

COMMISSIONER OF INSURANCE

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customary business collection procedures, claims settlement and salvage activities and other business activities totally unrelated to the solicitation of business for which a charge is made.

(g) Providing, or offering to provide, either directly or indirectly, a "compensating balance" or deposit in a lending institution either for the express or implied purpose of influencing the extension of credit by such lending institution to any such person, or for the express or implied purpose of influencing the placement or channeling of title insurance business by such lending institution. This shall not be construed to prohibit the maintenance by a title insurer of such demand deposits or escrow deposits as are reasonably necessary for use in the ordinary course of business of such title insurer.

(h) Paying, or offering to pay, the fees or charges of an outside professional (e.g., an attorney, engineer, appraiser, or surveyor) whose services are required by any such person to structure or complete a particular transaction.

(i) Paying, or offering to pay, all or any part of the salary of any employe of any such person.

(j) Paying, or offering to pay, any fee to any such person for any services unless such fee bears a reasonable relation to the services performed.

(k) Paying for, or offering to pay for, services by any such person which services are required to be performed by such person in his capacity as a real estate or mortgage broker or salesperson or agent.

(l) Furnishing or offering to furnish, or paying or offering to pay for, furniture, office supplies, telephones, equipment or automobiles to any such person, or paying for, or offering to pay for, any portion of the cost of renting, leasing, operating or maintaining any of the aforementioned items. Marketing and title insurance promotional items clearly of an advertising nature of token or nominal value, or supplies such as title insurance application blanks and related forms are not within the purview of this prohibition provided they are made available to all such persons on the same terms and conditions.

(m) Paying for, furnishing, or waiving, or offering to pay for, furnish, or waive, all or any part of the rent for space occupied by any such person.

(n) Renting, or offering to rent, space from any such person, regardless of the purpose, at a rent which is excessive when compared with rents for comparable space in the geographic area, or paying, or offering to pay, rent based in whole or in part on the volume of business generated by any such person except for a bona fide percentage lease based on the total volume of receipts of the title entity when the services of that title entity are offered from that location to the public generally.

(o) Paying for, or offering to pay for, gifts, vacations, business trips, convention expenses, travel expenses, membership fees, registration fees, lodging or meals on behalf of any such person, directly or indirectly, or supplying letters of credit, credit cards or any such benefits to any such person for any purpose whatsoever. This prohibition is directed at prohibiting special favors to certain customers. It is not intended to preclude reasonable and customary business entertainment and trade association activities and expense

incurred by the title insurer in the course of marketing its products and services. Moderate expenditures for food, meals, beverages and entertainment may be made, if correctly claimed and properly substantiated as a legitimate business expense.

(p) Paying for, or offering to pay for, money, prizes or other things of value for any such person in any kind of a contest or promotional endeavor. This prohibition applies whether or not the offer or payment of a benefit relates to the number of title orders placed or escrows opened with a title insurer or group of such insurers. It does not apply to offers or payments to trade associations, charitable or other functions where the thing of value is in the nature of a contribution or donation rather than a business solicitation.

(q) Paying for, or offering to pay for, any advertising concerning the title insurer which is to appear in a pamphlet, magazine, brochure, or any other advertising material promoted or distributed, with or without cost by any such person. Examples of this kind of advertising material are advertisements appearing in newsletters distributed by real estate brokers, tract brochures issued by land developers or builders, or jointly sponsored promotional magazines. This prohibition does not apply to brochures or other promotional items of the title insurer used in the marketing of its own products, to advertising in trade media or other media not promoted or solicited by such persons, nor to other forms of advertising provided the expected benefit to be derived from customers generally is fairly equivalent to the expense incurred.

(r) Paying for or furnishing, or offering to pay for or furnish any brochures, billboards, or advertisements of such persons, products or services appearing in newspapers, on the radio, or on television, or other advertising or promotional material published or distributed by, or on behalf of, any such person.

(5) PENALTY. Any violation of this rule shall subject the title insurer to the penalties and forfeitures provided by section 601.64, Wis. Stats.

History: Cr. Register, December, 1975, No. 240, eff. 1-1-76; emerg. am. (1), (2) and (3) (a), eff. 6-22-76; am. (1) (2), (3) (a) and (4) (c), Register, September, 1976, No. 249, eff. 10-1-76.

