



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott McCallum, Governor
Connie L. O'Connell, Commissioner
Wisconsin.gov

July 12, 2002

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HONORABLE JUDITH ROBSON
SENATE CO-CHAIRPERSON
JOINT COMM FOR REVIEW OF ADM RULES
SOUTH STATE CAPITOL RM 15
MADISON WI 53702

Re: Section Ins 8.52(4), Wis. Adm. Code, relating to publication of health insurance rates for small employers

Clearinghouse Rule No. 02-043

Dear Senator Robson:

I am enclosing a copy of this proposed rule which has been submitted to the presiding officers of the legislative houses under s. 227.19 (2), Wis. Stat. A copy of the report required under s. 227.19 (3), Wis. Stat., is also enclosed.

Sincerely,

Randy Blumer
Deputy Commissioner of Insurance

RB:SM
Attachment: 1 copy rule & legislative report

**PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE CREATING A
RULE**

To create Ins 8.52 (4), Wis. Adm. Code, relating to publication of health insurance rates for small employers.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 601.41, 635.05 (7) & 635.12, Stats.

Statutes interpreted: ss. 600.01, 635.05 (7) & 635.12, Stats.

Analysis: Section 635.12, Stats. (2001 Wisconsin Act 16) requires every small employer insurer to annually publish current new business premium rates in the manner and according to categories required by rule of the commissioner. The purpose of this proposed rule is to comply with this legislative mandate. The commissioner has determined that the most practical method of accomplishing this is to require small employer insurers to annually report their rates to the commissioner based on uniform criteria reported in a consistent format. Therefore the commissioner will provide a form for the small employer insurers to report rates. The form will follow the reporting criteria specified in this rule. The commissioner will publish the information gathered from all small employer insurers in a manner that will assist small employers to readily compare the rates. This publication will, by placing the information on OCI's website and in pamphlet form, be similar to other rate comparison documents currently in use for other forms of insurance. Small employer insurers who file rates with the commissioner as described in this rule will be in compliance with the requirements of s. 635.12, Stats. and need not publish the rates themselves.

SECTION 1. Section Ins 8.52 (4) is created to read:

(4) ANNUAL PUBLICATION OF RATES. (a) On or before December 1, every small employer insurer shall annually file with the commissioner the small employer insurer's lowest available monthly new business premium rates which will be in effect the following January 1. The filing shall be made on a form provided by the commissioner and shall require all of the following information as may apply to the type of plan offered:

1. For an indemnity plan, the rates shall be based on the insurer's plan that is closest to a plan that features a \$500.00 annual deductible and 80% / 20% coinsurance.
2. For a defined network plan, the rates shall be based on a plan which is actuarially equivalent to the features described in subd. 1.
3. For all plans, the rates shall be specified for family and single plans, by group size and by the geographical criteria that are used by the insurer.
4. The commissioner may require that additional information be provided in the form as appropriate to implement this subsection.

Note: The form (insert OCI form number for final draft) described in this subsection may be obtained without charge by contacting the Office of the Commissioner of Insurance PO Box 7873, Madison WI. 53707-7873. The form is also available on the OCI website at wi.oci.gov

(b) Small employer insurers who file rates with the commissioner as described in this subsection will be in compliance with the requirements of s. 635.12, Stats.

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

Dated at Madison, Wisconsin, this _____ day of _____, 2002

Connie L. O'Connell
Commissioner of Insurance



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott McCallum, Governor

Connie L. O'Connell, Commissioner

Wisconsin.gov

July 2, 2002

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REPORT ON Section Ins 8.52(4), Wis. Adm. Code, relating to
publication of health insurance rates for small employers

Clearinghouse Rule No 02-043
Submitted Under s. 227.19 (3), Stats.
The proposed rule-making order is attached.

(a) Statement of need for the proposed rule

see analysis to proposed rule

(b) Modifications made in proposed rule based on testimony at public hearing:

Wisconsin Association of Life & Health Insurers ("WALHI") and Wisconsin Association of Health Plans ("WAHP") made recommendations to publish rates based upon group size, geographical area, and other factors that are closest to a plan the insurer actually offers.

