

Chapter Ins 8

EMPLOYE WELFARE FUNDS; EMPLOYE BENEFIT PLANS

Subchapter I — Employee Welfare Funds		Ins 8.09	Preservation of records (p. 453)
Ins 8.01	Receipt of payments from funds by parties-in-interest (p. 447)	Ins 8.10	Advisory council on employee welfare plans (p. 453)
Ins 8.02	"Trust fund or other fund", definition (p. 448)	Ins 8.11	County and school district self-insured employee health care benefits: excess or stop-loss insurance requirements (p. 454)
Ins 8.03	"Employee benefits", definition (p. 450)	Subchapter II — Employee Benefit Plan Administrators	
Ins 8.04	Registration requirements (p. 450)	Ins 8.20	Purpose (p. 464)
Ins 8.05	Registration cancellation (p. 451)	Ins 8.22	Definitions (p. 464)
Ins 8.06	Annual statement and notice of number of fund participants in Wisconsin, when required (p. 451)	Ins 8.24	Exemptions (p. 465)
Ins 8.07	"Persons employed in this state" (p. 462)	Ins 8.26	Licensing (p. 465)
Ins 8.08	Availability of information to fund participants (p. 462)	Ins 8.28	Performance bond requirements (p. 466)
		Ins 8.30	Notification to office (p. 467)
		Ins 8.32	Audit (p. 468)

Note: Sections Ins 8.20 to 8.32 were created as emergency rules effective October, 1, 1991.

Ins 8.01 Receipt of payments from funds by parties-in-interest. (1) Section 641.19 (2), Stats., prohibits certain persons who are or may be in a position to influence the operations of an employee welfare fund from engaging in certain transactions with such fund or which affect such fund directly or indirectly. The parties to whom the prohibition is directed are the trustees of the fund, the participating employers, the labor organizations representing any employees covered by the fund, and the officers, agents and employees of such trustees, employers and labor organizations. One of the prohibitions placed upon such parties is the receipt of any payment, commission, loan, service or any other thing of value from the fund or which is charged against the fund or would otherwise be payable to the fund, either directly or indirectly. This prohibition does not extend to the receipt of benefits from the fund by any such party who is entitled thereto under the plan nor does the statute prohibit a trustee or officer, agent or employee from receiving from the fund reasonable compensation for necessary services and expenses rendered or incurred in connection with official duties in respect to the fund.

(2) The prohibition applied to receipts by the specified parties from the fund. The penalties for engaging in a transaction prohibited by s. 641.19 (2), Stats., would be enforceable against the persons named therein rather than against the fund. Accordingly it may be said that s. 641.19 (2), Stats., does not govern investments by a fund but rather governs the specified parties in their dealings with a fund.

(3) The law does not prohibit the trustees of a fund from investing fund monies in any certain way but it does prohibit trustees and other specified persons who may be in a position to influence the transactions of a fund from using their positions to enrich themselves at the expense of a fund either directly or indirectly. At the same time, the law does not alter the duty of trustees clearly established in other laws, both statutory and common, to manage funds exclusively for the purpose of providing the employee benefit promised.

(4) At the time of the enactment of this law, transactions between funds and participating employers, employees and labor organizations were an established practice. The internal revenue code of the United States recognizes that many such transactions may be entered into without impairing the tax status of such funds. Many of the trust agreements under which such funds are established and maintained specifically authorize the trustees to engage in such transactions on behalf of the funds. We do not interpret the law to prohibit all such transactions. What is prohibited is the receipt by any specified party of a payment, commission, loan, service or any other thing of value from a fund under such circumstances that at least an equivalent value in money's worth is not received by the fund from such person as a part of such transaction.

Note: In the following examples the receipt of a valuable consideration by the party as specified would not appear to be prohibited in the stated circumstances. These examples are not intended to be all-inclusive.

1. Receipt from a fund by a participating employer or labor organization of reasonable compensation for the fair value of necessary services rendered to the fund or for the actual cost of necessary expenses incurred for or on behalf of the fund.

