

Chapter Ins 8

EMPLOYEE WELFARE FUNDS

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Ins 8.01 Receipt of payments from funds by parties-in-interest. (1) Section 641.19 (2), Stats., prohibits certain persons who are or may be in a position to influence the operations of an employe welfare fund from engaging in certain transactions with such fund or which affect such fund directly or indirectly. The parties to whom the prohibition is directed are the trustees of the fund, the participating employers, the labor organizations representing any employes covered by the fund, and the officers, agents and employes of such trustees, employers and labor organizations. One of the prohibitions placed upon such parties is the receipt of any payment, commission, loan, service or any other thing of value from the fund or which is charged against the fund or would otherwise be payable to the fund, either directly or indirectly. This prohibition does not extend to the receipt of benefits from the fund by any such party who is entitled thereto under the plan nor does the statute prohibit a trustee or his officer, agent or employe from receiving from the fund reasonable compensation for necessary services and expenses rendered or incurred in connection with his official duties in respect to the fund.

(2) The prohibition applied to receipts by the specified parties from the fund. The penalties for engaging in a transaction prohibited by s. 641.19 (2), Stats., would be enforceable against the persons named therein rather than against the fund. Accordingly it may be said that s. 641.19 (2), Stats., does not govern investments by a fund but rather governs the specified parties in their dealings with a fund.

(3) The law does not prohibit the trustees of a fund from investing fund monies in any certain way but it does prohibit trustees and other specified persons who may be in a position to influence the transactions of a fund from using their positions to enrich themselves at the expense of a fund either directly or indirectly. At the same time, the law does not alter the duty of trustees clearly established in other laws, both statutory and common, to manage funds exclusively for the purpose of providing the employe benefit promised.

(4) At the time of the enactment of this law, transactions between funds and participating employers, employes and labor organizations were an established practice. The internal revenue code of the United States recognizes that many such transaction may be entered into with-

out impairing the tax status of such funds. Many of the trust agreements under which such funds are established and maintained specifically authorize the trustees to engage in such transactions on behalf of the funds. We do not interpret the law to prohibit all such transactions. What is prohibited is the receipt by any specified party of a payment, commission, loan, service or any other thing of value from a fund under such circumstances that at least an equivalent value in money's worth is not received by the fund from such person as a part of such transaction.

Note: In the following examples the receipt of a valuable consideration by the party as specified would not appear to be prohibited in the stated circumstances. These examples are not intended to be all-inclusive.

1. Receipt from a fund by a participating employer or labor organization of reasonable compensation for the fair value of necessary services rendered to the fund or for the actual cost of necessary expenses incurred for or on behalf of the fund.

2. Receipt from a fund by a participating employer or labor organization of payment for necessary real property or equipment sold or leased to the fund for use in the operations of the fund in an amount not in excess of the fair market value of such property or equipment at the date of sale or the fair rental value at the date of lease. Any facts known to such an employer or labor organization which would influence such market or rental value must necessarily be considered in determining the fair value at such date.

3. Purchase or lease of real estate or equipment from a fund by a participating employer or labor organization if such purchase or lease is made at arms-length on such terms and conditions as would be required at such time by an independent financial institution or other business organization engaged in such transactions which has knowledge of all facts pertinent thereto which are known by such employer or labor organization. If the terms and conditions required by such organizations cannot be established, the terms and conditions should be equivalent to those which would be granted by any independent vendor or lessor having knowledge of all pertinent facts known to such employer or labor organization and considering both the probable income and probable safety of his capital.

4. Receipt by a participating employer or labor organization of a loan from a fund if such loan is made at arms-length according to such terms and conditions, including the rate of interest and duration of the loan and the nature and amount of security pledged therefor, as would be required at such time by an independent financial institution or other business organization engaged in making such loans which has knowledge of all facts pertinent thereto which are known by such employer or labor organization.

5. Receipt by a participating employe of a loan from a fund if such loan would meet the requirements of a loan to a participating employer or labor organization as specified in example 4. above.

6. Purchase of securities or other investments from a fund by a participating employer or labor organization if made for not less than an adequate consideration to the fund. An "adequate consideration" means the price which would be paid at such time by an independent buyer having knowledge of all facts pertinent thereto which are known to such employer or labor organization. Such value may be established by an impartial appraisal of the investment if such value cannot be established by reference to bid and asked prices or by reference to sales prices.

