

CR 88-86

STATE OF WISCONSIN)
)
OFFICE OF THE COMMISSIONER OF INSURANCE)

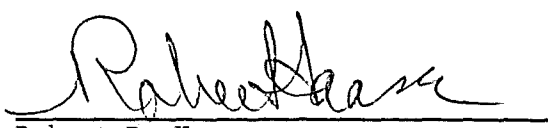
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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Robert D. Haase, Commissioner of Insurance and custodian of the official records of said Office, do hereby certify that the annexed order creating and amending rules relating to legal expense insurance was issued by this Office on November 30, 1988.

I further certify that said copy has been compared by me with the original on file in this Office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name in the City of Madison, State of Wisconsin, this 30th day of November, 1988.



Robert D. Haase
Commissioner of Insurance

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STATE OF WISCONSIN
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NOV 30 1988

DOUGLAS LA FOLLETT
SECRETARY OF STATE

2-1-89

ORDER OF THE COMMISSIONER OF INSURANCE

CREATING A RULE

NOV 30 1988

To create Ch. Ins 22 and amend s. Ins 14.02 (title), (1), and (2),
relating to the regulation of legal expense insurance and to allow for
modification of capital requirements.

DONALD A. FOLLETT
SECRETARY OF STATE

ANALYSIS PREPARED BY THE COMMISSIONER OF INSURANCE

This rule exempts certain types of legal expense insurance from regulation under the insurance code. Legal expense plans which provide only limited benefits, charge no more than \$200 per year, provide services only through employers or contracting attorneys, and which meet certain other conditions are exempted.

The rule also permits the commissioner by order to reduce capital requirements of insurers, including insurers offering nonexempt legal expense insurance, based on the circumstances of the particular insurer.

Pursuant to the authority vested in the Office of the Commissioner of Insurance by section 600.01 (1) (b) 5 and 601.41 (3), Stats., the Office of the Commissioner of Insurance creates a rule as follows:

SECTION 1. Ins 14.02 (title) and (1) are amended to read as follows:

Ins 14.02 CAPITAL, COMPULSORY AND SECURITY SURPLUS. (1) PURPOSE.

This section implements and interprets ss. 600.03 (45), 611.19, 618.21 (1) (a), 623.11, and 623.12, Stats., for the purpose of establishing the amount of capital and compulsory surplus an insurer is required to maintain to provide reasonable security against contingencies affecting its financial position that are not fully covered by reserves or by reinsurance and the amount of

security surplus that an insurer should maintain in order to provide an ample margin of safety and clearly assure a sound operation.

SECTION 2. Ins 14.02 (7) is amended to read as follows:

Ins 14.02 (7) INDIVIDUAL CIRCUMSTANCES. In the event of special circumstances of an individual insurer, the commissioner may by order:

(a) Adjust the factors in this section to calculate the compulsory or security surplus as a higher or lower amount than the amount determined under sub. (3) or (4) ~~adjust~~;

(b) Establish additional factors in relation to any relevant variables in determining the amount of compulsory surplus required for such insurer; and

(c) Require minimum capital in an amount of less than \$2 million.

SECTION 3. Chapter Ins 22, is created to read as follows:

CHAPTER 22 LEGAL EXPENSE INSURANCE

Ins 22.01 PURPOSE. (1) FINDINGS. The Commissioner of Insurance finds that certain plans of legal expense coverage, although they may constitute insurance plans, do not require regulation by the Commissioner of Insurance. The conduct of the lawyers is regulated by the state Supreme Court and, given the minimal coverage aspects of these plans, they do not require regulation by the commissioner. All other forms of legal expense insurance are subject to full insurance regulation.

(2) PURPOSE. This section exempts certain legal expense insurance from regulation and limits the regulation of other legal expense insurance plans.

(3) SCOPE. This chapter applies to all legal expense insurance written in the State of Wisconsin.

(4) STATUTES INTERPRETED. Wisconsin Statutes interpreted and implemented by this rule are: 600.01 (b) 5., 600.13, 601.41, 618.21, 623.11, 623.12, and 628.34 (12).

(5) DEFINITIONS. (a) "Commissioner" means the Commissioner of Insurance.

(b) "Insurer" means any person doing an insurance business in the state as defined in s. 618.02, Stats.

