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Financial and Market Regulation Positions (Insurance -- Agency Operations and Current Programs)

[LFB 2023-25 Budget Summary: Page 325, #2]

CURRENT LAW

The Office of the Commissioner of Insurance is responsible for the regulation of the insurance industry, including regulation of market practices to ensure compliance with laws relating to the sale of insurance products, as well as the monitoring of the financial condition of companies. In addition, OCI performs consumer protection and education functions, and administers insurance programs and funds, such as the injured patients and families compensation fund and the Wisconsin healthcare stability program.

The regulatory functions of the Office are funded with agent and company licensing and filing fees and assessments collected for the cost of company examinations. Revenue from fees and assessments is deposited in a program revenue account for general program operations. The base funding for this appropriation is $18,993,600, with 124.15 authorized PR positions.

DISCUSSION POINTS

1. Wisconsin is home to a large number of insurance companies in comparison to similarly sized states. As of 2021, there were 334 companies based in Wisconsin ("domestic" insurers), which was comparable to Illinois at 343, but substantially more than the other regional states of Iowa (209), Michigan (125), Minnesota (144), and Indiana (133). In addition to Illinois, only Florida, New York, and Texas have more domestic insurers than Wisconsin. In addition to domestic insurers, there are about 1,700 insurers based in other states ("foreign" insurers) that are licensed to do business in Wisconsin.

2. The Wisconsin Office of the Commissioner of Insurance (OCI) is responsible for the

licensing and regulation of all insurance companies (domestic and foreign), as well as for licensing insurance agents, brokers, and various other entities and individuals operating in the insurance industry.

3. OCI has two divisions for its regulatory functions: the Division of Financial Regulation and the Division of Market Regulation and Enforcement. Together these two divisions account for 73% of OCI's total authorized positions and 80% of OCI's authorized PR funding.

Division of Financial Regulation

4. AB 43/SB 70 would provide 10.0 PR positions, beginning in 2023-24, and associated funding of $699,400 PR in 2023-24 and $932,500 PR in 2024-25 for OCI's regulatory divisions, with 5.0 positions assigned to each division. This paper discusses this proposal by division.

5. The primary role of the Division of Financial Regulation is to conduct company examinations to monitor the financial condition of insurers. The purpose of these examinations is to detect early signs of financial risks that could result in insolvency, as well as to ensure that the company is in compliance with insurance laws and regulations. Upon completion of the examination, OCI produces a report listing the findings relevant to the company's solvency risk. The report may note, for instance, if the insurer has understated future claims liability or has overstated investment values. OCI may also issue an examination letter, which makes recommendations on other matters not directly tied to financial risks, such as steps for strengthening the company's governance practices or information technology systems.

6. With limited exceptions, OCI is required to conduct a financial examination of domestic insurers at least once in every five years. These in-depth reviews involve an assessment of the various aspects of a company's operations, including its financial condition, capital reserves, risk exposure, risk mitigation strategies, corporate structure, and information systems. Depending upon the size and complexity of the company, the examination can take anywhere between three months to over one year.

7. Financial examinations are conducted in accordance with procedures and standards developed by the National Association of Insurance Commissioners (NAIC), an accrediting organization for all state insurance departments. NAIC accreditation ensures that states are operating under a consistent regulatory framework, which allows insurers to operate in multiple states without having duplicative financial examinations. That is, since each state insurance department generally conducts financial examinations of its own domestic insurers in accordance with NAIC standards, other states can be reasonably confident that those companies have sufficient financial health to issue policies in their states, without having to conduct an additional examination.

8. To maintain NAIC accreditation, state insurance departments must demonstrate that they are adequately staffed and that staff are trained to conduct financial examinations and analysis of domestic insurers, as well monitor other aspects of the industry. NAIC reviews state insurance agency reports on an annual basis and conducts periodic on-site reviews to determine compliance with accreditation standards.

9. In addition to conducting in-depth financial reviews for domestic insurers, the Division of Financial Regulation's other duties include: (a) issuing company licenses; (b) reviewing annual financial statements for all licensed companies; (c) auditing and collecting insurance premium taxes and fees; and (d) reviewing applications for changes in control, including merger and acquisition proposals and changes in affiliation agreements.