Ins 3.35 Wisconsin health care liability insurance plan. (1) FINDINGS. (a) Legislation has been enacted authorizing the commissioner of insurance to promulgate a plan to provide health care liability insurance and liability coverage normally incidental to health care liability insurance for risks in this state which are equitably entitled to but otherwise unable to obtain such coverage, or to call upon the insurance industry to prepare plans for his approval.

(b) Health care liability insurance for medical or osteopathic physicians or podiatrists, licensed under chapter 448, Wis. Stats., and nurse anesthetists licensed under chapter 441, Wis. Stats., who practice in this state and for operating cooperative sickness care plans organized under sections 185.981 to 185.985, Wis. Stats., which directly provide services in their own facilities with salaried employees is not readily available in the voluntary market. Health care liability insurance and liability coverage normally incidental to health care liability insurance for hospitals as defined by section 140.24 (1) (a) and (c), Wis. Stats., but excluding, except as otherwise provided herein, those facilities exempted by section 140.29 (3), Wis. Stats., which operate in this state are not readily available in the voluntary

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market. Health care liability insurance and liability coverage normally incidental to health care liability insurance for those nursing homes as defined in section 146.30 (1) (a), Wis. Stats., which operate in this state and whose functional operations are combined with a hospital as herein defined as a single entity, whether or not the nursing home operations are physically separate from the hospital operations, are not readily available in the voluntary market. Health care liability insurance and liability coverage normally incidental to health care liability insurance for health care facilities owned or operated by a political subdivision of the state of Wisconsin are not readily available in the voluntary market.

(c) A facility for providing such health care liability insurance should be enacted pursuant to chapter 619, Wis. Stats.

(2) PURPOSE. This rule is intended to implement and interpret chapter 619, Wis. Stats., for the purpose of establishing procedures and requirements for a mandatory risk sharing plan to provide health care liability insurance coverage on a self-supporting basis for medical or osteopathic physicians or podiatrists licensed under chapter 448, Wis. Stats., and nurse anesthetists licensed under chapter 441, Wis. Stats., who practice in this state; for operating cooperative sickness care plans organized under sections 185.981 to 185.985, Wis. Stats., which directly provide service in their own facilities with salaried employees; and to provide health care liability insurance coverage and liability coverages normally incidental to health care liability insurance on a self-supporting basis for all hospitals as defined by sections 140.24 (1) (a) and (c), Wis. Stats., but excluding those facilities exempted by section 140.29 (3), Wis. Stats., except as otherwise provided herein, which operate in this state. Health care liability insurance coverage and liability coverages normally incidental to health care liability insurance on a self-supporting basis for those nursing homes as defined in section 146.30 (1) (a), Wis. Stats., which operate in this state and whose functional operations are combined with a hospital as herein defined as a single entity, whether or not the nursing home operations are physically separate from the hospital operations is also provided. Health care liability insurance coverage and liability coverages normally incidental to health care liability insurance on a self-supporting basis for those health care facilities owned or operated by a political subdivision of the state of Wisconsin is also provided. This rule is also intended to encourage the improvement in reasonable loss prevention measures and to encourage the maximum use of the existing voluntary market.

(3) SCOPE. This rule shall apply to all insurers authorized to transact in this state on a direct basis insurance against liability resulting from personal injuries, except for town mutuals authorized to transact insurance under chapter 612, Wis. Stats.

(4) DEFINITIONS. (a) *The Wisconsin health care liability insurance plan*, hereinafter referred to as the Plan, means the statutory, non-profit, unincorporated association established by this rule to provide for the issuance of health care liability insurance and liability coverages normally incidental to health care liability insurance at adequate rate levels for risk sharing subject to the right of recoupment and to assist qualified applicants in securing health care liability insurance and liability coverage normally incidental to health care liability insurance.

(b) Insurance against liability resulting from personal injuries means all insurance coverages against loss by the personal injury or death of any person for which loss the insured is liable. It includes the personal injury liability component of multi-peril policies, but it does not include steam boiler insurance authorized under subsection 201.04 (6), of Ins 6.70, workmen's compensation insurance authorized under subsection 201.04 (16), of Ins 6.70, or coverage authorized under subsection 201.04 (18) of Ins 6.70.

