

Chapter Ins 16

REGULATORY STRUCTURES

Ins 16.01 Annual billings for the examination of domestic insurers Ins 16.02 Annual audited financial reports and examinations

Ins 16.01 Annual billings for the examination of domestic insurers. (1) **PURPOSE.** The purpose of this section is to develop a framework for the regular annual billing of domestic insurers, except for town mutuals and cooperative associations organized under s. 185.981, Stats., to fund the costs of administering examinations as prescribed by s. 601.44, Stats., and to interpret and implement s. 601.45, Stats.

(2) **SCOPE.** The billing structure established by sub. (4) shall apply to all domestic insurers as defined by s. 600.03 (27) (c), Stats., with the exception of town mutuals and cooperative associations organized under s. 185.981, Stats.

(3) **BILLING FOR EXAMINATION CHARGES.** (a) On February 1, 1981, and annually thereafter, each domestic insurer subject to the provisions of this rule shall be billed an amount equivalent to such insurer's share of the estimated cost of conducting the insurer examinations program during that year.

(b) All other insurers and licensees, including town mutual insurers and cooperative associations organized under s. 185.981, Stats., shall be billed on a charge-back basis for the full cost of their examinations, including actual salaries and expenses of examinations and other apportionable expenses.

(c) Domestic insurers which request an examination, the end of the period of which is to be within 3 years of the end of the period of the insurer's last examination, shall be billed on a charge-back basis for the full cost of the conduct of such an examination. This cost shall be in addition to the annual billing of the insurer as determined by sub. (6) and is excluded from the limitations established under sub. (7).

(4) **BILLING STRUCTURE.** (a) The commissioner shall annually, prior to the annual hearing held under sub. (8), estimate the cost of administering the insurer examinations program for the next fiscal year. This amount shall be based on the biennial budget as approved by the legislature. Included in the estimated cost of administering the insurer examinations program shall be:

1. Salaries, fringe benefits and expenses of insurer examinations staff, including office overhead;
2. Supplies, office space, training costs, related data processing charges; and,
3. A contingency fund for hiring outside consulting or technical services.

(b) Excluded from this amount shall be the estimated share of the costs of the examination function which shall be provided through fund-

ing by insurers and licensees who will be charged for their examinations on a charge-back basis.

(c) In the event that the sum of a year's billings under this rule 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 examinations program.

(5) ACCOUNTING SUMMARY. On or before November 1 of each year, an accounting summary of the previous fiscal year's examination costs shall be prepared by the commissioner. This summary will be furnished upon request to those insurers subject to this rule.

(6) DETERMINATION OF INDIVIDUAL BILLINGS. The amount to be billed each domestic insurer subject to this rule shall be determined so that the billing is equal to a constant of proportionality times the square root of the insurer's premiums, where the constant of proportionality is determined each year so that the total of all billings equals the estimated cost of administering the insurer examinations program described in sub. (4). The formula is stated algebraically as follows:

$$A = k \times \sqrt{P}$$

where A = Annual Amount to be billed each domestic insurer
 k = Constant of Proportionality
 P = Net Premiums Earned or Premiums and Annuity Considerations Reported in the applicable annual statement listed in s. Ins 7.01 (5), Wis. Adm. Code, for business of the second calendar year preceding the year of billing.

(7) LIMITATIONS ON AMOUNT OF BILLINGS. The annual bill for each insurer subject to this rule shall be determined utilizing the formula developed for its proportionate share of cost of the examination function, except that:

(a) The maximum annual billing for any insurer shall be 1% of Net Premiums Earned or Premiums & Annuity Considerations reported in the applicable annual statement listed in s. Ins 7.01 (5), for business of the second calendar year preceding the year of billing, subject to a requirement that the minimum bill for any insurer be \$300.

(b) The annual bill for any insurer billed the previous year shall not exceed 1.2 times the immediately preceding year's bill adjusted for premium growth by multiplying by a factor equal to the second prior year's premium divided by the third prior year's premium. In calculating this adjustment, the year a billing is due shall be considered the current year.

(8) ANNUAL HEARING. The commissioner shall annually schedule a hearing in November under s. 601.41 (5), Stats., to review problems in the area of examinations, the estimated budget established under sub. (4) (a), the accounting summary required under sub. (5) and the formulas established under sub. (6).

(9) **DUE DATE.** Amounts billed to domestic insurers under sub. (3) shall be due and payable to the commissioner no later than March 1 of each year.

