

Clearinghouse Rule 10-149

STATE OF WISCONSIN

OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

★★★ NOTICE OF RULEMAKING HEARING ★★★

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41(3), Stats., and the procedures set forth in under s. 227.18 and 227.24 (4), Stat., OCI will hold a public hearing to consider the emergency rule and the adoption of the attached proposed permanent rulemaking order affecting s. Ins 3.375, Wis. Adm. Code, relating to health insurance coverage of nervous and mental disorders and substance use disorders and affecting small business.

**HEARING INFORMATION**

**Date:** January 27, 2011  
**Time:** 1:00 p.m., or as soon thereafter as the matter may be reached  
**Place:** OCI, Room 227, 125 South Webster St 2<sup>nd</sup> Floor, Madison, WI

Written comments can be mailed to:

Julie E. Walsh  
Legal Unit - OCI Rule Comment for Rule Ins 3375  
Office of the Commissioner of Insurance  
PO Box 7873  
Madison WI 53707-7873

Written comments can be hand delivered to:

Julie E. Walsh  
Legal Unit - OCI Rule Comment for Rule Ins 3375  
Office of the Commissioner of Insurance  
125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53703-3474

Comments can be emailed to:

Julie E. Walsh  
julie.walsh@wisconsin.gov

Comments submitted through the Wisconsin Administrative Rule Web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 10<sup>th</sup> day after the date for the hearing stated in this Notice of Hearing.

**SUMMARY OF PROPOSED RULE & FISCAL ESTIMATE**

For a summary of the rule, see the analysis contained in the attached proposed rulemaking order. There will be no state or local government fiscal effect. The full text of the proposed changes, a summary of the changes and the fiscal estimate are attached to this Notice of Hearing.

**INITIAL REGULATORY FLEXIBILITY ANALYSIS**

Notice is hereby further given that pursuant to s. 227.14(2g), Stats., the proposed rule may have a significant economic impact on small businesses.

## **OCI SMALL BUSINESS REGULATORY COORDINATOR**

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266-7843 or at email address [eileen.mallow@wisconsin.gov](mailto:eileen.mallow@wisconsin.gov)

### **CONTACT PERSON**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, OCI, at: [inger.williams@wisconsin.gov](mailto:inger.williams@wisconsin.gov), (608) 264-8110, 125 South Webster Street – 2<sup>nd</sup> Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

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

**To amend** Ins 3.37 (1) to (5) (intro);

**To create** Ins. 3.37 (2m), (3m), (4m) and (5m), and 3.375, Wis. Adm. Code,

**Relating to** health insurance coverage of nervous and mental disorders and substance use disorders, and affecting small business.

---

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

**1. Statutes interpreted:**

s. 600.01, 628.34 (12), and 632.89, Stats.

**2. Statutory authority:**

ss. 600.01 (2), 601.41 (3), 601.42, 628.34 (12), and 632.89, Stats.

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

The commissioner is required to promulgate rules to implement recreated s. 632.89, Stats., pursuant to s. 632.89 (4) (b), Stats., ensuring that insurers offering group health benefit plans and self-funded governmental plans include as a covered benefit the treatment of nervous and mental disorders and substance use disorders. In addition s. 632.89 (4) (a), Stats., requires the commissioner to promulgate rules relating to transitional treatment.

**4. Related statutes or rules:**

Section 609.71, Stats., was also created by 2009 Wis. Act 218 requiring defined health plans comply with the requirements contained in s. 632.89 and s. Ins 3.37, Wis. Admin. Code describe coverage for transitional treatment as required by s. 632.89 (4) (a), Stats.

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

The proposed rule implements the recreated s. 632.89, Stats., instituting mental health parity in the treatment of nervous and mental disorders and substance use disorders. The proposed rule amends regulations relating to transitional treatment coverage and creates a new section for implementing requirements for the coverage of nervous and mental disorders and substance use disorders.

