Publication Date: **October 1, 2009**
Effective Dates: **October 2, 2009 through October 1, 2010**

EMERGENCY ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE

To create Ins 3.75, Wis. Adm. Code, relating to continuation of group health insurance policies.

FINDING OF EMERGENCY

Under 2009 Act 11, s. 9126, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 11 reads as follows:

2009 Wisconsin Act 11, SECTION 9126. Nonstatutory provisions; Insurance.

(4) CONTINUATION COVERAGE RULES (a) Notwithstanding section 632.897 of the statutes and subsections (1), (2), and (3), the commissioner of insurance may promulgate rules establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a state eligible individual to whom subsection (2) or (3) applies or an assistance eligible individual, as defined under section 3001 (a) (3) of the federal act, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternative coverage.

(b) The commissioner may promulgate the rules under paragraph (a) as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) of the statutes, emergency rules promulgated under this paragraph may remain in effect for one year and may be extended under section 227.24 (2) of the statutes Notwithstanding section 227.24 (1) (a) and (3) of the statutes, **the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph**. [Emphasis Added]

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

1. **Statutes interpreted:**

   ss. 600.01, 628.34 (12), Stats.

2. **Statutory authority:**

   ss. 601.41 (3), 601.42, 632.897, Stats., s. 9126 of 2009 Wisconsin Act 11 and the American Recovery and Reinvestment Act of 2009, P.L. 111-5

3. **Explanation of OCI's authority to promulgate the proposed rule under these statutes:**

   2009 Act 11 specifically permits the commissioner to enact this rule.

4. **Related statutes or rules:**

   ss. 632.746 & 632.897, Stats.

5. **The plain language analysis and summary of the proposed rule:**

   The United States Department of the Treasury, Internal Revenue Service published an interpretation of the American Recovery and Reinvestment Act of 2009 that provided a continuation election opportunity for covered employees including former employees when an employer discontinues a group health plan. The proposed rule will consider continuation coverage election options for employees that meet the requirements of s. 632.897, Stat., or s. 9126 of 2009 Wisconsin Act 11 whose employer or former employer discontinues the group health insurance policy. The proposed rule will consider election and eligibility criteria for continuation of coverage through a group policy.

6. **Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

   The United States Department of the Treasury, Internal Revenue Service published in a frequently asked question and answer format the question of continuation rights for employees and their dependents when

employers discontinue a group policy and determined that eligible employees would be able to elect continuation coverage that may be eligible for premium subsidy under the American Recovery and Reinvestment Act of 2009. There is no current state rule or policy on this specific issue.

7. **Comparison of similar rules in adjacent states as found by OCI:**

   Illinois: None

   Iowa: None

   Michigan: None

   Minnesota: None

8. **A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:**

   This proposed rule would enact for Wisconsin insureds the ability to elect continuation of coverage when an employer discontinues group health insurance consistent with the Internal Revenue Service's interpretation of the American Recovery and Reinvestment Act of 2009.

9. **Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:**

   The rule imposes no substantial requirements on small employers but would allow discontinued employees of small employer who have group insurance the ability to elect continuation of health insurance coverage.

10. **See the attached Private Sector Fiscal Analysis.**

11. **A description of the Effect on Small Business:**

    This rule will have little or no negative effect on small businesses.

12. **Agency contact person:**

    A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: **http://oci.wi.gov/ocirules.htm**

    or by contacting Inger Williams, OCI Services Section, at:

    Phone: (608) 264-8110
    Email: inger.williams@wisconsin.gov
    Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474
    Mail: PO Box 7873, Madison, WI 53707-7873

13. **Place where comments are to be submitted and deadline for submission:**

    The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in the Notice of Hearing.

    Mailing address:

    Robert Luck
    Legal Unit - OCI Rule Comment for Rule Ins 375
    Office of the Commissioner of Insurance
    PO Box 7873
    Madison WI 53707-7873

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Web site: **http://oci.wi.gov/ocirules.htm**

The proposed rule changes are:

SECTION 1. Ins 3.75 is created to read:

Ins 3.75 Continuation of Discontinued Employer Provided Health Group Policy Coverage For Employees and their Dependents.

(1) PURPOSE. The purpose of this rule is to allow assistance eligible individuals to elect continued coverage provided under s. 632.897, Stats., in circumstances where the group policy is otherwise discontinued on or after June 30, 2009 and not replaced. The rule applies only to individuals who are eligible for a premium subsidy under the federal American Recovery and Reinvestment Act of 2009. The federal act makes the premium subsidy available to those individuals who are eligible due to an involuntary employment termination prior to January 1, 2010.

(2) DEFINITIONS. In this section, unless the context requires otherwise:

(a) "Assistance eligible individual" has the meaning provided in Section 3001 (a) (3) of the federal act.

