



***2006 ANNUAL REPORT
LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE***

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February 2007

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February 2007

TO: THE HONORABLE JAMES E. DOYLE, GOVERNOR, AND THE WISCONSIN
LEGISLATURE

This report of the calendar year 2006 activity of the Legislative Council Rules
Clearinghouse is submitted to you pursuant to s. 227.15 (5), Stats.

Sincerely,

Terry C. Anderson
Director

TCA:tlu

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s. 13.81, Stats.

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

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WISCONSIN LEGISLATIVE COUNCIL STAFF
2006 ANNUAL REPORT ON THE
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE*

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* This Report was prepared by Ronald Sklansky, Director, and Richard Sweet, Assistant Director, Rules Clearinghouse, Legislative Council.

FUNCTION OF THE LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

REVIEW OF RULES

Legislative review of proposed administrative rules begins with the submission of a rule to the Legislative Council Rules Clearinghouse. Section 227.15, Stats., requires that, prior to any public hearing on a proposed rule or prior to notification of the chief clerk of each house of the Legislature if no hearing is held, an agency must submit the proposed rule to the Legislative Council Rules Clearinghouse for staff review. (See the *Administrative Rules Procedures Manual* (January 2005), prepared by the Legislative Council and the Revisor of Statutes Bureau, for more information on drafting, promulgating, and reviewing administrative rules.)

The Legislative Council is provided 20 working days, following receipt of a proposed rule, to prepare a report on its review of the rule. However, with the consent of the Director of the Legislative Council, the review period may be extended for an additional 20 working days.

Upon receipt of a proposed administrative rule, a Clearinghouse rule number is assigned and submission of the rule is recorded in the *Bulletin of Proceedings* of the Wisconsin Legislature. Two numbered rule jackets, one for the Assembly and one for the Senate, are prepared.

The Director of the Rules Clearinghouse assigns the rule to a Legislative Council staff member for review and preparation of the statutorily required report. The staff member generally prepares the report within 10 working days and transmits the report to the Director or Assistant Director for final review. When the report on the proposed rule is completed, the staff returns the rule jackets and the Clearinghouse report containing the results of the review to the agency. [See *Appendix I* for a sample Clearinghouse report.]

In accordance with s. 227.15, Stats., the Clearinghouse report:

1. Reviews the statutory authority under which the agency intends to adopt the rule.
2. Reviews the proposed rule for form, style, and placement in the Wisconsin Administrative Code.
3. Reviews the proposed rule to avoid conflict with, or duplication of, existing rules.
4. Reviews the proposed rule to ensure that it provides adequate references to related statutes, rules, and forms.
5. Reviews the language of the proposed rule for clarity, grammar, and punctuation and to ensure the use of plain language.

6. Reviews the proposed rule to determine potential conflicts and to make comparisons with related federal statutes and regulations.

7. Reviews the proposed rule to determine whether the agency has specified the number of business days within which the agency will review and make a determination on an application for a business permit.

As part of this review process, staff of the Legislative Council is directed to ensure that procedures for the promulgation of the rule are followed, as required by ch. 227, Stats., and to streamline and simplify the rule-making process.

OTHER RELATED RESPONSIBILITIES

Other primary rule review responsibilities of the Legislative Council include:

1. Working with and assisting the appropriate legislative committees throughout the rule-making process.

2. Notifying the Joint Committee for Review of Administrative Rules (JCRAR) and appropriate committees of the Legislature whenever the rule-making authority of an agency is eliminated or significantly changed by the repeal, amendment, or creation of a statute, by the interpretive decision of a court of competent jurisdiction, or for any other reason.

3. Assisting the public in resolving problems related to administrative rules. This function includes providing information, identifying agency personnel who may be contacted in relation to rule-making functions, describing locations where copies of rules, proposed rules, and forms are available, and encouraging and assisting participation in the rule-making process.

4. Creating and maintaining an Internet site that includes a copy of each proposed rule in a format that allows the site to be searched using keywords.

