (b) are amended to read:

Ins 3.40 (2) SCOPE. This section applies to all group and blanket disability insurance policies subject to s. 631.01 (1), Stats., that provide 24-hour continuous coverage for medical or dental care, treatment or expenses due to either injury or sickness that contain a coordination of benefits provision, an "excess," "anti-duplication," "non-profit" or "other insurance" exclusion by whatever name designated under which benefits are reduced because of other insurance, other than an exclusion for expenses covered by worker's compensation, employer's liability insurance~~, Medicare, medical assistance~~ or individual traditional automobile "fault" contracts. Except as permitted under s. 632.32 (4) (b), Stats., this section applies to the medical benefits provisions in an automobile "no fault" type or group or group-type "fault"

policy. A policy subject to this section may reduce benefits because of medicare only to the extent permitted by federal law and shall comply with s. 632.755, Stats., when reducing benefits because of coverage by or eligibility for medical assistance.

(3) (b) "Claim" means a request that benefits of a Plan be provided or paid. The benefits claimed may be in the form of ~~services (~~any of the following:

1. Services, including supplies~~),~~ ~~payment.~~

2. Payment for all or a portion of the expenses incurred~~,~~ ~~a.~~

3. A combination of ~~the previous 2, or indemnification~~ subds. 1 and 2.

4. Indemnification.

(c) "Claim determination period" means the period of time~~,~~ ~~not less than 12 consecutive months,~~ over which allowable expenses are compared with total benefits payable in the absence of COB to determine whether overinsurance exists and how much each Plan will pay or provide. However, it does include any part of a year before the date this COB provision or a similar provision takes effect.

(k) "Secondary Plan" ~~means~~ means a plan which is not a Primary Plan according to the order of benefit determination rules and whose benefits are determined after those of another Plan and may be reduced because of the other plan's benefits.

(6) (b) The definition of Plan shown in the model COB provision in APPENDIX A is an example of what may be used. Any definition that satisfies sub. (3) (i) and this ~~sub.~~ subsection may be used.

(c) ~~This~~ Notwithstanding the fact that this section uses the term ~~"Plan".--However,~~ "Plan," a group contract may instead use "Program" or some other term.

(7) (b) (intro.) There may be more than one Primary Plan. ~~For example, 2 Plans which have no order of benefit determination rules would both be primary.~~ A Plan is a Primary Plan if either subd. 1 or 2 is true:

1. The Plan either has no order of benefit determination rules, or it has rules ~~which~~ that differ from ~~these permitted by this regulation~~ sub. (11).

2. All plans ~~which~~ that cover the person ~~use the order of benefit determination rules required by this section~~ are complying plans, and, under ~~these rules~~ sub. (11), the Plan determines its benefits first.

SECTION 2. Ins 3.40 (11) (b) 1 (title) is created to read:

Ins 3.40 (11) (b) 1 (title) No rule in another plan.

SECTION 3. Ins 3.40 (11) (b) 2 is amended to read:

Ins 3.40 (11) (b) 2. Non-dependent or dependent. The benefits of the Plan ~~which~~ that covers the person as an employe, member or subscriber ~~(that is, other than as a dependent)~~ are determined before those of the Plan ~~which~~ that covers the person as a dependent of an employe, member or subscriber.

SECTION 4. Ins 3.40 (11) (b) 5m is created to read:

Ins 3.40 (11) (b) 5m. Continuation coverage. a. If a person has continuation coverage under federal law or s. 632.897 (3) (a), Stats., and is also covered under another Plan, the following shall determine the order of benefits:

i. First, the benefits of a Plan covering the person as an employe, member or subscriber or as a dependent of an employe, member or subscriber.

ii. Second, the benefits under the continuation coverage.

b. If the other Plan does not have the rule described in subpar. a. and if, as a result, the Plans do not agree on the order of benefits, this subdivision is ignored.

SECTION 5. Ins 3.40 (11) (c) is created to read:

. Ins 3.40 (11) (c) If a dependent is a medicare beneficiary and if, under the social security act of 1965 as amended, medicare is secondary to the Plan covering the person as a dependent of an active employe, the federal medicare regulations shall supersede this subsection.