(c) Persons who appeared or registered regarding the proposed rule:

Appearances For:

Joe Kachelski, Deputy Director, WAHP

Appearances Against:

None

Appearances For Information:

Mary Haffenbredl, Atrium Health Plan

Registrations For:

None

Registrations Against:

None

Registrations Neither for nor against:

Mary Haffenbredl, Atrium Health Plan

Letters received:

Joe Kachelski, Deputy Director, WAHP & Allan Patek, President, WALHI

(d) Response to Legislative Council staff recommendations

All comments were complied with and corrected except the following:

Comment 1. a.

Publishing ALL small employer insurer rates would create confusion and inhibit comparisons because each plan's features would vary. Publishing one rate for each insurer for a plan with similar features facilitates comparison. Each insurer's rates for other plans may be inferred from this data. The analysis now describes how the commissioner will publish this data on its website and in pamphlet form.

Comment 1. b.

The proper reference to "this subsection" is included. New insurance policies and other market changes may necessitate format and data adjustments that are impractical and unnecessary to accomplish by additional rule changes. The rule allows the commissioner to adjust the reporting of the data on which insurer rates are based. This additional data will remain within the parameters of this rule and will not exceed the statutory authority conferred on the commissioner.

Comments 5. d. & e.

Indemnity plan and defined network plan does constitute the universe of plans subject to s. 635.12, Stats. The omission of sex and occupation as criteria was intentional as that information is not relevant to rate determination. The reference to location has been changed as suggested.

Comment 5. c.

This rule requires reporting of data to be published at a later time. Therefore the rule is effective December 1, 2002 with publication in 2003 of the rates that will be effective in 2003. The rule is timed carry out the legislative requirement.

(e) Regulatory flexibility analysis

1. None of the methods specified under s. 227.14 (2), Stats., for reducing the rule's impact on small businesses were included because all must be treated equally and thus it is not possible to have different rules for one segment of the population.
2. No issues were raised by small businesses during the hearing on the proposed rule.
3. The proposed rule does not impose any additional reporting requirements on small businesses.
4. The proposed rule does not require any additional measures or investments by small businesses.
5. No methods specified under s. 227.114 (2), Stats., are included in the proposed rule.
6. No methods specified under s. 227.114 (2), Stats., are included in the proposed rule.

(f) Fiscal Effect

See fiscal estimate attached to proposed rule.

Enclosure: Legislative Council Staff Recommendations

852 Rule Legislative Report 1.Doc



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

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 02-043

AN ORDER to create Ins 8.52 (4), relating to publication of health insurance rates for small employer health insurance.

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

04-05-02 RECEIVED BY LEGISLATIVE COUNCIL.

04-25-02 REPORT SENT TO AGENCY.

RS:JLK:tlu;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 NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02-043

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.]

I. Statutory Authority

a. Section 635.12, Stats., requires every small employer insurer to publish its current new business premium rates in the manner and according to categories required by administrative rule promulgated by the Commissioner of Insurance (Commissioner). "New business premium rates" means the premium rate charged or offered to small employers with similar case characteristics in the same class of business for newly issued health insurance with the same or similar benefit design characteristics. [s. 635.02 (5), Stats.]

It appears that a small employer insurer may offer more than one health benefit plan. However, s. Ins 8.52 (4) (a) (intro.) requires a small employer insurer to file only its lowest available new business rates. The statutes appear to require that a small employer insurer publish all of its new business premium rates, rather than only its lowest rates.

Also, s. 635.12, Stats., requires that the small employer insurer publish the new business premium rates. In contrast, the rule proposes that the Commissioner will publish all of the information submitted in a manner that will assist small employers to readily compare the rates. The analysis does not indicate how the Commissioner intends to publish this information. Is information available about this?

b. Section Ins 8.52 (4) (a) 4. indicates that the Commissioner may specify additional features to be included in the report as appropriate to implement "this section." Section Ins 8.52 relates to regulation of rates and rate changes in general. It appears that the intention was to

indicate that the Commissioner may specify additional features to be included in the report as appropriate to implement only s. Ins 8.52 (4), rather than all of s. Ins 8.52. If so, the correct reference would be to "this subsection."

