

LAOS. 51 RISK BASED CAPITAL FOR  
98-186 INSURERS

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

***RULES CLEARINGHOUSE***

**Ronald Sklansky**  
Director  
(608) 266-1946



**David J. Stute, Director**  
Legislative Council Staff  
(608) 266-1304

**Richard Sweet**  
Assistant Director  
(608) 266-2982

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

---

**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 98-186**

AN ORDER to repeal Ins 51.70; and to amend Ins 51.01, 51.05 and 51.60, relating to risk based capital for health insurers.

Submitted by **OFFICE OF THE COMMISSIONER OF INSURANCE**

11-13-98 RECEIVED BY LEGISLATIVE COUNCIL.

12-11-98 REPORT SENT TO AGENCY.

RNS:JLK:kjf:jal

**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)]

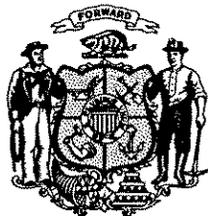
Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

Ronald Sklansky  
Director  
(608) 266-1946

Richard Sweet  
Assistant Director  
(608) 266-2982



David J. Stute, Director  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

## CLEARINGHOUSE RULE 98-186

### 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 September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

a. The analysis explains that "life and property and casualty insurers" are currently required to maintain certain risk-based capital levels and that the proposed order will require **health** insurers to conform to risk-based capital standards and increase protections for Wisconsin citizens who are covered by health insurance. However, current s. Ins 51.05 (2) already provides that a **health** insurer's risk-based capital must be determined in accordance with the risk-based capital instructions adopted by the National Association of Insurance Commissioners.

The proposed order affects only health maintenance organization insurers and limited service health organizations by eliminating their current exclusion from the definition of "insurer" and thus applying risk-based capital requirements to them also. The analysis should be amended to describe this specifically rather than simply referring to health insurers in general.

b. SECTION 1 amends s. Ins 51.01. However, none of the text of current s. Ins 51.01 is actually amended; rather, two subsections are being added and two subdivisions are being deleted. With respect to s. Ins 51.01, it would be preferable to eliminate: (1) all of the unchanged text that has been included in the proposed order; and (2) all of the renumbering. This could be accomplished by doing only the following:

- (1) Creating s. Ins 51.01 (8m) to define "health maintenance organization insurer." [See s. 1.03 (7), Manual.]
- (2) Creating s. Ins 51.01 (10m) to define "limited service health organization."

(3) Repealing s. Ins 51.01 (9) (a) 1. and 2.

c. Similarly, the unnecessary inclusion of unamended text and the renumbering in s. Ins 51.05 could be avoided by providing instead that s. Ins 51.05 (1g) and (1r) are created to include the text that is shown as underscored in new s. Ins 51.05 (2) and (3). This approach also would eliminate the need for the cross-reference renumbering in s. Ins 51.05 (~~35~~) and (~~57~~).

d. SECTION 3 should indicate that “s. Ins 51.60 (3) is created to read:”, rather than providing that “s. Ins 51.60 is amended to read:”. Using this approach, the text from s. Ins 51.60 (1) and (2) should not be included in the proposed order, and the text from s. Ins 51.60 (3) should not be underscored. Also note that “SECTION” should replace “Section.”

e. The effective date and initial applicability provision should be included in an unnumbered provision, rather than being listed as SECTION 5. [See s. 1.02 (4) (d), Manual.]

### 3. Conflict With or Duplication of Existing Rules

The definition of “life or health insurer” in s. Ins 51.01 (~~11~~) and the provision in s. Ins 51.05 (~~24~~) describing how a health insurer’s risk-based capital is determined appear to apply to a health maintenance organization insurer and a limited service health organization inasmuch as no exceptions are made for these organizations. Thus, new s. Ins 51.05 (2) and (3) (which describe how a health maintenance organization insurer’s or limited service health organization’s risk-based capital is determined) appear to be in conflict with s. Ins 51.05 (~~24~~) and (~~35~~) (which describe how a health insurer’s risk-based capital is determined).

### 4. Adequacy of References to Related Statutes, Rules and Forms

a. Section Ins 51.01 (12) defines “limited service health organization” as “an insurer licensed to write only the business described in s. 609.03 (3) (a) 2., Stats.” However, it appears that the definition would be more descriptive if it merely cross-referenced the statutory definition of the term in s. 609.01 (3), Stats.

b. In new s. Ins 51.05 (3), the reference to “sub. (3)” is incorrect. Presumably, the cross-reference should be to new sub. (2). (However, see comment 2. c., suggesting renumbering new subs. (2) and (3) as subs. (1g) and (1r), respectively. The cross-reference should be corrected appropriately.)

c. In s. Ins 51.60 (3), the second par. (a) should be renumbered as par. (b).

d. In SECTION 5, “Stats.” should be inserted after the statute cited.