7. Sale of securities or other investments to a fund by a participating employer or labor organization if made for not more than an adequate consideration as defined by example 6. above.

8. Purchase from or sale to a fund by a participating employer of its capital stock if in accord with conditions described in examples 6. and 7. above.

History: Cr. Register, August, 1960, No. 56, eff. 9-1-60; am. (1) and (2), Register, November, 1978, No. 275, eff. 12-1-78.

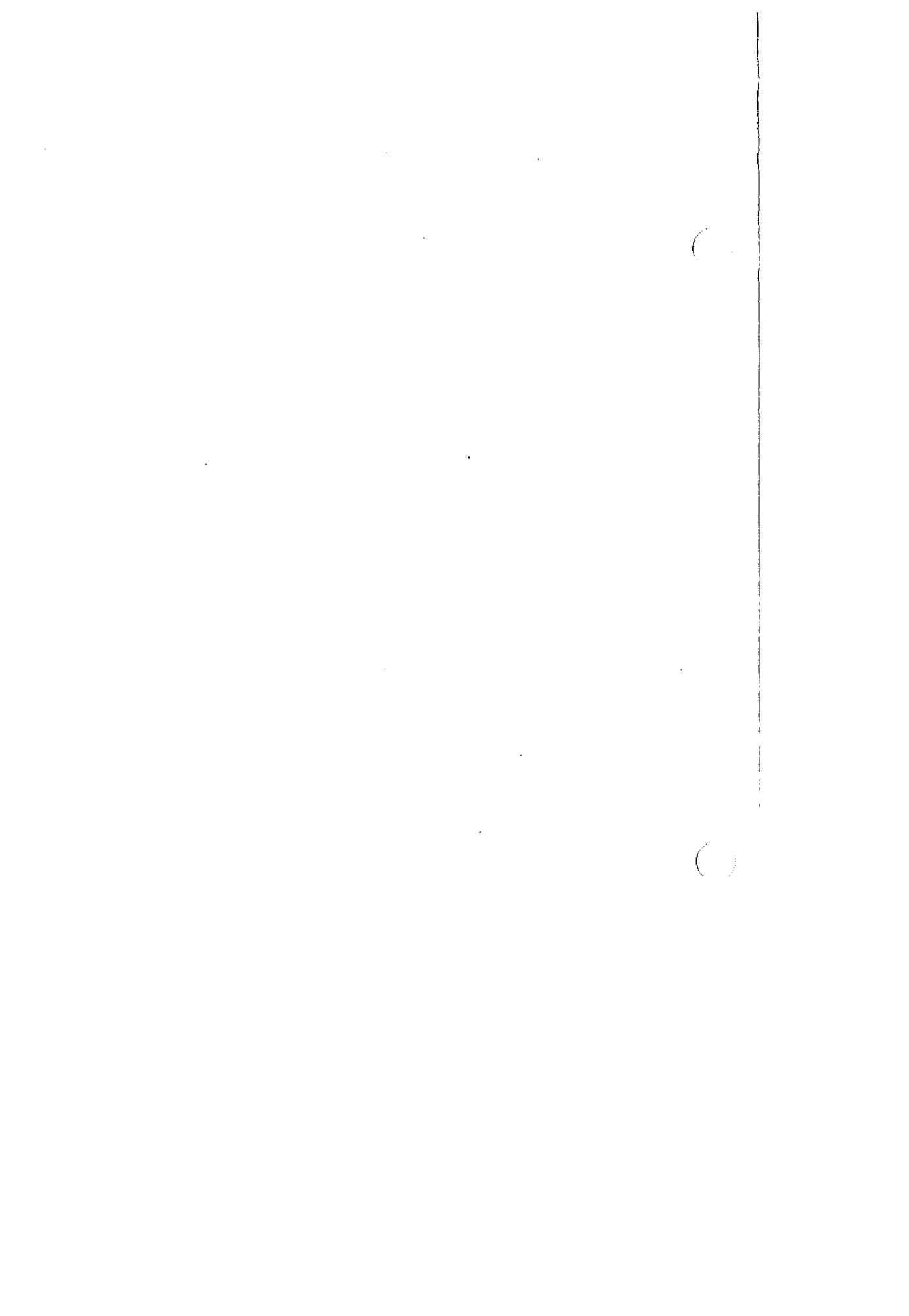
Ins 8.02 "Trust fund or other fund", definition of. (1) A "trust fund or other fund" constituting an employe welfare fund subject to ch. 641, Stats., exists where a trustee or trustees, a committee, or other party is designated jointly by one or more employers together with one or more labor organizations, solely by any employer or labor organization, or jointly by employers, or jointly by labor organizations to provide em-  
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ploye benefits a) under an agreement describing their responsibilities and duties, and b) from monies or other property under their control specifically segregated to provide such employe benefits.