The transitional treatment regulation is bifurcated into requirements for plans issued on or after November 1, 2007 and prior to December 1, 2010 and parallel numbered sections for policies issued on or after December 1, 2010. For existing policies or policies for which an employer has requested an exemption pursuant to s. 632.89 (3c) or (3f), Stats., the requirements reflect s. 632.89, 2007 Stats., and updated cites and provisions of regulations contained in the department of health services pertaining to transitional treatment.

For plans issued on or after December 1, 2010, parallel requirements are created within the proposed revisions to s. Ins 3.37 to apply to insurers offering group health insurance plans and for self-insured governmental plans on a going forward basis. The types of services are the same except for removal of minimum dollar limitations and the types of insurers or self-insured governmental plans to which the requirements apply.

Concerns were raised regarding compliance with the PPACA requirement of no annual limits for essential benefits and s. 632.89 (2), 2007 Stat., benefit levels. The concerns were silenced after identifying that the s. 632.89 (2), 2007 Stat., are written as “not less than” so act as benefit floors and do not preclude exceeding the floor amount therefore not volatile of the federal law.

The proposed rule also creates s. Ins 3.375, Wis. Adm. Code, to implement s. 632.89, Stats., for policies issued on or after December 1, 2010, that requires

insurers offering group health insurance and self-insured governmental plans to provide coverage for the treatment of nervous and mental disorders and substance use disorders no more restrictively than coverage for the most common or frequent type of treatment limitations that are applied to substantially all other coverage under the plan. This means insurers and self-insured governmental plans cannot impose limited benefits or impose different cost-sharing provisions based upon receiving nervous, mental or substance use disorders treatment. The rule defines “substantially all” to mean that the terms of coverage for nervous, mental and substance use disorders is to be treated no more restrictively than a single type of financial requirements or quantitative treatment limitations that apply to two-thirds of covered medical or surgical benefits.

Pursuant to s. 632.89 (3c), Stats., for employers seeking an exemption based upon increased costs related to the parity requirements, employers may request insurers to have a qualified actuary determine, at the insurer’s cost, whether the employer is eligible for the exemption. Nothing in the rule, however, limits or prohibits an employer or self-funded governmental plan from obtaining, at their cost, a qualified actuarial determination.

Proposed s. Ins 3.375 (5), contains provisions governing insurers offering individual health benefit plans that contain benefits for the treatment of nervous and mental disorders or substance use disorders. Insurers offering these individual health benefit plans shall make available the criteria for determining medical necessity and if the individual health benefit plan denies benefits related to nervous and mental disorders or substance use disorders it shall make the reason for the denial available to the insured, participant, or beneficiary in addition to complying with s. 632.857, Stats.

For eligible employers electing an exemption, Appendix 1 and 2 contain the model notices that insurers are to provide to employers or self-insured governmental plans that the employer is to post and distribute to employees explaining the basis of the exemption as well as a list of the benefits that will be provided to the employees as was contained in s. 632.89, 2007 Stats.

**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 Mental Health Parity and Addiction Equity Act of 2008 (“MHPAEA”), was effective October 1, 2009 with interim final regulations published in February 2010. Wisconsin’s 2009 Wis. Act 218 paralleled many provisions of the federal law in the statute and enhanced coverage benefits for Wisconsin consumers insured through small employers and covered by individual health benefit plans.

Additionally, the Patient Protection and Affordable Care Act of 2010, P.L. 111-148, as amended by the Federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152 (jointly “PPACA”), identifies the treatment for mental health benefits and substance use disorders as an essential benefit that is to be contained in all health plans effective January 1, 2014. Further, as an essential benefit, as of September 23, 2010, insurers are to remove annual limits and phase out lifetime limitations over the next several years.

However, as of the date of this proposed rule, no specific federal guidance has been provided on how the MHPAEA and PPACA will be combined and what affect that combination will have on insurers and consumers. In the absence of such guidance, the commissioner’s proposed rule does not interfere with an insurer’s ability to comply with Wisconsin law, federal parity and federal health reform.