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

a. In s. Ins 51.60 (3) (intro.), the phrase “that also complies with all of the following” could be interpreted as modifying: (1) only the phrase “a limited service health organization covering less than 2,000 lives”; or (2) both the phrase “a limited service health organization

covering less than 2,000 lives” and the phrase “a domestic health maintenance organization insurer writing \$2,000,000 or less direct annual premium.” This should be clarified.

b. In both paragraphs in s. Ins 51.60 (3), the initial word should be capitalized. Also, both paragraphs should end with a period.

c. Section Ins 51.60 (3) (intro.) refers to a *domestic* health maintenance organization insurer but does not refer to a *domestic* limited service health organization. Was the distinction intentional?

**PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE  
AMENDING A RULE**

To amend Chapter INS 51, Wis. Adm. Code, relating to risk based capital for health insurers.

---

**ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE**

Statutory authority: ss. 601.41(3), 601.42, Stats.

Statutes interpreted: ss. 609.97(2), 623.11, Stats.

Currently Wisconsin requires life and property and casualty insurers to maintain certain risk based capital levels. The amendments to this rule will require health insurers to conform to risk based capital standards recently developed by the National Association of Insurance Commissioners ("NAIC"). The objective of this rule is to establish solvency standards for health insurers in order to increase protections for Wisconsin citizens who are covered by health insurance.

---

**SECTION 1. Ins 51.01 is amended to read:**

**Ins 51.01 Definitions.** In this subchapter:

- (1) "Adjusted risk based capital report" means a risk based capital report which has been adjusted by the commissioner in accordance with s. Ins 51.05 (6).
- (2) "Authorized control level event" means any of the following events:
  - (a) The filing of a risk based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level risk based capital but less than its authorized control level risk based capital.
  - (b) The notification by the commissioner to the insurer of an adjusted risk based capital report that indicates the event in par. (a), if the insurer does not challenge the adjusted risk based capital report under s. Ins 51.50.
  - (c) If, under s. Ins 51.50, the insurer challenges an adjusted risk based capital report that indicates the event in par. (a), notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.
  - (d) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order, if the insurer has not challenged the corrective order under s. Ins 51.50.
  - (e) If the insurer has challenged a corrective order under s. Ins 51.50 and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the

commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(3) "Authorized control level risk based capital" means the number determined under the risk-based capital formula in accordance with the risk based capital instructions.

(4) "Company action level event" means any of the following events:

(a) The filing of a risk based capital report by an insurer which indicates one of the following:

1. The insurer's total adjusted capital is greater than or equal to its regulatory action level risk based capital but less than its company action level risk based capital.

2. If a life or health insurer, the insurer has total adjusted capital which is greater than or equal to its company action level risk based capital but less than the product of its authorized control level risk based capital and 2.5 and has a negative trend.

(b) The notification by the commissioner to the insurer of an adjusted risk based capital report that indicates an event in par. (a), if the insurer does not challenge the adjusted risk based capital report under s. Ins 51.50.

(c) If, under s. Ins 51.50, an insurer challenges an adjusted risk based capital report that indicates the event in par. (a), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) "Company action level risk based capital" means, with respect to any insurer, the product of 2.0 and its authorized control level risk based capital.

(6) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

(7) "Domestic insurer" means an insurer organized under the laws of this state.

(8) "Foreign insurer" means any insurer which is licensed to do business in this state that is not a domestic insurer.

(9) "Health maintenance organization insurer" has the meaning given in s. 600.03 (23c), Stats.

*not needed* → (910) "Insurer" means

(a) An insurer as defined under s. 600.03 (27), Stats., except, unless otherwise required by the commissioner under par. (b), it does not include any of the following:

*repeal*  
~~1. A health maintenance organization insurer as defined under s. 600.03 (23c), Stats. or an insurer writing primarily health maintenance organization business as defined under s. 609.01 (2), Stats., which the commissioner permits to file the NAIC health maintenance organization annual statement blank under s. Ins 50.20.~~

~~2. An insurer which is solely engaged in the business of offering limited service health organization plans as defined under s. 609.01 (3), Stats.~~

~~3. A town mutual insurer organized under ch. 612, Stats.~~

42. An insurer governed by ch. 615 or 616, Stats.

53. A fraternal insurer.

64. A service insurance corporation as defined under s. 600.03 (41m), Stats., but only until the date on which the commissioner makes a determination that risk based capital reporting forms and instructions for service insurance corporations have been developed and adopted by the NAIC.

