

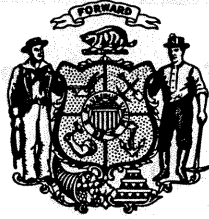
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-090

AN ORDER to repeal subchapters III and IV of chapter Ins 8; and to create chapter Ins 19, relating to health insurance.

Submitted by **OFFICE OF THE COMMISSIONER OF INSURANCE**

05-18-99 RECEIVED BY LEGISLATIVE COUNCIL.

06-15-99 REPORT SENT TO AGENCY.

RNS:GAA:jal;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

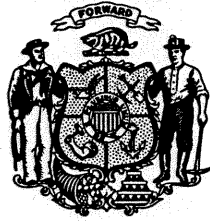
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CLEARINGHOUSE RULE 99-090

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In s. Ins 19.02 (4), "where the employer" should be changed to "issued to an employer that."

b. Throughout the rule, all semicolons should be replaced by periods. [See s. 1.03 (intro.), Manual.] For example, s. Ins 19.02 (8) (a) (intro.) should end with the words "any of the following occur" and each of the succeeding subdivisions should end with periods rather than semicolons or the word "or." Similar changes should be made throughout the rule. Introductory material generally includes the phrase "all of the following" or "any of the following." As another example, s. Ins 19.90 (intro.) should end with "doing all of the following" or "doing any of the following."

c. In s. Ins 19.02 (8) (a) 1. and (b) 1., the word "The" should be the first word in the subdivision.

d. In s. Ins 19.35 (2), the word "shall" should be substituted for "must."

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. Ins 19.90 (2), last sentence, the word "health" is misspelled.

1
2 **PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE**
3 **REPEALING AND CREATING A RULE**
4

5 To repeal Subchs. III and IV of ch. 8 and to create ch. Ins 19, Wis. Adm. Code, relating to
6 health insurance.

7
8 **ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE**

9 Statutory authority: ss. 600.01 (2), 601.41 (3), 601.42, 628.34 (12), Stats.

10 Statutes interpreted: ss. 600.01, 628.34 (12), 632.745 to 632.7945, and ch. 635, Stats.

11 This rule revises standards governing group, association, and individual health insurance to
12 reflect the requirements of the Health Insurance Portability and Accountability Act of 1996, U.S.

13 P.L.104-191 (HIPAA), the Interim Rule under HIPAA adopted by the Federal Health Care Financing
14 Authority, and changes in the Wisconsin Statutes reflecting those laws and regulation. The rule does
15 the following:

16 1. Makes clear an insurer must cover a late enrollee under any employer health insurance
17 policy, but permits the insurer to impose not more than a combined 18-month preexisting condition or
18 affiliation period.

19 2. Makes clear that an insurer may not subject a new entrant, including a person who
20 originally waived coverage during initial enrollment to accept alternative coverage, to more than a 12-
21 month preexisting condition exclusion.

22 3. Makes clear that an insurer providing health insurance coverage to an employer may:

23 a. Limit issuance of coverage to those employees and their dependents who are included in
24 a nondiscriminatory eligibility class established by a large employer.

25 b. Limit issuance of coverage to those employees and their dependents who are included in
26 a nondiscriminatory class established by a collectively bargained agreement.

27 c. Issue coverage to an employer who has varying levels of contribution toward premium,
28 but only if the classes are nondiscriminatory and the insurer consistently applies uniform minimum
29 contribution requirements.

1 4. Makes clear that an insurer is not required to offer coverage to an individual who is not
2 actively at work.

3 5. Makes clear that standards for health insurance coverage provided to or through an
4 employer apply regardless of whether the coverage is denominated association group, group, or
5 individual coverage.

6 6. Removes requirements that an insurer provide certain notices if an employer ceases to
7 qualify as a small employer but retains requirements that an insurer permit an employer to "cure"
8 inadequate participation to prevent nonrenewal or cancellation on that basis.

9 7. Prohibits an insurer from imposing more stringent participation requirement, for either
10 small or large employers, than 70% (other than in dual enrollment).

11 8. Make various changes to reflect the repeal of the basic health insurance plan.

12 9. Makes clear that an insurer may permit application of no more than a 6-month probation
13 period for eligibility for coverage under a policy issued to either a small or large employer.

