



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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Wisconsin.gov

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Report From Agency

Report on Sections Ins 6.57, 6.58, 6.59, 6.595, 6.61, 6.63, 6.92, 6.93, 26.03, 26.04, 26.05, 26.06, 26.07, 26.09, 28.01, 28.03, 28.04, 28.05, 28.06, 28.07, and 28.08, Wis. Adm. Code, relating to changes in the agent licensing process and affecting small business.

Clearinghouse Rule No. 19-025
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 Office of the Commissioner of Insurance (OCI) recently switched to the National Association of Insurance Commissioner's (NAIC) State Based System (SBS), which is a comprehensive web-based application that was developed to assist state regulators with many services relating to the agent licensing process. SBS was created by the NAIC in coordination with the National Insurance Producers Registry (NIPR) as an initiative to promote greater national licensing uniformity. Accordingly, the switch to SBS is creating greater uniformity between OCI's agent licensing process and those in other states.

The switch to SBS also provides OCI with a more efficient and effective tool for administering the agent licensing process by affording a streamlined process in which many aspects of agent licensing, including pre-licensing requirements, applications, company appointment and billings, terminations, notices, and continuing education are consolidated in one place. The comprehensive nature of the SBS application is necessary to facilitate an integrated online platform that will allow OCI and licensees to easily locate, update, and track important information, access and process licensing requirements, and more effectively and efficiently communicate with each other through electronic means.

General Changes to chs. 6, 26, and 28: Electronic Communications, Flexibility, and Uniformity

One of the key challenges with the switch to SBS and the agent licensing process in general is modernization in which new technology is being utilized to create more effective and efficient processes—largely in the form of consolidated services and electronic communications. Accordingly, the proposed rule seeks to utilize electronic means as the primary form of communication, particularly the use of e-mail. Current notice provisions, including provisions relating to renewal fees, appointment fees, and continuing education requirements, all require the notice to be sent through the mail, which is inefficient and expensive. The proposed rule will permit the Commissioner to specify the manner in which notices shall be provided to the individuals and entities. This will allow our office to shift to e-

mail in the short-term while providing the flexibility to adopt new forms of communication as they develop in the future (i.e. an online platform). In addition, the proposed rule will require individuals and entities to provide a contact e-mail address.

Similarly, the proposed rule will also permit the Commissioner to specify the manner in which applications, forms, and notices shall be filed. Under the current rules, applications and forms are generally required to be filed with OCI; for example, appointment requests and notices and intermediary licenses under ss. Ins 6.57, 6.58, and 6.59, Wis. Adm. Code., all require filing applications with OCI. However, under SBS many of these services will be handled through the SBS platform. Moreover, the proposed rule removes any reference to OCI specific applications or forms in favor of NAIC Uniform Applications to ensure uniformity with other states.

Finally, the proposed rule makes a distinction between the different causes for license revocation, which are governed by s. 628.10, Wis. Stats. Under the proposed rule, revocations for failing to comply with continuing education requirements or failing to pay regulation fees are referred to as terminations, while revocations for delinquent taxes and unemployment contributions are still referred to as revocations. This revision is not meant to create a substantive distinction, but rather is a way to more accurately reflect how the different revocations are both treated and viewed. For example, under s. Ins 6.61 (16) (a), Wis. Adm. Code, read in combination with s. Ins 6.61 (3) (e), Wis. Adm. Code, intermediaries are required to notify the Commissioner of any revocation for delinquent taxes or for failing to pay unemployment contributions, but they do not have to report revocations for failing to comply with continuing education requirements or failing to pay regulation fees.

Specific Changes to chs. 6, 26, and 28: Clarity, Efficiency, and Uniformity

In addition to the general changes outlined above, the proposed rule will also make a number of revisions that clarify, simplify, and/or remove existing requirements that are confusing and outdated. In general, these changes seek to streamline various aspects of the agent licensing process by removing unnecessary language and requirements and to create greater uniformity with other states.

Section Ins 6.57, Wis. Adm. Code—Appointment of Agents

First, under s. Ins 6.57 (1), Wis. Adm. Code, the proposed rule will clarify that appointment requests must be made either within 15 days of the date the agent contract is executed or the date the first insurance application is submitted. The same language is also added to subs. (5) and (6) in order to clarify appointment requirements regarding an insurer accepting business from an agent and for an agent soliciting on behalf of and submitting business to an insurer. In addition, the proposed rule also specifies that billing shall be done at the time of initial appointment. Finally, the proposed rule will remove specific fees details under subs. (4) and instead reference the statutory citation that governs the fees.

Sections Ins 6.58 and 6.59, Wis. Adm. Code—Firm and Individual Intermediary Licensing

The proposed rule will make a number of changes to OCI's individual and firm intermediary licensing provisions under ss. Ins 6.58 and 6.59, Wis. Adm. Code, which are intended to streamline the licensing procedures and create greater uniformity with other states. First, under s. Ins 6.58, Wis. Adm. Code, the proposed rule will allow travel intermediaries to apply for firm licensure, remove the certification requirement for the articles of incorporation, permit the application to be either signed or submitted by an officer or partner as opposed to being

signed by an officer or partner, and require the intermediary firm to designate a responsible licensed producer (DRLP).