SECTION 6. Ins 3.40 (12) (a) is amended to read:

Ins 3.40 (12) PAYMENT AS A SECONDARY PLAN. (a) In accordance with ~~sub. (11)~~ order of benefit determination rules under sub. (11), when ~~this~~ This Plan is a Secondary Plan as to one or more other Plans, the benefits of This Plan may be reduced ~~according to the alternatives described~~ as provided in par. (b) ~~(c) or (d)~~. ~~Such~~ The other Plan or Plans are referred to as "the other Plans" in ~~pars.~~ par. (b) ~~(c) and (d)~~.

SECTION 7. Ins 3.40 (12) (b) (title) and (intro.), (c) and (d) are repealed.

SECTION 8. Ins 3.40 (12) (b) is amended to read:

Ins 3.40 (12) (b) 1. The benefits of This Plan shall be reduced when the sum of the following exceeds the allowable expenses in a claim determination period:

a. The benefits that would be payable for the ~~Allowable Expenses~~ allowable expenses under This Plan in the absence of this COB provision, and

b. The benefits that would be payable for the allowable expenses under the other Plans, in the absence of provisions with a purpose like that of this COB provision, whether or not claim is made, ~~exceeds these allowable expenses in a claim determination period~~.

2. If ~~that occurs~~ subd. 1 applies, the benefits of This Plan will be reduced so that they and the benefits payable under the other Plans do not ~~total~~ equal more than ~~these~~ the total allowable expenses. When the benefits

of This Plan are reduced as described, each benefit is reduced in proportion and is then charged against any applicable benefit limit of This Plan."

SECTION 9. Ins 3.40 (13) (title) and (b) to (f) are repealed.

SECTION 10. Ins 3.40 (13) (a) is renumbered Ins 3.40 (12) (c) and amended to read:

Ins 3.40 (12) (c) ~~When-Alternative-1-is-used~~ If the benefits of This Plan are reduced under par. (b), a Secondary Plan may reduce its benefits so that the total benefits paid or provided by all Plans during a claim determination period are not more than the total allowable expenses. The amount by which the Secondary Plan's benefits are reduced shall be used by the Secondary Plan to pay allowable expenses~~,~~ not otherwise paid, which were incurred during the claim determination period by the person for whom the claim is made. As each claim is submitted, the Secondary Plan determines its obligation to pay for allowable expenses based on all claims which were submitted up to that point in time during the claim determination period.

SECTION 11. Ins 3.40 (14) and (18) (title) are amended to read:

Ins 3.40 (14) RIGHT TO RECEIVE AND RELEASE NEEDED INFORMATION. ~~Certain-facts-are-needed-to-apply-the-COB-rules.~~ An insurer has the right to decide ~~which~~ the facts it needs to apply the COB rules. It may get needed facts from or give them to any other organization or person without the consent of the insured but only as needed to apply the provisions of this section. This subsection does not relieve the insurer of the requirements of s. 146.82, Stats. ~~The-insurer-need-not-tell-or-get-the-consent-of-any-person to-do-this.~~ Each person claiming benefits under This Plan shall give the insurer any facts it needs to pay the claim.

(18) (title) COORDINATION WITH NONCOMPLYING PLANS.

SECTION 12. Ins 3.40 (18) (a) is repealed.

SECTION 13. Ins 3.40 (18) (b) is renumbered Ins 3.40 (18) and Ins 3.40.(18) (intro.), as renumbered, is amended to read:

Ins 3.40 (18) (intro.) Except for expenses covered by worker's compensation, employer's liability insurance, medicare, ~~or~~ medical assistance, or traditional automobile "fault" contracts, a Complying Plan may coordinate its benefits with a Noncomplying Plan that may not be subject to insurance regulation on the following basis:

SECTION 14. Ins 3.40 (20) is repealed.

SECTION 15. Ins 3.40 (20) NOTE is renumbered Ins 3.40 (18) NOTE.

SECTION 16. Ins 3.40 (APPENDIX A) (III) (B) (i) is amended to read:

Ins 3.40 (APPENDIX A) (III) (B) (i) Non-dependent/Dependent. The benefits of the Plan which covers the person as an employe, member or subscriber ~~(that is, other than as a dependent)~~ are determined before those of the Plan which covers the person as a dependent of an employe, member or subscriber.