14 10. Permits an insurer to issue coverage only through a bona fide association and market
15 coverage only to persons eligible to join the bona fide association, subject to certain requirements, but
16 prohibits insurers from otherwise marketing only to certain market segments.

17 11. Makes clear that an insurer may refuse to issue coverage to a small employer if the
18 small employer was cancelled or non-renewed by the insurer for failure to pay premium, or for fraud,
19 but only for a period of one year.

20 12. Permits an insurer to decline to issue coverage to a small employer on the basis that
21 small employer employees are not within the insurer's provider service area, but only if the insurer
22 adopts reasonable criteria and applies the criteria uniformly without regard to health status.

23 *Small Business Health to*

SECTION 1. Subchs. III and IV of ch. 8 are repealed.

24 **SECTION 2. Chapter Ins 19 is created to read:**
25

CHAPTER 19

GROUP, ASSOCIATION, INDIVIDUAL, AND SMALL EMPLOYER HEALTH INSURANCE

SUBCHAPTER I
GENERAL PROVISIONS

Ins 19.01 Purpose. This chapter interprets and implements chs. 628, 632 and. 635, Stats.

Ins 19.02 Definitions. In addition to the definitions in ss. 632.745 and 635.02, Stats., in this chapter:

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

old
8.42 (2)

(2) "Employee" for the purpose of ss. 632.745 to 632.7495 and ch. 635, Stats, and this chapter, does not include an individual who is not regularly performing assigned duties.

(3) "Initial enrollment period" means a period prior to issuance of a policy during which all eligible employees, and dependents of all eligible employees, or all eligible employees and their dependents in a class permitted under s. Ins 19.20, are entitled to enroll in coverage under the policy.

8.42(3)
new

(4) "Large employer policy" means a policy where the employer is a large employer as defined under s. 632.745 (16), Stats.

issued to an
into

new

(5) "Late enrollee" has the meaning provided under s. 632.745 (18), Stats. For the purposes of this chapter and s. 632.746 (1) (b), Stats., "late enrollee" does not include an individual eligible for coverage under s. 632.746 (6), Stats.

new
8.42(4)

(6) "New entrant" means an eligible employee, or dependent of an eligible employee, who is employed in a position included in a class permitted under s. Ins 19.20 establishing eligibility for an initial enrollment period.

8.42(5)

(7) "Office" means the office of the commissioner of insurance.

8.42 (7)

(8) "Policy" means a group health benefit plan as defined under s. 632.745 (6), Stats.

8.42 (8)

"Policy" includes, but is not limited to:

(a) An individual health benefit plan, including, but not limited to an individual health benefit plan which is intended or designed to supplement another health benefit plan, and issued by an insurer to an eligible employee if 3 or more eligible employees of the same employer apply for the coverage or are intentionally excluded from applying for reasons related to their health, and the individual health benefit plan is in fact, or in substance, sold to, or through active cooperation of, the employer, including but not limited to circumstances where:

any...
^

new
8.42 (8)

The

1. Premium is collected through a direct or indirect arrangement with the employer;

2. The individual health benefit plan is in substance a replacement for group health benefit plan coverage provided through the employer;

3. The employer directly or indirectly contributes toward a portion of the premium for the individual health benefit plan; or

4. An eligible employe is solicited to purchase the individual health benefit plan on the premises of the employer and with the consent and cooperation of the employer or the employer participates in the solicitation of the eligible employe.

(b) A health benefit plan that provides coverage through a trust or association, evidenced by a certificate or otherwise, including, but not limited to, coverage intended or designed to supplement another health benefit plan, and issued to an employer or in fact or substance, sold to, or through the active cooperation of, an employer, including but not limited to circumstances where:

The

1. Premium is collected through a direct or indirect arrangement with the employer;

2. The coverage is in substance a replacement for group health benefit plan coverage provided through the employer;

3. The employer directly or indirectly contributes toward a portion of the premium for the coverage; or

4. An eligible employe is solicited to purchase the coverage on the premises of the employer and with the consent and cooperation of the employer or the employer participates in the solicitation of the eligible employe.

(9) "Risk characteristic" means the health status, claims experience, duration of coverage, or any similar characteristic related to the health status or experience of a small employer group or of any member of a small employer group.

*5.42
(10)*

(10) "Risk load" means the percentage above the applicable base premium rate that is charged by a small employer insurer to a small employer to reflect the risk characteristics of the small employer group.

