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Details: Emergency Rule extension requests by Office of the Commissioner of Insurance.
(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2009-10
(session year)

Joint
(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

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DATE: September 10, 2010

TO: Representative Josh Zepnick, Co-Chair
Senator Jim Holperin, Co-Chair
Joint Committee for the Review of Administrative Rules

FROM: Sean Dilweg, Commissioner

SUBJECT: Emergency Rule extension request, Rule section Ins. 3.75, Wis. Adm. Code, relating to continuation of group insurance policies.

I am enclosing materials to assist your consideration of OCI's request to extend emergency rule, Ins. 3.75. The emergency rule extension is requested to permit time for the permanent rule to go into effect. The legislative review period for Ins. 3.75 will conclude on Sep. 26, 2010 in the Senate and on October 2, 2010 in the Assembly.

The American Recovery and Reinvestment Act of 2009 (ARRA) provided for premium reductions for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Assistance eligible individuals pay only 35 percent of their COBRA premiums; the remaining 65 percent is reimbursed to the coverage provider through a tax credit. The premium reduction applies to periods of health coverage that began on or after February 17, 2009 through May 31, 2010. Assistance is available for up to 15 months. Federal COBRA laws apply to groups of more than 25 employees. 2009 Wisconsin Act 11 authorized OCI to promulgate administrative rules to facilitate participation in this program that offers substantial subsidies for Wisconsin residents who lost their health insurance benefits and are subject to state continuation laws.

The proposed Ins. 3.75 provides a link between the steps taken at the federal level to give rights to assistance eligible individual and state continuation rights.

Ins 3.75 addresses the continuation of group coverage for individuals who are already assistance eligible individuals and eligible for the subsidy prior to when an employer cancels a group policy. As an example, individuals who may have been receiving the subsidy for 10 months already, would be eligible to continue coverage under the cancelled group policy for the remainder of the time they are still eligible for the subsidy, an additional 5 months

There were two emergency rules issued (attached) which have been combined in the permanent rule that was submitted for legislative review on August 25, 2010. A U. S. Department of Labor fact sheet on the COBRA premium reduction that lays out ARRA and the amendments is included. The COBRA and state continuation document gives an overview of how ARRA helps individuals with premium assistance for state continuation coverage premiums when coverage is comparable to COBRA. Since its initial adoption, Congress has made numerous changes and extensions to the ARRA subsidy legislation, which has slowed down the development of the permanent rule and thus necessitated the emergency rule extension request.

The emergency rule will expire on October 1, 2010. I am requesting a 60 day extension of the emergency rule at this time.

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

To create Ins 3.75, Wis. Adm. Code,

Relating to continuation of group health insurance policies.

FINDING OF EMERGENCY

Under 2009 Act 11, s. 9126, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 11 reads as follows:

2009 Wisconsin Act 11, SECTION 9126. Nonstatutory provisions; Insurance.

(4) CONTINUATION COVERAGE RULES (a) Notwithstanding section 632.897 of the statutes and subsections (1), (2), and (3), the commissioner of insurance may promulgate rules establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a state eligible individual to whom subsection (2) or (3) applies or an assistance eligible individual, as defined under section 3001 (a) (3) of the federal act, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternative coverage.

(b) The commissioner may promulgate the rules under paragraph (a) as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) of the statutes, emergency rules promulgated under this paragraph may remain in effect for one year and may be extended under section 227.24 (2) of the statutes Notwithstanding section 227.24 (1) (a) and (3) of the statutes, **the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph**. [Emphasis Added]

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

1. **Statutes interpreted:**

   ss. 600.01, 628.34 (12), Stats.

2. **Statutory authority:**

   ss. 601.41 (3), 601.42, 632.897, Stats., s. 9126 of 2009 Wisconsin Act 11 and the American Recovery and Reinvestment Act of 2009, P.L. 111-5

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

   2009 Act 11 specifically permits the commissioner to enact this rule.

4. **Related statutes or rules:**

   ss. 632.746 & 632.897, Stats.

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

   The United States Department of the Treasury, Internal Revenue Service published an interpretation of the American Recovery and Reinvestment Act of 2009 that provided a continuation election opportunity for covered employees including former employees when an employer discontinues a group health plan. The proposed rule will consider continuation coverage election options for employees that meet the requirements of s. 632.897, Stat., or s. 9126 of 2009 Wisconsin Act 11 whose employer or former employer discontinues the group health insurance policy. The proposed rule will consider election and eligibility criteria for continuation of coverage through a group policy.

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 United States Department of the Treasury, Internal Revenue Service published in a frequently asked question and answer format the question of continuation rights for employees and their dependents when employers discontinue a group policy and determined that eligible employees would be able to elect continuation coverage that may be eligible for premium subsidy under the American Recovery and Reinvestment Act of 2009. There is no current state rule or policy on this specific issue.

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

   Illinois: None

   Iowa: None

   Michigan: None

   Minnesota: None

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:**

   This proposed rule would enact for Wisconsin insureds the ability to elect continuation of coverage when an employer discontinues group health insurance consistent with the Internal Revenue Service's interpretation of the American Recovery and Reinvestment Act of 2009.

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:**

   The rule imposes no substantial requirements on small employers but would allow discontinued employees of small employer who have group insurance the ability to elect continuation of health insurance coverage.

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

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

    This rule will have little or no negative effect on small businesses.

12. **Agency contact person:**

    A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at:
    http://oci.wi.gov/ocirules.htm

or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110
Email: inger.williams@wisconsin.gov
Address: 125 South Webster St – 2nd 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 14th day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

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The proposed rule changes are:

SECTION 1. Ins 3.75 is created to read:

Ins 3.75 Continuation of Discontinued Employer Provided Health Group Policy Coverage For Employees and their Dependents.

(1) PURPOSE. The purpose of this rule is to allow assistance eligible individuals to elect continued coverage provided under s. 632.897, Stats., in circumstances where the group policy is otherwise discontinued on or after June 30, 2009 and not replaced. The rule applies only to individuals who are eligible for a premium subsidy under the federal American Recovery and Reinvestment Act of 2009. The federal act makes the premium subsidy available to those individuals who are eligible due to an involuntary employment termination prior to January 1, 2010.

(2) DEFINITIONS. In this section, unless the context requires otherwise:

(a) "Assistance eligible individual" has the meaning provided in Section 3001 (a) (3) of the federal act.

(b) "Terminated insured" means a terminated insured under s. 632.897 (1) (f) and (2) (b) 2, Stats., whose employment has been involuntarily terminated, who has been continuously covered under a group policy for at least 3 months and who:

1. Would be entitled to elect continued coverage under s. 632.897, Stats., but for the fact that the group policy was discontinued on or after June 30, 2009 and not replaced by another group policy offered by the employer during the terminated insured's 30 day election period under s. 632.897 (3) (a), Stats.; or

2. Is receiving, on behalf of themselves and, if applicable, a spouse or dependents, continued coverage under s. 632.897, Stats., due to an involuntary termination of employment that occurred on or after September 1, 2008 and, on or after June 30, 2009, the group policy is discontinued and not replaced by a group policy offered by the employer.