10. The Division of Financial Regulation currently has 57.0 authorized permanent positions. Of these, 51.0 are insurance financial examiners, of varying classification levels. Financial examiners are organized in six sections within the Division. Four of these sections, with a total of 34 examiners and four section chiefs, are assigned to financial examinations of domestic insurers. The other two sections, with a total of 15 examiners and two section chiefs, are assigned to company licensure and non-domestic company analysis and licensure, as well as more specialized aspects of financial evaluation, such as review and approval of complex transactions, and review of company IT systems.

11. The bill would provide the additional 5.0 insurance financial examiner positions at the entry level for this classification. These positions would be assigned to the sections that conduct financial examinations of domestic insurers.

12. OCI maintains that additional positions are needed to address the Division's current and emerging workload demands, primarily associated with performing financial examinations of domestic insurers. OCI indicates that insurance examinations have become more complex over the past decade, in large part due to a change in focus from a company's financial results toward a comprehensive examination of a company's risks and risk management strategies. In addition, examinations have become more complex because the companies themselves, their investments, and their products have become more complex. With this additional complexity, the time needed to complete an examination and analysis has increased.

13. According to a workload analysis conducted by OCI, the Division of Financial Regulation would need an additional six to ten financial examiners over the next three years to complete all scheduled financial examinations, as well as complete other regulatory duties of the Division.

14. OCI's workload analysis is based on the workforce and workload associated with conducting the primary examination and analysis work for domestic insurers, and not the work conducted by the teams conducting specialized review and company licensure. OCI indicates that if the Division does not have sufficient frontline staff to complete examinations of domestic insurers, financial examiners from the other sections in the Division, as well as financial examiner supervisors, may be called on to assist with the completion of these mandatory reviews. In addition to taking time away from their normal duties, this diversion of resources may harm employee retention efforts, as employees with specialized expertise would prefer to work on a level that matches their level of experience and knowledge.

15. Since OCI's workload analysis suggests that the Division may need as many as ten new positions, the Division may still face a shortfall in its insurance financial examiner frontline workforce, even if the 5.0 positions are approved and filled (and assuming that OCI's workload projections are accurate). In this event, the Division may need to continue shifting personnel from

other duties to complete the most pressing and mandatory duties. In addition, since some of the Division's regulatory responsibilities are not required to be completed on a statutory or NAIC-mandated timeline, the Division may need to defer those tasks. As an example, OCI notes that conducting financial examinations of town mutual insurers are not statutorily mandated, and so have been deferred for the past several years.

16. Some state insurance regulatory agencies rely on contracted financial examiners to conduct some or even most of the state's examinations. Wisconsin's Office of the Commissioner of Insurance has not used contract examiners, indicating that the domestic insurers prefer to have state examiners do the work due to their familiarity with the Wisconsin insurance industry and companies. In addition, contracting for company examinations is more costly than examinations conducted by state staff, an additional cost that is passed along to the company through the assessments that OCI levies to support the cost of the exam. For these reasons, the insurance companies have generally been supportive of adding state insurance examiner positions to meet the increasing workload demands.

17. The last increase for positions in the Division of Financial Regulation came in 2018, when the Committee approved a request for 4.0 positions under s. 16.505 of the statutes. One of these positions was a project position that was converted to a permanent position in 2021, also under s. 16.505 of the statutes.

Division of Market Regulation and Enforcement

18. The Division of Market Regulation and Enforcement is responsible for monitoring compliance with market conduct laws and regulations for insurers and agents. Among other actions to fulfill these duties, the Division may perform market conduct examinations to review insurer underwriting and rating practices. The Division is also responsible for agent licensing, monitoring marketing and sales practices, responding to consumer complaints, and promoting consumer education related to insurance matters.

19. The Division of Market Regulation and Enforcement has 42.0 positions, which includes 26.0 insurance examiners of varying classifications. The Division also has consumer complaint associates, license permit program associates, and insurance program manager positions.

20. As with the Division of Financial Regulation, AB 43/SB 70 would provide 5.0 additional PR positions for the Division of Market Regulation and Enforcement. OCI indicates that additional positions are needed to keep up with increases in the number agent license applications, as well as increased regulatory responsibilities stemming from state and federal insurance law changes.

21. The number of insurance companies licensed in Wisconsin has increased by 135 in the last five years from 1,873 in 2016 to 2,008 in 2021. With this increase comes additional responsibilities for market reviews and rate filings, and in the number of agent licenses and appointments. The number of insurance agents licensed in Wisconsin has increased by over 44,000 in the past five years.