uments although it is not required to file them with the commissioner of insurance under s. Ins 8.04.

(2) Copies of annual statements under s. 641.13, Stats., for the 3 latest fiscal years.

(3) Copy of latest report of examination of the fund by the commissioner of insurance.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1) and (2), Register, November, 1978, No. 275, eff. 12-1-78.

**Ins. 8.09 Preservation of records.** The trustee of every employe welfare fund subject to ch. 641, Stats., shall maintain the books and records of such fund in sufficient detail to permit a thorough examination of the operations of such fund by the commissioner of insurance for a period of 5 years after the close of the fiscal year of such fund in which the entries in such books or records are made. Such books and records shall include all journals, ledgers, checks, vouchers, invoices, receipts, bank statements, minutes, resolutions, agreements, contracts and other records of original or final entry. The preservation of photographic reproductions of such records shall constitute compliance with the requirements of this rule.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, November, 1978, No. 275, eff. 12-1-78.

**Ins 8.10 Advisory council on employe welfare plans.** (1) **PURPOSE.** The purpose of this rule is to create an advisory council on employe welfare plans to be appointed by the commissioner of insurance pursuant to ss. 15.04 (3) and 601.20, Stats.

(2) **MEMBERSHIP.** This council shall consist of the commissioner or a member of his staff designated by him and 8 other members having competence in the field of employe welfare funds, 2 to be representatives of management, 2 to be representatives of employes, and 4 to be representatives of the general public.

(3) **TERM.** Members of the council shall be appointed to serve for a term of 2 years except that the initial appointments under this rule shall be 4 members for a one-year term and 4 members for a 2-year term.

(4) **DUTIES.** It shall be the duty of the council to:

(a) Advise the commissioner with respect to the carrying out of his functions under ch. 641, Stats.,

(b) Review the administration of ch. 641, Stats., and

(c) Make such reports and recommendations to the commissioner with respect thereto as it deems necessary in the public interest.

(5) **CHAIRMAN.** The commissioner or his designee shall serve as chairman.

(6) **MEETINGS.** The council shall meet at least twice each year when called by the commissioner and at such other times when requested by the commissioner or 2 or more members.

(7) **EXPENSE REIMBURSEMENT.** Members of the council shall receive no salary or compensation for service on the council but shall be reimbursed

for their actual and necessary expenses in attending meetings or while performing other duties as directed by the commissioner.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70; am. (4)(a) and (b), Register, November, 1978, No. 275, eff. 12-1-78.

**Ins 8.11 County and school district self-insured employe health care benefits; excess or stop-loss insurance requirements.** (1) **PURPOSE.** This section interprets ss. 59.07 (2) (c) and 120.13 (2) (c), Stats., for the purpose of prescribing detailed requirements for excess or stop-loss insurance for self-insured employe health care benefit plans provided by counties or school districts.

(2) **SCOPE.** This section applies to any county or school district that alone or together with one or more counties or one or more school districts provides employe health care benefits on a self-insured basis to less than 1,000 covered employes.

(3) **DEFINITIONS.** In this section:

(a) "Aggregate claims" means total actual claim amounts incurred under the employe health care benefit plan during a benefit period.

(b) "Aggregate deductible" means the aggregate amount of liability specified in the excess or stop-loss insurance contract at or below which the county or school district remains liable for payments for eligible claims.

(c) "Benefit period" means a twelve-month accounting or reporting period of the employe health care benefit plan.

(d) "Coinsurance" means a fixed percentage of each claim established in the employe health care benefit plan which the county or school district is obligated to pay for each person covered in the plan.