(c) Health care liability insurance means insurance against loss, expense and liability resulting from errors, omissions or neglect in the performance of any professional service by any medical or osteopathic physician or podiatrist licensed under chapter 448, Wis. Stats., and nurse anesthetists licensed under chapter 441, Wis. Stats., who practice in this state; by operating cooperative sickness care plans organized under sections 185.981 to 185.985, Wis. Stats., which directly provide services in their own facilities with salaried employes; by all hospitals as defined by section 140.24 (1) (a) and (c), Wis. Stats., but excluding those facilities exempted by section 140.29 (3), Wis. Stats., except as otherwise provided; by those nursing homes as defined in section 146.30 (1) (a), Wis. Stats., whose functional operations are combined with a hospital as herein defined as a single entity, whether or not nursing home operations are physically separate from the hospital operations, which operate in this state; and by health care facilities owned or operated by a political subdivision of the state of Wisconsin.

(d) Liability coverage normally incidental to health care liability insurance shall include owners, landlords and tenants liability insurance; owners and contractors protective liability insurance; completed operations and products liability insurance; contractual liability insurance and personal injury liability insurance.

(e) Premiums written means gross direct premiums less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits, with respect to insurance against liability resulting from personal injuries covering insureds or risks resident or located in this state excluding premiums on risks insured under the Plan.

(f) Servicing company means an insurer which services policies issued on behalf of the Plan.

(g) Confidential claims information means any information relating to the Plan in the possession of the commissioner, the board of governors or an agent thereof which reveals, directly or indirectly, the identity of a health care provider, as defined in section 655.001 (8), Wis. Stats.

(h) Political subdivision means counties, cities, villages and towns.

(5) INSURANCE COVERAGE. (a) All medical or osteopathic physicians or podiatrists licensed under chapter 448, Wis. Stats., and nurse anesthetists licensed under chapter 441, Wis. Stats., who practice in this state; operating cooperative sickness care plans organized under sections 185.981 to 185.985, Wis. Stats., which directly provide services in their own facilities with salaried employes; all hospitals as defined by 140.24 (1) (a) and (c), Wis. Stats., but excluding those facilities exempted by section 140.29 (3), Wis. Stats., except as otherwise provided herein; those nursing homes as defined in section

146.30 (1) (a), Wis. Stats., whose functional operations are combined with a hospital as defined as a single entity, whether or not the nursing home operations are physically separate from the hospital operations; and health care facilities owned or operated by a political subdivision of the state of Wisconsin, which operate in this state and are equitably entitled to but are otherwise unable to obtain suitable health care liability insurance in the voluntary market shall be eligible to apply for insurance under this Plan.

(b) The maximum limits of coverage for the type of health care liability insurance defined in subsection (4) (c) which may be placed under this Plan are \$200,000 per claim and \$600,000 aggregate for all claims in any one policy year.

(c) The maximum limits of coverage for liability coverages normally incidental to health care liability insurance as defined in subsection (4) (d) which may be placed under this Plan are \$1,000,000 per claim and \$1,000,000 aggregate for all claims in any one policy year.

(d) Health care liability coverage shall be provided in a standard policy form on an occurrence basis, i.e., coverage for any liability based on a treatment, omission or operation which occurs during the term of the policy and which is brought within the time the applicable statute of limitations continues the liability. The board of governors may authorize the issuance of policies on other bases as an option under the Plan subject to such restrictions and rules as it may deem necessary and appropriate in the circumstances.

(e) Any policyholder holding coverage under the Wisconsin Health Care Liability Insurance Plan shall continue to be subject to the rules governing the Plan which were in force when the coverage was obtained. The renewal of any such coverage shall be subject to the provisions of the rule in effect at the time of the renewal. All obligations and liabilities created under such prior rule shall continue in force under the Plan until they are extinguished.

(f) Coverage for hospitals, nursing homes, or health care facilities owned or operated by a political subdivision of the state of Wisconsin which are eligible for insurance under this plan may include liability coverages normally incidental to health care liability insurance as defined in subsection (4) (d) 1.

(6) **MEMBERSHIP.** (a) Every insurer, subject to subsection (3) shall be a member of this Plan.

(b) An insurer's membership terminates when the insurer is no longer authorized to write personal injury liability insurance in Wisconsin, but the effective date of termination shall be the last day of the fiscal year of the Plan in which termination occurs. Any insurer so terminated shall continue to be governed by the provisions of this rule until it completes all of its obligations under the Plan.

(c) Subject to the approval of the commissioner, the board of governors may charge a reasonable membership fee, not to exceed \$50.00.

(7) **ADMINISTRATION.** (a) The Plan shall be administered by a board of governors.