Note: Any approach for development of a billing structure for examination costs must, of necessity, contain elements of arbitrariness and human judgment. The parameters established in the rule are attempts to provide for adjustments in billings related only to changes in insurer's premiums.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; r. and recr., Register, December, 1980, No. 300, eff. 1-1-81; am. (1), (2), (3) (b), (4) (a) and (b), (5) and cr. (3) (c), Register, December, 1981, No. 312, eff. 1-1-82.

Ins 16.02 Annual audited financial reports and examinations. (1) **PURPOSE.** This rule is promulgated to implement, interpret and set forth procedural requirements necessary to carry out the purpose and provisions of ss. 601.42 and 601.43, Stats.

This rule shall not prohibit, preclude, or in any way limit the commissioner, or his designee, from ordering or conducting or performing examinations of insurers under his jurisdiction as to practices, procedures, financial condition, market conduct and other aspects of the operations of such insurers.

(2) **SCOPE.** This section applies to all insurers licensed under s. 185.981 and chs. 611, 612, 613, 614 and 618, Stats., and the State Life Fund, except that a town mutual having less than \$300,000 of total premiums written for that year, including premiums on non-property coverage, is exempt from this section for that year provided:

(a) It has of the past December 31 financial statement a net of reinsurance premium to surplus ratio less than 6 to 1;

(b) Its articles of incorporation do not authorize operations in more than four counties;

(c) It does not engage in the writing of non-property coverage unless such coverage is 100% reinsured;

(d) It does not engage in the interchange of reinsurance with other town mutuals, except town mutual reinsurance corporations organized under s. 612.71, Stats., where the interchange reinsurance premiums exceed 20% of the annual net premiums written by the assuming town mutual; and

(e) It does not own real estate, including home office quarters, whose cost or book value exceeds 10% of its total assets.

(3) **EXEMPTIONS.** (a) Upon written application of any insurer, the commissioner may grant an exemption from compliance with this rule if the commissioner finds, upon review of the application, that compliance with this rule would constitute a financial or organizational hardship upon the insurer.

(b) An exemption may be granted at any time and from time to time for a specified period or periods.

(c) Within 10 days from a denial of an insurer's request for an exemption from this rule, such insurer may request a hearing on its application for an exemption as provided by s. 227.075, Stats.

(d) Insurers having premiums written in Wisconsin of less than \$100,000 in any year and having less than 1,000 Wisconsin policyholders at the end of any year are exempt from this rule for such year.

(4) DEFINITIONS. Unless the context otherwise requires:

(a) "Accountant" means those persons who meet the requirements of sub. (13).

(b) "Audited financial report" means and includes those items specified in sub. (6).

(c) "Executive officer" means any individual charged with active management and control in an executive capacity of a person, whether incorporated or unincorporated. These individuals include but are not limited to a chairman of the board, president, vice president, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers.

(d) "Insurer" has the meaning set forth in s. 600.03 (27) (a), Stats.

(e) "Workpapers" are the records kept by the accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the examination of the financial statements of an insurer. Workpapers, accordingly, shall include work programs, analyses, memoranda, letters of confirmation and representation, management letters, abstracts of company documents and schedules or commentaries prepared or obtained by the accountant in the course of the examination of the financial statements of an insurer and which support the opinion thereon.

(5) SCOPE OF AUDIT AND REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT. (a) Financial statements furnished pursuant to sub. (6) shall be audited by an independent certified public accountant.

(b) The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and such other procedures as promulgated by the national association of insurance commissioners, as the accountant deems necessary.

(c) The commissioner may from time to time require that additional auditing procedures be observed by the accountant in the audit of the financial statements of insurers pursuant to this rule. Any separate reports given to the commissioner on the additional procedures and findings shall be considered to be the commissioner's workpapers.

(6) CONTENTS OF ANNUAL AUDITED FINANCIAL REPORT. (a) The annual audited financial report shall report the admitted assets, liabilities and surplus; the results of its operations; the changes in financial position and the changes in capital and surplus for the year then ended in conformity with accounting practices prescribed or otherwise permitted in annual statements filed with the commissioner, as described in Ins 7.01 (5). In the alternative, such reports may be prepared in accordance with generally accepted accounting principles provided that the notes to the financial statements include a reconciliation of surplus (or stockholder's equity) and results of operations on the basis of generally accepted accounting principles to the statutory basis of accounting.

