Publication Date: **October 30, 2009**
Effective Dates: **October 31, 2009 through March 29, 2010**

PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE CREATING A RULE

To create Ins 3.34, Wis. Adm. Code,

Relating to coverage of dependents to age 27 and affecting small business.

FINDING OF EMERGENCY

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows: the Commissioner is aware that insurers, employers and consumers are interpreting the state mandate inconsistently so without this rule consumers will not be treated similarly when the law becomes effective on January 1, 2010; the Commissioner has received numerous inquiries from insurers, consumers and employers seeking clarity of terms and guidance on interpretation and implementation of the law as many employers are entering open enrollment for the 2010 plan year.

These changes will be effective the day following publication in the official state newspaper and a permanent rule will start the permanent rule process to achieve uniformity in interpretation therefore protecting the public, informing employers, and guiding insurers in the state.

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

1. **Statutes interpreted:**

   ss. 600.01, 628.34 (12), 632.885, Stats.

2. **Statutory authority:**

   ss. 600.01 (2), 601.41 (3), 601.42, 628.34 (12), Stats.

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

   The commissioner is authorized by s. 601.41, Stats., to propose rules in accordance with s. 227.11 (2), Stats., in order for the commissioner to administer and enforce the insurance statutes. Since passage of 2009 Wis. Act 28, the commissioner has been made aware of dramatic differences in interpretation and approaches to implementation that necessitate rule making.

4. **Related statutes or rules:**

   None.

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

   The proposed rule interprets and implements the requirements of s. 632.885, Stats., by clarifying and defining eligibility criteria and providing guidance as to how insurers and self-insured health plans are to determine an adult child's eligibility for coverage. The proposed rule clarifies that the mandate applies to individual and group health insurance, limited-scope health insurance including vision and dental plans as well as self-insured health plans. The rule also clarifies that this mandate does not apply to certain insurance products including long-term care and Medigap policies. Further, as described in the applicability provisions of 2009 Wis. Act 28, the rule states when the mandate first applies, including the initial applicability for collectively bargained health plans.

   The proposed rule provides clarity through definitions of "premium contribution" and "premium amount." The commissioner received the greatest volume of inquiries seeking guidance on how the premium comparison was to be conducted. The proposed rule simplifies and guides insurers and self-insured plans on exactly what is to be compared for this element of eligibility determination.

Guidance is provided regarding to whom an offer of coverage for an eligible adult child is to be given and reinforces the statutory provision that it is only the applicant or the insured who determines whether or not an eligible dependent is added to his or her health plan. The rule further informs insurers and self-insured plans on prohibited practices that would unduly restrict an otherwise eligible dependent from coverage contrary to the intent of the statute.

Specifically the rule provides specific guidance to insurers offering individual health insurance products as compared to insurers or self-insured health plans offering group health insurance coverage. Insurers offering individual health insurance may rate, may utilize pre-existing condition waiting periods and may apply elimination riders to an eligible adult child but may not impose such limitations as coverage would be rendered illusory. Insurers offering group health insurance or limited-scope insurance and self-insured health plans must comply with s. 632.746, Stat., with regards to pre-existing condition waiting periods and application of creditable coverage. The rule also requires insurers and self-insured health plans to treat an eligible adult child as a new entrant and provide annually at least a 30-day enrollment period.

Finally, the rule clarifies s. 632.885 (2) (a) 3. and (b) 3., Stats. An adult child is an eligible adult child when the child is between the ages of 17 and 27, is not married and who is not eligible for his or her employer sponsored coverage or whose employer does not offer health insurance to its employees. An adult child who has been called to federal active duty is an eligible adult child when a full-time student, less than 27 years of age when called to active duty. The rule clarifies that the adult child will have up to 12 months after completing active duty to apply for full-time student status at an institution of higher education, and that if the adult child is called more than once in four years of the first call to active duty, insurers and self-insured health plans may only use the adult child's age at the time of the first call to active duty when determining eligibility.