5.42

(11) "Small employer insurer" has the meaning provided under s. 635.02 (8), Stats.

dev

1 (12) "Small employer policy" means a policy where the employer is a small employer as
2 defined under s. 635.02 (7), Stats. nw

3 **Ins 19.03 Disclosure; participation requirement restrictions.** An insurer shall include in
4 each policy all of the following:

5 (1) On the face page or first page, a statement that the policy is guaranteed renewable
6 except for the reasons stated in the policy, which shall be consistent with s. 632.749, Stats.

7 (2) A statement of the minimum number of eligible employees required in order to keep the
8 policy in effect, expressed either as a schedule or as a percentage of eligible employees or both. The
9 insurer shall state the method for determining the minimum number required in the policy or employer
10 agreement. For purposes of this section, "eligible employee" does not include any person who has
11 continued coverage under s. 632.897 (2) (b) 2, Stats., under an employer's group policy and the number
12 of individuals in a group shall not include individuals with other creditable coverage except as permitted
13 under s. 635.746 (9) (d), Stats. An insurer may not impose more stringent requirements than the
14 following:

15 (a) For a group or a class of employees permitted under s. Ins 19.20 with more than 10 eligible
16 employees, 70% of the eligible employees.

17 (b) For a group or a class of employees permitted under s. Ins 19.20 with 10 eligible employees,
18 6 eligible employees.

19 (c) For a group or a class of employees permitted under s. Ins 19.20 with 8 or 9 eligible
20 employees, 5 eligible employees.

21 (d) For a group or a class of employees permitted under s. Ins 19.20 with 7 eligible employees,
22 4 eligible employees.

23 (e) For a group or a class of employees permitted under s. Ins 19.20 with 5 or 6 eligible
24 employees, 3 eligible employees.

25 (f) For a group or a class of employees permitted under s. Ins 19.20 with 2 to 4 eligible
26 employees, 2 eligible employees.

27 **Ins 19.10 Guaranteed renewability; cancellation and renewal restrictions.** (1) (a) An
28 insurer that intends to non-renew a policy or terminate a large or small employer policy under s. 632.749,

1 Stats., because the number of eligible employees is less than the number required to keep the policy in
2 force shall do all of the following:

3 1. Notify the employer of its intent to non-renew or terminate and the reason for the non-
4 renewal or termination. The notice shall be given as required under s. 631.36, Stats., for a non-renewal
5 or at least 20 days before the termination date for a termination.

6 2. Offer to continue the employer's coverage for not less than 60 days after the non-renewal
7 or termination date in order to allow the employer to increase the number of eligible employees to the
8 required number.

9 3. Provide the additional coverage, if the employer accepts the offer under par. (b) before the
10 non-renewal or termination date and pays the premium for the additional coverage at the rate in effect at
11 the time the additional coverage is provided.

12 (b) An insurer may not non-renew a policy or terminate a policy under s. 632.749 (2) (c),
13 Stats., if the reason the number of eligible employees is less than the required number is due to an
14 employee's sickness or injury, approved leave of absence or temporary layoff. The insurer may establish
15 participation requirements and reasonable verification procedures as part of the policy or employer
16 agreement.

17 (c) An insurer may not take into consideration factors related to an individual employer's claim
18 experience in deciding whether to non-renew a policy or terminate a policy under s. 632.749 (2) (c), Stats.

19 (2) Health benefit plans which are individual health benefit plans subject to s. 632.7945,
20 Stats., include, but are not limited to, the following:

21 (a) Group or blanket insurance other than large or small employer policies; and

22 (b) Insurance offered through an association, whether group coverage or otherwise, other
23 than a large or small employer policy.

24 (3) An insurer that intends to terminate or non-renew a policy under s. 632.749 or s.
25 632.7945, Stats., shall comply with the notice requirements under s. 631.36, Stats.

26 (4) An insurer discontinuing offering of coverage under s. 632.749 or s. 632.7945, Stats.,
27 shall, in addition to complying with the notice requirements of s. 632.749 or s. 632.7945, Stats., comply

1 with all other requirements under the law, including the notice requirements of ss. 631.36, 632.79 and
2 632.897, Stats.

