

Chapter Ins 8

EMPLOYEE WELFARE FUNDS; EMPLOYEE BENEFIT PLAN ADMINISTRATORS; SMALL EMPLOYER HEALTH INSURANCE

Subchapter I — Employee Welfare Funds	Ins 8.22	Definitions (p. 464)
Ins 8.01 Receipt of payments from funds by parties-in-interest (p. 447)	Ins 8.24	Exemptions (p. 465)
Ins 8.02 "Trust fund or other fund", definition (p. 448-1)	Ins 8.26	Licensing (p. 465)
Ins 8.03 "Employee benefits", definition (p. 460)	Ins 8.28	Performance bond requirements (p. 466)
Ins 8.04 Registration requirements (p. 450)	Ins 8.30	Notification to office (p. 467)
Ins 8.05 Registration cancellation (p. 451)	Ins 8.32	Audit (p. 468)
Ins 8.06 Annual statement and notice of number of fund participants in Wisconsin, when required (p. 451)	Subchapter III — Small Employer Health Insurance	
Ins 8.07 "Persons employed in this state" (p. 452)	Ins 8.40	Purpose (p. 468)
Ins 8.08 Availability of information to fund participants (p. 452)	Ins 8.42	Definitions (p. 468)
Ins 8.09 Preservation of records (p. 453)	Ins 8.44	Applicability; exclusion (p. 468)
Ins 8.10 Advisory council on employee welfare plans (p. 453)	Ins 8.46	Required policy provisions (p. 468-1)
Ins 8.11 County and school district self-insured employee health care benefits; excess or stop-loss insurance requirements (p. 454)	Ins 8.48	Solicitation; disclosure requirements (p. 468-1)
Subchapter II — Employee Benefit Plan Administrators	Ins 8.50	Underwriting restriction (p. 468-1)
Ins 8.20 Purpose (p. 464)	Ins 8.52	Regulation of rates and rate changes (p. 468-1)
	Ins 8.54	Guaranteed renewability; cancellation and renewal restrictions (p. 468-3)
	Ins 8.56	Certification of compliance; additional information required (p. 468-5)

Note: Sections Ins 8.20 to 8.32 were created as emergency rules effective October, 1, 1991. Sections Ins 8.40 to 8.56 were created as emergency rules effective February 12, 1992.

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 employee 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 employees covered by the fund, and the officers, agents and employees 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 officer, agent or employe from receiving from the fund reasonable compensation for necessary services and expenses rendered or incurred in connection with 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 employee benefit promised.

(4) At the time of the enactment of this law, transactions between funds and participating employers, employees and labor organizations were an established practice. The internal revenue code of the United States recognizes that many such transactions may be entered into without 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 or her 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 employee 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 invest-

ment if such value cannot be established by reference to bid and asked prices or by reference to sales prices.