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:

There is no existing regulation directly related to this new mandate. The federal government, US House and Senate are currently debating health insurance reform and at this time the office is aware that some of the proposals will be revised to contain similar requirements for extending coverage to adult children, but none have passed as of this date.

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

Illinois: 215 ILCS 5/356z.12 provides parents with the option of keeping unmarried dependents on their health care insurance up to age 26. Parents with dependents who are veterans can keep dependents on the plans up to age 30. The veterans must be unmarried, must be Illinois residents, and must have received a discharge other than dishonorable. Veterans do not have to be enrolled as full-time students.

Iowa: Iowa Code § 509.3 and Iowa Code § 514E.7 requires that health insurance providers continue to cover unmarried children under their parents' coverage provided that the child: 1) is under the age of 25 and a current resident of Iowa, 2) is a full-time student, or 3) has a disability. Iowa Code § 509A.13.B, effective July 1, 2009, allows reenrollment of the same children in previously existing coverage under certain circumstances.

Michigan: No comparable regulations found. Michigan Code § 500.3406g prohibits the denial of enrollment on certain grounds for plans offering dependent coverage, and § 500.3406h addresses the eligibility of parents for dependent coverage and the health coverage of children through noncustodial parents. § 500.2264 provides exception for the termination of dependent coverage at specified age if a child is incapable of self-support due to mental or physical disability.

Minnesota: Minnesota Chapter 62E.02 Defines "dependent" as a spouse or unmarried child under age 25, or a dependent child of any age who is disabled.

Ohio: (information only) Ohio Rev. Code § 1751.14, as amended by 2009 OH H 1 allows an unmarried, dependent child who is an Ohio resident or a full-time student to remain on parent's insurance up to age 28, or without regard to age if they are incapable of self-sustaining employment due to disability.

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:**

The commissioner reviewed existing interpretation of terms used within the new mandate that are used in other areas of the statutes and administrative code for consistency. Further the commissioner considered the intent of the mandate and proposed rules that furthered that intent.

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:**

Although there are some limited-scope health insurers that may meet the definition of a small business, the effect on the insurers will not be significant since insurers will be able to assess and collect premium for the inclusion of the eligible adult child or may apply limitations on coverage. Intermediaries, some of whom may meet the definition of a small business will need to become familiar with this regulation but will not significantly effect those persons.

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

See attached.

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

This rule will have little or no 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:

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13. **Contact information:**

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The proposed rule changes are:

SECTION 1. Ins 3.34 is created to read:

Ins 3.34 (1) PURPOSE. This section implements s. 632.885, Stats.

(2) APPLICABILITY. (a) This section applies to disability insurance policies as defined at s. 632.895 (1) (a), Stats., including individual health and group health benefit plans, and to self-insured health plans as defined at s. 632.745 (24), Stats. This section also applies to limited-scope plans including vision and dental plans but does not include hospital indemnity, income continuation, accident-only benefits, long-term care and Medigap policies.

(b) Coverage under this section first applies to policies issued or renewed on or after January 1, 2010, or for collectively bargained agreements containing provisions for health plans or policies the date the policies or plans are established, extended, modified, or renewed on or after January 1, 2010.

(3) DEFINITIONS. In this section and for purposes of applying s. 632.885, Stats.:

(a) "Adult child" means a child of the applicant, enrollee or insured who meets the eligibility requirements of s. 632.885 (2), Stats., as applicable.

(b) "Premium contribution" means the amount the adult child is required to pay for coverage under the adult child's employer sponsored group health benefit plan or self-insured health plan.

(c) "Premium amount" means the additional amount the applicant or insured is required to pay for inclusion of the adult child under the applicant's or insured's health insurance policy or self-insured plan.