(c) "Federal act" means the American Recovery and Reinvestment Act of 2009, P.L. 111-5.

(3) ADDITIONAL CONTINUATION COVERAGE ELECTION OPPORTUNITY FOR ASSISTANCE ELIGIBLE INDIVIDUALS WHEN AN EMPLOYER DISCONTINUES AND DOES NOT REPLACE GROUP POLICY COVERAGE.

(a) Except as provided in pars. (c) and (d) an insurer shall permit a terminated insured to elect continuation of coverage under the terms of an employer's group policy if:

1. The group policy is discontinued on or after the effective date of this rule and not replaced.

2. The group policy was discontinued on or after June 30, 2009 and prior to the effective date of this rule and not replaced.

(b) An insurer shall permit a terminated insured to elect continuation of coverage on behalf of themselves and the terminated insured's spouse and dependents if the spouse or dependents are covered under the group policy at the time the group policy was discontinued.

(c) An insurer may limit continuation of coverage under this section to individuals who are eligible for premium assistance under the federal act and who are assistance eligible individuals.

(d) This section does not require continuation of coverage if the individual:

1. Establishes residence outside this state.
2. Fails to make timely payment of a required premium amount after notice as required under s. 631.36, Stats.
3. Becomes eligible for similar coverage under another employer's group policy or for benefits under title XVIII of the Social Security Act.
4. Ceases to be eligible for premium assistance under s. 3001 (a) (2) of the federal act.
5. The individual's eligibility for continued coverage would have otherwise ceased under s. 632.897, Stats., if the group policy had not been discontinued.

(e) Coverage under this section, if elected under par. (a), shall continue uninterrupted from the date of the employer's discontinuance of the group policy . An insurer is not required to continue coverage for a period covered by a conversion policy issued under s. 632.897, Stats., for the period prior to the date of election of continuation coverage.

(f) An insurer shall provide a right to an individual conversion policy on termination of continuation of coverage under this section if the terminated insured tenders the first premium within 30 days after the continued coverage terminates. The insurer shall either include notice of this right and a description of how to make payment of premium in the notice required under sub. (4) or shall provide notice prior to termination of the continuation coverage. The conversion policy shall conform to the requirements of s. 632.897 (4), Stats. An insurer is not required to issue a conversion policy under this paragraph if issuance of an individual conversion policy is not required under the standards established in s. 632.897 (4) (d), Stats.

(4) NOTICE. (a) An employer shall provide written notice in the form required by par. (b) to each terminated insured prior to the date of discontinuance of the group policy except the employer shall provide the notice within 30 days of the effective date of this rule for an employer group policy discontinued on or after June 30, 2009 and

prior to the effective date of this rule. An employer or insurer is not required to give notice to a terminated insured who is not, and who is not entitled to elect coverage for, an assistance eligible individual.

(b) The notice required under this subsection shall include a description of the discontinuance of the group policy, the right to continuation under sub. (3) (a) and (b), an explanation of the procedure for electing continued coverage including par. (d), the payment amounts required for continuation coverage, and the manner, place, and time in which the payments shall be paid. The notice shall also include a description of the premium subsidy, the notice required under section 3001 (a) (7) of the federal act and a description of when the continuation coverage will discontinue, including a description of discontinuance under subd. (3) (d) 4.

(c) If an employer that is required to provide the notice as required under par. (a) and (b) fails to provide the notice within the time required, the insurer shall provide the notice specified in par. (b) within 10 days after the date the insurer acquires knowledge the employer has not provided the notice or the date the insurer exercising due diligence should know that the employer has not provided the notice.

(d) Insurance intermediaries shall provide reasonable assistance to insurers by notifying employers of the requirement to provide notice under this subsection and by making reasonable efforts to assist insurers in determining whether the employer complies and, if not, by making reasonable efforts to assist the insurer in giving notice.

(e) A terminated insured may elect continuation of coverage by electing continuation coverage and paying the premium due under sub. (5) (a) to either the employer or the insurer, as directed by the notice required under par. (b), within 30 days after notice is given as required under par. (a) or (c).

(5) PREMIUM. (a) The insurer may charge for coverage continued under this section an amount no more than 100% of the cost the employer incurred for providing the group policy coverage, including group rate adjustments on the date the group policy would have renewed that are based on applying rating factors to group changes that occurred prior to the discontinuance of the group policy. The employer or insurer shall collect only 35% of that amount from the terminated insured. The insurer may collect any premium subsidy available under the federal act.

(b) An insurer may require payment of premium for all required continuation coverage periods, including for periods prior to the date of election or the effective date of this rule.

(c) An employer, if requested by the insurer, shall collect and remit to the insurer premium due under this rule. An insurer may require the employer to collect and remit premium due from a terminated insured, spouse or dependent under this rule. An insurer may not condition continuation of coverage on the employer collection and remittance of premium. An insurer shall treat payment by a terminated insured, spouse or dependent to the employer as receipt and payment to the insurer unless the insurer directs that payment be made to the insurer. An insurer may direct a terminated insured, spouse or dependent to pay the premium to either the employer or to the insurer, including by direction in the notice under sub. (4) (b).

(d) An employer shall notify an insurer when the employer discontinues a group policy and does not replace the group policy. An insurer may require the employer to give it notice when it discontinues a group policy and does not replace the group policy. An insurer may not condition continuation of coverage under this rule on employer notice of such discontinuance.

(6) PORTABILITY; HIRSP. For an individual who elects continuation of coverage under

this section, the period, if any, from the date of the termination of the individual's group policy coverage to the commencement of continuation of coverage under this section shall be disregarded for the purpose of determining the 63-day period under section 632.746 (3) (b), Stats., and determining eligibility as an eligible individual under ch. 149, Stats.

(7) CONTRACT TERMS PRESERVED. An insurer may restrict coverage provided under this section to the terms of the group policy to the extent the terms do not conflict with this rule. Nothing in this section prohibits an insurer from applying deductibles and other cost sharing according to the terms of the group policy, including according to policy periods based on renewal dates that would have occurred had the policy not been discontinued. An insurer may apply policy modifications that were included in notice given to the employer under s. 631.36, Stats., or requested by the employer, that took effect or would have taken effect prior to or on the date of the discontinuance of the policy. An insurer may include provisions for administration of this rule in its group policy and certificates.

SECTION 2. This section may be enforced under ss. 601.41, 601.64, 601.65, 628.10, Stats., or ch. 645, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

SECTION 3. These emergency rule changes will take effect on the day after publication, as provided in s. 227.24(1)(c), Stats.

Dated at Madison, Wisconsin, this 28th day of September, 2009.

Sean Dilweg
Commissioner of Insurance

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Section Ins 3.75 relating to continuation of group insurance policies and affecting small business

This rule change will have no significant negative effect on the private sector regulated by OCI but will allow numerous people to continue group health insurance that would not be able to without this change.