(e) "Covered employes" means employes participating in an employe health care benefit plan.

(f) "Employes eligible to participate" means employes who are eligible to be covered employes under the terms of the employe health care benefit plan.

(g) "Employe health care benefit plan" means a self-insured plan established by one county or school district or jointly by two or more counties or two or more school districts to provide health care benefits to employes eligible to participate in the plan.

(h) "Expected claims" means the most accurate actuarial estimate of aggregate claims during a benefit period.

(i) "Incurred" means to have provided or furnished a service or item to an employe or dependent covered under an employe health care benefit plan for which a charge for a covered expense is made.

(j) "Maximums" means the largest total amount of claims per person established by the employe health care benefit plan which the county or school district is obligated to pay.

(k) "Paid basis" means the application of a claim payment to the aggregate deductible for the benefit period in which the payment is actually made, regardless of when the claim is incurred.

(l) "Quota share reinsurance" means insurance purchased for the employe health care benefit plan which pays the plan a pre-determined fixed percentage of each claim.

(4) EXCESS OR STOP-LOSS INSURANCE REQUIREMENTS. (a) Excess or stop-loss insurance required by s. 120.13 (2) (c), Stats., shall provide coverage for all claims incurred during the term of the policy or contract at a level at which an actuary has certified that the probability that aggregate claims will exceed 125% of expected claims is less than 5%.

(b) Each employe health care benefit plan shall be covered by one excess or stop-loss insurance policy that satisfies par. (a), regardless of the number of counties or school districts participating in the plan.

(c) Notwithstanding par. (a), a county or school district that self-insures employe health benefits under a plan in which an actuary has certified that the probability that aggregate claims will exceed 125% of expected claims is less than one-half percent need not purchase excess or stop-loss insurance.

(5) EXCESS OF STOP-LOSS INSURANCE PROVIDED ON A PAID BASIS. (a) Excess or stop-loss insurance required by s. 120.13 (2) (c), Stats., may provide coverage on a paid basis.

(b) Upon termination for any reason of an excess or stop-loss insurance policy that provides coverage on a paid basis, the policy shall apply all claims incurred but not paid prior to the termination of the policy to the aggregate deductible of the benefit period in which the service or item was provided or furnished to an employe or dependent under the self-insured employe health care benefit plan.

(6) ACTUARIAL CERTIFICATION. (a) Every county or school district with a plan that is subject to s. 120.13 (2) (c), Stats., shall file with the commissioner of insurance within 30 days after the effective date of the self-insured employe health care benefit plan, every 3 years thereafter and whenever a material change occurs to the plan, an actuarial certification that includes information on:

1. The number of employes eligible to participate in the plan and the number of covered employes in the plan.

2. A description of the plan's coverage including but not limited to an outline of benefits provided, deductibles, coinsurance, maximums and quota share reinsurance, if any.

3. A statement that the plan satisfies the excess or stop-loss insurance requirements specified in sub. (4).

4. Except for a county or school district with a plan subject to s. 641.08, Stats., a copy of the excess or stop-loss insurance contract and of the plan for self-insuring.

Note: A county or school district with a plan subject to ch. 641, Stats., must already file this information with the commissioner.

(b) The actuarial certification required in par. (a) may be filed by an actuary employed by the excess or stop-loss insurer or by an actuary independent of the excess or stop-loss insurer.

(c) Two or more counties or 2 or more school districts that jointly establish an employe health care benefit plan shall designate the individual

who will file the actuarial certification required in par. (a). Only one actuarial certification shall be filed for the plan.

Note: The commissioner of insurance will utilize the following tables to evaluate actuarial certifications for accuracy and compliance with this section. The following example illustrates the application of the tables. This example only gives a basic description of how to use the following tables. It may be necessary to extrapolate or interpolate from the information given in the tables in order to apply the tables to a particular plan. An actuary or other qualified person should be consulted to be certain that a plan meets the requirements of sub. (4). Also note that no table provides a description of dental or vision plan benefits. Under sub. (4) (c), many dental or vision plans may not need to purchase stop-loss insurance.