The final responsibility of the Legislative Council is the submission of an annual report to the chief clerk of each house of the Legislature and to the Governor summarizing any action taken by the staff and making recommendations to streamline the rule-making process and to eliminate obsolete, duplicative, and conflicting rules. This report is the *27th Annual Report* submitted by the Legislative Council and covers the staff's activities during calendar year 2006. It has been preceded by an initial report to the 1979 Legislature, which covered the staff's activities from November 2, 1979 to April 1, 1980 (i.e., from the effective date of Ch. 34, Laws of 1979, which initiated the omnibus rule review process, to the end of Floorperiod IV of the 1979 Session) and annual reports for calendar years 1980 to 2005.

RECORDKEEPING SYSTEM

The Legislature's *Bulletin of Proceedings* is used for recording actions relating to the review of administrative rules. The Legislative Council, the Senate and Assembly Chief Clerks, and the Legislative Reference Bureau cooperate in a computerized recordkeeping system.

Commencing with the 1979 Session, action on administrative rules has been shown in a separate part of the *Bulletin of Proceedings*.

Under this system, each proposed rule is assigned a number and entered in the computer by the staff of the Legislative Council. A copy of the Clearinghouse report is placed in a Senate and Assembly rule jacket (similar to bill jackets) and the rule is then transmitted to the agency promulgating the rule for its review. After transmittal, all legislative actions taken on the rule are entered on the face of the jacket and are reported to the chief clerk of each house. The chief clerk enters the actions in the computerized system, thereby compiling a history of all legislative actions taken on the rule.

At the beginning of each biennial session, the administrative rule portion of the *Bulletin of Proceedings* is updated by deletion of all records relating to rules which, in the preceding session, have become effective, have been withdrawn, or have been permanently objected to by law. Also removed from the *Bulletin of Proceedings* annually and withdrawn from the rule-making process is any proposed rule that, in accordance with s. 227.14 (6) (c), Stats., has been pending for at least four years, but no more than five years, after the date of its receipt by the Legislative Council under s. 227.15 (1), Stats. The final *Bulletin of Proceedings* printed for the preceding session then serves as the permanent record of the disposition of those rules. The remaining rules, which are still in the promulgation process, are carried over into the new *Bulletin of Proceedings* for the following biennial session.

Access to rules and agency reports over the Internet became available in 2001 for all rules initiated after the year 2000. These materials may be found at the Legislative Council's website, www.legis.state.wi.us/lc.

2006 ACTIVITIES OF THE RULES CLEARINGHOUSE

During 2006, 139 proposed administrative rules were submitted to the Legislative Council by 20 state agencies.

As of December 31, 2006, Clearinghouse reports had been completed on 131 of the 139 proposed rules and five rules were in the process of review. One rule was withdrawn prior to the preparation of a report and two proposals, previously reviewed in other rule packages, did not require the preparation of new reports. In addition to the 131 rule reports completed on 2006 rules, reports were prepared in 2006 on eight rules received in late 2005. Of the 139 reports completed in 2006, no rule required an extension of the review process by the Director of the Legislative Council. Clearinghouse activities in 2006 are summarized below:

Rules Received in 2006		139
Withdrawn	1	
No report required	2	
Pending	5	
		-8
2006 Reports Completed		131
2005 Reports Completed in January 2006		8
Total Reports in 2006		139

The table below shows that, from November 2, 1979 (the beginning of the omnibus rule review process) through December 31, 2006, the Clearinghouse has received 5,529 rule submissions and completed reviews on 5,434 proposed rules. Of the total rule submissions, 90 were exempt from the reporting process for various reasons and 5 were under review at the end of 2006.

<i>Year</i>	<i>Received</i>	<i>Completed</i>	<i>Exempt</i>
1979	70	45	12
1980	252	227	24
1981	252	234	9
1982	251	254	3
1983	222	220	4
1984	255	247	2
1985	213	206	4
1986	251	252	4
1987	182	186	1
1988	219	216	5
1989	212	208	1
1990	264	254	3
1991	199	205	2
1992	225	228	0
1993	241	232	1
1994	225	234	0
1995	236	224	2
1996	194	201	1
1997	158	159	1
1998	208	200	2
1999	170	177	1
2000	189	176	1
2001	157	158	1
2002	155	160	1
2003	126	127	2
2004	142	142	0
2005	122	123	0
2006	139	139	3
Total	5,529	5,434	90

In 2006, rules were received from the following 20 state agencies:

Number of Proposed Rules, by Submitting Agency

Department of Administration	2
Department of Agriculture, Trade and Consumer Protection	6
Department of Commerce	8
Department of Corrections	2
Department of Financial Institutions	4
Department of Health and Family Services	9
Department of Military Affairs	2
Department of Natural Resources	32
Department of Public Instruction	4
Department of Regulation and Licensing	23
Department of Revenue	5
Department of Tourism	1
Department of Transportation	18
Department of Veterans Affairs	1
Department of Workforce Development	8
Elections Board	2
Employment Relations Committee	1
Insurance Commissioner	4
Public Service Commission	6
University of Wisconsin System	1
Total Number of Rules Submitted	139

Although the statistics presented in this report give some indication of the workload of the Legislative Council staff in reviewing proposed administrative rules, it should be noted that rules vary in length. Similarly, Clearinghouse reports vary from completion of a simple checklist to large reports. In summary, for all rule reports completed in 2006, the Legislative Council staff commented on:

1. The *statutory authority* of a proposed administrative rule on 15 occasions.
2. The *form, style and placement* of proposed administrative rules in the Wisconsin Administrative Code on 66 occasions.
3. A *conflict* with, or *duplication* of, existing rules on 8 occasions.
4. The *adequacy of references* of proposed administrative rules to related statutes, rules and forms on 36 occasions.

5. *Clarity, grammar, punctuation and use of plain language* in proposed administrative rules on 64 occasions.

6. The *potential conflicts* of proposed administrative rules with, and their comparability to, related federal statutes and regulations on no occasions. In addition, the Legislative Council staff has adopted a policy of noting when proposed rules are based on federal “*guidelines*,” which do not have the force of law, as opposed to rules based on federal “*regulations*,” which do have the force of law and with which the state may have a legal obligation to comply.

7. The *permit action deadline requirement* on no occasions.

WORKING WITH AND ASSISTING COMMITTEES

A Legislative Council staff attorney or analyst works with each standing committee and statutory committees, except Joint Finance. When a committee has a proposed rule referred to it by the presiding officer of the house, the staff member will participate in the committee’s oversight.

During 2006, legislative committees held hearings or requested meetings on **48 proposed rules**. Modifications to rules were either requested or received in the legislative review of **21 proposed rules**. **Eight proposed rules** were objected to by committees.

As a result of committee activities, **seven rule objections** were subject to JCRAR jurisdiction in 2006. The JCRAR objected to four proposed rules and took no action on the three remaining rules.

The table below reviews legislative committee activity in the review of proposed administrative rules beginning on November 2, 1979 and ending on December 31, 2006.

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2006)*						
Year	Rules Submitted	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
11/2/79–80	322	18	5	1	0	No bill introduced, rule withdrawn
1981	252	29	10	4	4	Chapters 20 (SEC. 1561), 26, 31 and 180, Laws of 1981
1982	251	31	4	1	1	1983 Wisconsin Act 94
1983	222	30	5	0	0	—
1984	255	26	2	2	2	1983 Wisconsin Act 310 and 1985 Wisconsin Act 29 (SEC. 826)
1985	213	37	8	3	2	◆ 1985 Wisconsin Act 29 (SECS. 1059r and 2238ng to 2238or) ◆ 1985 Assembly Bill 460, passed and vetoed; override failed
1986	251	30	1	0	0	—
1987	182	30	5	0	0	—
1988	219	38	4	0	0	—
1989	212	22	6	2	0	◆ 1989 Senate Bill 89 and 1989 Assembly Bill 171 (failed to pass) ◆ 1989 Senate Bill 248 and 1989 Assembly Bill 457 (failed to pass)
1990	264	29	2	1	0	◆ 1991 Senate Bill 24 and 1991 Assembly Bill 71 (failed to pass)
1991	199	19	5	1	0	◆ 1991 Senate Bill 442 and 1991 Assembly