SECTION 17. Ins 3.40 (APPENDIX A) (III) (B) (iv) NOTE is created to read:

Ins 3.40 (APPENDIX A) (III) (B) (iv) NOTE: If a dependent is a Medicare beneficiary and if, under the Social Security Act of 1965 as amended, Medicare is secondary to the plan covering the person as a dependent of an active employe, the federal Medicare regulations shall supersede this paragraph (iv).

SECTION 18. Ins 3.40 (APPENDIX A) (III) (B) (v) is renumbered Ins 3.40 (APPENDIX A) (III) (B) (vi).

SECTION 19. Ins 3.40 (APPENDIX A) (III) (B) (v) is created to read:

Ins 3.40 (APPENDIX A) (III) (B) (v) Continuation coverage. a. If a person has continuation coverage under federal or state law and is also

covered under another plan, the following shall determine the order of benefits:

i. First, the benefits of a plan covering the person as an employe, member or subscriber or as a dependent of an employe, member or subscriber.

ii. Second, the benefits under the continuation coverage.

b. If the other plan does not have the rule described in subparagraph a., and if, as a result, the plans do not agree on the order of benefits, this paragraph (v) is ignored.

SECTION 20. Ins 3.40 (APPENDIX A) (IV), title "ALTERNATIVE 1," following (A), is repealed.

SECTION 21. Ins 3.40 (APPENDIX A) (IV) (B) is amended to read:

Ins 3.40 (APPENDIX A) (IV) (B) Reduction in this Plan's Benefits. The benefit of This Plan will be reduced when the sum of <u>the following exceeds the Allowable Expenses in a Claim Determination Period</u>:

(i) the benefits that would be payable for the Allowable Expenses under This Plan in the absence of this COB provision; and

(ii) the benefits that would be payable for the Allowable Expenses under the other Plans, in the absence of provisions with a purpose like that of this COB provision, whether or not claim is made ~~exceeds these Allowable Expenses in a Claim Determination Period. In that case, the~~ <u>. Under this provision, the</u> benefits of This Plan will be reduced so that they and the benefits payable under the other Plans do not total more than those Allowable Expenses.

When the benefits of This Plan are reduced as described above, each benefit is reduced in proportion. It is then charged against any applicable benefit limit of This Plan.

SECTION 22. Ins 3.40 (APPENDIX A) (IV) ALTERNATIVE 2, (B) (intro.), (i) and (ii), and ALTERNATIVE 3 (B), are repealed.

SECTION 23. Ins 3.40 (APPENDIX A) (V) is repealed and recreated to read:

Ins 3.40 (V) (APPENDIX A) RIGHT TO RECEIVE AND RELEASE NEEDED INFORMATION.

The [name of insurance company] has the right to decide the facts it needs to apply these COB rules. It may get needed facts from or give them to any other organization or person without the consent of the insured but only as needed to apply these COB rules. Medical records remain confidential as provided by state law. Each person claiming benefits under This Plan must give the [name of insurance company] any facts it needs to pay the claim.

SECTION 24. INITIAL APPLICABILITY. (1) Except as provided in subsection (2), the treatment of s. Ins 3.40 (2), (12) and (13) by this rule first applies to a group contract providing health care benefits:

(a) For group contracts that are issued or renewed on January 1, 1992, on the effective date of this rule.

(b) For group contracts that are issued or renewed after January 1, 1992, on the date of issuance or the first anniversary or renewal date following the effective date of this rule.

(2) If a group contract providing health care benefits is written pursuant to a collectively bargained agreement, the treatment of s. Ins 3.40 (2), (12) and (13) by this rule first applies on whichever of the following occurs later:

(a) January 1, 1992.

(b) The expiration date of the collectively bargained agreement pursuant to which the group contract was written if the agreement prohibits changes to the health care benefits prior to its expiration date.

SECTION 25. EFFECTIVE DATE. This rule will take effect on January 1, 1992, as provided in s. 227.22 (2) (b), Stats.

Dated at Madison, Wisconsin, this 15 day of AUGUST 1991.

John W. Torgerson
Deputy Commissioner of Insurance

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08/13/91