22. In addition to growth in the number of insurers and agents, OCI indicates that several recently enacted state and federal laws have added to the Division's responsibilities. For instance,

2021 Act 9 established a licensing and regulatory framework for pharmacy benefit managers. Although OCI indicated in its fiscal estimate for the bill that this new area of responsibility would require an additional 7.5 positions, the legislation did not provide additional positions.

23. With respect to federal legislation, the recent passage and implementation of the federal No Surprises Act has also added to OCI's market review and consumer protection responsibilities. The No Surprises Act, which was passed in 2020 and took effect in 2022, prohibits certain medical providers and emergency medical services who are out-of-network for a patient's insurance from billing the patient by an amount that exceeds what the patient would be billed for an in-network provider. Disputes between out-of-network providers and a consumer's insurer over payments must be resolved in accordance with an arbitration process. Some of the regulatory responsibilities associated with the law have fallen to state insurance agencies, like OCI, although the law did not provide additional resources to support these responsibilities. OCI has seen an increase in consumer complaints and inquiries as the provisions of the new law have taken effect.

24. OCI indicates it has recently had to use overtime and LTE staffing to address a backlog in agent licensing. In addition, the Office has had to reallocate staff from other duties to maintain a manageable backlog. This has left those other areas, such as the Division's consumer affairs section, with fewer available staff.

25. The last time that the number of positions for licensing and market regulation activities was increased was the 2005-07 biennium, when the biennial budget provided 6.0 insurance examiner positions. At that time OCI did not have the same organizational structure as now, but some of the new positions were assigned to duties that are currently performed by the Division of Market Regulation and Enforcement.

26. While an increase in the number insurance companies and agents has increased responsibilities for both the Division of Financial Regulation and the Division of Market Regulation and Enforcement, it also increased revenues collected by OCI. However, OCI expenditure authority does not automatically increase with an increase in revenue collected. Instead, the Office's principal program revenue appropriation limits its expenditures to amounts in the Chapter 20 schedule of appropriations. The amount of insurance revenue collected in excess of OCI expenditures (plus a reserve equal to 10% of expenditures), is deposited in the general fund, counted as GPR-earned. The following table shows collected revenue, OCI PR expenditures, and GPR-earned transfer for the past five years.

Insurance Fee Program Revenue Collected, OCI Expenditures, and Amount Transferred to the General Fund

Fiscal Year	OCI PR Revenues	OCI PR Expenditures	GPR-Earned Transfer
2017-18	$43,101,300	$17,064,800	$26,685,900
2018-19	44,351,400	17,451,100	26,285,700
2019-20	43,522,300	18,267,300	25,148,300
2020-21	49,260,000	17,365,100	32,437,300
2021-22	52,505,752	18,925,600	33,908,100

27. As the table in the previous point illustrates, insurance licensing fee and other insurance PR revenue has increased substantially since 2019-20, likely reflecting an overall increase in insurance company and agent activity in the state. Because OCI's expenditures have not increased at the same rate, the annual transfers to the general fund increased by over 30% in 2021-22 compared to 2019-20.

28. With the increase in PR revenue collections seen in recent years, the Committee could determine that providing additional positions in OCI's two regulatory divisions can be supported from current revenues and are warranted based on current workload demands. [Alternative 1a and 1b]

29. The Committee could also decide not to provide additional positions, which would require OCI's regulatory divisions to reallocate staff as needed to complete the most critical tasks, or use contract staff if necessary to complete financial and market reviews. [Alternative 2]

ALTERNATIVES

1. Provide additional positions and funding for OCI's regulatory divisions as follows:

a. An increase of 5.0 PR positions, beginning in 2023-24, and funding increases of $358,000 PR in 2023-24 and $477,400 PR in 2024-25 for the Division of Financial Regulation.

ALT 1a	**Change to Base**	
	Funding	**Positions**
PR	$835,400	5.00

b. An increase of 5.0 PR positions, beginning in 2023-24, and funding increases of $341,400 PR in 2023-24 and $455,100 PR in 2024-25 for the Division of Market Regulation and Enforcement.

ALT 1b	**Change to Base**	
	Funding	**Positions**
PR	$796,500	5.00

2. Take no action.

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