

Publication Date: December 29, 2011
Effective Date: December 29, 2011 through May 26, 2012

EmR1119

PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE REPEALING A RULE

The statement of scope SS 045-11 was approved by the Governor on December 1, 2011, and published December 14, 2011 in Register No. 672. The Statement of Scope was signed by Commissioner Nickel on December 24, 2011.

The emergency rule was approved by the Governor on December 27, 2011.

To repeal EmR 1117;

Relating to repeal of EmR 1117 and affecting small business.

FINDING OF EMERGENCY

The Commissioner of Insurance finds that an emergency exists and that the attached proposed emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Emergency Rule 1117 (EmR 1117), was effective November 16, 2011 and is to be first applicable on January 1, 2012. EmR 1117 contained provisions modifying Wisconsin's insurance regulations governing grievances and independent review processes to comply with federal law provisions of 42 USC 300gg 19 (a) and (b), as implemented by 45 CR 147.136, as amended. It has been determined that this may not be in the best interest of the state.

The proposed emergency rule will repeal EmR 1117 in its entirety and maintain Wisconsin's prior existing regulations and oversight of the grievance and independent review process. To avoid full implementation of EmR 1117 and industry and consumer confusion, the Commissioner has determined that this emergency rule must be effective prior to January 1, 2012.

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

1. Statutes interpreted:

ss. 600.01, 628.34 (12), 632.73, 632.76, 632.81, 632.83, 632.835, and 632.84, Stats.

2. Statutory authority:

ss. 600.01 (2), 601.41 (3), 628.34 (12), 632.73, 632.76, 632.81, 632.835 (5) and (8), and 632.84, Stats.

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

The OCI has authority to promulgate rules interpreting s. 632.83 and 632.835, Stats., implementing grievance and independent review requirements and procedures. In addition s. 632.835, Stats., permits the OCI to promulgate rules for the certification of independent review organizations.

4. Related statutes or rules:

None.

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

The proposed emergency rule reinstates all provisions of ch. Ins 18, Wis. Adm. Code as it existed prior to November 16, 2011.

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:

Amendments to the Public Health Service Act (42 USC 300gg-19 (a) and (b)) created an internal appeal and external review right for consumers covered by group or individual health insurance. Section 2719 of the Public Health Service Act is implemented by interim final rules and guidance as issued by the US Department of Health and Human Services (45 CFR 147.136, as amended).

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

Illinois: Effective August 26, 2011, Illinois passed House Bill 224 further implementing the Patient Protection and Affordable Care Act (PPACA) by including provisions for preexisting conditions and rescissions and modifying review timeframes to comply with federal requirements. This builds on Illinois' managed care reform and patients right act 215 ILCS 134, providing to insureds for insured enrolled in health maintenance organizations a right to external review of medical necessity determinations. Also on January 5, 2010, Illinois enacted the health carrier external review act that broadens the right to external review to all Illinois residents enrolled in health insurance plans under 215 ILCS 180.

Iowa: Effective March 23, 2011, Iowa enacted House File 597 to enact new procedures for external review in order to comply with federal law. Iowa updated its regulations 191- ch. 76 effective July 8, 2011 and is compliant with federal requirements.

Michigan: Effective October 1, 2000, Michigan offers external review for adverse determinations based upon medical necessity that are unresolved internally by the plan. 2000 PA 251, MCL 550.1911. Michigan is compliant with federal requirements.

Minnesota: Effective 2000 Minnesota enacted a law that provides external review relating to medical necessity determinations from managed care plans and indemnity carriers. Minn. Stat. 72A.327. Minnesota is compliant with federal requirements

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:

The office reviewed state and federal law and regulations that reflect the National Association of Insurance Commissioners Uniform Health Carrier External Review Model Act and the Department of Labor's regulations for ERISA plans. Insurers and independent review organizations are required to comply with the federal requirements and state requirements by promulgation of this emergency rule. This rule reinstates ch. Ins 18 Wis. Adm. Code, as it read prior to November 16, 2011.

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 independent review organizations are certified by the commissioner's designee to conduct independent reviews in the state and several are small businesses. The additional cost for complying with this rule is no different for an independent review organization cost for complying with the federal law. Further, if there is additional cost it will be primarily borne by large insurers who are required to pay for the cost of an independent review, not the independent review organizations. The proposed rule places few additional requirements on the independent review organizations and in clarifying what is and is not eligible for reviews, the costs incurred will be limited.

10. See the attached Private Sector Fiscal Analysis.

11. A description of the Effect on Small Business:

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

12. 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: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110
Email: inger.williams@wisconsin.gov
Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474
Mail: PO Box 7873, Madison, WI 53707-7873

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

The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

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The proposed rule changes are:

SECTION 1. Repeal EmR 1117.

SECTION 2. These changes first apply to claims occurring on or after January 1, 2012.

SECTION 3. This chapter may be enforced under ss. 601.41, 601.64, 601.65, 628.10, Stats., or ch. 645, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

SECTION 4. These emergency rule changes will take effect on December 29, 2011, as provided in s. 227.24 (1) (c), Stats.

Dated at Madison, Wisconsin, this ____ day of _____, 2011.

Theodore K. Nickel
Commissioner of Insurance

**Office of the Commissioner of Insurance
Private Sector Fiscal Analysis**

Chapter Ins 18 relating to repeal of EmR 1117 and affecting small business.

This rule change will have no significant effect on the private sector regulated by OCI.