(b) The board of governors shall consist of the commissioner or his designated representative, and 10 other board members. Each shall have one vote.

1. The commissioner shall appoint 5 board members from insurers who are members of the Plan.

a. The following associations shall at the direction of the commissioner nominate board members:

American Insurance Association
American Mutual Insurance Alliance
National Association of Independent Insurers
Wisconsin Insurance Alliance

b. The commissioner shall appoint one board member from other insurers not members of the associations in subdivision a.

2. The state bar association shall appoint one board member who shall be an attorney.

3. The Wisconsin medical society shall appoint one board member who shall be a physician.

4. The Wisconsin Hospital Association shall appoint one board member.

5. The Governor shall appoint 2 public board members for staggered three-year terms who are not attorneys or physicians and who are not professionally affiliated with any hospital or insurance company.

(c) The commissioner or his representative shall be chairman of the board of governors.

(d) Board members other than the commissioner or his representative shall be compensated at the rate of \$50 per diem plus actual necessary travel expenses.

(8) DUTIES OF THE BOARD OF GOVERNORS. (a) The board of governors shall meet as often as may be required to perform the general duties of the administration of the Plan or on the call of the commissioner. Six members of the board shall constitute a quorum.

(b) The board of governors shall be empowered to invest, borrow and disburse funds, budget expenses, levy assessments, cede and assume reinsurance, and perform all other duties provided herein as necessary or incidental to the proper administration of the Plan. The board of governors may appoint a manager or one or more agents to perform such duties as may be designated by the board.

(c) The board of governors shall develop rates, rating plans, rating and underwriting rules, rate classifications, rate territories, and policy forms in accordance with sections 619.01 (1) (c) 2., 619.04 (5), 625.11, and 625.12, Wis. Stats., and subsection (12) of this rule.

(d) The board of governors shall cause all policies written pursuant to this Plan to be separately coded so that appropriate records may be compiled for purposes of calculating the adequate premium level for each classification of risk, and performing loss prevention and other studies of the operation of the Plan.

(e) The board of governors shall determine, subject to the approval of the commissioner, the eligibility of an insurer to act as a servicing company. If no qualified insurer elects to be a servicing company, the board of governors shall assume such duties on behalf of member companies.

(f) The board of governors shall enter into agreements and contracts as may be necessary for the execution of this rule consistent with its provisions.

(g) The board of governors may appoint advisory committees of interested persons, not limited to members of the Plan, to advise the board in the fulfillment of its duties and functions.

(h) The board of governors shall be empowered to develop, at its option, an assessment credit plan subject to the approval of the commissioner, wherein a member of the Plan receives a credit against an assessment levied, based upon Wisconsin voluntarily written health care liability insurance premiums.

(i) The board of governors of the Plan shall be authorized to take such actions as are consistent with law to provide the appropriate examining boards or the department of health and social services with such claims information as may be appropriate.

(j) The board of governors shall assume all duties and obligations formerly vested in the governing committee whenever it becomes necessary to administer any of the provisions governing the Wisconsin Health Care Liability Insurance Plan, which provisions preceded the adoption of the provisions contained in this rule.

(9) ANNUAL REPORTS AND RECORDS. (a) By May 1 of each year the board of governors shall make a report to the members of the Plan and to the standing committees on health insurance in each house of the legislature summarizing the activities of the Plan in the preceding calendar year.

(b) All books, records, documents or audits relating to the Plan or its operation shall be open to public inspection, with the exception of confidential claims information.

(10) APPLICATION FOR INSURANCE. (a) Any medical or osteopathic physician, podiatrist, nurse anesthetist, operating cooperative sickness care plan, hospital, nursing home, or health care facility owned or operated by a political subdivision of the state of Wisconsin eligible for insurance under this plan may submit an application for insurance by the plan directly or through any licensed agent.

(b) The Plan may bind coverage.

(c) The Plan shall, within 8 business days from receipt of an application, notify the applicant of the acceptance, rejection or the holding in abeyance of the application pending further investigation. Any individuals rejected by the Plan shall have the right to appeal that judgment within 30 days to the board of governors in accordance with subsection (16).

(d) If the risk is accepted by the Plan, a policy shall be delivered to the applicant upon payment of the premium. The Plan shall remit any commission to the licensed agent designated by the applicant; if no licensed agent is so designated, such commission shall be retained by the Plan.