(b) The annual audited financial report shall include the following:

1. Report of independent certified public accountant.
2. Statement of admitted assets, liabilities, capital and surplus.
3. Statement of gain or loss from operations.
4. Statement of changes in financial position.
5. Statement of changes in capital and surplus.
6. Notes to financial statements. These notes shall be those needed for fair presentation and disclosure and shall include a reconciliation of differences, if any, between the audited financial statements described in par. (b) and the annual statement filed with the commissioner and described in Ins 7.01 (5) with a written description of the nature of these differences.
7. Supplementary data and information which the commissioner may from time to time require to be disclosed.

(7) CONSOLIDATED OR COMBINED ANNUAL AUDITED FINANCIAL REPORTS. (a) An insurer may file an annual audited financial report which contains audited consolidated or combined financial statements in lieu of separate annual audited financial statements provided that the following are included:

1. An organization chart of the companies included in the report.
2. A worksheet setting forth the amounts shown on the consolidated or combined annual audited financial report with a reconciliation to individual amounts shown on the annual statements of the insurers which are filed with the commissioner. The reconciliation shall be in columnar form and must include explanations of consolidating and eliminating entries. Amounts for each insurer subject to this rule must be stated separately.

(b) The commissioner may require an insurer to file a separate annual audited financial report.

(8) NOTIFICATION OF ADVERSE FINANCIAL CONDITION. (a) The insurer required to furnish an annual audited financial report shall require the accountant to immediately notify in writing an executive officer of the insurer of any determination by that accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the December 31 immediately preceding, or of any determination that the insurer does not meet the minimum capital and surplus requirements of the commissioner.

(b) Any executive officer or director of an insurer required to file an annual audited financial report who received any notification from the accountant, shall within 3 business days report the existence of the materially misstated financial condition or the failure to meet the minimum capital and surplus requirements of the commissioner, through a written report to the commissioner

(9) EVALUATION OF ACCOUNTING PROCEDURES AND SYSTEM OF INTERNAL CONTROL. (a) In addition to the annual audited financial report, each insurer shall furnish the commissioner with a report of evaluation performed by the accountant, in connection with his audit, of the accounting procedures of the insurer and its system of internal control.

(b) The report described in par. (a), including a summary of any remedial action taken or proposed, shall be filed annually by the insurer with the commissioner within 60 days after the due date for filing the annual audited financial report.

(c) This report on internal control shall be in a form prescribed by generally accepted auditing standards.

(10) FILING OF ANNUAL AUDITED FINANCIAL REPORTS. Every insurer except town mutual insurers must file an annual audited financial report on or before June 30, for the year ended December 31 immediately preceding. Town mutual insurers required by this section to file an audited financial report shall file the report on or before June 30 or within thirty days following the annual meeting of members whichever is sooner.

(11) EXTENSIONS FOR FILING OF ANNUAL AUDITED FINANCIAL REPORTS.

(a) Extensions of the June 30 filing date may be granted by the commissioner for 30 day periods upon the insurer and its accountant showing the reasons for requesting such extension.

(b) Requests for extensions must be submitted in writing not less than 10 days prior to the due date and in sufficient detail to permit the commissioner to make an informed decision with respect to a requested extension.

(12) DESIGNATION OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT.

(a) Each insurer currently engaging an independent accountant to examine its financial statements must within 60 days of the effective date of this rule, furnish the commissioner the name and address of the accountant retained to conduct the annual audit.

(b) Insurers which do not have an accountant for the year ending December 31, 1978 and which are not exempted pursuant to sub. (3) shall furnish the name and address of their retained accountant by September 1, 1979.

(c) The insurer shall obtain a letter from such accountant, and file a copy with the commissioner, stating that the accountant is aware of the provisions of the Wisconsin insurance code and the rules of the commissioner that relate to accounting and financial matters and affirming that the opinion will be expressed in terms of conformity to accounting practices prescribed or otherwise permitted by the commissioner, specifying such exceptions as are appropriate.

(d) If an accountant who was not the accountant for the immediately preceding filed audited financial report is engaged to audit the insurer's financial statements, the insurer shall within 30 days of the date the accountant is engaged notify the commissioner of this event.

1. The insurer shall also furnish the commissioner with a separate letter stating whether in the 24 months preceding such engagement there were any disagreements with the former accountant on any matter of accounting principles (either statutory or generally accepted accounting principles) or practices, financial disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion.

2. The insurer shall also in writing request such former accountant to furnish it a letter stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for disagreement. The insurer shall furnish such responsive letter from the former accountant to the commissioner together with its own.

