

WISCONSIN LEGISLATIVE COUNCIL STAFF



*RULES CLEARINGHOUSE*

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**CLEARINGHOUSE REPORT TO AGENCY**

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[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

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## 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. Done

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~~). Done

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." Done

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.] Done

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

The definition of "life or health insurer" in s. Ins 51.01 (~~4011~~) 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). Done

### 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. Done

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.) Done

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

d. In SECTION 5, "Stats." should be inserted after the statute cited. Done

### 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? 



To  
Go  
son  
Connie L. O'Connell  
Commissioner

# State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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[http://badger.state.wi.us/agencies/oci/oci\\_home.htm](http://badger.state.wi.us/agencies/oci/oci_home.htm)

REPORT ON Section Ins 51, Wis. Adm. Code, relating to  
risk based capital for health insurers

Clearinghouse Rule No 98-186  
Submitted Under s. 227.19 (3), Stats.  
The proposed rule-making order is attached.

(a) Statement of need for the proposed rule

(see analysis of rule in proposed rulemaking order)

(b) Modifications made in proposed rule based on testimony at public hearing:

none

(c) Persons who appeared or registered regarding the proposed rule:

Appearances For:

none

Appearances Against:

none

Appearances For Information:

Catherine Truchinski & Lisa Ramminger, Security Health Plan, 1000 N  
Oak, Marshfield WI 54449

Registrations For:

none

Registrations Against:

none

Registrations Neither for nor against:

Nancy Wenzel, Association of Wisconsin HMO's, 2 E Mifflin, #701, Madison  
WI 53703

Mary Haffenbredl, Atrium Health Plan, 4222 Bagley Pkwy, Madison WI  
53705

Virginia Graves, Greater LaCrosse Health Plan/Mayo Management  
Information Systems, 217 S Hamilton, Madison WI 53711

Letters received:

none

(d) Response to Legislative Council staff recommendations

All comments were complied with and corrected. Copies of legislative council comments and the revised rule were handed out at the hearing held January 29, 1999.

(e) Regulatory flexibility analysis

1. None of the methods specified under s. 227.14 (2), Stats., for reducing the rule's impact on small businesses were included because all must be treated equally and thus it is not possible to have different rules for one segment of the population.
2. No issues were raised by small businesses during the hearing on the proposed rule.
3. The proposed rule does not impose any additional reporting requirements on small businesses.
4. The proposed rule does not require any additional measures or investments by small businesses.
5. No methods specified under s. 227.114 (2), Stats., are included in the proposed rule.

(f) Fiscal Effect

See fiscal estimate attached to proposed rule.

Attachment: Legislative Council Staff Recommendations  
February 12, 1999

**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.

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**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 health and life and property and casualty insurers to maintain certain risk based capital levels. The proposed order removes the current exclusion of health maintenance organization insurers and insurers writing only limited service health organization business from the definition of "insurer" thus applying risk based capital requirements developed by the National Association of Insurance Commissioners ("NAIC") to them also. The objective of this rule is to establish solvency standards for these health insurers in order to increase protections for Wisconsin citizens covered by this insurance.

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**SECTION 1. Ins 51.01 (8m) is created to read:**

**(8m)** "Health maintenance organization insurer" has the meaning given in s. 600.03 (23c), Stats.

**SECTION 2. Ins 51.01 (9) (a) 1. and 2. are repealed and subd 3. through 8. are renumbered subd. 1. through 6.**

**SECTION 3. Ins 51.01 (10) is amended to read:**

**(10)** "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. A "life or health insurer" does not include a health maintenance organization insurer as defined in s. 600.03 (23c), Stats. or an insurer writing only limited service health organization business as defined in s. 609.01 (3) Stats.

**SECTION 4. Ins 51.05 (1g) and (1r) are created to read:**

**(1g)** The risk based capital of health maintenance organization insurers and of insurers writing only limited service health organization business 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.

**(1r)** The risks identified under sub. (1g) shall be provided for as determined in each case by applying the factors in the manner set forth in the risk based capital instructions.