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

**Illinois:** 214 Ill. Comp. Stat. Ann 5/370c, SB 1341, and HB 2190 provide minimum mandated benefits affecting group health policies having more than 50 enrolled employees. Covered conditions include serious mental illness, including pervasive developmental disorders and post-traumatic stress disorders. Benefits include a minimum of 45 inpatient days and 35 outpatient visits benefits for serious mental illness; other mental health conditions may be subject to 50% co-pays and the lesser of the annual limit of \$10,000.00 or 25% of the lifetime policy limit. Mental illness resulting from the use of controlled substances or cannabis and addictions to controlled substances and cannabis are not required to be covered.

**Iowa:** Iowa code 514c.22 and HF420 provide minimum mandated benefits affecting group health policies having more than 50 enrolled employees. There is a 50-employee exemption if no coverage of mental illness is provided. Serious mental illness including pervasive developmental disorders and autistic disorders are covered; the minimum benefits include 30 inpatient days and 52 outpatient visits per plan year.

**Michigan:** SB 1209/Act 252 provides a minimum mandated benefit affecting Health Maintenance Organizations (HMOs) that covers broad-based mental health disorders and substance use disorders. Minimum coverage levels include a 3% cost exemption and no fewer than 20 outpatient mental health visits per plan year.

**Minnesota:** Minn. Stat. Sec. 62A.152, Minn. Stat. Sec. 62Q.47, and SB 845 provide comprehensive parity for HMOs and Community Integrated Service Networks. Benefits are mandated if offered for individual and group policies. Broad-based mental health disorders and substance use disorders are covered at minimum coverage levels.

**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 appointed a 20-member advisory council that met two times to discuss implementation advice to the commissioner on the parity law, content and delivery of notices to employees and components of the actuarial study. The council

membership includes Sen. Hansen and Rep. Pasch, the sponsors of Wisconsin's law as well as representatives from the insurance industry, mental health and hospital providers, consumer mental health and substance use disorder advocates, large and small businesses. The commissioner's staff also met with the Department of Health Services to ensure citations and coverage description reflects current transitional treatment provisions and updated regulations. The proposed rule reflects the results of the council's deliberations and advice.

**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:**

Upon review of insurers affected by the regulation, the office identified no small businesses that would be affected by the regulation.

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

Private sector fiscal analysis is attached to the rule

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

No significant effect will be imposed on regulated small businesses. No additional technology requirements are necessary to comply with the regulation.

**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](mailto:inger.williams@wisconsin.gov)

Address: 125 South Webster St – 2<sup>nd</sup> 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 14<sup>th</sup> day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

Lynn A. Welsh

Legal Unit - OCI Rule Comment for Rule Ins 3375

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Street address:



Lynn A. Welsh  
Legal Unit - OCI Rule Comment for Rule Ins 3375  
Office of the Commissioner of Insurance  
125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53703-3474

Email address:

Lynn A. Welsh  
lynn.welsh@wisconsin.gov

Web site: <http://oci.wi.gov/ocirules.htm>

---

**The proposed rule changes are:**

**SECTION 1. Ins. 3.37 (1) to (4) and (5) (intro.) are amended to read:**

Ins 3.37 (1) PURPOSE. This section implements s. 632.89 (4) (a), Stats.

**(2) APPLICABILITY.** (a) This section applies to group and blanket disability insurance policies issued or renewed on and after November 1, 1992, and prior to December 1, 2010, and group health benefit plans and self-insured governmental plans that elect and are eligible to be exempt pursuant to s. 632.89 (3c), (3f) or (5), Stats., that provide coverage for inpatient hospital services or outpatient services, as defined in s. 632.89 (1) (d) or (e), Stats. Group and blanket disability insurance policies and exempted group health benefit plans and self-insured governmental plans shall cover transitional treatment services and comply with subs. (2m), (3), (4) and (5).