(11) ASSESSMENTS AND PARTICIPATION. (a) In the event that sufficient funds are not available for the sound financial operation of the Plan, and pending recoupment pursuant to section 619.01 (1) (c) 2., Wis. Stats., all members shall, on a temporary basis, contribute to the financial needs of the Plan in the manner prescribed in paragraph (b). When such assessment contribution is recouped, it shall be reimbursed to members as their total share of the assessment contribution bears to the aggregate outstanding contributions.

(b) All members of the Plan shall participate in all premiums, other income, losses, expenses, and costs of the Plan in the proportion that the premiums written of each such member [excluding that portion of premiums attributable to the operation of the Plan and giving effect to any assessment credit plan under subsection (8) (h)] during the preceding calendar year bears to the aggregate premiums written in this state by all members of the Plan. Each member's participation in the Plan shall be determined annually on the basis of such premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the member with the commissioner of insurance.

(12) RATES, RATE CLASSIFICATIONS, AND FILINGS. Rates, rate classifications, and filings for coverages issued by the Plan shall be generally subject to chapter 625, Wis. Stats., and specifically shall meet the requirements of sections 619.01 (1) (c) 2., 619.04 (5), 625.11, and 625.12, Wis. Stats. Rates and rate classifications shall not discriminate on the basis of the insured's sex, marital status, race, color, creed or national origin. Information supporting the rates and rate classifications filed with the commissioner shall be made a part of such filing. Rates, rate classifications and filings shall be developed in accordance with the following standards or rules:

(a) Rates. 1. Rates shall not be excessive, inadequate or unfairly discriminatory.

2. Rates shall be calculated in accordance with generally accepted actuarial principles, using the best available data and shall be reviewed by the board of governors at least once each year.

3. Rates shall be calculated on a basis which will make the Plan self-supporting and shall be presumed excessive if they produce a long run profit or surplus for the Plan over losses and expenses, and loss reserves (including contingency reserves).

4. Any deficit incurred by the Plan in any one year shall be recouped by rate increases applicable prospectively, or any surplus over the loss reserves of the Plan in any one year shall be distributed by rate decreases applicable prospectively.

5. Rates shall reflect past and prospective loss and expense experience in different areas of practice.

6. Wisconsin loss and expense experience shall be used in establishing and reviewing rates to the extent it is statistically credible supplemented by relevant data from outside the state; relevant data shall include, but not be limited to, data provided by other insurance companies, rate service organizations or governmental agencies.

7. Loss and expense experience used in determining initial or revised rates shall be adjusted to indicate as nearly as possible the loss and expense experience which will emerge on policies issued by the

Plan during the period for which the rates were being established; for this purpose loss experience shall include paid and unpaid losses, a provision for incurred but not reported losses, and both allocated and unallocated loss adjustment expenses and consideration shall be given to changes in estimated costs of unpaid claims and to indications of trends in claim frequency, claim severity, and level of loss expense.

8. Review of rates for the Plan shall begin with the experience of the Plan, supplemented first by Wisconsin experience of coverage provided by other insurers, and then, to the extent necessary for statistical credibility, by relevant data from outside the state.

9. Information supporting the rate filing shall indicate the existence, extent and nature of any subjective factors in the rates based on judgment of technical personnel, such as consideration of the reasonableness of the rates compared to the cost of comparable coverage where it is available.

10. Expense provisions included in the rate to be used by the Plan shall reflect reasonable prospective operating expense levels of the Plan.

11. All accumulated net income, including investment income under the Plan, shall be used to modify the indicated rates promulgated in accordance with the foregoing criteria.

12. Provision may be made for modification of rates for individual risks in accordance with rating plans or surcharge schedules which establish reasonable standards for measuring probable variation in hazards, expenses, or both.

(b) Classifications. 1. Classifications shall reflect past and prospective loss and expense experience in different areas of practice.

2. Classifications shall be established which measure to the extent possible variations in exposure to loss and in expenses based upon the best data available.

3. Classifications shall include recognition of any difference in the exposure to loss of semi-retired or part-time professionals.

4. Classifications shall to the extent possible reflect past and prospective loss and expense experience of risks insured in the Plan and other relevant experience from within and outside this state.

5. Classification schedules may provide for modification of rates for individual risks in accordance with rating plans or surcharge schedules which establish reasonable standards for measuring probable variations in hazards, expenses, or both.

6. Classifications shall be reviewed by the board of governors at least once each year.

(c) Filings. 1. All filings of rates, classifications and supporting information of the Plan and all changes and amendments thereof shall be filed with the commissioner within 30 days after they become effective.

