



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, Governor
Theodore K Nickel, Commissioner

Wisconsin.gov

Legal Unit
125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 267-9586 • Fax: (608) 264-6228
Web Address: oci.wi.gov

Report From Agency

July 6, 2017

REPORT ON an order to repeal ss. Ins 3.70, 5.45 (1) (b), 6.52 Form B, 8.42 (4) (a), (b) and (7) (c) (1), 8.59 (4), 8.60 (1) (a), (d) and (e), 8.61 (2) and (6), 8.68 (3) (b) and (c) and 9.40 (1) (a), (5) and (6); to renumber, consolidate and amend Ins 8.42 (4) (intra.) and (c), 9.40 (1) (intra.) and (b); to amend Ins 3.651 (2) (Note), 3.75 (6), 6.52 (5), ch. 6 Appendix 1 and Appendix 2, 7.02, 7.06 (Note), 8.40, 8.42 (13), 8.68 (4), 16.01 (4) (c), (6) (a) and (7) (a) and (b), 50.01 (1r) and 50.14 (2); and to create Ins 16.01 (7) (c), 50.01 (6g), 50.15 (2m), 50.155 and 50.18 (8), Wis. Adm. Code, relating to certain reporting requirements, electronic filing and obtaining information, increasing minimum annual assessment for OCI insurer examinations, other technical corrections and affecting small business.

Clearinghouse Rule No. 17-015
Submitted under s. 227.19 (3), Stats.

(The proposed rule-making order is attached.)

- (a) A detailed statement of basis for the proposed rule and how the rule advances relevant statutory goals or purposes:

The proposed rule makes technical corrections to current rules by inserting OCI's current mailing address and adding OCI's website so consumers may make complaints and obtain insurance forms electronically. The proposed rule deletes insurance forms no longer in use and repeals all rule references to the Health Insurance Risk Sharing Plan (HIRSP) which was eliminated by 2013 Act 20. OCI currently requires two different forms filing from domestic insurers that provide biographical information on new officers and directors -- one for an insurer *before* it is organized (Form A) and a second form for new officers and directors *after* the insurer is organized (Form B). The proposed rule eliminates Form B and replaces it with the more informative current Form A. Therefore, the proposed rule requires Form A to be filed for new officers and directors of insurers both before and after the insurer is organized.

The proposed rule eliminates as unnecessary in the current health insurance marketplace a requirement that all HMOs annually submit HEDIS (Health Plan Employer Data and Information Set) quality assurance data to OCI. Also eliminated is a requirement that a very limited number of defined network plans submit annually to OCI a "standardized data set" of quality outcome data.

Under current rules, OCI annually bills domestic insurers for their proportionate share of the estimated total cost of administering that year's examinations program generally determined by comparing each insurer's premium volume. The current rule provides that "in the event the sum of the previous year's assessment exceeds the actual cost of administering the insurer examinations program, the amount of the excess shall be applied as an offset to the estimated cost for the next year's examination program." The proposed rule change provides that if the sum of a year's billings for insurer examinations by OCI "differs" from the actual cost of administering the examinations program, the difference (*plus or minus*) will be applied as an "adjustment" to the estimated cost for the next year's examinations program. The proposed rule also modernizes a rule section by making clear that the commissioner may obtain CPA work papers pertaining to an insurer's annual audit in electronic form.

OCI financial examiners perform a financial examination of all domestic insurers at a minimum of once every five years. The proposed rule increases the minimum annual amount OCI may charge for its examinations of domestic insurers to an amount that more accurately reflects the actual minimum administrative costs of OCI's examinations. The new minimum amounts will also more equitably distribute the examination costs among insurers. The current minimum annual billing for OCI examinations is \$1,000 for domestic insurers located primarily out of state and \$300 for all other domestic insurers. These amounts have not been updated since 1999 and 1977, respectively. The proposed rule increases the annual minimum amount for domestic insurers located primarily out of state to \$10,000 and the minimum amount for all other domestic insurers to \$3,000 per year. This proposed rule change will not result in an increase to the aggregate amount charged the domestic insurance industry for administering OCI's examinations program.

Finally, the proposed rule adopts an NAIC (National Association of Insurance Commissioners) model law requiring large insurers (with over \$500,000,000 of gross annual premiums) to have an independent internal audit function effective January 1, 2018. This is a good business and solvency practice, which most large insurers already have in place.