3 **Ins 19.20 Initial enrollment and discriminatory coverage.** (1) Except as permitted under
4 subs. (2) to (5) an insurer that offers a policy shall provide an initial enrollment period during which each
5 eligible employe and dependent of an eligible employe is entitled to enroll in coverage under the policy.

6 (2) An insurer may offer, or participate in an offer, to all eligible employes, or, if permitted
7 under sub. (3) or (4), to a class of eligible employes, of a choice by the eligible employe ~~among 2 or more~~
8 policies for coverage of the eligible employe and the eligible employe's dependents, but only if:

9 (a) The enrollment period is simultaneous for all the policies; and

10 (b) The eligible employe may choose any one of the offered policies.

11 (3) Subject to s. 632.748, Stats., an insurer may restrict its offer of a large employer policy to
12 a class of eligible employes and their dependents determined by the employer, but only if:

13 (a) The employer establishes the class without influence by the insurer or an agent of the
14 insurer;

15 (b) The insurer offers to the employer issuance of a policy to cover all eligible employes and
16 their dependents;

17 (c) The class is not established in violation of s. 632.748, Stats., or by the large employer in
18 violation of 26 U.S.C. 9802; and

19 (d) The insurer determines that the class is permitted under this subsection.

20 (4) Subject to s. 632.748, Stats., an insurer may restrict its offer of a policy to a class of
21 eligible employes and their dependents determined by the employer but only if the insurer determines
22 that:

23 (a) The class is not established in violation of s. 632.748, Stats., or by the large employer in
24 violation of 26 U.S.C. 9802; and

25 (b) The class is established by a bona fide collective bargaining.

26 (5) An insurer may permit a large or small employer to establish classes for employer
27 contribution levels for a policy but only if the insurer:

1 (a) Determines the class is not established in violation of s. 632.748, Stats., or by the
2 employer in violation of 26 U.S.C. 9802;

3 (b) Establishes a minimum employer required contribution level which is applied uniformly to
4 all employers and which varies only by employer size; and

5 (c) Requires the employer to pay not less than the minimum required contribution level for
6 each covered eligible employee and the eligible employee's dependents.

7 (6) Except as permitted by this section an insurer shall issue the same coverage under any
8 policy to each eligible employee and dependent.

9 **Ins 19.30 Large and small employer policies; new entrants and individuals switching**

10 **coverage.** (1) An insurer shall provide under a policy for an enrollment period during which a new entrant
11 is entitled to enroll in coverage under the policy. The insurer shall provide an enrollment period under a
12 policy of at least 30 days after the date the new entrant is notified of the opportunity to enroll. An insurer
13 which offers more than one policy in the initial enrollment period shall offer the new entrant the same
14 choice of policies during the new entrant's enrollment period. An insurer may restrict its offer to new
15 entrants to those eligible under a class permitted for the initial enrollment period under s. Ins 19.20.

16 (2) An insurer may not accept waiver of coverage under a policy from a new entrant who is
17 currently covered under the plan established ch. 149, Stats., and shall provide coverage under the policy
18 to the new entrant unless the new entrant is not eligible under a class permitted under s. Ins 19.20.

19 (3) An insurer's policy shall not apply, or permit application of, a probationary period which
20 must be met before a new entrant is eligible for coverage under a policy, or a similar limitation, that is
21 longer than 6 months.

22 (4) An insurer may not add coverage restrictions or limitations under a policy because of the
23 risk characteristics of a new entrant.

24 (5) An insurer may assess a risk load to the premium rate associated with a new entrant. An
25 insurer issuing a small employer policy shall comply with s. 635.05, Stats., and s. Ins 19.60 (3) (d).

26 (6) An individual electing coverage under s. 632.746 (6), Stats., may be subject to no more
27 than a 12-month preexisting condition exclusion under s. 632.76 (1) (b), Stats.

1 **Ins 19.35 Late enrollees.** (1) An insurer shall provide under a policy for an enrollment
2 period during which a late enrollee is entitled to enroll in coverage under the policy. The insurer shall
3 provide an enrollment period of at least 30 days after the date the late enrollee requests coverage is
4 notified of the opportunity to enroll. An insurer may restrict its offer to late enrollees to those eligible
5 under a class permitted for the initial enrollment period under s. Ins 19.20.

6 (2) An insurer may apply a preexisting condition exclusion or affiliation period or a
7 combination of both to a late enrollee but the total period subject to a preexisting condition or affiliation
8 period may not exceed 18 months. Any preexisting condition exclusion period imposed under this section
9 must be consistent with s. 632.746, Stats.