(13) **QUALIFICATIONS OF ACCOUNTANT.** (a) The commissioner shall not recognize any person as an independent certified public accountant who is not duly registered to practice and in good standing under the laws of the state of Wisconsin or in any state with similar licensing requirements. It shall also mean, for British or Canadian companies, a Canadian or British chartered accountant.

(b) Except as otherwise provided herein, a certified public accountant shall be recognized as independent as long as he or she conforms to the standards of the profession.

(c) The commissioner may hold a hearing pursuant to the authority granted by ch. 227, Stats., to determine whether a certified public accountant is independent and, considering the evidence presented, may rule that the accountant is not independent for purposes of expressing an opinion on the financial statements in the annual audited financial report.

(d) As a result of the hearing held pursuant to (c) above, the commissioner may order the insurer to replace the accountant with another whose relationship with the insurer is independent within the meaning of this rule.

(14) **AVAILABILITY AND MAINTENANCE OF CPA WORKPAPERS.** (a) Every insurer required to file an audited financial report pursuant to this rule, shall require the accountant to make available for review, the workpapers prepared in the conduct of his audit. The insurer shall require that the accountant retain the audit workpapers for a period of not less than 5 years after the period reported.

(b) In the conduct of a periodic review by the commissioner, it shall be agreed that copies of pertinent audit workpapers may be made and retained by the commissioner. Such copies shall be considered part of the commissioner's workpapers.

(15) **EXAMINATIONS.** (a) The commissioner shall determine the nature, scope and frequency of examinations conducted pursuant to s. 601.43, Stats.

(b) Such examinations may, but need not, cover all aspects of the insurer's assets, condition, affairs and operations and may include and be supplemented by audit procedures performed by accountants as herein provided.

(c) Scheduling of examinations will take into account such matters as analysis of financial test results, changes in management, results of market conduct examinations, and audited financial reports.

(d) The type of examinations under the provisions of this rule performed by the commissioner after the effective date of this rule shall be as follows:

1. Compliance examinations will consist of a review of the accountant's workpapers defined under sub. (4) and a general review of the in-

surer's corporate affairs and insurance operations to determine compliance with the Wisconsin insurance code and the rules and regulations of the commissioner. The examiners may perform alternative or additional examinations procedures to supplement those performed by the accountant when the examiners determine that such procedures are necessary to verify the financial condition of the insurer.

2. Targeted examinations may cover such areas as life reserve valuations, claims analyses, organizational and capital changes, loss reserves, market conduct and such other areas as the commissioner may deem appropriate.

3. Comprehensive examinations will be performed when the report of the accountant as provided for in sub. (6) or the notification required by sub. (8) or the results of compliance or targeted examinations or other circumstances indicate in the judgment of the commissioner that a complete examination of the condition and affairs of the insurer is necessary.

(17) PENALTY. Violations of this rule shall subject the person violating the same to s. 601.64, Stats.

(18) EFFECTIVE DATE. (a) Insurers not retaining an independent certified public accountant on the effective date of this rule shall comply with this rule for the year ending December 31, 1979 unless the commissioner permits otherwise. The annual audit report for the year ending December 31, 1979 need not include the statements required in (6) (b) 3., 4. and 5.

(b) Insurers retaining an independent certified public accountant on the effective date of this rule shall comply with this rule for the year ending December 31, 1978, unless the commissioner permits otherwise. If the insurer's stock is held by another insurer or by a holding company as defined under Ins 12.01 (3) and this owner-insurer or holding company had retained an independent certified public accountant prior to December 31, 1978, the insurer shall be deemed to be audited for purposes of this rule.

(c) For insurers licensed under ch. 612, the effective date of this rule shall be January 1, 1981.

(d) For insurers licensed under s. 185.981, Stats., the effective date of this section is November 1, 1982. Pursuant to sub. (12), each of these insurers shall furnish the commissioner with the name and address of its accountant by January 1, 1983. Annual audited financial reports shall be filed under sub. (10) by June 30, 1983, unless an extension is granted under sub. (11).

History: Cr. Register, January, 1979, No. 278, eff. 2-1-79; am. (2) and (10), Register, December, 1980, No. 300, eff. 1-1-81; am (2) (intro.) and cr. (18) (d), Register, October, 1982, No. 322, eff. 11-1-82; r. (16) under s. 13.93 (2m) (b) 16, Stats., Register, December, 1984, No. 348.