(b) Summary of the public comments and the agency's responses to those comments:

Comment: A question/comment posed to OCI: Does the proposed language of s. Ins 50.155 (5) allow an insurer to satisfy the internal audit function requirements of the section at the ultimate controlling parent level if the ultimate parent of the insurer is a health system?

Response: Referencing the definition in s. Ins 40.01(6), Wis. Adm. Code, of the term "insurance holding company system" used in the proposed rule, OCI determined that the proposed rule language does allow an insurer to satisfy internal audit function requirements at the ultimate controlling parent level if the ultimate controlling parent is a health system. In order to make this clear, OCI has revised the provisions of proposed s. Ins 50.155 (5) to add a reference to the definition of the term as follows: "If an insurer is a member of an insurance holding company system, as defined ins. Ins 40.01 (6), or included . . ."

Comment: The proposed language of the CPA work papers provision, s. Ins 50.14 (2), should be revised to provide the "CPA must take reasonable efforts to provide the commissioner with functional electronic copies" and "the CPA must take reasonable efforts to provide individual electronic work papers without password protection." These changes should be made because due to IT issues CPA firms may not be able in all cases to meet OCI's proposed standards requiring electronic copies to be as fully functional as the original documents. Similarly, OCI's not permitting "passwords on individual electronic work papers, or passwords that disable features of individual electronic work papers" may not be achievable in all cases. Finally, a revision in the last sentence of s. Ins 50.14 (2) should be made changing the word "may" to "shall".

Response: OCI declines to make the first two suggested language revisions. OCI's proposed CPA work paper standards which require providing electronic copies as fully functional as the original documents, and prohibiting passwords on individual work papers, are reasonable requirements and necessary to provide the regulator with full access to insurers' CPA electronic work papers for financial examinations of insurers. Further, proposed s. Ins 50.14 (2) as written complies with the American Institute of Certified Public Accountants' (AICPA) NAIC Task Force Best Practices: Insurance Regulator Access to Audit Documentation. OCI has revised the language of the last sentence of s. Ins 50.14 (2) to read as follows: "All working papers and communications obtained by the commissioner under this section may be treated by the commissioner as are confidential under s. 601.465, Stats." in response to this comment.

(c) An explanation of any modifications made in proposed rule as a result of public comments or testimony received at a public hearing:

Please see discussion/explanation in section (b).

(d) Persons who appeared or registered regarding the proposed rule:

Appearances for:

None

Appearances against:

None

Appearances for information:

Phil Dougherty, Wisconsin Association of Health Plans

Registrations for:

None

Registrations against:

None

Registrations neither for nor against:

Angela Keenan, Network Health

Rita Hurley, Network Health

Connie O'Connell, Wisconsin Council of Life Insurers

Letters received: May 8, 2017 Comment letter from the American Institute of CPAs regarding proposed s. Ins 50.14 (2)-discussed in Comments and Responses above.

- (e) **An explanation of any changes made to the plain language analysis of the rule under s. 227.14 (2), Stats., or to any fiscal estimate prepared under s. 227.14 (4), Stats.**

None

- (f) **The response to the Legislative Council staff recommendations indicating acceptance of the recommendations and a specific reason for rejecting any recommendation:**

All comments were complied with and corrected except the following:

With respect to Legislative Council staff recommendation #2.b. regarding s. Ins 50.155, OCI has decided to keep the exemption section in the first subsection of the proposed rule to allow insurers and others reading the rule to determine if they are exempt from the requirements of the internal audit function provisions before reading through all other subsections of the rule.

In response to Legislative Council staff recommendation #5. regarding s. Ins 50.14 (2), OCI has revised the language of the section to read: "Password protection of the storage medium used to transmit electronic work papers is acceptable in order to securely transfer electronic work papers to the commissioner. Passwords on individual electronic work papers, or passwords that disable features of individual electronic work papers, are not permitted." This revised language now clearly expresses the agency's intent. Also, OCI notes the term "work papers" is already defined ins. Ins 50.01 (9), Wis Adm Code. Finally, the language of s. Ins 50.14 (2) should be read in conjunction with the previous subsection Ins 50.14 (1), Wis Adm Code.

- (g) **The response to the report prepared by the small business regulatory review board:**

The small business regulatory review board did not prepare a report.

- (h) **Final Regulatory Flexibility Analysis**

A Final Regulatory Flexibility Analysis is Not Required because the rule will not have a significant economic impact on a substantial number of small businesses.

(i) **Fiscal Effect**

See fiscal estimate attached to proposed rule.

Attachment: Legislative Council Staff Recommendations
April 12, 2017