Under s. Ins 6.59, Wis. Adm. Code, the proposed rule requires applicants to provide a copy of the certificate of prelicensing that was presented to the exam proctor in order to sit for the exam, removes the requirement that applicants notify the testing vendor one day in advance of their scheduled examination, and increases the time period in which exam scores are valid from 30 to 180 days. In addition, the proposed rule clarifies the meaning of criminal “conviction” under ss. Ins 6.58 (4) (b) 1. and 6.59 (5) (a), Wis. Adm. Code, to align with the meaning of criminal “conviction” in the NAIC’s Uniform Applications. Finally, s. Ins 6.59 (8), Wis. Adm. Code, currently requires nonresident intermediaries to provide OCI with a letter of certification when they become a resident of a new state, which is an outdated practice. The proposed rule replaces “new state of residence” with “home state” as a matter of uniformity and will only require the letter of certification if OCI cannot independently verify the nonresident license status in the new home state first.

Section Ins 6.63, Wis. Adm. Code—Regulation Changes

The proposed rule adds failure to pay unemployment insurance contributions as a basis for license revocation under s. Ins 6.63 (3) and (4), Wis. Adm. Code, which is provided for by statute under s. 628.10 (2) (cm), Wis. Stat. In addition, the proposed rule eliminates the last sentence in s. Ins 6.63 (4), Wis. Adm. Code, which outlines the requirements for re-licensure depending on the length of time the license was terminated or revoked. This sentence is unnecessary as the requirement is already set forth by statute under s. 628.10 (5) (a), Wis. Stat.

Chapters Ins 26 and 28, Wis. Adm. Code—Prelicensing Education and Continuing Education

Finally, the proposed rule will make a number of revisions to the current provisions governing prelicensing education and continuing education, which will simplify and/or eliminate unnecessary requirements that exist in the current code. In general, these changes seek to streamline the processes for prelicensing and continuing education.

The proposed rule will eliminate the “banking” of prelicensing credits by education providers under ss. 26.05 (5) and 26.07 (2), Wis. Adm. Code, which is no longer necessary with the switch to SBS. The elimination of “banking” may reduce potential fees to applicants and providers for uploading the credits while also eliminating the need for providers to collect the full social security number of pre-licensing students, which can be costly to secure. In addition, the proposed rule clarifies that approval of noncredit courses will expire on August 30 every two years starting on the August 30 after approval, and removes the requirement that applications for the next period be made on or before July 15 under s. Ins 26.06 (3), Wis. Adm. Code. Finally, the proposed rule permits noncredit programs to be offered in an audio or video format.

Similarly, the proposed rule will also clarify that approval for continuing education programs will expire on July 31 every two years starting on the July 31 after approval, and removes the requirement that applications for the next period be made on or before June 1 pursuant to s. Ins 28.06 (4), Wis. Adm. Code. In addition, the proposed rule moves communication skills, personnel management, and agency management into the category of subjects that may qualify for approval. Finally, the proposed rule also permits continuing education programs to be offered in an audio or video format.

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

N/A

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

N/A

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

Appearances for:

None

Appearances against:

None

Appearances for information:

None

Registrations for:

None

Registrations against:

None

Registrations neither for nor against:

Melissa Duffy
Representing Common Ground Health Care

Letters received:

(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.

N/A

(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:

1. Section 2. b.: The Legislative Council noted that portions of the current ch. Ins 28, Wis. Adm. Code, do not follow the format prescribed by the Manual in terms of using introductory sections and punctuation and suggested updating the provisions. After reviewing this recommendation, OCI believes that such an update would go beyond the scope and decrease clarity in the current proposed rule. Rather, an update of this nature would be better addressed in a future rule where OCI could make wholesale revisions by utilizing Repeal/Replace, which will be much easier to follow. In terms of the provisions already being amended in the current proposed rule that do not follow the prescribe format, OCI is not changing the format in order maintain consistency with the current format of ch. Ins 28, Wis. Adm. Code.

2. Section 2. d.: In this section the Legislative Council suggests reviewing a number of revisions, which replace specific requirements with “in a manner specified by the commissioner” to ensure the changes do not authorize the commissioner to prescribe by policy what would otherwise require rulemaking. The revised language addresses administrative processes such as how/where to file forms or how various information should be communicated between OCI and licensees, not substantive requirements pertaining to licensure. Our Office reviewed these revisions and does not believe they authorize the Commissioner to substitute rulemaking with policy decisions.
3. Section 4: OCI will continue to provide clear guidance and access to applicable forms on our website.
4. Section 5. b.: The Legislative Council suggests changing an “and” to an “or” in the definition of “Home state.” Since this definition is from an NAIC Model Act OCI is keeping the current language in order to maintain uniformity with other states and the Model Act language.

(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

1. None of the methods specified under s. 227.14 (2), Stats., were included because all must be treated equally and thus it is not possible to have different rules for one segment of the population. Moreover, the proposed rule will likely have a positive impact on small businesses, including insurance agencies, pre-licensing and continuing education providers, and small insurance companies by reducing fees and administrative costs, eliminating unnecessary requirements, and streamlining processes.
2. No issues were raised by small businesses during the hearing on the proposed rule.
3. The proposed rule does not impose any additional reporting requirements on small businesses.
4. The proposed rule does not require any significant additional measures or investments by small businesses.
5. OCI does not need any additional funds to administer or enforce the proposed rule using the methods specified in s. 227.114 (2), Stats.
6. There is no impact on public health, safety and welfare caused by including in the rule any of the methods specified under s. 227.114 (2), Stats

(i) Fiscal Effect

See fiscal estimate attached to proposed rule.

Attachment: Legislative Council Staff Recommendations