Division of Executive Budget and Finance
DOA-2047 (R10/2000)

Wisconsin Department of Administration

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

☒ ORIGINAL	☐ UPDATED	LRB Number	Amendment No. if Applicable
☐ CORRECTED	☐ SUPPLEMENTAL	Bill Number	Administrative Rule Number **INS 3.75**

Subject
continuation of group insurance policies 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 Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	**Increased Rev.**	**Decreased Rev.**
GPR Taxes	**$ 0**	**$ -0**
GPR Earned	**0**	**-0**
FED	**0**	**-0**
PRO/PRS	**0**	**-0**
SEG/SEG-S	**0**	**-0**
TOTAL State Revenues	**$ 0 None**	**$ -0 None**

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	$ **None 0**	$ **None 0**
NET CHANGE IN REVENUES	$ **None 0**	$ **None 0**

Prepared by: Robert Luck	**Telephone No.** (608) 266-0082	**Agency** Insurance
Authorized Signature:	**Telephone No.** (608) 267-3782	**Date** (mm/dd/ccyy) 09/28/2009

Division of Executive Budget and Finance
DOA-2048 (R10/2000)

Wisconsin Department of Administration

FISCAL ESTIMATE

☒ ORIGINAL ☐ UPDATED

☐ CORRECTED ☐ SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number **INS 3.75**

Subject
continuation of group insurance policies and affecting small business

Fiscal Effect

State: ☒ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Increase Costs - May be possible to Absorb Within Agency's Budget ☐ Yes ☐ No

☐ Decrease Costs

Local: ☒ No local government costs

1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected: ☐ Towns ☐ Villages ☐ Cities ☐ Counties ☐ Others ____ ☐ School Districts ☐ WTCS Districts

Fund Sources Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Long-Range Fiscal Implications

None

Prepared by:	Telephone No.	Agency
Robert Luck	(608) 266-0082	Insurance
Authorized Signature:	**Telephone No.**	**Date** (mm/dd/ccyy)
	(608) 267-3782	09/28/2009

Fact Sheet

U. S. Department of Labor
Employee Benefits Security Administration
April 26, 2010

COBRA PREMIUM REDUCTION

The American Recovery and Reinvestment Act of 2009 (ARRA), as amended, provides for premium reductions for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985, commonly called COBRA. The premium assistance is also available for continuation coverage under certain State laws. "Assistance Eligible Individuals" pay only 35 percent of their COBRA premiums; the remaining 65 percent is reimbursed to the coverage provider through a tax credit. The premium reduction applies to periods of health coverage that began on or after February 17, 2009 and lasts for up to 15 months.

Eligibility for the Premium Reduction

An "assistance eligible individual" is the employee or a member of his/her family who elects COBRA coverage timely following a qualifying event related to an involuntary termination of employment that occurs at any point from:

- September 1, 2008 through May 31, 2010; or
- March 2, 2010 through May 31, 2010 if:
    - the involuntary termination follows a qualifying event that was a reduction of hours; and
    - the reduction of hours occurred at any time from September 1, 2008 through May 31, 2010. (A reduction of hours is a qualifying event when the employee and his/her family lose coverage because the employee, though still employed, is no longer working enough hours to satisfy the group health plan's eligibility requirements.)

- Generally, the maximum period of continuation coverage is measured from the date of the original qualifying event (for Federal COBRA, this is generally 18 months). However, ARRA, as amended, provides that the 15 month premium reduction period begins on the first day of the first period of coverage for which an individual is "assistance eligible." This is of particular importance to individuals who experience an involuntary termination following a reduction of hours. Only individuals who have additional periods of COBRA (or state continuation) coverage remaining after they become assistance eligible are entitled to the premium reduction.

- For purposes of ARRA, COBRA continuation coverage includes continuation coverage required under Federal law (COBRA or Temporary Continuation Coverage) or a State law that provides comparable continuation coverage (for example, so-called "mini-COBRA" laws).

- Those who are eligible for other group health coverage (such as a spouse's plan or new employer's plan) or Medicare are not eligible for the premium reduction. There is no premium reduction for periods of coverage that began prior to February 17, 2009.

- Assistance eligible individuals who pay 35 percent of their COBRA premium must be treated as having paid the full amount. The premium reduction (65 percent of the full premium) is reimbursable to the employer, insurer or health plan as a credit against certain employment taxes.

What is COBRA?

COBRA gives workers and their families who lose their health benefits the right to purchase group health coverage provided by the plan under certain circumstances.

If the employer continues to offer a group health plan, the employee and his/her family can retain their group health coverage for up to 18 months by paying group rates. The COBRA premium may be higher than what the individual was paying while employed, but generally the cost is lower than that for private, individual health insurance coverage.

The plan administrator must notify affected employees of their right to elect COBRA. The employee and his/her family each have 60 days to elect the COBRA coverage; otherwise, they lose all rights to COBRA benefits.

COBRA generally does not apply to plans sponsored by employers with fewer than 20 employees. Many States have similar requirements for insurance companies that provide coverage to small employers. The premium reduction is available for insurers covered by these State laws.

Period of Coverage

The premium reduction applies to periods of coverage beginning on or after February 17, 2009. A period of coverage is a month or shorter period for which the plan charges a COBRA premium. The premium reduction for an individual ends upon eligibility for other group coverage (or Medicare), after 15 months of the reduction, or when the maximum period of COBRA coverage ends, whichever occurs first. Individuals paying reduced COBRA premiums must inform their plans if they become eligible for coverage under another group health plan or Medicare.

Notice Requirements

ARRA, as amended by the Continuing Extension Act of 2010 (CEA), mandates that plans notify certain current and former participants and beneficiaries about the premium reduction. The Department has updated its existing models to help plans and individuals comply with these requirements. Each model notice is designed for a particular group of individuals and contains information to help satisfy ARRA's notice provisions, including those modified by CEA.

Plans subject to the Federal COBRA provisions must provide a **General Notice** to all qualified beneficiaries, not just covered employees, who experienced a qualifying event at any time from September 1, 2008 through May 31, 2010, regardless of the type of qualifying event, and who have not yet been provided an election notice. Plans MUST provide the updated General Notice within the required timeframes for providing a COBRA election notice. The updated model General Notice includes information on the premium reduction as well as information required in a COBRA election notice.

Plans that are subject to COBRA continuation provisions under Federal or State law should provide a **Notice of New Election Period** to ALL individuals who:

- experienced a qualifying event that was a reduction of hours at any time from September 1, 2008 through May 31, 2010;
- subsequently experience a termination of employment at any point from March 2, 2010 through May 31, 2010; AND
- either did not elect COBRA continuation coverage when it was first offered OR elected but subsequently discontinued COBRA.

Generally, individuals who have experienced a qualifying event that consists of a reduction of hours and who, from March 2, 2010 through May 31, 2010, experience an involuntary termination of

employment MUST be provided this notice within 60 days of the event. Pursuant to CEA, for the April 1, 2010 through April 14, 2010 period, the notice requirement attaches to any termination of employment. The Department strongly recommends that notice be provided to individuals who experienced any termination of employment because employers may be subject to civil penalties if it is later determined that the termination was involuntary and notice was not provided. The Department has updated its model Notice of New Election Period. Using this model to provide notice to these individuals satisfies the requirements of ARRA, as amended by CEA.

Plan administrators must also provide notice to certain other individuals who have already been provided a COBRA election notice that did not include information regarding ARRA, as amended by CEA. The Department has updated two existing models to assist plans in these areas.