(b) "Terminated insured" means a terminated insured under s. 632.897 (1) (f) and (2) (b) 2, Stats., whose employment has been involuntarily terminated, who has been continuously covered under a group policy for at least 3 months and who:

1. Would be entitled to elect continued coverage under s. 632.897, Stats., but for the fact that the group policy was discontinued on or after June 30, 2009 and not replaced by another group policy offered by the employer during the terminated insured's 30 day election period under s. 632.897 (3) (a), Stats.; or

2. Is receiving, on behalf of themselves and, if applicable, a spouse or dependents, continued coverage under s. 632.897, Stats., due to an involuntary termination of employment that occurred on or after September 1, 2008 and, on or after June 30, 2009, the group policy is discontinued and not replaced by a group policy offered by the employer.

(c) "Federal act" means the American Recovery and Reinvestment Act of 2009, P.L. 111-5.

(3) ADDITIONAL CONTINUATION COVERAGE ELECTION OPPORTUNITY FOR ASSISTANCE ELIGIBLE INDIVIDUALS WHEN AN EMPLOYER DISCONTINUES AND DOES NOT REPLACE GROUP POLICY COVERAGE.

(a) Except as provided in pars. (c) and (d) an insurer shall permit a terminated insured to elect continuation of coverage under the terms of an employer's group policy if:

1. The group policy is discontinued on or after the effective date of this rule and not replaced.

2. The group policy was discontinued on or after June 30, 2009 and prior to the effective date of this rule and not replaced.

(b) An insurer shall permit a terminated insured to elect continuation of coverage on behalf of themselves and the terminated insured's spouse and dependents if the spouse or dependents are covered under the group policy at the time the group policy was discontinued.

(c) An insurer may limit continuation of coverage under this section to individuals who are eligible for premium assistance under the federal act and who are assistance eligible individuals.

(d) This section does not require continuation of coverage if the individual:

1. Establishes residence outside this state.
2. Fails to make timely payment of a required premium amount after notice as required under s. 631.36, Stats.
3. Becomes eligible for similar coverage under another employer's group policy or for benefits under title XVIII of the Social Security Act.
4. Ceases to be eligible for premium assistance under s. 3001 (a) (2) of the federal act.
5. The individual's eligibility for continued coverage would have otherwise ceased under s. 632.897, Stats., if the group policy had not been discontinued.

(e) Coverage under this section, if elected under par. (a), shall continue uninterrupted from the date of the employer's discontinuance of the group policy . An insurer is not required to continue coverage for a period covered by a conversion policy issued under s. 632.897, Stats., for the period prior to the date of election of continuation coverage.

(f) An insurer shall provide a right to an individual conversion policy on termination of continuation of coverage under this section if the terminated insured tenders the first premium within 30 days after the continued coverage terminates. The insurer shall either include notice of this right and a description of how to make payment of premium in the notice required under sub. (4) or shall provide notice prior to termination of the continuation coverage. The conversion policy shall conform to the requirements of s. 632.897 (4), Stats. An insurer is not required to issue a conversion policy under this paragraph if issuance of an individual conversion policy is not required under the standards established in s. 632.897 (4) (d), Stats.

(4) NOTICE. (a) An employer shall provide written notice in the form required by par. (b) to each terminated insured prior to the date of discontinuance of the group policy except the employer shall provide the notice within 30 days of the effective date of this rule for an employer group policy discontinued on or after June 30, 2009 and prior to the effective date of this rule. An employer or insurer is not required to give notice to a terminated insured who is not, and who is not entitled to elect coverage for, an assistance eligible individual.

(b) The notice required under this subsection shall include a description of the discontinuance of the group policy, the right to continuation under sub. (3) (a) and (b), an explanation of the procedure for electing continued coverage including par. (d), the payment amounts required for continuation coverage, and the manner, place, and time in which the payments shall be paid. The notice shall also include a description of the premium subsidy, the notice required under section 3001 (a) (7) of the federal act and a description of when the continuation coverage will discontinue, including a description of discontinuance under subd. (3) (d) 4.

(c) If an employer that is required to provide the notice as required under par. (a) and (b) fails to provide the notice within the time required, the insurer shall provide the notice specified in par. (b) within 10 days after the date the insurer acquires knowledge the employer has not provided the notice or the date the insurer exercising due diligence should know that the employer has not provided the notice.

(d) Insurance intermediaries shall provide reasonable assistance to insurers by notifying employers of the requirement to provide notice under this subsection and by making reasonable efforts to assist insurers in determining whether the employer complies and, if not, by making reasonable efforts to assist the insurer in giving notice.

(e) A terminated insured may elect continuation of coverage by electing continuation coverage and paying the premium due under sub. (5) (a) to either the employer or the insurer, as directed by the notice required under par. (b), within 30 days after notice is given as required under par. (a) or (c).