75. An insurance plan administered by the office or a board attached to the office or a plan established under ch. 619, Stats.

86. Monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(b) One or more persons otherwise excepted from the definition of insurer under par. (a) if the commissioner finds that compliance with this subchapter will improve the efficiency and effectiveness of the office's solvency monitoring and the commissioner requires the person to comply as an insurer under this subchapter.

**(1011)** "Life or health insurer" means any insurer licensed to write life, annuity or health insurance or 2 or more of those lines, or a licensed property and casualty insurer writing only accident and health insurance.

**(12)** "Limited service health organization" means an insurer licensed to write only the business described in s. 609.03 (3) (a) 2., Stats.

**(1113)** "Mandatory control level event" means any of the following events:

(a) The filing of a risk based capital report which indicates that the insurer's total adjusted capital is less than its mandatory control level risk based capital.

(b) Notification by the commissioner to the insurer of an adjusted risk based capital report that indicates the event in par. (a), if the insurer does not challenge the adjusted risk based capital report under s. Ins 51.50.

(c) If, pursuant to s. Ins 51.50, the insurer challenges an adjusted risk based capital report that indicates the event in par. (a), notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

**(1214)** "Mandatory control level risk based capital" means the product of .70 and the authorized control level risk based capital.

**(1315)** "NAIC" means the national association of insurance commissioners.

**(1416)** "Negative trend" means, with respect to a life or health insurer, trend over a period of time which is negative, as determined in accordance with the trend test calculation included in the risk based capital instructions.

**(1517)** "Property and casualty insurer" means any insurer licensed to sell property or casualty insurance.

**(1618)** "Regulatory action level event" means any of the following events:

- (a) The filing of a risk based capital report by an insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level risk based capital but less than its regulatory action level risk based capital.
- (b) The notification by the commissioner to an insurer of an adjusted risk based capital report that indicates the event in par. (a), if the insurer does not challenge the adjusted risk based capital report under s. Ins 51.50.
- (c) If, pursuant to s. Ins 51.50, the insurer challenges an adjusted risk based capital report that indicates the event in par. (a), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.
- (d) The failure of the insurer to file a risk based capital report by the March 1, unless the insurer has provided an explanation for such failure which is satisfactory to the commissioner and has cured the failure within ten days after March 1.
- (e) The failure of the insurer to submit a risk based capital plan to the commissioner within the time period set forth in s. Ins 51.15 (2).
- (f) Notification by the commissioner to the insurer of all of the following:
1. The risk based capital plan or revised risk based capital plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory.
  2. Such notification constitutes a regulatory action level event with respect to the insurer, provided the insurer has not challenged the determination under s. Ins 51.50
- (g) If, under s. Ins 51.50, the insurer challenges a determination by the commissioner under par. (f), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected such challenge.
- (h) Notification by the commissioner to the insurer that the insurer has failed to adhere to its risk based capital plan or revised risk based capital plan, but only if such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its risk based capital plan or revised risk based capital plan and the commissioner has so stated in the notification, provided the insurer has not challenged the determination under s. Ins 51.50.
- (i) If, under s. Ins 51.50, the insurer challenges a determination by the commissioner under par. (h), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge.
- (1719)** "Regulatory action level risk based capital" means, with respect to any insurer, the product of 1.5 and its authorized control level risk based capital.
- (1820)** "Revised risk based capital plan" means a risk based capital plan prepared by an insurer with or without the commissioner's recommendation after the original plan is rejected by the commissioner.
- (1921)** "Risk based capital instructions" means the risk based capital report including risk based capital instructions adopted by the NAIC, as of September 1, 1996, and, if approved in writing by the commissioner, the risk based capital report and instructions as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

~~(2022)~~ "Risk based capital level" means an insurer's company action level risk based capital, regulatory action level risk based capital, authorized control level risk based capital, or mandatory control level risk based capital.

~~(2123)~~ "Risk based capital plan" means a comprehensive financial plan containing the elements specified in s. Ins 50.15 (1).

~~(2224)~~ "Risk based capital report" means the report required under s. Ins 51.05.

~~(2325)~~ "Total adjusted capital" means the sum of all of the following:

(a) An insurer's statutory capital and surplus.