Plans that are subject to COBRA continuation provisions under Federal law and insurers subject to continuation coverage requirements under State law must provide the **Supplemental Information Notice**. It should be provided to ALL individuals who elected and maintained continuation coverage based on the following qualifying events:

- terminations of employment that occurred at some time on or after March 1, 2010 through April 14, 2010 for which notice of the availability of the premium reduction available under ARRA was not given; or
- reductions of hours that occurred during the period from September 1, 2008 through May 31, 2010 which were followed by a termination of the employee's employment that occurred on or after March 2, 2010 and by May 31, 2010.

For the first item above plans MUST provide this notice to all individuals with a qualifying event related to any termination of employment if they have not already been provided notice of their rights under ARRA. This notice must be provided before the end of the required time period for providing a COBRA election notice. For the second item above, generally, individuals who experience an involuntary termination of employment from March 2, 2010 through May 31, 2010 after experiencing a qualifying event that consists of a reduction of hours MUST be provided this notice within 60 days of the termination of employment. However, as has been noted, CEA requires plans to provide notices to all individuals with qualifying events related to ANY termination of employment that occurred from April 1, 2010 through April 14, 2010. In those cases, this notice MUST be provided before the end of the required time period for providing a COBRA election notice.[1] Because employers may be subject to civil penalties if it is later determined that the termination was involuntary, the Department strongly recommends that notice be provided to individuals who experienced any termination of employment. The Department has updated its model Supplemental Information Notice. Using this model to provide notice to these individuals satisfies the requirements of ARRA, as amended by CEA.

Plans that are subject to COBRA continuation provisions under Federal law and insurers subject to continuation coverage requirements under State law must provide the **Notice of Extended Election Period**. It must include the information described above and be provided to ALL individuals who experienced a qualifying event that was a termination of employment from April 1, 2010 through April 14, 2010, were provided notice that did not inform them of their rights under ARRA, as amended by CEA, and either chose not to elect COBRA continuation coverage at that time OR elected COBRA but subsequently discontinued that coverage. This notice MUST be provided before the end of the required time period for providing a COBRA election notice. The Department has updated its model Notice of Extended Election Period. Using this model satisfies the requirements of ARRA, as amended by CEA.

Insurance issuers that provide group health insurance coverage must provide notice to persons who became eligible for continuation coverage under a State law. The Department updated its model

[1] ARRA section 3001(a)(7) provides that COBRA election notices provided for qualifying events occurring during the effective dates of the premium reduction program are not complete if they fail to include information on the availability of the premium reduction.

Alternative Notice to assist issuers with satisfying this requirement. However, continuation coverage requirements vary among States and issuers should modify this model notice as necessary to conform it to the applicable State law. Issuers may also find one (or more) of the other models appropriate for use in certain situations.

Expedited Review of Denials of Premium Reduction

Individuals who are denied treatment as assistance eligible individuals and thus are denied eligibility for the premium reduction (whether by their plan, employer or insurer) may request an expedited review of the denial by the U.S. Department of Labor. The Department must make a determination within 15 business days of receipt of a completed request for review. The official application form is available at www.dol.gov/COBRA and can be filed online or submitted by fax or mail.

Switching Benefit Options

If an employer offers additional coverage options to active employees, the employer may (but is not required to) allow assistance eligible individuals to switch the coverage options they had when they became eligible for COBRA. To retain eligibility for the ARRA premium reduction, the different coverage must have the same or lower premiums as the individual's original coverage. The different coverage cannot be coverage that provides only dental, vision, a health flexible spending account, or coverage for treatment that is furnished in an on-site facility maintained by the employer.

Income limits

If an individual's modified adjusted gross income for the tax year in which the premium assistance is received exceeds $145,000 (or $290,000 for joint filers), then the amount of the premium reduction during the tax year must be repaid. For taxpayers with adjusted gross income between $125,000 and $145,000 (or $250,000 and $290,000 for joint filers), the amount of the premium reduction that must be repaid is reduced proportionately. Individuals may permanently waive the right to premium reduction but may not later obtain the premium reduction if their adjusted gross incomes end up below the limits. If you think that your income may exceed the amounts above, consult your tax preparer or contact the IRS at www.irs.gov.

New Penalty Provision

ARRA provides that the appropriate Secretary may assess a penalty against a plan sponsor or health insurance issuer of up to $110 per day for each failure to comply with such Secretary's determination 10 days after the date of the plan sponsor's or issuer's receipt of the determination.

For further information, visit www.dol.gov/COBRA, contact EBSA electronically at www.askebsa.dol.gov, or call a Benefits Advisor toll-free at 1-866-444-3272.

This fact sheet has been developed by the U.S. Department of Labor, Employee Benefits Security Administration, Washington, DC 20210. It will be made available in alternate formats upon request: Voice phone: 202-693-8664; TTY: 202-501-3911. In addition, the information in this fact sheet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

Overview

Premium Assistance for COBRA and State Continuation Coverage Extended to Cover Workers Involuntarily Terminated Through May 31, 2010; Unofficial Text Tracking Amendments to ARRA Posted Below

Background: When an employee loses his or her job, employers subject to COBRA (Consolidated Omnibus Budget Reconciliation Act of 1985) or any State continuation coverage law (also known as "mini-COBRA" laws), must offer the employee and any family members covered by his or her group health plan (qualified beneficiaries) the opportunity to purchase the insurance coverage. However, many unemployed individuals and family members cannot afford the cost of the continuation coverage. As discussed below, the American Recovery and Reinvestment Act of 2009 (ARRA) provides a 65 percent subsidy covering the cost of premiums for all involuntarily terminated workers and related qualified beneficiaries.

COBRA

This section provides information about public sector COBRA continuation of coverage. The information in this section will be of interest to state and local government employers that maintain group health plan coverage for their employees, their plan administrators and plan enrollees.

The landmark COBRA health benefit provisions became law in 1986. The law amends the Employee Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Code and the Public Health Service Act (PHS Act) to provide continuation of employer-sponsored group health coverage that otherwise might be terminated. CMS has advisory jurisdiction for the COBRA law as it applies to state and local government (public sector) employers and their group health plans. (See Related Link Outside CMS at the bottom of this page.) Click on "Federal Jurisdiction" on the left navigation bar for information about contacting the federal agencies that administer private sector COBRA and the continuation of coverage provisions for federal employees.

The COBRA law generally applies to group health plans maintained by employers with 20 or more employees in the prior year. The law does not, however, apply to plans sponsored by the governments of the District of Columbia or any territory or possession of the United States, certain church-related organizations or the federal government. (The Federal Employees Health Benefit Program is subject to generally similar, although not parallel, temporary continuation of coverage provisions under the Federal Employees Health Benefits Amendments Act of 1988.)

Individuals who work for a state or local government employer, and their dependents, should be aware of their rights regarding COBRA. A good starting point is reading your summary plan description (SPD) booklet, if a state or local government employer distributes an SPD to its employees. Most of the specific rules on COBRA rights may be found there or with the person who manages your

health benefits plan. Also, this Website provides detailed information about COBRA. Use the left navigation bar to access information related to a specific area of COBRA-related inquiry. Also, see "COBRA Helpful Tips" in the downloads section below. Additionally, the "More Information" page contains a link to COBRA questions and answers.