10 (3) An insurer may assess a risk load to the premium rate associated with a late entrant,
11 consistent with the requirements of s. 635.05, Stats., and s. Ins 19.60 (3) (d).

12 **Ins 19.40 Discrimination among employees prohibited.** (1) An insurer may not accept a
13 waiver of coverage, if the insurer, or an insurance intermediary for the insurer, reasonably should know
14 that the employer pressured or unfairly induced the employee or dependent of an employee to decline
15 coverage due to the individual's risk characteristics.

16 (2) An insurance intermediary shall notify an insurer in writing, prior to submitting an
17 application for coverage with the insurer on behalf of an employer, or prior to transmittal of a waiver, of
18 any circumstances that would indicate that the employer pressured or unfairly induced an employee or
19 dependent of an employee to decline coverage due to the individual's risk characteristics.

20
21 SUBCHAPTER II

22 SMALL EMPLOYER HEALTH INSURANCE

23 **Ins 19.50 Waiver of coverage under a small employer policy.** (1) An insurer issuing a
24 small employer policy shall, during the initial enrollment period, cover all the eligible employees and their
25 dependents, except an insurer may permit an individual to decline coverage in the initial enrollment period
26 if the insurer determines: *any...*

27 (a) The individual has coverage under a comprehensive health benefit plan or other
28 comprehensive health benefit arrangement, other than the plan established under ch. 149, Stats.;

1 (b) The individual elected coverage under another policy during an enrollment period
2 permitted under s. Ins 19.20 (2);

3 (c) The individual does not have a risk characteristic or other attribute that would be the sole
4 cause for the insurer to make a decision with respect to premiums policy that is adverse to the employer;
5 or

6 (d) The individual is not enrolled in the plan established under ch. 149, Stats., and the
7 annualized premium contribution to be paid by the eligible employe on behalf of the employe or the
8 dependent of the employe would exceed 10% of the annualized gross earnings of the eligible employe
9 from the employer.

10 (2) An insurer may permit an individual to decline coverage under a small employer policy
11 under sub. (1) only if the insurer complies with ss. Ins 19.40 and 19.65.

12 **Ins 19.55 Disclosure requirements.** (1) Before completing an application for a small
13 employer policy, an agent shall provide the small employer or representative of the small employer or the
14 individual applicant with a form stating the information required under s. 635.11 (1m) to (3m), Stats. The
15 agent shall sign and date the form certifying that he or she made the required disclosure and shall obtain
16 the signature of the small employer or representative of the small employer or the individual applicant on
17 the form. The agent shall give one copy of the completed form to the person who signed it. The agent or
18 small employer insurer shall retain one copy of the completed form.

8.40

19 (2) An insurer that solicits the sale or sells small employer policies without using agents shall,
20 with any solicitation material, provide the small employer or individual applicant with a form stating the
21 information required under s. 635.11 (1m) to (3m), Stats. The insurer shall secure with or as part of each
22 application a form signed by the small employer, a representative of the small employer or individual
23 applicant stating that he or she has received the information. The small employer insurer shall provide a
24 copy to the person who signed the form no later than the date the policy is issued.

25 **Ins 19.60 Regulation of rates.** (1) (a) Each insurer shall identify a set of rates applicable to
26 all combinations of case characteristics and benefit design characteristics that serves as the set of
27 midpoint rates for small employer policies. These rates shall be represented by any combination of rates
28 and rating factors that satisfy the following:

8.52

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

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

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

9 (2) An insurer may vary a rate for small employer policy from the midpoint rate applicable to
10 small employer policies with the same case characteristics and benefit design characteristics by no more
11 than 30%.

12 (3) (a) For the purpose of complying with s. 635.02 (3), Stats., and this section, "class of
13 business" means a group of policies with the same or similar benefit design whose rates are based wholly
14 or partly on their aggregate loss experience.

15 (b) An insurer shall maintain sufficient documentation so that each of the following distinct
16 components can be identified:

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

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

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

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

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

4 1. The experience component shall be limited to 15% per year, adjusted proportionately for
5 rating periods of less than one year.