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2006)*						
Year	Rules Submitted	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
						Bill 840 (failed to pass after rule objected to withdrawn by agency)
1992	225	33	3	2	1	◆ 1993 Wisconsin Act 9 ◆ 1993 Senate Bill 3 and 1993 Assembly Bill 17 (failed to pass)
1993	241	24	1	0	0	—
1994	225	29	3	0	0	—
1995	236	19	0	0	0	—
1996	194	19	1	1	1	◆ 1997 Assembly Bill 5 and 1997 Senate Bill 20 (failed to pass) ◆ 1997 Wisconsin Act 237 (SECS. 320s, 322d and 322e)
1997	158	19	6	0	0	—
1998	208	15	0	0	0	—
1999	170	18	2	1	0	—
2000	189	20	2	1	1	◆ 1999 Wisconsin Act 178
2001	157	14	5	2	0	◆ 2001 Assembly Bill 18 and Senate Bill 2 (failed to pass); ◆ 2001 Assembly Bill 524 and Senate Bill 267 (failed to pass) ◆ 2001 Assembly Bill 697 and Senate Bill 361 (failed to pass)
2002	155	35	2	1	0	◆ 2003 Assembly Bill 25 and Senate Bill 19 (failed to pass)
2003	126	20	2	2	0	◆ 2003 Assembly Bill 253 and Senate Bill 123 (failed to pass)
2004	142	21	4	2	1	◆ 2003 Wisconsin Act 240
2005	122	20	4	3	0	◆ 2005 Assembly Bill 8 and Senate Bill 8 (failed to pass) ◆ 2005 Assembly Bill 12 and Senate Bill 12 (failed to pass) ◆ 2005 Assembly Bill 401 and Senate Bill 200 (failed to pass) ◆ 2005 Assembly Bill 404 and Senate Bill 201 (failed to pass) ◆ 2005 Assembly Bill 442 and Senate Bill 220 (failed to pass)
2006	139	21	8	4	0	2005 Assembly Bill 1225 and Senate Bill 732 (failed to pass, late introduction and possible reintroduction in 2007 session) 2005 Assembly Bill 1226 and Senate Bill 733 (failed to pass; late introduction and possible reintroduction in 2007 session)
TOTAL	5529	666	100	34	13 (PLUS ONE BILL PASSED AND VETOED; VETO NOT OVERRIDDEN)	

* The general system of legislative review of proposed administrative rules, primarily embodied in ss. 227.15 and 227.19, Stats., took effect on November 2, 1979, as part of Ch. 34, Laws of 1979.

ELECTRONIC ACCESS

In 2001, the Legislature, through its service agencies, began providing electronic access to all proposed administrative rules submitted to the Clearinghouse. The system mirrors the process already in place for legislative proposals. That is, interested persons are able to use the Internet to search for proposed rules directly or to link to them from the Legislature's Bulletin of Proceedings. The site holds the initial version of the proposed rule, the Clearinghouse report on the proposed rule, all modified versions of the proposed rule submitted to the Legislature, and the related agency report to the Legislature. Electronic access is available for proposed rules submitted to the Clearinghouse after the year 2000. [The Clearinghouse also has given advice to the Department of Health and Family Services regarding a searchable rules website operated by the Executive Branch.

NOTICE OF CHANGE IN RULE-MAKING AUTHORITY

To date, no court decisions or changes in legislation have been brought to the attention of the Legislative Council staff that would require notification of JCRAR or appropriate standing committees of a change in, or the elimination of, agency rule-making authority.

ASSISTING ADMINISTRATIVE AGENCIES

The Legislative Council staff has responded to numerous questions from agency personnel, relating to both the process and the law governing legislative review of proposed rules.

PUBLIC LIAISON

To date, the Legislative Council staff has received minimal requests from the public. These infrequent questions have either concerned aspects of the rule review procedure or have related to the status of specific rules.

ADDITIONAL ACTIVITIES

On May 4, 2004, the Co-Chairs of the Joint Legislative Council directed the Legislative Council staff to examine current laws relating to the procedures used for the promulgation of administrative rules and to develop proposed legislation that modifies current statutory language, codifies practices used in the process, coordinates statutory changes made in the 2003 Session of the Legislature, and makes minor substantive changes to the law.

In order to fulfill this request, the Legislative Council staff sought comments from rule-promulgating state agencies, the chief clerks of the Legislature, and the Revisor of Statutes. The Joint Legislative Council introduced 2005 Senate Bill 150 in order to respond to many of the comments the Legislative Council staff received as well as to issues noted by the experience of the Legislative Council staff itself. The bill was enacted as 2005 Wisconsin Act 249 and took effect on July 1, 2006.

