

**ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE AMENDING,  
CREATING AND REPEALING A RULE**

**Office of the Commissioner of Insurance**

Rule No. Agency 145 – S. Ins 51.01 (21) and 51.80

The Commissioner of Insurance proposes an order to amend INS 51.01 (21), INS 51.80 (3) (a) 1., INS 51.80 (3) (a) 2., INS (3) (a) 3., and INS 51.80 (6); and to create INS 51.80 (3) (a) 3e., INS 51.80 (3) (a) 3m., INS 51.80 (3) (a) 3s., and INS 51.80 (6m), relating to capital requirements for insurers.

The statement of scope for this rule SS: 160-20 was approved by the Governor on December 11, 2020, published in Register No.780A3, on December 21, 2020, and approved by the Commissioner on January 13, 2021. The proposed rule was approved by the Governor on January 5, 2023, to submit to the Legislature, and submitted to the Legislature on January 10, 2023. The rule passed through Senate and Assembly committees and the Joint Committee for Review of Administrative Rules on April 6, 2023 (Senate) and April 12, 2023 (Assembly) with no action taken.

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

**1. Statutes interpreted:**

Sections 601.01, 623.11, Stats.

**2. Statutory authority:**

Sections 601.01, 601.41 (3), 601.42, 611.19 (1), 614.13, 614.19, 618.21, 623.02 and 623.11, Stats.

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

The Commissioner has the general authority to promulgate rules necessary to administer and enforce Wis. Stats. chs. 600 to 655, and as provided in Wis. Stat. § 601.41 (3) (a), has “rule-making authority” under Wis. Stat. § 227.11 (2). Wis. Stat. § 623.11 (2) requires the Commissioner to establish by rule the minimum ratios for the compulsory surplus in relation to any relevant variables, including amounts at risk, premiums written or earned, liabilities, and equity investments.

**4. Related statutes or rules:**

Wis. Adm. Code Ins ch. 51, Wisconsin Statutes Section 623.11.

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

The proposed rule will modify the compulsory surplus requirement for insurers offering Medicare stand-alone drug coverage, variable business, and medical malpractice insurance to be reflective of the risk and amount of compulsory surplus required to be maintained. Additionally, the proposed rule will add provisions regarding premiums for health insurers for purposes of Wis. Admin. Code § Ins 51.80 and will correct a citation cross reference in Wis. Admin. Code § Ins 51.01.

**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:**

NA

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

**Illinois:** 215 ILL. COMP. STAT. 5/35A-1 to 5/35A-70 (“risk-based capital law”)

**Iowa:** IOWA CODE §§ 521E.1 to 521E.12 (“risk-based capital requirements for insurers”)

**Michigan:** BULLETIN 2013-21-INS (regarding risk-based capital levels for insurers)

**Minnesota:** MINN. STAT. §§ 60A.60 to 60A.696 (“regulation of risk-based capital”)

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:**

OCI has issued orders to insurers who offer stand-alone Medicare, variable life and medical malpractice policies in which the agency provided more refined approaches to compulsory surplus requirements in line with the proposed changes in this rule. The intent of the rule is to adopt the factors that OCI has currently been modifying through specific company orders as industry-wide standards for simplicity and uniformity.

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 proposed rule would modify surplus requirements for stand-alone Medicare, variable business, and medical malpractice insurance products. OCI is not aware of any insurers that issue these type of products that would be considered a small business.

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

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

11. **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: <https://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx> or by contacting Karyn Culver at:

Phone: (608) 267-9586  
Email: [karyn.culver@wisconsin.gov](mailto:karyn.culver@wisconsin.gov)  
Address: 125 South Webster St – 2<sup>nd</sup> Floor, Madison WI 53703-3474  
Mail: PO Box 7873, Madison, WI 53707-7873

12. **Place where comments are to be submitted and deadline for submission:**

Persons wishing to testify or provide oral or written comments regarding the proposed administrative rule may appear during the hearing. Additionally, the rule may be reviewed and comments made at <https://docs.legis.wisconsin.gov/code> or sent to the following:

The deadline for submitting comments is 4:00 p.m. on December 2, 2022.

Written comments can be mailed or hand-delivered to:

Legal Unit – OCI Rule Comment for Rule Ins 51  
Office of the Commissioner of Insurance

125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53703-3474

Email address: [Sharone.assa1@wisconsin.gov](mailto:Sharone.assa1@wisconsin.gov)

For additional information please contact: [Sharone.assa1@wisconsin.gov](mailto:Sharone.assa1@wisconsin.gov)

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**The proposed rule changes are:**

**SECTION 1. Ins 51.01 (21) is amended to read:**

“Risk based capital plan” means a comprehensive financial plan containing the elements specified in s. Ins ~~50.15 (1)~~51.15 (1).

**SECTION 2. Ins 51.80 (3) (a) 1. is amended to read:**

1.15% of premiums for individual life and disability insurance, not including variable life insurance;

**SECTION 3. Ins 51.80 (3) (a) 2. is amended to read:**

2. 10% of premiums for group life and disability insurance, not including variable life insurance;

**SECTION 4. Ins 51.80 (3) (a) 3. is amended to read:**

3. The greater of 2% of reserves or 7 1/2% of premiums for annuities and deposit administration funds, not including variable annuity business;

**SECTION 5. Ins 51.80 (3) (a) 3e. is created to read:**

3e. 2% of premiums for variable life and variable annuity business;

**SECTION 6. Ins 51.80 (3) (a) 3m. is created to read:**

3m. 30% of premiums for medical professional liability insurance;

**SECTION 7. Ins 51.80 (3) (a) 3s. is created to read:**

3s. 7% of premiums for Medicare stand-alone drug coverage insurance;

**SECTION 8. 51.80 (6) is amended to read:**

**(6) PREMIUMS.** For purposes of subs. (3) and (4), for all insurers except insurers that file on the national association of insurance commissioners health annual statement blank, premiums are gross premiums and other considerations received for insurance and annuities in the 12-month

period ending on or not more than 60 days before the date as of which the calculation is made with the following deductions and exclusions:

**SECTION 9. 51.80 (6m) is created to read:**

**(6m) HEALTH INSURANCE PREMIUMS.** For purposes of subs. (3) and (4), for insurers that file on the national association of insurance commissioners health annual statement blank, premiums are earned premiums and other considerations for insurance in the 12-month period ending on or not more than 60 days before the date as of which the calculation is made with the deductions and exclusions allowed in sub. (6) (a) and (b).

**SECTION 10. EFFECTIVE DATE.** The rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provide in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin \_\_\_\_\_

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Nathan Houdek  
Commissioner of Insurance