If you are unable to find the COBRA-related information you are looking for on this Website, you may e-mail us at phig@cms.hhs.gov, except for ARRA COBRA related inquiries which should be emailed to continuationcoverage@maximus.com.

Premium Assistance

Section 3001 of ARRA provides a subsidy to all involuntarily terminated workers and their dependents covering 65 percent of the cost of COBRA premiums under ERISA and the PHS Act and the premium for continuation coverage for federal employees. The subsidy also covers 65 percent of the cost of State continuation coverage premiums provided the state continuation coverage is comparable to COBRA. Before section 3001 was amended, premium assistance under ARRA lasted up to nine months. At that time ARRA required that the employee: (1) become eligible for continuation coverage during the period from September 1, 2008 up through December 31, 2009; (2) on account of being involuntarily terminated during that same time period; and (3) that the employee or family member elect continuation coverage.

Extension of Benefit: On December 19, 2009, the President signed into law the Department of Defense Appropriations Act of 2010 (2010 DOD Act), which extended the subsidy in several ways. For example, employees who were involuntarily terminated during an additional two months--January and February 2010--were be eligible to apply for premium assistance. And after enactment of the 2010 DOD Act, premium assistance was available for a maximum of up to 15 months for individuals covered by that and preceding extensions. For instance, workers and family members who at the time of enactment were still receiving 9 months premium assistance could, if otherwise eligible, receive up to 6 more months premium assistance (for a total of 15 months coverage). Beneficiaries whose 9 months of premium assistance expired before the extension was signed into law were afforded the same opportunity to receive up to 6 months more premium assistance provided they paid their 35 percent due for unpaid premiums within 60 days of such enactment or, if later, within 30 days after receiving notice of the extension from their employers or issuers. Those individuals who continued to pay for their continuation coverage after their 9 months premium assistance ended and before enactment of the extension could receive credit or a refund for payments above 35 percent of the premium cost.

ARRA, as amended, also changed the first of the three part eligibility requirement above such that the date of the event that qualifies the individual for continuation coverage--rather than the date that the continuation coverage itself starts--determines whether an individual is eligible for premium assistance. (That event, however, must still be an involuntary termination and the qualified beneficiary must still elect continuation coverage.)

On March 2, 2010, President Obama signed into law the "Temporary Extension Act of 2010" (TEA) which:

1. Extended premium assistance
a) To AEIs involuntarily terminated up to March 31, 2010:
b) To individuals who initially qualified for continuation coverage because of a reduction of hours and were later involuntarily terminated provided that the reduction of hours took effect on or after September 1, 2008 and the involuntary termination occurred on or after March 2, 2010. The period for counting the months of eligibility for continuation coverage must begin at the point of the initial qualifying event (reduction of hours). Upon being involuntarily terminated, these

individuals must be provided a second COBRA election notice with information on how to apply for the premium assistance.
2. Provided the Departments of Labor (DOL) and Department of Health and Human Services (DHHS) the authority to impose Civil Monetary Penalties (CMPs) on employers and insurance companies in the amount of $110 per day for failure to comply with the determinations on the Request for Review of the Denials of Premium Assistance after 10 days after the date of the employer's or insurance company's receipt of the determination.

The Continuing Extension Act of 2010 (CEA), signed into law on April 15, 2010, extended the period in which an involuntary termination may entitle individuals to premium assistance to last up through May 31, 2010. Likewise, individuals may qualify based on an involuntary termination occurring in March through May 31, 2010 when that qualifying event follows a reduction of hours occurring from September 1, 2008 up until May 31, 2010.

As a convenience to readers, we are making available an unofficial document that incorporates all the amendments made by the 2010 DOD Act, TEA, and CEA to section 3001 of ARRA as originally enacted. See "Downloads" below for the Unofficial Consolidation of Amendments to Section 3001 of ARRA. This document is "clean" and does not distinguish among changes from the different Acts. However, if you are interested in a marked consolidated version which allows readers to identify statutory sources by color (or typeface), please contact our contractor Maximus Federal Services, Inc. using the contact information provided below (e.g., toll-free number (866) 400-6689)). Just request the "Marked Consolidation of Amendments to Section 3001 of ARRA."

Expedited Review: As has always been the case under ARRA, individuals who are denied access to premium assistance by their employers or issuers can request a determination from the DOL or DHHS via CMS. This expedited review must be completed within 15 business days after each agency receives such a request. The DOL handles all appeals regarding plans under ERISA, while CMS handles all requests for review regarding public sector (state and local government with 20 or more employees) employer plans, federal government (including the Federal Employees Health Benefits Program), and State continuation coverage (mini-COBRA) laws. Each Department has developed a similar, but separate form.

Contact Information: Below are sources for three different Federal components overseeing continuation coverage benefits under ARRA, as well as a central source providing State contact information regarding continuation coverage:

(1) Centers for Medicare & Medicaid Services (CMS). For more information about ARRA, go to the "Downloads" section at the bottom of this page. You may contact the CMS-sponsored premium assistance continuation coverage help desk via e-mail at continuationcoverage@maximus.com or call toll-free at (866) 400-6689. Staff members are available to help you from 9 a.m. until 7 p.m. ET. A form to request review by CMS if you are denied premium assistance is located under the "Downloads" section. It is entitled "Request for Review If You Have Been Denied Premium Assistance". The link to the Premium Assistance Appeals Website is located in the "Related Links Outside CMS" section. Additionally, help desk staff members would be glad to assist you with any questions about completing the application. You can mail your completed form to:

MAXIMUS Federal Services, Inc.

COBRA--Continuation Coverage

Assistance Appeals Project

800 Cross Keys Office Park

First Floor - Suite 822

Fairport, New York 14450

Alternatively, you can fax your form, toll-free, to (866) 941-0170. To confirm receipt when faxing, you may call the toll-free number (866) 400-6689.

(2) State Departments of Insurance (DOIs). Your State DOI can advise you whether it requires State continuation coverage (or mini-COBRA plans) and, if so, whether it considers that coverage "comparable" such that you might qualify for ARRA premium assistance. Go to "Related Links Inside CMS," select the "Health Insurance Reform for Consumers" Web page, scroll to the "Downloads" section, and select "DOI Contact Information - State Status Chart".

(3) Department of Labor (DOL). The DOL can be reached at: Employee Benefits Security Administration, 1-866-444-3272. You may obtain information about DOL review of your denial of the ARRA premium at http://www.dol.gov/ebsa/COBRA/main.html and an electronic form is available at: https://www.askebsa.dol.gov/COBRA/?submit=Online+Application+%3E%3E. Or for a paper form link below to the "ARRA COBRA DOL Form" located under the "Downloads" section. You may also link to ARRA information posted on the DOL Website below under "Related Links Outside CMS." The DOL website includes Model ARRA-related notices and forms.

(4) The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS). Treasury through the IRS oversees tax issues for all individuals and group health plans affected by the ARRA premium assistance. Its Website contains detailed information (see, for instance, http://www.irs.gov/pub/irs-drop/n-09-27.pdf). You may also link to ARRA information posted on the IRS Website below under "Related Links Outside CMS."

