



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 14-071

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

1. Statutory Authority

a. It appears that the limitation on total billing in s. Ins 16.01 (4) (d) should be removed. Section 617.215 (3), Stats., requires insurers to “cover” all expenses for the commissioner’s participation in supervisory colleges. The statute requires only that the expenses must be “reasonable”, and does not provide a formula cap for the expenses that may be billed to insurers.

b. The confidentiality provision in s. Ins 40.02 (1) (c) should be reviewed and revised to more closely follow the confidentiality provisions of s. 601.465, Stats. Alternatively, as confidentiality for this section is also addressed in s. Ins 40.05 of the proposed rule, the confidentiality provision could be removed from this section, or a reference could instead be made to s. Ins 40.05.

c. The confidentiality provision in s. Ins 40.03 (9) (b) should more precisely state that any copy of an enterprise risk report “in the commissioner’s possession” is not subject to subpoena, discovery, or use as evidence in a private civil action. It does not appear that the commissioner has authority to prohibit legal process involving a report that is in the possession of any other person.

d. It appears that the waiver provision in s. Ins 40.03 (9) (c) should be removed. Section 617.12 (2), Stats., applies to all insurers, and does not provide any exceptions.

2. Form, Style and Placement in Administrative Code

a. The introductory clause should be updated to reflect any revisions made in accordance with these comments, and to more specifically describe the treatments actually prescribed by the rule. For example, the creation of s. Ins 40.01 (4m) should be specifically listed in the enumeration of sections affected by the proposed rule. It is insufficient to refer generally to the amendment of s. Ins 40.01 when the actual treatments to that section include multiple instances of amendment and creation. [s. 1.02 (1), Manual.]

b. In s. Ins 40.01 (4m) and (7), the phrase “given in” should replace both instances of the phrase “provided under”. [s. 1.01 (7) (d), Manual.]

c. In ss. Ins 40.02 (1) (a) 1., (b) 1., (2) (a) 1. and 2., 40.025 (2) (d) 1. and 2., (4) (b) 2. a. and b., 3. a. and b., 40.03 (3) (a) to (g), and 40.04 (1) (a), (2) (a) to (c) and (e), each subunit should end with a period, rather than a comma or semicolon, and the word “and” or “or” should be removed. [s. 1.03 (4), Manual.]

d. In s. Ins 40.02 (1) (b) (intro.), the phrase “if all of the following apply” should replace the phrase “only if”. [s. 1.03 (3), Manual.]

e. In s. Ins 40.02 (2), par. (l) should be designated with the capital letter “L”, as “(L)”. [s. 1.03 (2) (d), Manual.] Also, a period should replace the semicolon at the end of the paragraph.

f. In s. Ins 40.025 (1), the phrase “In this section,” should replace “For this section.”. Also, the phrase “but is not limited to” should be removed. [s. 1.01 (7) (d), Manual.]

g. In ss. Ins 40.025 (2) (b), (d) 1. and 3., (4) (b) 1. (intro.), 1. b., 2. (intro.), 2. c., 40.03 (9) (a), and form A (Item 13), each number, including a percentage, should be expressed using only an Arabic numeral, and each spelled out number and the parentheses enclosing the Arabic numeral should be removed. [s. 1.01 (5), Manual.]

h. In s. Ins 40.025 (2) (d) (intro.), the phrase “; any of the following applies” should be inserted after the word “acquisition”. [s. 1.03 (3), Manual.]

i. In s. Ins 40.025 (2) (d) 3., the definition of a “market” should be removed from this subdivision and placed in a subunit with a proper internal reference for its applicability. For example, if the definition applies to par. (d), as indicated, a definition could be created in that introduction, to state that, “In this paragraph, a ‘market’ means....”. If the definition also applies to sub. (4), the definition could instead be created in sub. (1).

