

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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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.

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 (~~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).

### **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?