#### Example

Assume a school district has a self-insured employee health care benefit plan that covers 250 employees and family members. The plan offers individual specific stop-loss of \$25,000 and provides benefits with a \$500.00 deductible per person, 80% coinsurance and \$1,000.00 out-of-pocket limit per person.

The plan's stop loss coverage and benefit package are the same as that used in Table 7. Therefore, use Table 7 for determining whether the plan meets the requirements in sub. (4).

In Table 7, use the 125 percent of mean line. Since sub. (4) (a) deals with "125% of expected claims," refer to the 125% of mean line when using any of the tables.

To determine whether the probability that aggregate claims will exceed 125% of expected claims is less than 5%, subtract the decimal numbers shown in the tables from the number "1". For example, for a plan offering the benefits described in Table 7 and having 25 employees, the probability that aggregate claims will exceed 125% of expected claims is 28% (1 minus .72 = .28). It is 26% for 50 employees (1 minus .74), 23% for 100 employees (1 minus .77), etc.

In this example, the plan covers 250 employees. Table 7 shows that at 250 employees, the probability that aggregate claims will exceed 125% of expected claims is 18% (1 minus .82).

In order to comply with the rule, this probability must be less than 5%. In this example, the probability is 18%. Therefore, the school district or county must purchase aggregate stop-loss insurance at a level sufficient to bring this probability down to less than 5%. Stop-loss insurance is sold at various levels, including a level at which the probability that aggregate claims will exceed 125% of expected claims is less than 5%. At a minimum, the school district or county should purchase stop-loss insurance at this level.



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Table 1

STATE OF WISCONSIN

Distribution of Medical Claim  
Individual Specific Stop Loss Level: \$5,000  
July 1, 1987

Probability that Medical Claims are  
Less Than a Given Percent of Mean

\$0 Deductible, 100 Percent Coverage

Percent of Mean	Employees				
	100	250	500	1,000	5,000
50%	.04	.01	.00	.00	.00
75	.19	.14	.06	.01	.00
100	.53	.52	.51	.51	.51
105	.60	.61	.63	.70	.86
110	.67	.69	.74	.84	.96
115	.73	.77	.83	.92	.99
120	.78	.83	.89	.97	1.00
125	.83	.87	.94	.99	1.00
130	.86	.90	.96	1.00	1.00
150	.95	.98	1.00	1.00	1.00

Table 2

STATE OF WISCONSINDistribution of Medical ClaimIndividual Specific Stop Loss Level: \$10,000July 1, 1987Probability that Medical Claims are  
Less Than a Given Percent of Mean\$0 Deductible, 100 Percent Coverage

Percent of Mean	Employees				
	100	250	500	1,000	5,000
50%	.05	.01	.00	.00	.00
75	.21	.14	.06	.01	.00
100	.53	.52	.52	.51	.51
105	.60	.61	.63	.69	.85
110	.66	.69	.74	.83	.96
115	.72	.76	.83	.91	.99
120	.77	.82	.89	.96	1.00
125	.82	.86	.93	.99	1.00
130	.85	.90	.96	1.00	1.00
150	.94	.98	1.00	1.00	1.00

STATE OF WISCONSIN

Distribution of Medical Claim

Individual Specific Stop Loss Level: \$25,000

July 1, 1987

Probability that Medical Claims are  
Less Than a Given Percent of Mean

\$0 Deductible, 100 Percent Coverage

Percent of Mean	Employees				
	100	250	500	1,000	5,000
50%	.06	.01	.00	.00	.00
75	.24	.15	.07	.01	.00
100	.54	.53	.53	.52	.52
105	.60	.61	.63	.68	.83
110	.66	.70	.73	.82	.95
115	.71	.75	.81	.90	.99
120	.76	.80	.87	.95	1.00
125	.80	.85	.92	.98	1.00
130	.83	.89	.95	.99	1.00
150	.92	.97	1.00	1.00	1.00

Table 4

STATE OF WISCONSINDistribution of Medical ClaimIndividual Specific Stop Loss Level: UnlimitedJuly 1, 1987Probability that Medical Claims are  
Less Than a Given Percent of Mean\$0 Deductible, 100 Percent Coverage