(b) Policies issued on or after December 1, 2010, by a group health benefit plan and a self-insured governmental health plan that are not otherwise exempt under s. 632.89 (3c), (3f) or (5), Stats., shall comply with subs. (2m), (3m), (4m) and (5m).

**(3) COVERED SERVICES.** AAn insurer offering a policy subject to this subsection shall provide at least the amount of coverage required under s. 632.89 (2) (dm) 2., 2007 Stats., subject to the exclusions or limitations, including deductibles and copayments, that are generally applicable to coverage required under s. 632.89 (2), 2007 Stats., for all of the following:

**Note:** ~~Section 632.89 (2) (dm) 2., is repealed effective 12-1-10, by 2009 Wis. Act~~

218.

(a) Mental health services for adults in a day treatment program compliant with the services identified at s. DHS 61.75 (2) and offered by a provider certified by the department of health services under s. DHS 61.75.

(b) Mental health services for children and adolescents in a day treatment program compliant with the services identified at s. DHS 40.11 and offered by a provider certified by the department of health services under s. DHS 40.04.

(c) Services for persons with chronic mental illness provided through a community support program compliant with the services identified at s. DHS 63.11 and certified by the department of health services under s. DHS 63.03.

(d) Residential treatment programs compliant with the services identified at s. DHS 75.14 (1), for alcohol or drug dependent persons, or both, certified by the department of health services under s. DHS 75.14 (4) ~~and (2)~~ and under supervision as required in s. DHS 75.14 (5).

(e) Services for ~~alcoholism and other drug problems~~ substance use disorders provided in a day treatment program compliant with the services identified at s. DHS 75.12 (1), certified by the department of health services under s. DHS 75.12 (1) ~~and (2)~~ and under supervision as required in s. DHS 75.12 (5).

(f) Intensive outpatient programs for ~~the narcotic treatment of psychoactive substance use disorders provided in accordance with the patient placement criteria of the American society of addiction medicine~~ services for opiate addiction compliant with the services under s. DHS 75.15 (1) and (9), certified by the department of health services under s. DHS 75.15 (2) and under supervision as required in s. DHS 75.15 (4).

(g) Coordinated emergency mental health services for persons who are experiencing a mental health crisis or who are in a situation likely to turn into a mental health crisis if support is not provided. Services are provided by a program compliant with s. DHS 34.22, certified by the department of health services under s. DHS 34.03, and provided in accordance with subch. III of

ch. DHS 34 for the period of time the person is experiencing a mental health crisis until the person is stabilized or referred to other providers for stabilization. Certified emergency mental health service plans shall provide timely notice to third-party payors to facilitate coordination of services for persons who are experiencing or are in a situation likely to turn into a mental health crisis.

**(4) OUT-OF-STATE SERVICES AND PROGRAMS.** An insurer offering a group and blanket disability plan or exempt group health benefit plans and self-insured governmental plans may comply with sub. (3) (a) to (eg), by providing coverage for services and programs that are substantially similar to those specified in sub. (3) (a) to (eg), if the provider complies with similar requirements of the state in which the provider is located.

**(5) POLICY FORM REQUIREMENTS.** An insurer offering a group and blanket disability plan or exempt group health benefit plans and self-insured governmental plans shall specify in each policy form all of the following:

**SECTION 2. Ins 3.37 (2m), (3m), (4m) and (5m) are created to read:**

**Ins 3.37 (2m) DEFINITIONS.** The definitions contained in s. 632.89, Stats., and s. 3.375, shall also apply to this section.

**(3m) COVERED SERVICES.** An insurer offering a group health benefit plan or a self-funded governmental plan subject to this subs. shall provide coverage for services included in s. 632.89 (2) (dm), Stats., subject to the exclusions or limitations, including deductibles and copayments, that are generally applicable to coverage required under s. 632.89 (3), Stats., for all of the following:

(a) Mental health services for adults in a day treatment program compliant with the services identified at s. DHS 61.75 (2) and offered by a provider certified by the department of health services under s. DHS 61.75.