j. It appears that s. Ins. 40.025 (3) should be renumbered as its own section. The introduction states that the notification requirement applies to mergers and acquisitions under both ss. Ins 40.02 and 40.025. If that is so, the requirement would be more logically placed in its own section, rather than under s. Ins 40.025, which applies in different instances than s. Ins 40.02. Additionally, the reference in s. Ins 40.02 (1) (d) should be revised to more precisely reference sub. (3) of s. Ins 40.025, or a new section if one is created for this notification requirement.

k. Is the standard for disapproval given in s. Ins 40.025 (4) meant to also apply to mergers and acquisitions under s. Ins 40.02? If so, that should be stated and the subunit should be renumbered as its own section. If a different standard applies, then the separate standard should be given in s. Ins 40.02.

l. In s. Ins 40.025 (4) (b) 1. b., an undesignated paragraph appears after the subdivision paragraph. The paragraph should be placed in a subunit with a proper internal reference for its applicability. For example, if the paragraph applies to all of the subdivisions in par. (b), a definition could be created in that introduction, to state that, “In this paragraph, a ‘highly concentrated market’ is”. Also, the phrase “In this paragraph” should replace the phrase “For purpose of this item”.

m. In s. Ins 40.025 (4) (b) 3. (intro.), the phrase “In this paragraph” should replace the phrase “For the purposes of par. (b)”. [s. 1.01 (7) (a), Manual.] Also, consider consolidating the definitions in this subdivision with the definitions given in subs. (2) (d) 3. and (4) (b) 1. b., under s. Ins 40.025 (1), and combining the two separate definitions given for a “market”.

n. In s. Ins 40.025 (4) (b) 3. b., the acronym “NAIC” should either be written out or be given a definition under s. Ins 40.01. [s. 1.01 (8), Manual.] If a definition is created for the acronym, the acronym could replace the full association name referenced in ss. Ins 40.02 (6) and 40.03 (9) (a).

o. In s. Ins 40.04 (2) (c), the phrase “, but not limited to,” should be removed. [s. 1.01 (7) (d), Manual.]

p. In s. Ins 40.11 (1), the amendment to the list of forms should appear as follows: “A, B, C, ~~and~~ D, E, and F”. [s. 1.06 (1) (a), Manual.]

q. The treatment of s. Ins. 40.13 should be separated into three separate SECTIONS of the proposed rule as follows:

(1) “Ins 40.13 (title) is amended to read:”. [Show amended title.]

(2) “Ins 40.13 (1) is repealed.”. [No text shown.]

(3) “Ins 40.13 (2) and (3) are renumbered (1) and (2), and, as renumbered, Ins 40.13 (1) (intro.) is amended to read:”. [Show amended introduction.]

r. In form B (Item 4), the underscoring of the period at the end of the paragraph should be removed.

s. In the treatment clause for form C, the word “(title)” should be inserted after the words “Form C”. Then, the text of the proposed rule should show the amended title, and the text of form C should be removed. [s. 1.05 (3) (a), Manual.]

t. In form D (Item 6 (g)), the underscoring of the period at the end of the paragraph should be removed.

u. The SECTION creating form AA should be renumbered to follow sequentially from the preceding SECTION, and the subsequent SECTIONS should be renumbered accordingly.

v. In the text of the proposed rule, the treatment of s. Ins 16.01 (4) (d) should be moved to appear before the treatment of sections in ch. Ins 40, according to the numerical order of the provisions. [s. 1.04 (1) (intro.), Manual.]

w. In SECTION 23 of the proposed rule, insert a treatment clause and designate an affected code section. [s. 1.04 (1) (b), Manual.]

x. In SECTION 24 of the proposed rule, the following revisions should be made as shown in s. 1.02 (4) (a) (ex.), Manual:

- (1) The title "EFFECTIVE DATE." should be inserted after the SECTION number.
- (2) The phrase "This rule shall" should replace the phrase "These changes will".
- (3) The phrase "in the Wisconsin Administrative Register" should be inserted after the word "publication".