2. These filings shall be open to public inspection during the usual business hours of the office of the commissioner of insurance.

(13) **VOLUNTARY BUSINESS - CANCELLATION AND NONRENEWAL.** Any member cancelling or not renewing voluntarily written health care liability insurance covering any risk eligible under this Plan shall inform the policyholder of the availability of insurance under the Plan. Any such notice of cancellation or nonrenewal shall allow ample time for application to the Plan and for the issuance of coverage. A copy of such cancellation or nonrenewal notice shall be filed with the office of the commissioner of insurance.

(14) **PLAN BUSINESS - CANCELLATION AND NONRENEWAL.** (a) The Plan shall not cancel or refuse to renew a policy issued under the Plan except for:

1. Nonpayment of premium; or
2. Revocation of the license of the insured by the appropriate licensing board.

(b) Notice of cancellation or nonrenewal under paragraph (a), containing a statement of the reasons therefor, shall be sent to the insured with a copy to the Plan. Any cancellation or nonrenewal notice to the insured shall be accompanied by a conspicuous statement that the insured has a right of appeal as provided in subsection (16).

(15) **COMMISSION.** Commission to the licensed agent designated by the applicant shall be \$125.00 for each new or renewal policy issued to medical or osteopathic physicians; \$15.00 for each new or renewal policy issued to podiatrists or nurse anesthetists; and 5% of the annual premium for each new or renewal policy issued to operating cooperative sickness care plans, or to teaching facilities for medical or osteopathic physicians, or to hospitals, or to health care facilities owned and operated by a political subdivision of the state of Wisconsin, not to exceed \$2,500.00 per policy period. The agent need not be licensed with the servicing company.

(16) **RIGHT OF APPEAL.** Any affected person may appeal to the board of governors within 30 days after notice of any final ruling, action or decision of the Plan. Decisions of the board of governors may be further appealed in accordance with chapter 227, Wis. Stats.

(17) **REVIEW BY COMMISSIONER.** The board of governors shall report to the commissioner the name of any member or agent which fails to comply with the provisions of the Plan or with any rules prescribed thereunder by the board of governors or to pay within 30 days any assessment levied.

(18) **INDEMNIFICATION.** Each person serving on the board of governors or any subcommittee thereof, each member of the Plan, and the manager and each officer and employe of the Plan shall be indemnified by the Plan against all cost, settlement, judgment, and expense actually and necessarily incurred by him or it in connection with the defense of any action, suit, or proceeding in which he or it is made a party by reason of his or its being or having been a member of the board of governors, or a member or manager or officer or employe of the Plan except in relation to matters as to which he or it has been judged in such action, suit, or proceeding to be liable by reason of willful or criminal misconduct in the performance of his or its duties as a member of such board of governors, or a member or manager or officer or employe of the Plan. This indemnification shall not apply to

any loss, cost, or expense on insurance policy claims under the Plan. Indemnification hereunder shall not be exclusive of other rights to which the member, manager, officer, or employe may be entitled as a matter of law.

History: Emerg. cr. eff. 3-20-75; cr. Register, June, 1975, No. 234, eff. 7-1-75; emerg. am. eff. 7-28-75; emerg. r. and recr. eff. 11-1-76; r. and recr. Register, January, 1976, No. 241, eff. 2-1-76; am. (1) (b), (2), (4) (c), and (5) (a), Register, May, 1976, No. 245, eff. 6-1-76; emerg. am. (4) (b), eff. 6-22-76; am. (1) (b), (2), (4) (b) and (c) and (5) (a), Register, September, 1976, No. 249, eff. 10-1-76; am. (1) (b), (2), (4) (c), (5) (a), (5) (f), (10) and (15), cr. (4) (h), Register, May, 1977, No. 257, eff. 6-1-77. (a)

Ins 3.36 Statistical reports—health professional liability insurance. (1) **PURPOSE.** This rule is intended to interpret and implement section 625.34, Wis. Stats., and respond to the mandate of section 625.35, Wis. Stats., for the purpose of obtaining statistical data on health professional liability insurance in Wisconsin.

(2) **SCOPE.** This rule applies only to insurance issued to health care providers whose principal place of practice or operation is in Wisconsin.