(c) "Legal expense insurance" means the contractual obligation to provide specific legal services or to reimburse for specific legal expenses in consideration of specified payment for an interval of time, regardless of whether the payment is made by the beneficiary individually or by a third person for the beneficiary but does not include the provision of, or reimbursement for, legal services incidental to other insurance coverages.

22.02 EXEMPTIONS. The provisions of ch. 600 to 655, Stats., do not apply to:

(1) Any lawyer referral service operated by the Wisconsin State Bar or a local bar association.

(2) The furnishing of legal assistance by labor unions or other employe organizations to their members for matters relating to employment or occupation.

(3) The furnishing of legal assistance to members or their dependents by a church, cooperative, educational institution, credit union, or organization of employes if:

(a) The organization is established primarily for purposes other than to obtain insurance or to provide legal assistance or both;

(b) The organization contracts directly with a lawyer or law firm for the provision of legal services; and

(c) The administration and marketing of the legal services are conducted wholly by the organization and solely to individuals who are members of the organization.

(4) Employee welfare benefit plans to the extent that state laws are superseded by the Employee Retirement Income Security Act of 1974, 29 USC s. 1144, if evidence of exemption from state laws is shown to the commissioner.

Ins 22.03 LIMITED REGULATION. (1) Legal expense insurance plans which market plans which comply with all the following provisions are subject only to the requirements listed in subs. (2) and (3):

(a) Except as provided by par. (c), the plan's legal services are limited to advice, consultation, preparation of a simple will or power of attorney or other simple, routine legal documents, and do not include representation in litigation [except as provided in sub. (c)];

(b) The total annual cost including all fees, charges, or other consideration for one year of coverage under the plan does not exceed \$200 per contract holder;

(c) Legal services other than those described under par. (a) provided under the plan are charged at predetermined or reduced rates which are not substantially below the usual charge by the same attorney for those services, but not less than 70% of the rate usually charged nonparticipants for the same service;

(d) A participant in the plan is not obligated to continue participation in the plan or to make further payments or to pay any fee or penalty to the plan if the participant wishes to withdraw from the plan at any time;

(e) A copy of the legal expense insurance contract and the form of agreement utilized under par. (f) is filed with the commissioner; and

(f) All legal services are to be provided either by partners, members, or employes of the plan or by individuals who have a written agreement to provide legal services to plan participants, which agreement includes provisions which:

1. Waive any liability of plan participants for compensation for services provided by the contractor if the services are covered by the plan; and

2. Require the legal services must be rendered to the participants regardless of any breach of the contract by the plan including, but not limited to, the plan's failure to make payments or the plan's insolvency.

Ins 22.03 (2) Any plan described in sub. (1) is subject to only the following statutes and any related administrative rule:

(a) ss. 601.41 to 601.45, Stats.;

(b) ss. 601.61 to 601.73, Stats.;

(c) ss. 628.34 to 628.46, Stats.;

(d) Chapter 630, Stats.; and

(3) s. 631.36, Stats.

Ins 22.03 (3) Any plan described in sub. (1) shall reply promptly in writing or other designated form supplying information requested by the commissioner in writing.

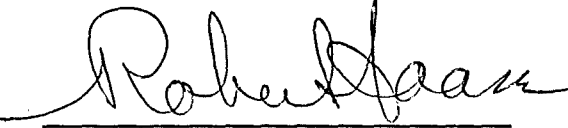
Ins 22.04 PLANS INCLUDED. Any legal expense insurance contract made by attorneys-at-law or law firms which are both promoted by mass-marketing techniques and charge a fee for the plan which is not based on an individual estimate of the nature, quantity, complexity, and amount of services to be provided each client are subject to this chapter unless otherwise exempted by s. 22.02.

Ins 22.04 OTHER LEGAL EXPENSE INSURANCE NOT AUTHORIZED. This chapter does not authorize an insurer to transact any insurance business, other than that of legal expense insurance exempted under this chapter, unless it is authorized under a certificate of authority issued by the commissioner under the provisions of the ch. 600 to 655, Stats.

(Note: This rule does not preempt any plan from compliance with Supreme Court Rules including 11.06.)

SECTION 4. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Nov. 30, 1988
Date


Robert D. Haase