4. Adequacy of References to Related Statutes, Rules and Forms

a. In both the rule summary's listing of statutes interpreted and the listing of statutory authority, the following revisions should be made:

- (1) It appears that a reference to sub. "(3)" should be inserted after "617.215".
- (2) The reference to s. "601.48" should be placed in numerical order, and the reference to subs. "(1), (2)" should be removed as those are the only two subsections of that section.
- (3) The final reference to s. "601.45 (1)" should be removed, as that final reference repeats the reference already given in the list to that section.

b. In the rule summary's explanation of agency authority, a reference to s. "617.12 (2)" should be inserted in the list of statutes that provide specific rule-making authority, and an explanation should be provided in the same manner as explanations are provided for other specific sections.

c. In s. Ins 40.02 (1) (c), the reference to a "statement" under "par. (a)" is unclear, as par. (a) does not contain a requirement for a "statement." Is this intended to refer, instead, to sub. (2)?

d. In s. Ins 40.02 (2) (L), the reference to a "statement" under "sub. (1)" is unclear, as sub. (1) does not contain a requirement for a "statement". Is this intended to refer, instead, to a "person required to file" under sub. (1)? Also, the phrase "Wis. Adm. Code," should be removed. [s. 1.07 (2) (Note), Manual.]

e. In s. Ins 40.02 (2) (m), the reference to a "statement" under "sub. (1)" is again unclear, as sub. (1) does not contain a requirement for a "statement". Instead, it appears that the word "under" could replace the phrase "the statement referred to in".

f. In s. Ins 40.02 (2) (n), the word ", Stats." should be inserted after the reference to "s. 645.21". [s. 1.07 (2) (Table), Manual.]

g. In s. Ins 40.025 (2) (b), the phrase "this subsection" should replace "sub. (2)". [s. 1.07 (2) (Table), Manual.]

h. In s. Ins 40.025 (4) (b) (intro.), 1. b., and 2. (intro.), each instance of the phrase "of this subsection" should be deleted. [s. 1.07 (2) (Table), Manual.]

i. In s. Ins 40.025 (4) (b) 4., the phrase "this paragraph" should replace both references to "par. (b)". [s. 1.07 (2) (Table), Manual.]

j. In ss. Ins 40.03 (9) (a) and 40.20, the phrase “in the appendix to this chapter” should be inserted after each reference to “form F”, in the same manner that the appendix forms are referenced in other sections of the proposed rule.

k. In s. Ins 40.03 (9) (c), the word “paragraph” should replace the reference to “par. (c)”. [s. 1.07 (2) (Table), Manual.] Also, the word “otherwise” before “exempted” should be removed.

l. In s. Ins 40.04 (1) (a), the phrase “, and sub. (6);” should be removed, as sub. (6) is a provision for the commissioner’s disapproval of a transaction, and is not an element of compliance. Then, the phrase “Notwithstanding compliance with sub. (1),” should be inserted at the beginning of sub. (6).

m. In s. Ins 40.04 (2) (d) 11. (intro.), 12., and 13., the word “Stats.” should be inserted after each reference to “ch. 645”. [s. 1.07 (2) (Table), Manual.] Also, in subd. 13., the abbreviation “ch.” should replace the word “chapter”.

n. In s. Ins 40.20, the phrase “, Wis. Adm. Code,” should be removed. [s. 1.07 (2) (Note), Manual.]

o. In form A (Item 12 (a)), the word “Stats.” should replace the phrase “Wis. Stat.”. [s. 1.07 (2) (Table), Manual.]

p. In form D (Item 2 (c)), the word “, Stats.” should be inserted after the reference to “s. 617.21”. [s. 1.07 (2) (Table), Manual.]