(b) Mental health services for children and adolescents in a day treatment program compliant with the services identified at s. DHS 40.11 and offered by a provider certified by the department of health services under s. DHS 40.04.

(c) Services for persons with chronic mental illness provided through a community support program compliant with the services identified at s. DHS 63.11 and certified by the department of health services under s. DHS 63.03.

(d) Residential treatment programs compliant with the services identified at s. DHS 75.14 (1), for alcohol or drug dependent persons, or both, certified by the department of health services under s. DHS 75.14 (2) and under supervision as required in s. DHS 75.14 (5).

(e) Services for substance use disorders provided in a day treatment program compliant with the services identified at s. DHS 75.12 (1), certified by the department of health services under s. DHS 75.12 (2) and under supervision as required in s. DHS 75.12 (5).

(f) Intensive outpatient programs for narcotic treatment service for opiate addiction compliant with the services under s. DHS 75.15 (1) and (9), certified by the department of health services under s. DHS 75.15 (2) and under supervision as required in s. DHS 75.15 (4).

(g) Coordinated emergency mental health services for persons who are experiencing a mental health crisis or who are in a situation likely to turn into a mental health crisis if support is not provided. Services are provided by a program compliant with s. DHS 34.22, certified by the department of health services under s. DHS 34.03, and provided in accordance with subch. III of ch. DHS 34 for the period of time the person is experiencing a mental health crisis until the person is stabilized or referred to other providers for stabilization. Certified emergency mental health service plans shall provide timely notice to third-party payors to facilitate coordination of services for persons who are experiencing or are in a situation likely to turn into a mental health crisis.

**(4m) OUT-OF-STATE SERVICES AND PROGRAMS.** An insurer offering a group health benefit plan and self-insured governmental health plan may comply with sub. (3m) (a) to

(g) by providing coverage for services and programs that are substantially similar to those specified in sub. (3m) (a) to (g), if the provider complies with similar requirements of the state in which the provider is located.

**(5m) POLICY FORM REQUIREMENTS.** An insurer offering a group health benefits plan and self-insured governmental health plan shall specify in each policy form all of the following:

(a) The types of transitional treatment programs and services covered by the policy as specified in sub. (3m).

(b) The method the insurer and the self-insured governmental health plan uses to evaluate a transitional treatment program or service to determine if it is medically necessary and covered under the terms of the policy.

**SECTION 3. Ins 3.375 is created to read:**

**Ins 3.375 (title) Ins 3.375. Coverage of nervous and mental disorders and substance use disorders.**

**(1) PURPOSE.** This section interprets and implements s. 632.89, Stats.

**(2) APPLICABILITY.** (a) This section applies to group health benefit plans as defined in s. 632.745 (9), Stats., health benefit plans as defined in s. 632.745 (11), Stats., and self-insured governmental health plans as defined in s. 632.745 (24), Stats., unless otherwise excluded pursuant to s. 632.89 (5), Stats.

(b) For group health benefit plans and self-insured governmental plans covering employees who are affected by a collective bargaining agreement, the coverage under this section applies as follows:

1. If the collective bargaining agreement contains provisions consistent with s. 632.89, Stats., the coverage under this section first applies on the earliest of any of the following: the date the group health benefit plan is issued or renewed on or after December 1, 2010, or the date the self-insured governmental health plan is established, modified, extended or renewed on or after December 1, 2010.

2. If the collective bargaining agreement contains provisions inconsistent with s. 632.89, Stats., the coverage under this section applies on the earliest of any of the following: the date the collective bargaining agreement expires, or the date the collective bargaining agreement is extended, modified, or renewed.

**(3) DEFINITIONS.** In this section and for purposes of applying s. 632.89, Stats.:

(a) "Individual health benefit plan" means an insurance product offered on an individual basis that meets the criteria established for a health benefit plan in s. 632.745 (11), Stats.

(b) "Qualified actuary" means a member in good standing of the American academy of actuaries who meets any other requirements that the commissioner may by rule specify as defined in s. 623.06 (1c), Stat., and in accordance with s. 632.89 (3c) (b), Stats.