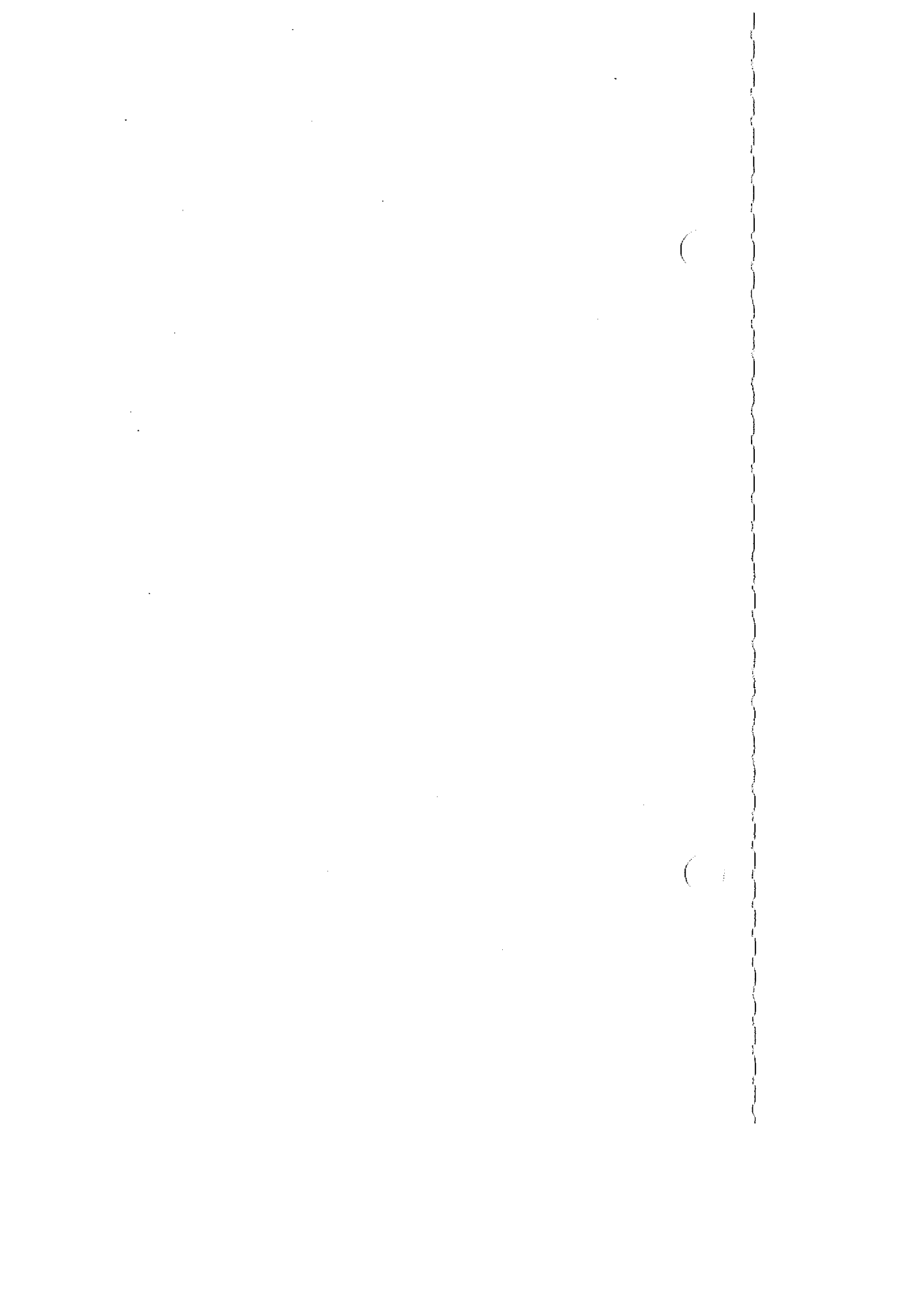
7. Sale of securities or other investments to a fund by a participating employer or labor organization if made for not more than an adequate consideration as defined by example 6. above.

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; corrections made under s. 13.93 (2m) (b) 5., Stats., Register, April, 1992, No. 436.

Ins 8.02 "Trust fund or other fund", definition. (1) A "trust fund or other fund" constituting an employe welfare fund subject to ch. 641,

Next page is numbered 449



administered by the administrator and to any such employe benefit plan on behalf of the residents of this state who are its beneficiaries in the event of injury caused by a failure of the administrator to fulfill its responsibilities as an administrator.

(2) If the administrator collects premiums or employe contributions on behalf of any principal, or commingles funds belonging to more than one principal, the performance bond shall be in the greater of the following amounts:

(a) \$25,000.

(b) Ten percent of the total amount of projected premiums, charges and claim funds the administrator expects to handle on behalf of residents of this state during the fiscal year following the year for which a financial statement is submitted under s. Ins 8.26 (1) (c). A bond under this paragraph need not exceed \$500,000.

(3) If the administrator does not collect premiums or employe contributions on behalf of any principal, and maintains a separate fiduciary account for each principal, the performance bond shall be in the greater of the following amounts:

(a) \$15,000.

(b) Five percent of the total amount of projected claim funds the administrator expects to handle on behalf of residents of this state during the fiscal year following the year for which a financial statement is submitted under s. Ins 8.26 (1) (c). A bond under this paragraph need not exceed \$250,000.

(4) An administrator may exclude from the calculations required under sub. (2) (b) or (3) (b) all amounts handled as administrator for any of the following:

(a) Self-insured, partially insured or divided insurance worker's compensation plans subject to s. Ind 80.60 or 80.61.

(b) Warranty plans subject to ch. Ins 15.

Note: Notwithstanding s. Ins 8.28, as created by an emergency rule effective October 1, 1991, a bond meeting the requirements of s. Ins 8.28, effective May 1, 1992, shall satisfy the bond requirements for an administrator required to submit an initial license application before May 1, 1992.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Ins 8.30 Notification to office. An administrator shall notify the office in writing of any of the following within 30 days after the date of the occurrence:

(1) The cessation of business activities as an administrator. A notification under this subsection shall include the name and address of the custodian of the administrator's business records and the location of those records.