(b) Such other items, if any, as the risk based capital instructions may provide.

**SECTION 2. Ins 51.05 is amended to read:**

**Ins 51.05 Risk based capital reports. (1)** Every domestic insurer shall, on or prior to each March 1, prepare and submit a report of its risk based capital levels as of the end of the calendar year just ended, in a form and containing such information as is required by the risk based capital instructions. For the purpose of this section filing of a risk based capital report with the NAIC constitutes filing with the commissioner. A domestic insurer shall file its risk based capital report with all of the following:

(a) The NAIC in accordance with the risk based capital instructions.

(b) The insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its risk based capital report not later than the later of:

1. Fifteen days from the receipt of notice to file its risk based capital report with that state.

2. March 1.

(2) A health maintenance organization insurer's or limited service health organization's risk based capital shall be determined in accordance with the formula set forth in the risk based capital instructions. The formula shall take into account, and may adjust for the covariance between each of the following:

(a) Asset risk.

(b) Credit risk.

(c) Underwriting risk.

(d) All other business risks and such other relevant risks as are set forth in the risk based capital instructions.

(3) The risks identified under sub. (3) shall be provided for as determined in each case by applying the factors in the manner set forth in the risk based capital instructions.

**(24)** A life or health insurer's risk based capital shall be determined in accordance with the formula set forth in the risk based capital instructions. The formula shall take into account, and may adjust for the covariance between each of the following:

- (a) The risk with respect to the insurer's assets.
- (b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations.
- (c) The interest rate risk with respect to the insurer's business.
- (d) All other business risks and such other relevant risks as are set forth in the risk based capital instructions.

**(35)** The risks identified under sub. (24) shall be provided for as determined in each case by applying the factors in the manner set forth in the risk based capital instructions.

**(46)** A property and casualty insurer's risk based capital shall be determined in accordance with the formula set forth in the risk based capital instructions. The formula shall take into account, and may adjust for the covariance between each of the following:

- (a) Asset risk.
- (b) Credit risk.
- (c) Underwriting risk.
- (d) All other business risks and such other relevant risks as are set forth in the risk based capital instructions.

**(57)** The risks identified under sub. (46) shall be provided for as determined in each case by applying the factors in the manner set forth in the risk based capital instructions.

**Note:** An excess of capital over the amount produced by the risk based capital requirements in this subchapter and the formulas, schedules and instructions referenced in this subchapter is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the risk based capital levels required by this subchapter. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this chapter.

**(68)** If a domestic insurer files a risk based capital report which in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the risk based capital report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment.

**Section 3. Ins 51.60 is amended to read:**

**Ins 51.60 Supplemental provisions; exemptions. (1)** The provisions of this subchapter are supplemental to any other provisions of the laws or rules of this state, and do not preclude or limit any other powers or duties of the commissioner under

these laws or rules or procedures for applying those laws, including, but not limited to, chs. 620, 623, and 645, Stats. and subch. II. An insurer which is in violation of subch. II is in financially hazardous condition and may be subject to any of the proceedings provided under ch. 645, Stats., regardless of whether the insurer is in compliance with this subchapter or a proceeding is requested or pending under this subchapter and regardless of the insurer's risk based capital level. Nothing in this subchapter prevents the commissioner from taking, or limits the authority of the commissioner to take, action under any of those provisions when action is not permitted or required under this subchapter.

(2) The commissioner may exempt from the application of this subchapter any domestic property and casualty insurer which complies with all of the following:

- (a) The insurer writes direct business only in this state.
- (b) The insurer writes direct annual premiums of \$10,000,000 or less.
- (c) The insurer assumes no reinsurance in excess of five percent of direct premium written.

*cr.* (3) The commissioner may exempt from the application of this subchapter a domestic health maintenance organization insurer writing \$2,000,000 or less direct annual premium or a limited service health organization covering less than 2,000 lives that also complies with all of the following:

- (a) writes only direct business in this state .
- (a) assumes no reinsurance in excess of 5 percent of direct premium written .

**SECTION 4. Ins 51.70 is repealed.**

**SECTION 5.** These changes will take effect on the first day of the first month after publication, as provided in s. 227.22 (2) (intro) and first apply to reports or plans of health maintenance organization and limited service health organization insurers for the calendar year ending December 31, 1999.

Dated at Madison Wisconsin this 5<sup>th</sup> day of November, 1998.

Randy Blumer  
Randy Blumer, Commissioner of Insurance