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

a. In the rule summary’s plain language analysis and summary of the proposed rule, the first instance of the acronym “NAIC” should be written out, and the acronym should be enclosed in parentheses.

b. Throughout the text of the proposed rule, review the use of the word “which”. If the description following the word “which” adds a specific clause that limits and defines the application of the phrase that is being modified, then the word “that” should replace “which”. For example, the introductory phrase in s. Ins 40.04 (1) (intro.) should appear as follows: “An insurer, or affiliate of an insurer, that is required to register under s. Ins 40.03 may not...” [Strunk, Wm., Jr. and White, E.B., *The Elements of Style*, 3rd ed., “Words and Expressions Commonly Misused”.]

c. In s. Ins 40.02 (1) (b) 2., should the word “and” before the reference to “s. 617.21” be replaced with the word “or”? If so, the prior instance of the words “or” and “Stats.” should be removed. Also, a reference to “s.” should replace “ss.” at the beginning of the list of statutes.

d. In s. Ins 40.02 (1) (d), the word “shall” should replace the word “must”.

e. In s. Ins 40.02 (5), the second instance of the word “information”, after the word “file”, should be removed.

f. In s. Ins 40.025 (3) (intro.), the word “under” or the phrase “described in” should replace both instances of the phrase “pursuant to”.

g. In s. Ins 40.025 (4) (a), it appears that the phrase “shall review and” should be inserted after “commissioner”. Also, the phrase “to substantially” should replace the phrase “substantially to”.

h. In s. Ins 40.025 (4) (c), consider revising the phrases “not disapprove” and “not lessening” to be expressed in positive form, for example, “approve” and “preserving”. [s. 1.01 (1), Manual.]

i. In s. Ins 40.03 (3) (intro.), the phrase “on the forms and in a format” should be removed or revised, as under s. Ins 40.11 (1) the information is not to be provided directly “on” the forms, and s. Ins 40.15 does not provide the “format”. The rules instead require the “information” on the forms to be provided.

j. In s. Ins 40.04 (1) (b), the following revisions should be made:

(1) The word “Allocate” should be inserted before the word “Expenses”, and “Expenses” should not be capitalized.

(2) The phrase “are allocated” should be removed.

(3) The segue to par. (c), “; and”, should be removed. [s. 1.03 (4), Manual.]

(4) Paragraph (c) should be separated from par. (b), into its own paragraph.

(5) The word “Disclose” should be inserted before the phrase “The books”, and “The” should not be capitalized.

(6) The word “with” should replace the word “disclose”, before the phrase “the nature and details”.

k. In s. Ins 40.04 (2) (intro.), the word “shall” should replace the word “will”.

l. In s. Ins 40.04 (2) (d) (intro.), the word “do” should replace the word “contain”.

m. In s. Ins 40.04 (4), consider defining or describing what is meant by “related transactions”.

n. In form D (Item 6 (f)), the semicolon after the word “and” should be removed.

o. In form D (Item 6 (g)), it appears that the word “of” should replace the first instance of the word “regarding”.

p. In form F, consider removing the slashed alternative in each instance of the phrase “Registrant/Applicant”. Instead, determine whether the phrase means “and” or “or” and use the appropriate word. [s. 1.01 (9) (a), Manual.]

q. In s. Ins 16.01 (4) (d), the “insurers” should be referred to in the singular, the duplicative reference to “expense” should be removed, and the references to par. (a) and sub. (4) should be revised. Also, the reference to “any one year” may be broader than intended; is this intended to apply to the estimated costs for the applicable fiscal year, in the same manner as phrased in sub. (3) (a)? Hence, the paragraph could appear as follows:

A domestic insurer that is a member of a holding company system that is the subject of a supervisory college shall be billed as determined under par.

(a) and applied under sub. (3) (a), adjusted for the additional reasonable expense associated with the commissioner's participation in supervisory colleges. This adjustment may be in addition to any adjustment under par. (b), however, total billing to a domestic insurer shall not exceed the estimated cost of administering the insurer examinations program for that year determined under par. (a) and applied under sub. (3) (a).