(2) Any change in the administrator's business mailing address or the location of its business records.

(3) Formal administrative action in this state or another state by an agency that regulates the business of administrators, insurance, real estate, securities or financial institutions against the administrator or any

officer, director, partner or other individual having comparable responsibilities in the corporation or partnership.

(4) The conviction in this state or another state of a felony or misdemeanor, other than a misdemeanor related to the use of a motor vehicle or the violation of a fish and game regulation, of the administrator or any of the officers, directors, partners or other persons having comparable responsibilities in the corporation or partnership.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Ins 8.32 Audit. In order to determine whether the financial resources of an administrator are adequate to safeguard the interests of the public and persons covered by a plan, or to determine the appropriate bond amount under s. Ins 8.28, the office may order the administrator to submit financial statements that have been audited by a certified public accountant.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Subchapter III — Small Employer Health Insurance

Ins 8.40 Purpose. This subchapter interprets and implements subch. I of ch. 635, Stats.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.

Ins 8.42 Definitions. In addition to the definitions in s. 635.02, Stats., which apply to this subchapter, in this subchapter:

(1) "Commissioner" means the commissioner of insurance.

(2) "Office" means the office of the commissioner.

(3) "Policy" means any of the following:

(a) A group health benefit plan issued to a small employer.

(b) An individual health benefit plan issued by a small employer insurer to 3 or more employes of the same small employer, where premium is collected through a direct or indirect arrangement with the small employer.

(c) In the case of a health benefit plan that provides coverage for more than one employer through a trust or association, the certificate issued to an individual small employer.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.

Ins 8.44 Applicability; exclusion. (1) Subchapter I of ch. 635, Stats., and this subchapter apply to a policy issued to a small employer if the number of eligible employes in this state was not less than 2 nor more than 25 during at least 50% of the number of weeks the small employer was actively engaged in the business enterprise during the 12 months preceding the date of application or the policy renewal date.

(2) In addition to the types of policies excluded under s. 635.02 (3m), subch. I of ch. 635, Stats., and this subchapter do not apply to policies providing only specified disease coverage or to hospital indemnity policies, as defined in s. 632.895 (1) (c), Stats.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.
Register, October, 1992, No. 442

Ins 8.46 Required policy provisions. Each policy shall include all of the following:

(1) On the face page or first page, a statement that the policy is guaranteed renewable except for the reasons stated in the policy, which shall be consistent with s. 635.07 (1) and (2), Stats.

(2) A statement of the minimum number of eligible employees required in order to keep the policy in effect, expressed either as an absolute number or as a percentage of eligible employees or both. The method for determining the minimum number required shall be stated in the policy or employer agreement. For purposes of this subsection, "eligible employee" does not include any person who has continued coverage under s. 632.897 (2) (b) 2, Stats., under a small employer's group policy.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.

Ins 8.48 Solicitation; disclosure requirements. (1) **AGENTS.** Before completing an application for a policy, an agent shall provide the small employer or representative of the small employer or the individual applicant with a form stating the information required under s. 635.11 (1) to (4), Stats. The agent shall sign and date the form certifying that he or she made the required disclosure and shall obtain the signature of the small employer or representative of the small employer or the individual applicant on the form. The agent shall give one copy of the completed form to the person who signed it. The agent or small employer insurer shall retain one copy of the completed form.

(2) **SMALL EMPLOYER INSURERS.** A small employer insurer that does not use agents to solicit or sell policies shall, with any solicitation material, provide the small employer or individual applicant with a form stating the information required under s. 635.11 (1) to (4), Stats. The small employer insurer shall secure with or as part of each application a form signed by the small employer, a representative of the small employer or individual applicant stating that he or she has received the information. The small employer insurer shall provide a copy to the person who signed the form no later than the date the policy is issued.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.

Ins 8.50 Underwriting restriction. In determining whether to issue or continue to provide coverage to a small employer, a small employer insurer may not consider the occupation of the employees of the small employer or the type of business in which the small employer is engaged.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.