Downloads

ARRA Section 3001 (statutory text) - Premium Assistance for COBRA Benefits (PDF, 54KB)

Section 1010 of the 2010 DOD Act, amending ARRA Section 3001 (PDF, 60 KB)

Section 3 of the TEA Act, amending ARRA Section 3001 (PDF, 66 KB) *NEW*

Section 3 of the CEA Act, amending ARRA Section 3001 (PDF, 66 KB) *NEW*

Unofficial Consolidation of Section 3001 of ARRA (PDF, 114 KB) *NEW*

ARRA Conference Report Excerpt (PDF, 111 KB)

CMS Request for Review If You Have Been Denied Premium Assistance (CMS) (PDF, 365 KB)

COBRA Helpful Tips (PDF, 116 KB)

Related Links Inside CMS

Health Insurance Reform for Consumers

Related Links Outside CMS

HHS Press Release - COBRA ARRA

Premium Assistance Appeals Website

ARRA COBRA Webpage - The Department of the Treasury

ARRA COBRA Webpage - The Department of Labor (DOL)

ARRA COBRA DOL Model Notices (updated per DOD Act extension)

ARRA COBRA Guidance of the Internal Revenue Service (IRS) (PDF, 82KB)

Public Sector COBRA Law

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FORWARD

State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 266-3585 • Fax: (608) 266-9935
E-Mail: oclinformation@wisconsin.gov
Web Address: ocl.wi.gov

September 29, 2010

THE HONORABLE JIM HOLPERIN
SENATE CO-CHAIRPERSON
JOINT COMM FOR REVIEW OF ADM RULES
SOUTH STATE CAPITOL RM 409
MADISON WI 53702

Re: Rule, Sections Ins. 17.01(3) and 17.28(6), Wis. Adm. Code, relating to fiscal year 2011 fund fees and mediation panel fees

Emergency Rule Extension Request

Dear Senator Holperin:

I am requesting a 51-day extension of an emergency rule under s. 227.24 (2), Wis. Stat. This emergency rule became effective on June 15, 2010. The current emergency rule expires November 11, 2010. It is necessary to extend the emergency rule because the permanent rule cannot become effective prior to the termination of the current emergency rule period. The permanent rule will be sent to the revisor for final processing soon. This is the Office's first request for extension and will extend the emergency rule's effective date to 51 days from November 11, 2010.

If you have any questions regarding this, please contact Jim Guidry at 264-6239.

Sincerely,

Sean Dilweg
Commissioner of Insurance

SD:TLW

ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE

AND THE

BOARD OF GOVERNORS OF THE INJURED PATIENTS AND FAMILIES COMPENSATION FUND

AMENDING, AND REPEALING AND RECREATING A RULE

To amend s. Ins 17.01 (3) Wis. Adm. Code, and to repeal and recreate s. Ins 17.28 (6), Wis. Adm. Code, relating to annual injured patients and families compensation fund fees and medical mediation panel fees for the fiscal year beginning July 1, 2010, and may have an effect on small business.

.

FINDING OF EMERGENCY

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

These changes must be in place with an effective date of July 1, 2010 for the new fiscal year assessments. The fiscal year fees were established by the Board of Governors at meeting on May 18, 2010.

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

1. **Statutes interpreted:**

   ss. 655.27 (3), and 655.61, Wis. Stats.

2. **Statutory authority:**

   ss. 601.41 (3), 655.004, 655.27 (3) (b), and 655.61, Wis. Stats.

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

   The commissioner of insurance, with the approval of the board of governors (board) of the injured patients and families compensation fund (fund), is required to establish by administrative rule the annual fees which participating health care providers must pay to the fund and the annual fee due for the operation of the medical mediation panel.

4. **Related statutes or rules:**

   None

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

This rule establishes the fees that participating health care providers must pay to the fund for the fiscal year beginning July 1, 2010. These fees represent a 8.6% increase from fees paid for the 2009-10 fiscal year. The board approved these fees at its meeting on May 18, 2010

The board is also required to promulgate by rule the annual fees for the operation of the injured patients and families compensation mediation system, based on the recommendation of the director of state courts. The recommendation of the director of state courts was reviewed by the board's actuarial and underwriting committee. This rule implements the funding level approved by the board by establishing mediation panel fees for the next fiscal year at $28.00 for physicians and $6.00 per occupied bed for hospitals, representing an increase of $3.00 per physician and $1.00 per occupied bed for hospitals from 2009-10 fiscal year mediation panel fees.

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:**

To the fund board's and OCI's knowledge there is no existing or proposed federal regulation that is intended to address patient compensation fund rates, administration or activities.

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

To the fund board's and OCI's knowledge there are no similar rules in the adjacent states to compare this rule to as none of these states have a patients compensation fund created by statute where rates are directed to be established yearly by rule as is true in Wisconsin.

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:**

None. This rule establishes annual fund fees pursuant to the requirements of the above-noted Wisconsin statutes.

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:**

This increase in fund fees and mediation panel fees will have an affect on some small businesses in Wisconsin; particularly those that employ physicians and other health care professionals. The mediation panel fee is assessed only on physicians and hospitals, not on corporations or other health care entities. These increases will affect only those small businesses that pay the fund fees and mediation panel fees on behalf of their employed physicians. However, these increases will not have a significant effect nor should it negatively affect the small business's ability to compete with other providers.

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

The increase in fees promulgated by this rule does not result in a significant fiscal effect on the private sector. Although a health care provider may pass this increase on to its patients, there will not be a significant fiscal effect on the private sector as a result of this proposed rule.

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

This rule will have little or no effect on small businesses. The increase contained in the proposed rule will require providers to pay an increased fund fee and mediation panel fee which will increase the operational expenses for the providers. However, this increase is not considered to be significant and will have no effect on the provider's competitive abilities.

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

Mailing address:

Theresa L. Wedekind
OCI Rule Comment for Rule Ins 1701
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Street address:

Theresa L. Wedekind
OCI Rule Comment for Rule Ins 1701
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Email address:

Theresa L. Wedekind
theresa.wedekind@wisconsin.gov

Web site: **http://oci.wi.gov/ocirules.htm**

The proposed rule changes are:

SECTION 1. Ins 17.01 (3) is amended to read:

Ins 17.01 (3) FEE SCHEDULE. The following fee schedule shall be effective July 1, ~~2009~~ 2010:

(a) For physicians-- ~~$25.00~~ $28.00

(b) For hospitals, per occupied bed-- ~~$5.00~~ $6.00

SECTION 2. Ins 17.28 (6) is repealed and recreated to read:

(6) FEE SCHEDULE. The following fee schedule is in effect from July 1, 2010 to June 30, 2011:

(a) Except as provided in pars. (b) to (f) and sub. (6e), for a physician for whom this state is a principal place of practice:

Class 1 $1,347	Class 3 $5,387
Class 2 $2,423	Class 4 $8,888

(b) For a resident acting within the scope of a residency or fellowship program:

Class 1 $ 673	Class 3 $2,693
Class 2 $1,211	Class 4 $4,444

(c) For a resident practicing part-time outside the scope of a residency or fellowship program:

All classes	$808

(d) For a medical college of Wisconsin, inc., full-time faculty member:

Class 1 $542	Class 3 $2,168
Class 2 $969	Class 4 $3,577

(e) For physicians who practice part-time:

1. For a physician who practices fewer than 500 hours during the fiscal year, limited to office practice and nursing home and house calls, and who does not practice obstetrics or surgery or assist in surgical procedures: $ 337

2. For a physician who practices 1040 hours or less during the fiscal year, including those who practice fewer than 500 hours during the fiscal year whose

practice is not limited to office practice, nursing homes or house calls or who do practice obstetrics, surgery or assist in surgical procedures:

Class 1 $ 808	Class 3 .... $3,232
Class 2 $1,455	Class 4 .... $5,333

(f) For a physician for whom this state is not a principal place of practice:

Class 1 $ 673	Class 3 .... $2,693
Class 2 $1,211	Class 4 .... $4,444

(g) For a nurse anesthetist for whom this state is a principal place of practice:

$ 330

(h) For a nurse anesthetist for whom this state is not a principal place of practice: $ 165

(i) For a hospital, all of the following fees:

1. Per occupied bed $ 81

2. Per 100 outpatient visits during the last calendar year for which totals are available: $ 4.06

(j) For a nursing home, as described under s. 655.002 (1) (j), Stats., that is wholly owned and operated by a hospital and that has health care liability insurance separate from that of the hospital by which it is owned and operated:

Per occupied bed $ 16

(k) For a partnership comprised of physicians or nurse anesthetists, organized for the primary purpose of providing the medical services of physicians or nurse anesthetists, all of the following fees:

1. a. If the total number of partners and employed physicians and nurse anesthetists is from 2 to 10 $ 47

b. If the total number of partners and employed physicians and nurse anesthetists is from 11 to 100 $ 465

c. If the total number of partners and employed physicians and nurse anesthetists exceeds 100 $1,157

2. The following fee for each full-time equivalent allied health care professional employed by the partnership as of the most recent completed survey submitted:

Employed Health Care Persons	Fund Fee
Nurse Practitioners	$ 337
Advanced Nurse Practitioners	471
Nurse Midwives	2,963
Advanced Nurse Midwives	3,096
Advanced Practice Nurse Prescribers	471
Chiropractors	539
Dentists	269
Oral Surgeons	2,020
Podiatrists-Surgical	5,722
Optometrists	269
Physician Assistants	269

(L) For a corporation, including a service corporation, organized under ch. 180, Stats., for the primary purpose of providing the medical services of physicians or nurse anesthetists, all of the following fees:

1. a. If the total number of shareholders and employed physicians and nurse anesthetists is from 2 to 10 $ 47

b. If the total number of shareholders and employed physicians and nurse anesthetists is from 11 to 100 $ 465

c. If the total number of shareholders and employed physicians or nurse anesthetists exceeds 100 $1,157

2. The following fee for each full-time equivalent allied health care professional employed by the corporation as of the most recent completed survey submitted:

Employed Health Care Persons	Fund Fee
Nurse Practitioners	$ 337
Advanced Nurse Practitioners	471
Nurse Midwives	2,963
Advanced Nurse Midwives	3,096
Advanced Practice Nurse Prescribers	471
Chiropractors	539
Dentists	269
Oral Surgeons	2,020
Podiatrists-Surgical	5,722
Optometrists	269
Physician Assistants	269

(m) For a corporation organized under ch. 181, Stats., for the primary purpose of providing the medical services of physicians or nurse anesthetists, all of the following fees:

1. a. If the total number of employed physicians and nurse anesthetists is from 1 to 10 $ 47

b. If the total number of employed physicians and nurse anesthetists is from 11 to 100 $ 465

c. If the total number of employed physicians or nurse anesthetists exceeds 100 $1,157

2. The following fee for each full-time equivalent allied health care professional employed by the corporation as of the most recent completed survey submitted:

Employed Health Care Persons	Fund Fee
Nurse Practitioners	$ 337
Advanced Nurse Practitioners	471
Nurse Midwives	2,963
Advanced Nurse Midwives	3,096
Advanced Practice Nurse Prescribers	471
Chiropractors	539
Dentists	269
Oral Surgeons	2,020
Podiatrists-Surgical	5,722
Optometrists	269
Physician Assistants	269

(n) For an operational cooperative sickness care plan as described under s. 655.002 (1) (f), Stats., all of the following fees:

1. Per 100 outpatient visits during the last calendar year for which totals are available $0.10

2. 2.99% of the total annual fees assessed against all of the employed physicians.

3. The following fee for each full-time equivalent allied health care professional employed by the operational cooperative sickness plan as of the most recent completed survey submitted:

Employed Health Care Persons	Fund Fee
Nurse Practitioners	$ 337
Advanced Nurse Practitioners	471
Nurse Midwives	2,963
Advanced Nurse Midwives	3,096
Advanced Practice Nurse Prescribers	471
Chiropractors	539

Dentists	269
Oral Surgeons	2,020
Podiatrists-Surgical	5,722
Optometrists	269
Physician Assistants	269

(o) For a freestanding ambulatory surgery center, as defined in s. HFS 120.03 (13), per 100 outpatient visits during the last calendar year for which totals are available: $ 21.00

(p) For an entity affiliated with a hospital, the greater of $100 or whichever of the following applies:

1. 8% of the amount the entity pays as premium for its primary health care liability insurance, if it has occurrence coverage.

2. 11% of the amount the entity pays as premium for its primary health care liability insurance, if it has claims-made coverage.

(q) For an organization or enterprise not specified as a partnership or corporation that is organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists, all of the following fees:

1. a. If the total number of employed physicians and nurse anesthetists is from 1 to 10 $ 47

b. If the total number of employed physicians and nurse anesthetists is from 11 to 100 $ 465

c. If the total number of employed physicians or nurse anesthetists exceeds 100 $1,157

2. The following for each full-time equivalent allied health care professional employed by the organization or enterprise not specified as a partnership or corporation as of the most recent completed survey submitted:

Employed Health Care Persons	Fund Fee
Nurse Practitioners	$ 337
Advanced Nurse Practitioners	471
Nurse Midwives	2,963
Advanced Nurse Midwives	3,096
Advanced Practice Nurse Prescribers	471
Chiropractors	539
Dentists	269
Oral Surgeons	2,020
Podiatrists-Surgical	5,722
Optometrists	269
Physician Assistants	269

SECTION 1. These emergency rule changes will take effect on July 1, 2010, as provided in s. 227.24(1)(c), Stats.

Dated at Madison, Wisconsin, this _____ day of _____, 2010.

_____

Sean Dilweg
Commissioner of Insurance

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Section Ins 17.01(3), and 17.28(6) relating to fiscal year 2011 fund fees and mediation panel fees and affecting small business

Modify or cut any of the following

Statute Involved: **s. 227.14(4) FISCAL ESTIMATES.**

(a) An agency shall prepare a fiscal estimate for each proposed rule before it is submitted to the legislative council staff under s. 227.15.