2. Receipt from a fund by a participating employer or labor organization of payment for necessary real property or equipment sold or leased to the fund for use in the operations of the fund in an amount not in excess of the fair market value of such property or equipment at the date of sale or the fair rental value at the date of lease. Any facts known to such an employer or labor organization which would influence such market or rental value must necessarily be considered in determining the fair value at such date.

3. Purchase or lease of real estate or equipment from a fund by a participating employer or labor organization if such purchase or lease is made at arms-length on such terms and conditions as would be required at such time by an independent financial institution or other business organization engaged in such transactions which has knowledge of all facts pertinent thereto which are known by such employer or labor organization. If the terms and conditions required by such organizations cannot be established, the terms and conditions should be equivalent to those which would be granted by any independent vendor or lessor having knowledge of all pertinent facts known to such employer or labor organization and considering both the probable income and probable safety of his or her capital.

4. Receipt by a participating employer or labor organization of a loan from a fund if such loan is made at arms-length according to such terms and conditions, including the rate of interest and duration of the loan and the nature and amount of security pledged therefor, as would be required at such time by an independent financial institution or other business organization engaged in making such loans which has knowledge of all facts pertinent thereto which are known by such employer or labor organization.

5. Receipt by a participating employe of a loan from a fund if such loan would meet the requirements of a loan to a participating employer or labor organization as specified in example 4. above.

6. Purchase of securities or other investments from a fund by a participating employer or labor organization if made for not less than an adequate consideration to the fund. An "adequate consideration" means the price which would be paid at such time by an independent buyer having knowledge of all facts pertinent thereto which are known to such employer or labor organization. Such value may be established by an impartial appraisal of the investment if such value cannot be established by reference to bid and asked prices or by reference to sales prices.

7. Sale of securities or other investments to a fund by a participating employer or labor organization if made for not more than an adequate consideration as defined by example 6. above.

8. Purchase from or sale to a fund by a participating employer of its capital stock if in accord with conditions described in examples 6. and 7. above.

History: Cr. Register, August, 1960, No. 56, eff. 9-1-60; am. (1) and (2), Register, November, 1978, No. 275, eff. 12-1-78; corrections made under s. 13.93 (2m) (b) 5., Stats., Register, April, 1992, No. 436.

Ins 8.02 "Trust fund or other fund", definition. (1) A "trust fund or other fund" constituting an employe welfare fund subject to ch. 641, Register, April, 1992, No. 436

Stats., exists where a trustee or trustees, a committee, or other party is designated jointly by one or more employers together with one or more labor organizations, solely by any employer or labor organization, or jointly by employers, or jointly by labor organizations to provide employe benefits a) under an agreement describing their responsibilities and duties, and b) from monies or other property under their control specifically segregated to provide such employe benefits.

(2) A fund, program or plan of employe benefits under which benefits are paid to participants directly out of the general funds of an employer or labor union without the actual segregation of monies or other assets to meet liabilities for benefits does not operate through means of a "trust fund or other fund". This is true although a balance sheet reserve account may be maintained for such estimated liabilities. A common plan of such type is a plan of continuation of wages in the event of sickness or accident.

(3) A fund, program or plan of employe benefits in which all benefits are provided through insurance contracts issued to an employer or labor union under which premiums are paid out of the general funds of such employer or union directly to the insurance carrier without the interposition of trustees or a fund, although employes may contribute through payroll deductions or otherwise, does not operate through means of a "trust fund or other fund".

(4) Under certain forms of insurance or annuity contracts available to pension plans, insurers guarantee that benefits will be paid to participants only to the extent that a fund or account held by them will be sufficient to provide them. Under such contracts, amounts are paid to the insurer for credit to a deposit or accumulation account. The balance in this account is held as a deposit subject to future determinations by the policyholder as to its disposition. Deposit administration contracts with variations thereof, such as immediate participation guarantees, are a common form of contract under which such unallocated funds or accounts are held. Also unallocated funds may be held to supplement or convert, at retirement, reserves under other forms of insurance or annuity contracts. This is common under forms of life or group permanent contracts. Funds, programs or plans of employe benefits which provide benefits through such unallocated funds or accounts held by insurers operate through a "trust fund or other fund". Such funds, programs or plans constitute employe welfare funds under the law irrespective of the parties and methods through which premiums are paid under sub. (3).