(3) **DEFINITIONS.** As used in this rule, which interprets the mandate of section 625.35, Wis. Stats.:

(a) Health professional liability insurance means insurance for liability arising out of the acts or omissions of any of the following health care providers whose principal place of practice or operation is in Wisconsin:

1. medical or osteopathic physicians, 2. blood banks, 3. chiroprodists, 4. chiropractors, 5. dental hygienists, 6. hearing aid service establishments, 7. medical laboratory technicians, 8. medical or x-ray laboratories, 9. nurses (registered or trained practical nurses), 10. opticians, 11. optometrists, 12. pharmacists, 13. physiotherapists, 14. x-ray laboratories, 15. x-ray technicians, 16. osteopathic hospitals, 17. drugless healing institutions, 18. clinics, dispensaries or infirmaries—out-patient treatment only, 19. convalescent or nursing homes, 20. hospitals, 21. mental-psychopathic institutions, 22. sanitariums or health institutions—not hospitals or mental-psychopathic institutions, 23. dentists, 24. surgeons, 25. radium, laboratory, pathological or x-ray therapy technicians, 26. operational cooperative sickness plans organized under sections 185.981 to 185.985, Wis. Stats., which directly provide services through salaried employes in their own facilities, 27. partnerships comprized of physicians or nurse anesthetists, 28. corporations owned by physicians or nurse anesthetists and operated for the purpose of providing medical services.

(b) Rating class means any of the classifications listed on pages 7 through 14, part III of the Uniform Statistical Plan for Medical Professional Liability Insurance published by the Insurance Services Office effective January 1, 1976, as revised January 19, 1976, plus additional classifications for osteopathic hospitals, nurse anesthetists partnership liability, nurse anesthetists corporate liability, and operational cooperative sickness plans organized under sections 185.981 to 185.985, Wis. Stats., which directly provide services through salaried employes in their own facilities. The Uniform Statistical Plan for Medical Professional Liability Insurance published by the Insurance Services Office is distributed by Insurance Services Office, 160 Water Street, New York, New York 10038. A copy of this plan is

on file at the office of the commissioner of insurance, the secretary of state and the revisor of statutes.

(c) Claim means every occurrence in which a claim for damages is made or a suit is brought against the health care provider defined in paragraph (a) whether or not such claim is false, groundless or fraudulent. Incidents not resulting in a suit or claim for damages shall not constitute a claim. Claims against more than one health care provider joined in a suit shall be treated as separate claims against each health care provider.

(d) Premiums paid means premiums received by the insurer on direct business only, less returned premiums, and shall not include premiums received on account of reinsurance assumed nor shall any deductions be made for premiums ceded on account of reinsurance ceded. Insurers shall also report for each classification the direct earned premiums in Wisconsin for the calendar year of report which shall consist of the direct premiums written less the premiums unearned at the end of the calendar year plus the premiums unearned at the beginning of the calendar year.

(e) Amount of claims means claims paid during the calendar year plus the claims unpaid at the end of the calendar year and less the claims unpaid at the beginning of the calendar year, and shall be further segregated to show:

1. Damages paid to claimants;
2. Reserves for outstanding losses;
3. Incurred but not reported losses;
4. Allocated loss adjustment expenses (i.e., investigative costs, defense costs, court costs, processing costs, etc. attributable to a specific claim);
5. Unallocated loss adjustment expenses (i.e., investigative costs, defense costs, processing costs, etc. not attributable to any specific claim, but rather to all professional liability claims in general).

Note: Insurers who do not compile "incurred but not reported losses" and/or "unallocated loss adjustment expenses" on a state-by-state basis may satisfy this requirement on the basis of estimates which reflect the ratio of Wisconsin losses and expenses to comparable countrywide data.

(f) Health professional liability insurance policy means a policy for which at least 50% of the total premium for the policy is for the insurance of health professional liability.

(g) Principal place of practice or operation means the place where more than 50% of the time of a health professional is spent in practice.

advertised as a recommendation of any particular policy by the commissioner or the state of Wisconsin.

(12) **SEVERABILITY.** If any provision of this rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end the parts of the rule are declared to be severable.

(13) **EFFECTIVE DATE.** This rule shall take effect 120 days after publication of this rule or November 1, 1977, whichever is later.

Note: Subsequent to the adoption of this rule but prior to its effective date the pamphlet required by subsection (10) shall be revised pursuant to the procedures of that subsection. The revised pamphlet shall include information on this rule and contain other appropriate changes.

History: Cr. Register, July, 1977, No. 259, eff. 11-29-77.