Ins 8.52 Regulation of rates and rate changes. (1) **IDENTIFICATION OF THE SET OF MIDPOINT RATES.** (a) Each small employer insurer shall identify a set of rates applicable to all combinations of case characteristics and benefit design characteristics that serves as the set of midpoint rates for policies issued to small employers. These rates shall be represented by any combination of rates and rating factors that satisfy the following:

1. All differences among rates in the set shall be in accordance with the insurer's rate manual or rating procedures and shall be based on the actuarially determined values of the differences in case characteristics and benefit design characteristics.

Register, October, 1992, No. 442

2. The differences among the rates may not reflect any differences due to such factors as the claim experience, health status and duration of coverage of an individual policy or a collection of policies grouped according to anything other than case characteristics or benefit design.

(b) The set of midpoint rates identified in par. (a) shall apply during a specified period which shall not be less than one calendar month.

(2) **RATE VARIANCE RESTRICTION.** (a) For a new policy issued on or after March 15, 1992, the following table lists the maximum percent a rate may vary from the midpoint rate applicable to policies with the same case characteristics and benefit design characteristics according to the effective date of any rate applied to that policy:

<u>EFFECTIVE DATE OF RATE</u>	<u>MAXIMUM VARIANCE FROM MIDPOINT RATE</u>
1. March 15, 1992 - August 14, 1994	35%
2. August 15, 1994 and after	30%

(b) For a policy issued before March 15, 1992, an insurer shall comply with the rate variance restriction specified in par. (a) 2 no later than August 15, 1994.

(3) **PREMIUM RATE CHANGES; DOCUMENTATION AND RESTRICTIONS.** (a) For the purpose of complying with s. 635.02 (2), Stats., and this subsection, "class of business" means a group of policies with the same or similar benefit design whose rates are based wholly or partly on their aggregate loss experience.

(b) For a policy renewed on or after March 15, 1993, an insurer shall maintain sufficient documentation so that each of the following distinct components can be identified:

1. The percentage change in the new business premium rate measured from the rating period in which the small employer was last rated to the current rating period or, in the case of a class of business for which the insurer is not issuing new policies, the corresponding change in the base premium rate.

2. The percentage change due to adjustments in case characteristics, determined in accordance with the insurer's rate manual or rating procedures.

3. The percentage change due to adjustments in benefit design, determined in accordance with the insurer's rate manual or rating procedures.

4. The percentage change due to such rating factors as claim experience, health status and duration of coverage, determined in accordance with the insurer's rate manual or rating procedures.

(c) Each renewal rate, regardless of whether the rate represents an increase, shall be limited to the previous rate adjusted by the combination of the 4 components specified in par. (b) with the following restrictions on the experience component specified in par. (b) 4:

1. For a policy issued on or after March 15, 1992, the experience component shall be limited to 15% per year, adjusted proportionately for rating periods of less than one year.

2. For a policy issued before March 15, 1992, subd. 1 applies, except if the premium rate exceeds the midpoint rate by more than the percentage specified in sub. (2) (a) for the applicable period for policies with the same case characteristics and benefit design characteristics, the experience component may not exceed 0%.

(d) For a rate change due to a change in the small employer's census made before the end of the policy term, par. (c) applies, except that:

1. The new business rate change component specified in par. (b) 1 may not be applied at that time.

2. The experience component specified in par. (b) 4 may not exceed 15% per year, adjusted proportionately to the time remaining in the policy term.

3. The experience component specified in par. (b) 4, when combined with the experience component of the last scheduled rate renewal and any other subsequent rate changes during the current policy term, shall not exceed the limit specified in par. (c) 1 or 2, whichever applies.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.

Ins 8.54 Guaranteed renewability; cancellation and renewal restrictions. (1) DEFINITION. (a) In this section, "medically underwritten policy" means a policy that is issued after the small employer insurer has, for purposes of risk selection, used information about the group's claim experience or the health history or medical records of one or more persons eligible for coverage.

(b) Notwithstanding par. (a), a small employer insurer may apply medical underwriting standards to an individual who originally declined and later applies for coverage under a nonmedically underwritten policy without converting that policy to a medically underwritten policy.

(2) CLASS OF BUSINESS. (a) In this section, each of the following is a separate class of business, regardless of variations in policy forms, marketing methods or duration of coverage among small employers in the class of business:

1. All small employers with medically underwritten policies.

2. All small employers with policies that are not medically underwritten.

3. All small employers whose policies constitute a block of business assumed by the small employer insurer under a specific assumption treaty with an insurer that is not an affiliate.

(b) No small employer insurer may establish a class of business other than one specified in par. (a).