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

10 (d) For a rate change made before the end of the policy term due to the addition of a new
11 entrant, late enrollee, or an individual eligible under s. 632.746 (6) or (7), Stats., par. (c) applies, except
12 that:

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

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

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

20 **Ins 19.65 Documentation of voluntary waiver.** (1) An insurer shall require each employer
21 that applies for a small employer policy, as part of the application process, to provide a complete list of
22 eligible employees and dependents of eligible employees of the employer. The insurer shall require the
23 employer to provide appropriate supporting documentation, such as the state unemployment or worker's
24 compensation quarterly reporting forms, to verify the information required under this section.

25 (2) An insurer shall secure a waiver signed by the eligible employee on behalf of the employee
26 or the dependent of the employee with respect to each eligible employee, and each dependent of an eligible
27 employee, who declines an offer of coverage under a small employer policy, whether during an initial
28 enrollment period or as a new entrant. The insurer shall include on the waiver and require: *all*

1 (a) A certification that the individual who declined coverage was informed of the availability of
2 coverage under the policy;

3 (b) That the reason for declining coverage be stated; and

4 (c) A written warning of the consequences which may be imposed on late enrollees.

5 (3) An insurer shall obtain, with respect to each individual who submits a waiver under sub.
6 (2) in connection with an initial enrollment period, information sufficient to establish that the waiver may
7 be accepted under s. Ins 19.50 (1).

8 (4) An insurer shall maintain waivers required under sub. (2), the information required to be
9 obtained under sub. (3) and notifications under s. Ins 19.40 (2), for a period of 3 years or until the policy
10 terminates, whichever is later.

11 (5) An insurer may not issue coverage to an employer that refuses to provide the list required
12 under sub. (1), a waiver required under sub. (2) or information required under sub. (3).

13 **Ins 19.70 Fraud or failure to pay premium.** An insurer is not required under s. 635.19 (1)
14 to issue a small employer policy to or through a small employer if:

15 (1) The insurer previously terminated a small employer policy issued to or through the small
16 employer;

17 (2) The insurer terminated the small employer for the reasons permitted under s. 632.749 (2)
18 (a) or (b), Stats.; and

19 (3) The effective date for the requested small employer policy is within one year of the
20 termination date of the previous small employer policy.

21 **Ins 19.75 Small employer certificate of compliance.** (1) The annual certification of
22 compliance required under s. 635.13, Stats., shall be submitted in the form prescribed by the office.

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

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

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

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

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

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

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

8 **Ins 19.80 Network plan guarantee issue standards.** An insurer limiting small employers
9 who may apply for coverage under s. 635.19 (2) (a) 1., Stats., may make this determination on any
10 uniform basis but only if it applies written standards which are reasonable and consistently applied to all
11 small employers without regard to health status or other underwriting criteria.

12 **Ins 19.90 Fair marketing standards in the small employer market.** (1) (a) Unless
13 otherwise permitted under par. (b), an insurer which offers or renews a small employer policy shall
14 actively market its health benefit plans to all small employers and without regard to the size of the small
15 employer group by: *doing all*

16 1. Actively marketing in each segment of the small employer market at least one form of a
17 policy which provides comprehensive health benefits.

18 2. Actively marketing in each area of the state at least one form of a policy which provides
19 comprehensive health benefits, except a small employer insurer may:

20 a. Limit marketing to the provider service areas for the health maintenance organization or
21 preferred provider plans if it limits the policies it offers to policies which are a health maintenance
22 organization plans or preferred provider plans; or

23 b. Limit its marketing of policies to selected areas which the small employer insurer can
24 demonstrate by clear and convincing evidence are selected for justifiable business reasons other than
25 desirable demographic characteristics related to risk selection.

26 (b) An insurer which markets and issues small employer policies only to small employers who
27 are eligible to participate in a bona fide association may limit marketing to only those small employers but
28 only if the insurer investigates and makes the determination required under sub. (5) (a).

1 (2) An insurer shall provide written notice of the benefits, preexisting condition waiting
2 periods, and enrollment information for each available small employer policy to each small employer who
3 applies within 10 working days of the date the insurer receives the small employer's application. The
4 insurer shall provide the notice directly or through an authorized insurance intermediary. The insurer
5 shall provide the small employer with sufficient copies of the notice to distribute to each eligible employee
6 and shall ask the employer to promptly distribute a copy to each eligible employee. The insurer shall make
7 reasonable efforts to obtain, within 20 business days after the insurer issues a health benefit plan to a
8 small employer, certification that the small employer promptly distributed the notice to all eligible
9 employees.