The amendments to ch. 227, Stats., as contained in Act 249, can be categorized as follows:

1. Amending or eliminating obsolete provisions.
2. Clarifying terminology and correcting cross-references.
3. Streamlining the timing and procedure of the administrative rule-making process.
4. Coordinating and clarifying certain provisions of Wisconsin Acts 118 and 145 that affected ch. 227, Stats.

Act 249 also contains minor substantive changes that clarify and streamline the process. For example, SECTION 25 provides a new method by which an agency may reconsider a proposed administrative rule. SECTION 25 authorizes an agency, during the committee review period, to reconsider the proposed rule by recalling it from the Chief Clerk of each house of the Legislature. If the agency decides to continue the rule-making process with regard to the proposed rule, it must resubmit the proposed rule, either in its recalled form or with one or more germane modifications, to the Chief Clerk in each house of the Legislature for the commencement of a new committee review period. An additional example can be found in SECTION 45. This SECTION clarifies and codifies current practice by stating that if the Joint Committee for Review of Administrative Rules suspends an emergency rule, the agency may not submit to the Legislature the substance of the emergency rule as a proposed permanent rule during the time the emergency rule is suspended.

RS:RNS;jal:tlu

APPENDIX 1
SAMPLE CLEARINGHOUSE REPORT



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **06-083**

AN ORDER to repeal Ins 9.01 (10m); to amend Ins 9.01 (5), (9m), and (13), 9.20 (intro.), 9.25 (4), 9.32 (2) (a) and 9.41 and 9.42 (1) and (5) (a); and to repeal and recreate Ins 9.32 (2) (f), relating to defined network plans, preferred provider plans, limited service health organizations and limited scope plans and affecting small businesses.

Submitted by **INSURANCE COMMISSIONER**

06-30-2006 RECEIVED BY LEGISLATIVE COUNCIL.

07-28-2006 REPORT SENT TO AGENCY.

RS:JLK

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 06-083

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

I. Statutory Authority

Section 227.26, Stats., provides that the Joint Committee for Review of Administrative Rules (JCRAR) may suspend an existing rule. JCRAR then introduces a bill supporting the suspension. If the bill is introduced after February 1 of an even-numbered year, then, unless the bill is adversely disposed of, JCRAR must introduce the bill again on the first day of the next regular session of the Legislature. If either bill is adversely disposed of, then the rule goes into effect. However, until that time, the rule remains suspended.

On March 1, 2006, JCRAR suspended portions of ch. Ins 9 and then introduced 2005 Assembly Bill 1178 and 2005 Senate Bill 687 to prohibit the Office of the Commissioner of Insurance from promulgating certain rules related to limited-scope dental or vision plans and preferred provider plans. Neither bill has been adversely disposed of. Because the bills were introduced after February 1, 2006, JCRAR must introduce new bills in January 2007. If JCRAR does so, the suspension remains in effect unless and until the bills are adversely disposed of in the 2007-08 Legislative Session. While a rule is in suspended status, an agency may not promulgate a new rule that is the substantive equivalent of the suspended rule.

Several aspects of Clearinghouse Rule 06-83 (CR 06-83) are inconsistent with JCRAR’s objection as follows:

(1) JCRAR objected to the definition of “limited-scope plan” in s. Ins 9.01 (10m) and the inclusion of limited-scope plans in ss. Ins 9.01 (5), (9m), and (13), 9.07, 9.20 (intro.), 9.41, and 9.42 (1) and (5) (a). Therefore, the inclusion of limited-scope plans has been suspended in those provisions.

CR 06-83 repeals the definition of “limited-scope plan” and then amends ss. Ins 9.01 (5), (9m), and (13); 9.20 (intro.), 9.41; and 9.42 (1) and (5) (a) to eliminate the term “limited-scope plan” in each of these provisions. However, each of these provisions then adds a reference to preferred provider plans and limited service health organizations.

All limited-scope plans (defined in s. Ins 9.01 (10m) as a health care plan providing limited-scope dental or vision benefits under a separate policy, certificate, or contract of insurance in accordance with s. 632.745 (11) (b) 9., Stats.), come under the definition of either: (a) a preferred provider plan under s. 609.01 (4), Stats. (a health care plan (as defined in s. 609.01 (1m), Stats.), that makes available without referral and on an uncapitated basis coverage of a limited range of health care services, regardless of whether the services are performed by a participating or nonparticipating provider); or (b) a limited service health organization under s. 609.01 (3) Stats. (a health care plan that makes available on a capitated basis a limited range of health care services performed by participating providers).