(3) GUARANTEED RENEWABILITY. Except as provided in s. 635.07, Stats., a policyholder has the right to renew a policy on the same terms subject to the premium rate restrictions specified in s. Ins 8.52 (3). The subsection does not prohibit a small employer insurer from offering a policyholder renewal with altered benefit design characteristics if the offer is available to all policyholders in the same class of business without regard to claim experience.

(4) **TERMINATION.** (a) A small employer insurer that intends to terminate a policy under s. 635.07 (1) (d), Stats., because the number of eligible employees is less than the number required to keep the policy in force shall do all of the following:

1. Notify the small employer of its intent to terminate and the reason for the termination. The notice shall be given at least 20 days before the termination date.

2. Offer to continue the small employer's coverage for not less than 60 days after the termination date in order to allow the small employer to increase the number of eligible employees to the required number.

3. Provide the additional coverage, if the small employer accepts the offer under subd. 2 before the termination date and pays the premium for the additional coverage at the rate in effect at the time the additional coverage is provided.

(b) A small employer insurer may not terminate a policy under s. 635.07 (1) (d), Stats., if the reason the number of eligible employees is less than the required number is due to an employee's sickness or injury, approved leave of absence or temporary layoff. The small employer insurer may establish participation requirements and reasonable verification procedures as part of the policy or employer agreement.

(c) A small employer insurer may not take into consideration factors related to an individual small employer's claim experience in deciding whether to terminate a policy under s. 635.07 (1) (d), Stats.

(d) A small employer insurer that intends to terminate a policy under s. 635.07 (1) (a) to (c) or (e), Stats., shall comply with the notice requirements under s. 631.36 (2) (b) and (c), (4), (6) and (7), Stats.

(5) **NONRENEWAL OF CLASS OF BUSINESS.** (a) If a small employer insurer ceases to renew policies issued to all small employers in the same class of business under s. 635.07 (2), Stats., the small employer insurer may not establish any new class of business during the 5-year period beginning with the latest expiration date for policies in effect in the class of business that is not renewed.

(b) At least one year before a small employer insurer ceases to renew policies under s. 635.07 (2), Stats., the small employer insurer shall provide the office with all of the following information:

1. The reason for the decision not to renew.

2. The number of small employers and the total number of eligible employees affected by the decision not to renew.

3. The number of small employers in other classes of the small employer insurer's business that are not affected by the decision not to renew.

(c) The commissioner may order an examination under s. 601.43, Stats., in order to determine the premium rate history and obtain information on the profitability of the nonrenewed class of business.

(d) At least one year before a small employer insurer ceases to renew policies under s. 635.07 (2), Stats., the small employer insurer shall provide written notice of that intent to all affected small employers and the

insurance regulatory agency in each state in which an affected insured individual resides. The notice shall include all of the following:

1. The reason for the decision to terminate coverage for the class of business.

2. The date on which coverage will terminate.

(e) In addition to the requirement under par. (d), the small employer insurer shall, at least 60 days but not more than 75 days before the date coverage will terminate, provide each affected small employer with written notice, complying with s. 631.36 (6) and (7), Stats., of the intent not to renew the policy. The notice shall also comply with the notice requirements of ss. 632.79 and 632.897, Stats.

(6) **CONVERSION OF ASSUMED CLASS OF BUSINESS.** A small employer insurer that assumes a class of business from another small employer insurer shall, by the 2nd renewal date for each policy or one year from the date of assumption, whichever is later, convert each policy in the assumed class of business to a policy with the same or similar benefit design characteristics in another class of business specified under sub. (2) (a).

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.

Ins 8.56 Certification of compliance; additional information required. (1) The annual certification of compliance required under s. 635.13, Stats., shall be submitted in the form prescribed by the office.

(2) In addition to the annual certification required under sub. (1), the commissioner may require a small employer insurer to furnish additional information including, but not limited to, the following, using the form and method of transmittal prescribed by the commissioner:

(a) Rate manuals or exhibits of all rating factors used for each class of business.

(b) Sample data of small employers including premiums charged and rating factors applied for case characteristics and benefit design characteristics.

(c) An inventory of case characteristics used by the small employer insurer since the last certification date.

(d) An exhibit showing the difference in new business premium rates between the current certification date and the last certification date.

(e) A description of how midpoint rates are determined.

Note: The form required under sub. (1), OCI 26-051, may be obtained from the Office of the Commissioner of Insurance, P. O. Box 7873, Madison, WI 53707-7873.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.