10 (3) (a) An insurer shall provide a price quote to a small employer directly or through an
11 authorized insurance intermediary within 15 working days of receiving a request for a quote and the
12 information necessary to provide the quote. An insurer shall notify a small employer directly or through
13 an authorized insurance intermediary within 7 working days of receiving a request for a price quote of any
14 additional information needed by the small employer insurer to provide the quote.

15 (b) A small employer insurer may not apply more stringent or detailed requirements related to
16 the application process for differing health benefit plans offered by the insurer to groups of equivalent
17 size.

18 (4) An insurer shall establish and maintain a toll-free telephone service to provide information
19 to small employers regarding the availability of small employer health benefit plans in this state. The toll-
20 free telephone service is not required to be dedicated to this purpose. The service shall provide
21 information to callers on how to apply for coverage from the insurer. The information may include the
22 names and phone numbers of insurance intermediaries actively marketing in the geographic area
23 proximate to the caller or other information that is reasonably designed to assist the caller to locate an
24 authorized insurance intermediary or to otherwise apply for coverage.

25 (5) An insurer may not require a small employer to join or contribute to a bona fide
26 association as a condition of being accepted for small employer policy but only if:

27 (a) The insurer investigates and determines the association is a bona fide association as
28 defined in s. 632.745 (3), Stats., and the requirements of this subsection are met;

- 1 (b) The requirement is reasonable and in compliance with s. 635.19 (5), Stats.;
- 2 (c) The requirement does not have the purpose of discouraging small employers from
- 3 applying for coverage;
- 4 (d) The requirement is not related to the health status or claim experience of the small
- 5 employer or employes or dependents of employees of small employers;
- 6 (e) The requirement is applied consistently to all small employers applying for coverage; and
- 7 (f) The insurer accepts all applications from small employers who join the bona fide
- 8 association.

9 (6) An insurer may not require, as a condition to the offer or sale of a small employer policy to
10 a small employer, that the small employer purchase or qualify for any other insurance product or service
11 or purchase or qualify for a health benefit plan which includes coverage other than health coverage.

12 (7) (a) An insurer offering group health insurance coverage through a trust or association or
13 individual health benefit plans in this state shall investigate and determine whether the plans or coverage
14 are subject to this subchapter, ss. 632.745 to 632.749, Stats., or ch. 635, Stats. An insurer shall obtain
15 the following information from applicants for individual and group health benefit plans at the time of
16 application and shall include the information on the application:

- 17 1. Whether or not any portion of the premium will be paid by or on behalf of a small employer,
- 18 either directly or through wage adjustments or other means of reimbursement;
- 19 2. Whether or not any portion of the premium will be collected by or with the cooperation of a
- 20 small employer; and
- 21 3. Whether or not the prospective policyholder, certificate holder or any prospective insured
- 22 individual intends to treat the health benefit plan as part of a plan or program under Section 162 [other
- 23 than Section 162 (1)], Section 125 or Section 106 of the United States internal revenue code.

24 (b) If an insurer violates par. (a), in addition to any penalty imposed for the violation, it is
25 presumed that any health benefit plan issued is a small employer policy.

26 (c) An insurer is not relieved from complying with ch. 635, Stats., and there is no presumption
27 that ch. 635, Stats., does not apply merely because the insurer has complied with the minimum obligation
28 to investigate the status of applicants imposed under this subsection.

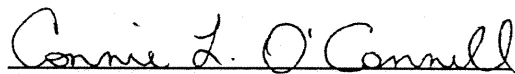
1 (8) A small employer insurer shall annually file information with the commissioner related to
2 health benefit plans issued by the small employer insurer to small employers in this state in the form
3 prescribed by the commissioner.

4 Note: Copies of forms referred to in this section may be obtained without charge from the
5 Office of the Commissioner of Insurance by sending a written request to P. O. Box 7873, Madison,
6 Wisconsin 53707-7873.

7 **SECTION 3.** These changes will take effect on the first day of the first month after
8 publication, as provided in s. 227.22 (2) (intro.), Stats.

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Dated at Madison, Wisconsin, this 18 day of May 1999.


Connie L. O'Connell
Commissioner of Insurance

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