(c) "Self-insured governmental plan" has the meaning of a self-insured health plan as defined at s. 632.89 (1) (em), Stats.

(d) "Substance use disorder" has the same meaning as "alcoholism and other drug abuse problems" as the phrase appears throughout s. 632.89, Stats.

(e) "Substantially all" has the meaning as defined in 29 CFR 2590 § 2590.712 (c) (3) (i) (A).

(f) "Treatment limitations" means the limitations that insurers offering group or individual health benefit plans and self-insured governmental plans can impose on treatment of nervous and mental disorders and substance use disorders as described in s. 632.89 (3).

**(4) INDIVIDUAL HEALTH BENEFIT PLANS.** (a) Insurers offering health benefit plans on an individual basis that provide benefit coverage for the treatment of nervous and mental disorders or substance use disorders shall provide its criteria for determining medical necessity for coverage upon request and provide a detailed explanation of the reason for a benefit denial to the insured or the insured's authorized representative. The detailed explanation shall be in addition to the explanation of benefits required pursuant to s. 632.857, Stats.

(b) Insurers offering an individual health benefit plans that provide coverage of the treatment of nervous and mental disorders or substance use disorders may impose treatment limitations if the treatment limitations are no more restrictive than the most common or frequent type of treatment limitations applied to substantially all other coverage under the plan and in accordance with s. 632.89 (2), Stat., 29 CFR 2590 subpart C, and s. 2707 of Pub. L. 111-148, as applicable.

(c) Expenses incurred for the treatment of nervous and mental disorders or substance use disorders shall be included in any overall deductible amount, annual, lifetime, or out-of-pocket limits for the plan.

**(5) LIMITATIONS.** (a) Insurers offering group health benefit plans and self-insured governmental health plans that provide coverage of the treatment of nervous and mental disorders, and substance use disorders may impose treatment limitations. If treatment limitations are utilized by an insurer or self-insured governmental plan than the treatment limitations shall be no more restrictive than the most common or frequent type of treatment limitations applied to substantially all other coverage under the plan, in accordance with this section, s. 632.89 (2), Stat., 29 CFR 2590 subpart C, and s. 2707 of Pub. L. 111-148, as applicable.

(b) Expenses incurred for the treatment of nervous and mental disorders and substance use disorders shall be included in any overall deductible amount, annual, lifetime, or out-of-pocket limits for the plan.

**(6) INCREASED COST EXEMPTION.** (a) *Solely claims-experience rated employer.* At the request of an employer that is solely claims experience rated, an insurer offering a group health benefit plan shall have a qualified actuary determine whether the employer is eligible for a cost exemption based on the actual group claims experience in accordance with s. 632.89 (3c), Stats. Insurers can require employers to give at least 90-days advance notice to the insurer from the employer's renewal date for obtaining the determination.

1. The insurer shall request that the qualified actuary prepare an actuarial determination, provide copies of the actuarial determination and all underlying documents that the actuary relied upon in making the determination to the insurer. The insurer must provide the actuary's determination to the employer within 45 days of the employer's request.

2. The insurer shall be responsible for all expenses related to the actuarial cost increase determination and certification.

3. Both the insurer and the employer shall maintain the actuarial determination and underlying documentation for a period of not less than five years and in accordance with s. Ins. 6.80.

(b) *Combined pooled and claims experience rated employer.* An insurer offering a group health benefit plan shall have a qualified actuary determine whether the employer is eligible for an exemption in accordance with either of the following:

1. For an employer that is predominantly rated based on both its own claims experience and has less than 51% of the claims experience pooled with other group health plans, the calculation is to be based on the proportionate share applied due to actual group claims experience and the share applied due to the pooled experience and in accordance with s. 632.89 (3c), Stats. Insurers can require employers to give at least 90-days advance notice to the insurer from the employer's renewal date for obtaining the determination.

a. The insurer shall request that the qualified actuary prepare an actuarial determination, provide copies of the actuarial determination and all underlying documents that the actuary relied upon in making the determination to the insurer. The insurer must provide the actuary's determination to the employer within 45 days of the employer's request.

b. The insurer shall be responsible for all expenses related to the actuarial cost increase determination and certification.



c. Both the insurer and the employer shall maintain the actuarial determination and underlying documentation for a period of not less than five years and in accordance with s. Ins. 6.80.