However, the larger problem with s. Ins 8.52 (4) (a) 4. is that an administrative rule should not be used to bootstrap additional requirements that are not included in the rule by simply indicating that an agency may later develop policies. Any later developed policies are subject to the rule-making process. [See generally ss. 227.01 (13) and 227.10 (1), Stats.] How does the Commissioner intend to specify the additional features?

2. Form, Style and Placement in Administrative Code

a. Section Ins 8.52 (4) (intro.) indicates that the filing must be on a form provided by the Commissioner. A reference to the form and how to obtain a copy of the form at no charge (or on the Internet, if available) should be included in a Note. [See s. 1.09 (2), Manual.] Also, the form should either be attached to the rule or a statement should be included indicating where a copy of the form may be obtained. As the form was not submitted to the Rules Clearinghouse, this report does not include comments on the content of the form.

b. In s. Ins 8.52 (4) (b), "this rule" should be changed to "this subsection." [See s. 1.07 (1) (a), Manual.]

c. The effective date of the rule should not pre-date the effective date of the underlying statute.

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

a. In the first sentence of s. Ins 8.52 (4) (a) (intro.), it would be helpful if the introductory phrase "On or before December 1" were followed by a comma. It also would be helpful to set off the introductory phrases in s. Ins 8.52 (4) (a) 1., 2., and 3. with a comma.

b. In the first sentence of s. 8.52 (4) (a) (intro.), "new business rates" should be changed to "new business premium rates" to be consistent with ss. 635.02 (5) and 635.12, Stats.

c. In s. Ins 8.52 (4) (a) 1., the hyphen in "co-insurance" should be deleted in order to make the word consistent with other provisions in ch. Ins 8, e.g., s. Ins 8.77. Also, "80/20" should be changed to clarify that this is a percentage. For example, changing it to "80% coinsurance" would make it consistent with other references to coinsurance in ch. Ins 8.

Also, is the reference to 80/20 coinsurance accurate? Should it be 80% of a certain amount of charges and then a different coinsurance rate after a certain amount has been paid, for example, see s. Ins 8.77 (3) (a) 1. and 2.?

d. Section Ins 8.52 (4) (a) 1. and 2. refer respectively to an indemnity plan and defined network plan. Does this constitute the universe of small employer health insurers subject to s. 635.12, Stats.? If not, what provisions apply to other plans?

e. Section Ins 8.52 (4) (a) 3. requires that the rates be specified for family and single plans by age and by geographical location of the small employer insurer. However, it is noted that s. 635.02 (2), Stats., also includes sex and occupation as characteristics that may be used to determine premium rates for a small employer. Was the omission of sex and occupation intentional?

Also, the reference to geographical location of the small employer insurer is confusing in that it suggests that it is the location of the insurer at issue, rather than the geographic location used by the insurer to determine premium rates. [See s. 635.02 (2) and (3j), Stats.] It appears that it would be more accurate to change "by geographical location of the small employer insurer" to "geographic location used by the small employer insurer."

f. Section Ins 8.52 (4) (a) 4. refers to additional features to be included in the "report." It appears that the reference should be to the form, rather than to a report. (However, see, 1. b., above.)

g. The proposed order states that it was signed on April 4, 2000. It appears that this date should be April 4, 2002.

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ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

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1. For an indemnity plan the rates shall be based on a plan with a \$500.00 annual deductible and 80/20 co-insurance.

forms

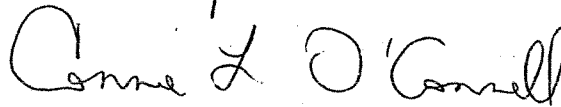
2. For a defined network plan the rates shall be based on a plan which is actuarially equivalent to subd. 1.
3. For all plans the rates shall be specified for family and single plans by age and by geographical location of the small employer insurer.
4. The commissioner may specify additional features to be included in the report as appropriate to implement this section.

(b) Small employer insurers who file rates with the commissioner as described in this ~~rule~~ will be in compliance with the requirements of s. 635.12, Stats.

subsection

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

Dated at Madison, Wisconsin, this 4 day of April, 2000.



Connie L. O'Connell
Commissioner of Insurance