(5) PREMIUM. (a) The insurer may charge for coverage continued under this section an amount no more than 100% of the cost the employer incurred for providing the group policy coverage, including group rate adjustments on the date the group policy would have renewed that are based on applying rating factors to group changes that occurred prior to the discontinuance of the group policy. The employer or insurer shall collect only 35% of that amount from the terminated insured. The insurer may collect any premium subsidy available under the federal act.

(b) An insurer may require payment of premium for all required continuation coverage periods, including for periods prior to the date of election or the effective date of this rule.

(c) An employer, if requested by the insurer, shall collect and remit to the insurer premium due under this rule. An insurer may require the employer to collect and remit premium due from a terminated insured, spouse or dependent under this rule. An insurer may not condition continuation of coverage on the employer collection and remittance of premium. An insurer shall treat payment by a terminated insured, spouse or dependent to the employer as receipt and payment to the insurer unless the insurer directs that payment be made to the insurer. An insurer may direct a terminated insured, spouse or dependent to pay the premium to either the employer or to the insurer, including by direction in the notice under sub. (4) (b).

(d) An employer shall notify an insurer when the employer discontinues a group policy and does not replace the group policy. An insurer may require the employer to give it notice when it discontinues a group policy and does not replace the group policy. An insurer may not condition continuation of coverage under this rule on employer notice of such discontinuance.

(6) PORTABILITY; HIRSP. For an individual who elects continuation of coverage under

this section, the period, if any, from the date of the termination of the individual's group policy coverage to the commencement of continuation of coverage under this section shall be disregarded for the purpose of determining the 63-day period under section 632.746 (3) (b), Stats., and determining eligibility as an eligible individual under ch. 149, Stats.

(7) CONTRACT TERMS PRESERVED. An insurer may restrict coverage provided under this section to the terms of the group policy to the extent the terms do not conflict with this rule. Nothing in this section prohibits an insurer from applying deductibles and other cost sharing according to the terms of the group policy, including according to policy periods based on renewal dates that would have occurred had the policy not been discontinued. An insurer may apply policy modifications that were included in notice given to the employer under s. 631.36, Stats., or requested by the employer, that took effect or would have taken effect prior to or on the date of the discontinuance of the policy. An insurer may include provisions for administration of this rule in its group policy and certificates.

SECTION 2. This section may be enforced under ss. 601.41, 601.64, 601.65, 628.10, Stats., or ch. 645, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

SECTION 3. These emergency rule changes will take effect on the day after publication, as provided in s. 227.24(1)(c), Stats.

Dated at Madison, Wisconsin, this 28th day of September, 2009.

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Sean Dilweg
Commissioner of Insurance

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Section Ins 3.75 relating to continuation of group insurance policies and affecting small business

This rule change will have no significant negative effect on the private sector regulated by OCI but will allow numerous people to continue group health insurance that would not be able to without this change.

Division of Executive Budget and Finance
DOA-2047 (R10/2000)

Wisconsin Department of Administration

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

☒ ORIGINAL	☐ UPDATED	LRB Number	Amendment No. if Applicable
☐ CORRECTED	☐ SUPPLEMENTAL	Bill Number	Administrative Rule Number **INS 3.75**

Subject
continuation of group insurance policies and affecting small business

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

Annualized Costs:	**Annualized Fiscal impact on State funds from:**	
	Increased Costs	**Decreased Costs**
A. State Costs by Category 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**
TOTAL State Costs by Category	**$ 0**	**$ -0**
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**
C. State Revenues Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.) GPR Taxes	**Increased Rev.** **$ 0**	**Decreased Rev.** **$ -0**
GPR Earned	**0**	**-0**

FED	**0**	**-0**
PRO/PRS	**0**	**-0**
SEG/SEG-S	**0**	**-0**
TOTAL State Revenues	**$ 0 None**	**$ -0 None**

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	$ **None 0**	$ **None 0**
NET CHANGE IN REVENUES	$ **None 0**	$ **None 0**

Prepared by: Robert Luck	**Telephone No.** (608) 266-0082	**Agency** Insurance
Authorized Signature:	**Telephone No.** (608) 267-3782	**Date (mm/dd/ccyy)** 09/28/2009

Division of Executive Budget and Finance
DOA-2048 (R10/2000)

Wisconsin Department of Administration

FISCAL ESTIMATE

☒ ORIGINAL ☐ UPDATED

☐ CORRECTED ☐ SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number **INS 3.75**

Subject

continuation of group insurance policies and affecting small business

Fiscal Effect

State: ☒ No State Fiscal Effect

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

☐ Increase Existing Appropriation ☐ Increase Existing Revenues

☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues

☐ Create New Appropriation

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

☐ 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

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Long-Range Fiscal Implications

None		
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Authorized Signature:	**Telephone No.** (608) 267-3782	**Date (mm/dd/ccyy)** 09/28/2009