(b) The **fiscal estimate shall include [1] the major assumptions used in its preparation and [2] a reliable estimate of the fiscal impact of the proposed rule, including:**

1. The anticipated effect on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues.
2. A projection of the anticipated state fiscal effect during the current biennium and a projection of the net annualized fiscal impact on state funds.
3. **For rules that the agency determines may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by the private sector in complying with the rule.**

(c) **If a proposed rule interpreting or implementing a statute has no independent fiscal effect, the fiscal estimate prepared under this subsection shall be based on the fiscal effect of the statute.**

(d) If a proposed rule is revised so that its fiscal effect is significantly changed prior to its issuance, an agency shall prepare a revised fiscal estimate before promulgating the rule. The agency shall give notice of a revised fiscal estimate in the same manner that notice of the original estimate is given.

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

Division of Executive Budget and Finance
DOA-2047 (R10/2000)

Wisconsin Department of Administration

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

☒ ORIGINAL	☐ UPDATED	LRB Number	Amendment No. if Applicable
☐ CORRECTED	☐ SUPPLEMENTAL	Bill Number	Administrative Rule Number **INS 1701**

Subject
fiscal year 2011 fund fees and mediation panel fees 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 Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	**Increased Rev.**	**Decreased Rev.**
GPR Taxes	**$ 0**	**$ -0**
GPR Earned	**0**	**-0**
FED	**0**	**-0**
PRO/PRS	**0**	**-0**
SEG/SEG-S	**0**	**-0**
TOTAL State Revenues	**$ 0 None**	**$ -0 None**

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	$ **None 0**	$ **None 0**
NET CHANGE IN REVENUES	$ **None 0**	$ **None 0**

Prepared by: Theresa L. Wedekind	**Telephone No.** (608) 266-0953	**Agency** Insurance
Authorized Signature:	**Telephone No.**	**Date** (mm/dd/ccyy)

Division of Executive Budget and Finance
DOA-2048 (R10/2000)

Wisconsin Department of Administration

FISCAL ESTIMATE

☒ ORIGINAL	☐ UPDATED	LRB Number	Amendment No. if Applicable
☐ CORRECTED	☐ SUPPLEMENTAL	Bill Number	Administrative Rule Number **INS 1701**

Subject
fiscal year 2011 fund fees and mediation panel fees and affecting small business

Fiscal Effect

State: ☒ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Increase Costs - May be possible to Absorb Within Agency's Budget ☐ Yes ☐ No

☐ Decrease Costs

Local: ☒ No local government costs

1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected: ☐ Towns ☐ Villages ☐ Cities ☐ Counties ☐ Others ____ ☐ School Districts ☐ WTCS Districts

Fund Sources Affected ☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The Injured Patients and Families Compensation Fund (IPFCF or Fund) is a segregated fund. Annual Fund fees are established to become effective each July 1 based the Fund's needs for payment of medical malpractice claims. The proposed fees were approved by the Fund's Board of Governors at its May 18, 2010, meeting and represent an increase of 8.6% over fiscal year 2010 fund fees.

The Fund is a unique fund; there are no other funds like it in the country. The Fund provides unlimited liability coverage and participation is mandatory. These two features make this Fund unique compared to funds in other states. The only persons who will be affected by this rule change are the Fund participants themselves as the IPFCF is fully funded through assessments paid by Fund participants.

There is no effect on GPR.

Long-Range Fiscal Implications

None

Prepared by:	Telephone No.	Agency
Theresa L. Wedekind	(608) 266-0953	Insurance
Authorized Signature:	**Telephone No.**	**Date** (mm/dd/ccyy)

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 ss. 227.18 and 227.24(4), Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting Section Ins 17.01(3), and 17.28(6), Wis. Adm. Code, relating to fiscal year 2011 fund fees and mediation panel fees and affecting small business.

HEARING INFORMATION

Date: July 19, 2010
Time: 10:00 a.m., or as soon thereafter as the matter may be reached
Place: OCI, Room 227, 125 South Webster St 2nd Floor, Madison, WI

Written comments can be mailed to:

Theresa L. Wedekind
Legal Unit - OCI Rule Comment for Rule Ins 1701
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Written comments can be hand delivered to:

Theresa L. Wedekind
Legal Unit - OCI Rule Comment for Rule Ins 1701
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Comments can be emailed to:

Theresa L. Wedekind
theresa.wedekind@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 14th 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.

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

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, (608) 264-8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.


FORWARD
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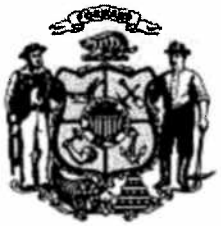
SENATOR JIM HOLPERIN
CO-CHAIR

PO Box 7882
MADISON, WI 53707-7882

(608) 266-2509



REPRESENTATIVE JOSH ZEPNICK
CO-CHAIR

PO BOX 8953
MADISON, WI 53707-8953

(608) 266-1707

Wednesday, October 20, 2010

Sean Dilweg, Commissioner
Office of the Commissioner of Insurance
P.O. Box 7873
Madison, WI 53707

Dear Commissioner Dilweg:

The Joint Committee for the Review of Administrative Rules met in Executive Session on October 20, 2010 and adopted the following motion:

Moved by Representative Hebl, seconded by Representative Hubler that That the Joint Committee for Review of Administrative Rules, pursuant to s. 227.24 (2), Stats., extend the effective period of an emergency rule of the Office of the Commissioner of Insurance, relating to annual injured patients and families compensation fund fees and medical mediation panel fees for the fiscal year beginning July 1, 2010 (EmR1020), for a period of 51 days through January 1, 2011.

Motion Passed 9-1.

Sincerely,

Jim Holperin
Senator Jim Holperin
Senate Co-Chair

Josh Zepnick
Representative Josh Zepnick
Assembly Co-Chair

cc: Bruce Hoesly, Legislative Reference Bureau
Ron Sklansky, Legislative Council


FORWARD
E PLURIBUS UNUM

Date ??

OCI

CR 10-043 Ins. Autism Spectrum Disorders
Background and Summary

OCI is requesting a 60-day extension of the emergency rule Ins. 3.36.

Under 2009 Wisconsin Act 28, the Commissioner is required under the autism services mandate, to define four terms: intensive level services, non-intensive level services, qualified, and paraprofessionals; and may draft rules that relate to the interpretation or administration of section.

An emergency rule was put in place on September 28, 2009 once Act 28 was signed into law. However, OCI did not file an extension request for that emergency rule until the request deadline had passed. Subsequently, that emergency rule expired. Additionally, the legislature passed and Governor Doyle signed SB 667 which made a change to the statute to included Board Certified Behavioral Analysts as qualified professionals under the mandate. OCI issued a new emergency rule to include the changes made to the mandate on March 8, 2010.

The permanent rule for Ins 3.36 was submitted to the legislature on June 29, where it was assigned to the Assembly Committee on Insurance and the Senate Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue. The legislative review period will expire on July 30, 2010 in the Senate and on August 6, 2010 in the Assembly.

A full 60-day extension is requested to allow time for formal promulgation and publication in the Wisconsin Administrative Register once the legislative review period expires.