2. For an employer that is predominantly rated based on claims experience pooled with other group health benefit plans that constitutes 51% or more of the claims experience, the insurer shall have a qualified actuary determine whether the pooled group is eligible for an exemption calculated based on the pool's claims experience and in accordance with s. 632.89 (3c), Stats. Insurers can require employers give at least 30-days advance notice to the insurer from the employer's renewal date for obtaining the determination.

1. The insurer shall have a qualified actuary calculate one time each year a determination of whether the employers participating within the pool are eligible for a cost exemption.

2. The insurer shall be responsible for all expenses related to the actuarial cost increase determination and certification.

3. The insurer shall make the determination available to an employer within 15 days of the employer's request. The insurer shall provide a date on which the actuarial determination will be available annually. The insurer shall maintain the actuarial determination and underlying documentation for a period of not less than five years and in accordance with s. Ins. 6.80.

(c) *Prior and succeeding insurers.* During the first year after an employer changes insurers offering group health benefit plans, the succeeding insurer shall accept as accurate and may rely upon the prior insurer's determination of eligibility for cost exemption. A succeeding insurer shall provide the prior insurer's calculation to the employer following a timely request for purposes of calculating the employer's eligibility for a cost exemption.

(d) *Notice of election.* An insurer offering a group health benefit plan or a self-insured governmental health plan shall provide the applicable notice to the employer who qualifies for

and elects an increased cost exemption under s. 632.89 (3c), Stats. The insurer shall inform the employer to notify promptly all enrollees under the plan of the exemption not to exceed 30-days following the cost increase determination and exemption election.

1. The notice shall be in substantially the form outlined in Appendix 2, using a standard typeface with at least a 10-point font, indicating the exemption election and that the plan will comply with benefit coverage requirements contained in s. 632.89 (2), 2007 Stats.

2. The notice shall be provided to each plan enrollee in either electronic or paper form.

3. The notice shall also be posted in a prominent position in each workplace of the employer.

**(7) SMALL EMPLOYER EXEMPTION.** (a) *Employer request.* An employer having fewer than 10 eligible employees on the first day of the plan year may request and elect an exemption from compliance with s. 632.89, Stats. An insurer offering a group health benefit plan or self-funded government plan shall inform the employer that in lieu of those requirements, the plan will cover benefits for nervous and mental disorders and substance use disorders in accordance with the requirements contained in s. 632.89 (2), 2007 Stats.

(b) *Notice of election.* An insurer offering a group health benefits plan or a self-insured governmental health plan shall provide the applicable notice to the employer who qualifies for and elects the small employer exemption under s. 632.89 (3f), Stats. The insurer shall inform the employer to notify promptly all enrollees under the plan of the exemption not to exceed 30 days from the employer's determination to elect exemption. The notice shall comply with all of the following:

1. The notice shall be in substantially the form outlined in Appendix 1, using a standard typeface with at least a 10-point font, indicating the exemption election and that the plan will cover benefits for nervous and mental disorders and substance use disorders in accordance with the requirements contained in s. 632.89 (2), 2007 Stats.

2. The notice shall be provided to each plan enrollee in either electronic or paper form.

3. The notice shall also be posted in a prominent position in each workplace of the employer.

**SECTION 4.** 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 5.** These changes apply to policies issued or renewed on or after December 1, 2010.

Dated at Madison, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 2010.