Percent of Mean	Employees				
	<u>100</u>	<u>250</u>	<u>500</u>	<u>1,000</u>	<u>5,000</u>
50%	.07	.02	.00	.00	.00
75	.29	.19	.10	.02	.00
100	.59	.56	.56	.55	.53
105	.63	.63	.64	.68	.80
110	.69	.70	.73	.79	.93
115	.73	.75	.80	.87	.98
120	.76	.79	.85	.92	1.00
125	.80	.84	.89	.95	1.00
130	.83	.87	.92	.97	1.00
150	.91	.95	.98	1.00	1.00

STATE OF WISCONSIN

Distribution of Medical Claim

Individual Specific Stop Loss Level: \$5,000

July 1, 1987

Probability that Medical Claims are  
Less Than a Given Percent of Mean

\$500 Deductible Per Person, 80% Percent Coinsurance

\$1,000 Out-of-Pocket Limit Per Person

Percent of Mean	Employees					
	25	50	100	150	250	500
50%	.22	.13	.06	.05	.01	.00
75	.39	.32	.23	.21	.16	.07
100	.57	.55	.53	.52	.52	.52
105	.60	.60	.60	.60	.61	.63
110	.63	.64	.66	.66	.69	.73
115	.66	.68	.71	.72	.76	.81
120	.69	.72	.76	.77	.81	.88
125	.72	.74	.80	.82	.85	.92
130	.74	.77	.83	.84	.89	.95
150	.82	.87	.92	.94	.97	1.00

Table 6

STATE OF WISCONSINDistribution of Medical ClaimIndividual Specific Stop Loss Level: \$10,000July 1, 1987Probability that Medical Claims areLess Than a Given Percent of Mean\$500 Deductible Per Person, 80% Percent Coinsurance\$1,000 Out-of-Pocket Limit Per Person

Percent of Mean	Employees					
	25	50	100	150	250	500
50%	.25	.16	.07	.05	.02	.00
75	.42	.34	.25	.23	.17	.08
100	.58	.55	.55	.53	.53	.53
105	.60	.60	.60	.60	.61	.63
110	.64	.64	.65	.66	.68	.73
115	.67	.67	.70	.72	.74	.80
120	.70	.71	.75	.76	.79	.86
125	.71	.74	.78	.80	.84	.91
130	.74	.77	.82	.84	.89	.94
150	.81	.85	.91	.93	.96	.99

STATE OF WISCONSIN

Distribution of Medical Claim

Individual Specific Stop Loss Level: \$25,000

July 1, 1987

Probability that Medical Claims are

Less Than a Given Percent of Mean

\$500 Deductible Per Person, 80% Percent Coinsurance

\$1,000 Out-of-Pocket Limit Per Person

Percent of Mean	Employees					
	25	50	100	150	250	500
50%	.29	.19	.08	.06	.02	.00
75	.47	.39	.30	.26	.19	.10
100	.61	.58	.56	.55	.54	.53
105	.64	.61	.61	.61	.61	.63
110	.66	.64	.65	.66	.67	.71
115	.68	.68	.70	.70	.73	.78
120	.70	.70	.73	.74	.79	.85
125	.72	.74	.77	.79	.82	.89
130	.74	.76	.80	.82	.86	.93
150	.80	.83	.89	.92	.95	.99

STATE OF WISCONSINDistribution of Medical ClaimIndividual Specific Stop Loss Level: UnlimitedJuly 1, 1987Probability that Medical Claims areLess Than a Given Percent of Mean\$500 Deductible Per Person, 80% Percent Coinsurance\$1,000 Out-of-Pocket Limit Per Person

Percent of Mean	Employees					
	25	50	100	150	250	500
50%	.35	.24	.12	.09	.04	.00
75	.53	.53	.37	.32	.25	.15
100	.67	.66	.61	.59	.58	.57
105	.69	.68	.65	.64	.64	.64
110	.71	.71	.68	.68	.69	.72
115	.72	.72	.72	.72	.73	.78
120	.74	.75	.75	.75	.77	.83
125	.76	.76	.78	.79	.81	.87
130	.77	.78	.80	.81	.84	.90
150	.82	.84	.88	.89	.92	.96

(7) ACTUARY QUALIFICATIONS. The actuarial certification specified in sub. (6) shall be signed by an actuary who satisfies the requirements of s. Ins 6.12.

History: Cr. Register, April, 1988, No. 388, eff. 5-1-88.