**SECTION 5. Ins 51.60 (3) is created to read:**

**(3)** The commissioner may exempt from the application of this subchapter:

(a) Any domestic health maintenance organization insurer writing \$2,000,000 or less direct annual premium that writes only direct business in this state and assumes no reinsurance in excess of 5 percent of direct premium.

(b) Any domestic insurer writing only limited service health organization business covering less than 2,000 lives that writes only direct business in this state and assumes no reinsurance in excess of 5 percent of direct premium written.

**SECTION 6. Ins 51.70 is repealed.**

**EFFECTIVE DATE**

These changes will take effect on the first day of the first month after publication, as provided in s. 227.22 (2) (intro) Stats. 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 \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Connie O'Connell, Commissioner of Insurance

LRB or Bill No./Adm. Rule No.

WS 51

Amendment No. if Applicable

FISCAL ESTIMATE  
DOA-2048 N(R10/94)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

Subject

RISK BASED CAPITAL FOR HEALTH INSURERS

Fiscal Effect

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Decrease Costs

Local:  No local government costs

- 1.  Increase Costs
  - Permissive
  - Mandatory
- 2.  Decrease Costs
  - Permissive
  - Mandatory

- 3.  Increase Revenues
  - Permissive
  - Mandatory
- 4.  Decrease Revenues
  - Permissive
  - Mandatory

5. Types of Local Governmental Units Affected:
- Towns
  - Villages
  - Cities
  - Counties
  - Others \_\_\_\_\_
  - School Districts
  - WTCS Districts

Fund Sources Affected

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.) 608  
STEPHEN K. MUELLER 267-2833

Authorized Signature/Telephone No.

*Randy Blume*

Date

11/5/98

**FISCAL ESTIMATE WORKSHEET**

1995 Session

Detailed Estimate of Annual Fiscal Effect  
DOA-2047 (R10/94)

ORIGINAL       UPDATED  
 CORRECTED     SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

Amendment No.

WS 51

Subject

*RISK BASED CAPITAL FOR HEALTH INSURERS*

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
A. State Costs by Category		Increased Costs	Decreased Costs
State Operations - Salaries and Fringes		\$ 0	\$ - 0
(FTE Position Changes)		( 0 FTE)	(- 0 FTE)
State Operations - Other Costs		0	- 0
Local Assistance		0	- 0
Aids to Individuals or Organizations		0	- 0
<b>TOTAL State Costs by Category</b>		<b>\$ 0</b>	<b>\$ - 0</b>
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$ 0	\$ - 0
FED		0	- 0
PRO/PRS		0	- 0
SEG/SEG-S		0	- 0
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		Increased Rev.	Decreased Rev.
GPR Taxes		\$ 0	\$ - 0
GPR Earned		0	- 0
FED		0	- 0
PRO/PRS		0	- 0
SEG/SEG-S		0	- 0
<b>TOTAL State Revenues</b>		<b>\$ 0</b>	<b>\$ - 0</b>

**NET ANNUALIZED FISCAL IMPACT**

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)

*STEPHEN K. MUELLER 608-267-2833*

Authorized Signature/Telephone No.

*Randy Blume*

Date

*11/5/98*

FEB 12 1999



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Tommy G. Thompson  
Governor

Connie L. O'Connell  
Commissioner

February 12, 1999

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HONORABLE RICHARD GROBSCHMIDT  
SENATE CO CHAIRPERSON  
JOINT COMM FOR REVIEW OF ADM RULES  
100 N HAMILTON ST RM 404  
MADISON WI 53702

Re: Rule, Section Ins 51, Wis. Adm. Code, relating to risk based capital  
for health insurers  
Clearinghouse Rule No. 98-186

Dear Senator Grobschmidt:

I am enclosing a copy of this proposed rule which has been submitted to the presiding officers of the legislative houses under s. 227.19 (2), Wis. Stat. A copy of the report required under s. 227.19 (3), Wis. Stat., is also enclosed.

Best Regards,

A handwritten signature in cursive script that reads "Connie L. O'Connell".

Connie L. O'Connell  
Commissioner of Insurance

CLO:SM

Attachment: 1 copy rule and legislative report