---

Sean Dilweg  
Commissioner of Insurance

## **Small Employer Notice of the Plan's Election of Exemption from Mental Health and Substance Use Disorder Parity for [This Plan Year]**

You are receiving this notice as an employee of [name of employer group]. This notice is to inform you that [name of employer group] qualifies and elects to be exempt from the state nervous and mental disorders and substance use disorders coverage parity requirements for this plan year, beginning [insert date of the first day of the plan year]. The employer is eligible to elect this exemption based upon having fewer than 10 eligible employees. Benefits may change as of [insert the date of the first day of the plan year].

Despite the exemption from the state nervous and mental disorders and substance use disorders coverage requirements, state law requires [name of employer group] to comply with the minimum mandated coverage requirements and limitations contained in s. 632.89 (2), 2007 Stats., for treatment services for nervous and mental disorders and substance use disorders.

For this plan year, your plan provides the following coverage related to nervous and mental disorders and substance use disorders:

[Insert plain language benefits summary]

Carefully review your health plan's benefits, limitations, and exclusions for detailed information on services and coverage available to you and your family this plan year. If you have additional questions please contact [insert contact name, phone number and e-mail address if available].

**Group Health Benefit Plan Notice of Election of Exemption from Mental Health and Substance Use Disorder Parity for [This Plan Year]**

You are receiving this notice as an employee of [name of employer group]. This notice is to inform you that [name of employer group] qualifies and elects to be exempt from the state nervous and mental disorders and substance use disorders coverage parity requirements for this plan year, beginning [insert date of the first day of the plan year].

A group health benefit plan may elect to be exempt from mental health and substance use disorder parity if there are increases in the employer's total cost of coverage for the treatment of physical conditions and nervous and mental disorders and substance use disorders by a percentage that exceeds either two percent (2%) in the first plan year in which the nervous and mental disorders and substance use disorders coverage requirements apply or one percent (1%) in any plan year after the first plan year in which the requirements apply. Benefits may change as of [insert the date of the first day of the plan year].

Despite the exemption from the state nervous and mental disorders and substance use disorders coverage requirements, state law requires [name of employer group] to comply with the minimum mandated coverage requirements and limitations contained in s. 632.89 (2), 2007 Stats., for treatment services for nervous and mental disorders and substance use disorders..

For this plan year, your plan provides the following coverage related to nervous and mental disorders and substance use disorders:

[Insert plain language benefits summary]

Carefully review your health plan's benefits, limitations, and exclusions for detailed information on services and coverage available to you and your family this plan year. If you have additional questions please contact [insert contact name, phone number and e-mail address if available].

**Office of the Commissioner of Insurance  
Private Sector Fiscal Analysis**

Section Ins 3.375 relating to health insurance coverage of nervous and mental disorders and substance use disorders, and affecting small business

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

## FISCAL ESTIMATE WORKSHEET

### Detailed Estimate of Annual Fiscal Effect

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number <b>INS 3375</b>

**Subject** health insurance coverage of nervous and mental disorders and substance use disorders, and affecting small business

**One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**  
**None**

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
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	Increased Rev.	Decreased Rev.
<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		
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

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ <u>None 0</u>	\$ <u>None 0</u>
NET CHANGE IN REVENUES	\$ <u>None 0</u>	\$ <u>None 0</u>

Prepared by: Lynn A. Welsh	Telephone No. (608) 261-8565	Agency Insurance
Authorized Signature:	Telephone No.	Date (mm/dd/ccyy)

### FISCAL ESTIMATE

- ORIGINAL                       UPDATED  
  
 CORRECTED                       SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number <b>INS 3375</b>

**Subject**  
health insurance coverage of nervous and mental disorders and substance use disorders 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. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts

Fund Sources Affected                      Affected Chapter 20 Appropriations  
 GPR  FED  PRO  PRS  SEG  SEG-S

Assumptions Used in Arriving at Fiscal Estimate

**Long-Range Fiscal Implications**  
  
**None**

Prepared by: Lynn A. Welsh	Telephone No. (608) 261-8565	Agency Insurance
Authorized Signature:	Telephone No.	Date (mm/dd/ccyy)