Thus, even though CR 06-83 amends ss. Ins 9.01 (5), (9m), and (13); 9.20 (intro.); 9.41, and 9.42 (1) and (5) (a) to eliminate the term “limited-scope plan,” because each of these provisions is also amended to add reference to a preferred provider plan and limited service health organization, the substantive effect of the proposed amendments is to continue to include limited-scope plans in these provisions. This appears to be contrary to JCRAR’s objection which suspended inclusion of limited-scope plans in these provisions.

(2) JCRAR objected to and suspended all of s. Ins 9.25 (4).

CR 06-83 would amend s. Ins 9.25 (4) to delete a part but also retain a part of s. Ins 9.25 (4). Retaining any part of s. Ins 9.25 (4) is contrary to JCRAR’s objection. However, this is not a matter of concern if the agency’s intent is to propose that if and when the suspension expires, only the first sentence of s. Ins 9.25 (4) will survive.

(3) JCRAR objected to and suspended all of s. Ins 9.32 (2) (f). One of the items included in 2005 Assembly Bill 1178 and 2005 Senate Bill 687 was a prohibition against promulgating a rule relating to a preferred provider plan that “imposes requirements relating to coverage of emergency services rendered by a nonparticipating provider and the rate at which the insurer offering the preferred provider plan must pay the nonparticipating provider.” [Proposed s. 609.20 (3) (c).]

CR06-83 would repeal and recreate s. Ins 9.32 (2) (f) in such a way that it relates to a preferred provider plan’s coverage of emergency medical services and imposes requirements relating to how nonparticipating providers are compensated for emergency medical services. This appears to be inconsistent with JCRAR’s objection. Again, this is not a matter of concern if the agency only intends to enforce this provision following the expiration of the rule suspension. [If this is the case, then it would be appropriate to include a note to the rule describing the agency’s intention regarding the future enforcement of ss. Ins 9.25 (4) and 9.32 (2) (f).]

2. Form, Style and Placement in Administrative Code

a. In ss. Ins 9.20 (intro.), 9.41, and 9.42 (1) and (5) (a), the new underscored word “plan,” is added immediately preceding overstricken deleted material. However, new

underscored material must always immediately follow overstricken deleted material. [See s. 1.06 (1), Manual.]

b. Provisions to be deleted should be shown as overstricken. [See s. 1.06 (1), Manual.] In s. 9.25 (4), the last fragmentary sentence “~~may not use utilization management techniques, including prior authorization requirements or similar methods, to deny access to nonparticipating providers.~~” is not in the current rule text and should be deleted in its entirety.

c. In s. Ins 9.42 (1), the reference to “Stats. Applicable” should be changed to “Stats., applicable” to reflect the current rule.

d. The first sentence of current s. Ins 9.42 (1) includes the phrase “compliance with ss. 609.22, 609.24, 609.30, 609.32, 609.34, 609.36, and 632.83, Stats.” The proposed amendment to s. Ins 9.42 (1) refers only to ‘compliance with “ss. 609.22, 609.34, 609.36, and 632.83, Stats.”’ However, the proposed rule does not reflect that there is any amendment of the current rule with respect to the statutes cited. If an amendment is made, it should be shown with overstriking deletions and underscoring additions. [Section 1.06 (1), Manual.]

Moreover, if this amendment is made in s. Ins 9.42 (1), it would appear to create an inconsistency with other provisions in s. Ins 9.42 which refer to all seven statutory sections.

3. Conflict With or Duplication of Existing Rules

Given the expanded scope of s. Ins 9.20 (intro.) applying subch. III of ch. Ins 9 to defined network plans, preferred provider plans, and limited service health organizations, it appears that the title of subch. III (which refers only to defined network plans) should be amended. For that matter, consideration should be given to amending the title to ch. Ins 9 which currently refers only to defined network plans.