(4) PREMIUM DETERMINATION. (a) To determine whether an adult child meets the eligibility standard in s. 632.885 (2) (a) 3., Stats., the insurer or self-insured health plan must use only the following:

1. The amount of the adult child's premium contribution.

2. The amount of the applicant's or insured's premium amount.

(5) OFFER OF COVERAGE. (a) Insurers and self-insured health plans shall offer to all applicants and insureds a special enrollment opportunity to include an eligible adult child as a new entrant covered under the policy or plan. It is solely the applicant's or insured's decision whether or not to add eligible adult children to the plan to the extent permitted by law.

(b) Insurers and self-insured health plans may not limit or otherwise restrict the offer of coverage to an eligible adult child by requiring any of the following:

1. The eligible adult child to have been previously covered as a dependent.

2. The eligible adult child to reside in this state.

3. The eligible adult child demonstrate that he or she had previous creditable coverage.

4. The insured or applicant to have requested coverage for an eligible adult child the first time the child was eligible for coverage.

(c) Insurers offering individual disability insurance must also comply with the following:

1. Insurers may not deny coverage to an eligible adult child when the applicant or insured requests coverage.

2. Insurers may individually rate the eligible adult child and apply pre-existing condition waiting periods compliant with s. 632.76 (2) (ac) 2., Stats.

3. Insurers may apply elimination riders to the eligible adult child.

4. Insurers may not otherwise limit coverage if such limitations result in coverage that is illusory.

(d) Insurers offering group disability insurance and self-insured health plans must also comply with the following:

1. Insurers and self-insured health plans may not deny coverage of an eligible adult child when coverage is requested by the applicant or insured.

2. Insurers and self-insured health plans must apply portability rights to an eligible adult child so long as the adult child has not had a break in creditable coverage longer than 62 days.

3. Insurers and self-insured health plans must comply with s. 632.746, Stats., as applicable.

4. Insurers and self-insured health plans shall offer coverage for eligible adult children of applicants and insureds as new entrants and shall annually provide at least a 30-day enrollment period. In 2010, the 30-day enrollment period shall occur at the time the policy is issued or renews. Insurers may request documentation of the adult child's creditable coverage for determining portability. The pre-existing condition waiting period applicable to the eligible adult child must be applied to the adult child the same as any other applicant or eligible dependent.

(6) ELIGIBLE ADULT CHILD. (a) For purposes of this section and implementation of s. 632.885 (2), Stats., an adult child is eligible for coverage as a dependent if either of the following is met:

1. For an adult child who has not been called to federal active duty in the national guard or in a reserve component of the U.S. armed forces, either of the following:

a. An adult child who meets s. 632.885 (2) (a) 1. and 2., Stats., and who is not eligible for his or her employer sponsored coverage or whose employer does not offer health insurance to its employees is an eligible adult child.

2. For an adult child who has been called to federal active duty in the national guard or in a reserve component of the U.S. armed forces, all of the following:

a. The adult child must apply to an institution of higher education as a full-time student within 12 months from the date the adult child has fulfilled his or her active duty obligation.

b. When an adult child is called to active duty more than once within a four-year period of time, the insurer and self-insured health plan must use the adult child's age when first called to active duty for determining eligibility under this section.

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 following publication as provided in s. 227.24 (1) (c), Stats.

Dated at Madison, Wisconsin, this _____ day of _____, 2009.

_____
Sean Dilweg
Commissioner of Insurance

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Section Ins 3.34 relating to coverage of dependents to age 27 and affecting small business

This rule change will have no significant effect on the private sector regulated by OCI.

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 334**

Subject
coverage of dependents to age 27 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.)	**Increased Rev.**	**Decreased Rev.**
GPR Taxes	**$ 0**	**$ -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: Julie E. Walsh	**Telephone No.** (608) 264-8101	**Agency** Insurance
Authorized Signature:	**Telephone No.**	**Date (mm/dd/ccyy)**

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 334**

Subject

coverage of dependents to age 27 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**		
Prepared by: Julie E. Walsh	**Telephone No.** (608) 264-8101	**Agency** Insurance
Authorized Signature:	**Telephone No.**	**Date (mm/dd/ccyy)**