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

a. In Item 5. of the analysis, the word “to” should be inserted before the word “prohibit” in the second listed item.

b. In the third paragraph of Item 7. of the analysis describing Illinois law, the word “a” preceding the word “individual” should be replaced by the word “an;” the word “are” preceding the word “provided” should be replaced by the word “is;” and the word “must” preceding the word “include” should be replaced by the word “to.” In the quoted notice, on the top of page 4, the word “are” probably should be replaced by the word “area.” Finally, in the fourth paragraph, the first sentence should read: “Illinois statute ... procedures for a quality assessment program ... that require plans to have a procedure”

c. In the last paragraph of Item 7 of the Analysis describing Minnesota law, “who are” should be changed to “who is” and the word ‘participating’ should be replaced by the word “participate.”

d. In the last paragraph of Item 7. of the analysis describing Michigan law, the word “organization” in the first sentence should be replaced by the word “organizations.”

e. In Item 11 of the analysis, “rule will effect on” should be changed to either “rule will affect” or “rule will have an effect on.”

f. Section Ins 9.42 (1) indicates, in pertinent part, that all insurers offering a defined network plan, preferred provider plan, or limited service health organization, except to the extent otherwise exempted under ch. Ins 9 or by statute, are responsible for compliance with s. 609.22, 609.34, 609.36, and 609.83, Stats. (See the comment above regarding which statutes are cited as it appears that other statutes should be included as they are in current s. 9.42 (1) and in other subsections of s. Ins 9.42.)

While the statement may be technically accurate because it refers to statutory exemptions, this provision is confusing because it appears that a limited service health organization is never subject to s. 609.22, 609.34, or 609.36, Stats. (or to s. 609.24, 609.30, or 609.34, Stats., which were omitted without showing an amendment to s. Ins 9.42 (1)). It may be useful to delete reference to limited service organizations in that sentence and create a separate sentence referring to limited service health organizations and the specific statute that they are responsible for complying with. (However, see the comment in Section 5., above, regarding including limited-scope plans in s. Ins 9.42.)

APPENDIX 2

PROCESSING INSTRUCTIONS TO AGENCY HEADS



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

PROCESSING INSTRUCTIONS TO AGENCY HEADS

[ENCLOSED ARE THE SENATE AND ASSEMBLY RULE JACKETS CONTAINING THE LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT. AN ADDITIONAL COPY OF THE CLEARINGHOUSE REPORT IS ENCLOSED FOR YOUR FILES.]

PLEASE NOTE: Your agency must complete the following steps in the legislative process of administrative rule review:

1. On the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Report Received by Agency."
2. On the appropriate line or lines on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date or dates and, in column 2, "Public Hearing Held" OR "Public Hearing Not Required."
3. Enclose in both clearinghouse rule jackets, in triplicate, the notice and report required by s. 227.19 (2) and (3), Stats. [The report includes the rule in final draft form.]
4. Notify the presiding officer of the Senate and Assembly that the rule is in final draft form by hand delivering the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk. At the time of this submission, on the appropriate line on the face of the clearinghouse rule jacket, each Chief Clerk will enter, in column 1, the appropriate date and, in column 2, "Report Received from Agency." Each clearinghouse rule jacket will be promptly delivered to each presiding officer for referral of the notice and report to a standing committee in each house.
5. If the agency does not proceed with the rule-making process on this rule, on the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Rule Draft Withdrawn by Agency" and hand deliver the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk.

FOR YOUR INFORMATION: A record of all actions taken on administrative rules is contained in the Bulletin of Proceedings of the Wisconsin Legislature. The clearinghouse rule jackets will be retained by the Legislature as a permanent record.

[See reverse side for jacket sample.]

-- SAMPLE --

CLEARINGHOUSE RULE ASSEMBLY _____ 06-083` _____

AN ORDER to repeal Ins 9.01 (10m); to amend Ins 9.01 (5), (9m), and (13), 9.20 (intro.), 9.25 (4), 9.32 (2) (a) and 9.41 and 9.42 (1) and (5) (a); and to repeal and recreate Ins 9.32 (2) (f), relating to defined network plans, preferred provider plans, limited service health organizations and limited scope plans and affecting small businesses.

Submitted by _____ Insurance Commissioner _____

06-30-06	Received by Legislative Council.		
07-28-06	Report sent to Agency.		

<p><u>NOTE:</u> EACH SUBSEQUENT ACTION TAKEN BY A STANDING COMMITTEE OR THE JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES WILL BE ENTERED ON THE JACKETS BY APPROPRIATE LEGISLATIVE STAFF.</p>
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