(5) A fund, program, or plan of employe benefits operating under a custodian or trust agreement under which a custodian receives employer contributions and purchases shares in an investment trust or other similar arrangement of pooling moneys for investment purposes constitutes an employe welfare fund if:

(a) The custodian holds such shares for the fund, program, or plan pending receipt of distribution instructions to be received when a participant in the plan qualifies for a benefit distribution, and

(b) The employer contributing to the plan determines when an employe is to be enrolled under the plan and qualifies for a benefit distribution.

(6) Where a trust or fund receives contributions from more than one employer and these contributions are commingled for investment purposes, a separate employe welfare fund exists for each employer segment of the trust if separate computations or allocations are made to each employer segment of the trust for the benefit cost, insurance experience, or gains from forfeited benefits arising from participants.

(7) Where a trust or fund is established by one employer to hold moneys for 2 or more employe benefit plans for different groups of employes of that employer, one fund exists if all the assets of the trust or fund are available for benefit payments under any of the plans. Where separate accounting is required to be maintained by the trustee, so that only a designated portion of the total trust is available for benefit payments under each plan, an employe welfare fund exists for each plan portion of the trust or fund.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; cr. (4), (5), (6), Register, October, 1963, No. 154, eff. 11-1-63; am. title, (1) (a), (b), (c) and (d); r. (2) intro. and (a); renum. (2) (b) to be (2), (2) (c) to be (3); r. (2) (d); renum. (3) to be (4) and am.; renum. (4), (5), and (6) to be (5), (6) and (7), Register, December, 1970, No. 180, eff. 1-1-71; am. (1), Register, November, 1978, No. 275, eff. 12-1-78; correction made under s. 13.93 (2m) (b) 5, Stats., Register, April, 1992, No. 436.

Ins 8.03 "Employe benefits", definition. (1) The term "employe benefits" under s. 641.07 (2), Stats., must be broadly construed. The definition covers both benefits and services. Section 641.07(2), Stats., declares that the type of benefits covered by the law are not limited to those specifically enumerated therein.

(2) Section 641.07(2), Stats., enumerates 4 classes of benefits as being among the forms of benefits covered by the law. These are:

- (a) Medical, surgical or hospital care or benefits.
- (b) Benefits in the event of sickness, accident, disability or death.
- (c) Benefits in the event of unemployment.
- (d) Retirement benefits.

(3) Other types of benefits commonly offered to employes which are covered by the law include:

- (a) Deferred benefits from profit-sharing savings or stock bonus plans.
- (b) Benefits upon termination of employment.
- (c) Vacation benefits.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1) and (2), Register, November, 1978, No. 275, eff. 12-1-78.

Ins 8.04 Registration requirements. (1) Every employe welfare fund within the meaning of s. 641.07 (1), Stats., must be registered with the commissioner of insurance within 3 months after the first day on which coverage is provided for any person employed in Wisconsin. For purposes of computing the time in which to register a fund in which the plan is back-dated or provides coverage to participants retroactively, the plan should be construed to provide coverage as of the date of its formal establishment.

(2) Registration shall be made on form No. 71-3. A fund which covers more than 25 persons employed in Wisconsin at the time of registration

Register, April, 1992, No. 436

must file a copy of the following documents, if applicable, as a part of such registration:

- (a) Plan, as amended to date
- (b) Trust indenture, as amended to date
- (c) Any separate contract or other instrument under which the fund is administered
- (d) Collective bargaining agreement(s), or provisions thereof relating to the fund, as currently in force
- (e) Any booklet or other written material descriptive of the fund which is given or made available to employees

(3) An employe welfare fund which does not cover more than 25 persons employed in Wisconsin at the time of registration is not required to submit copies of fund documents when registered; however, if subsequently it provides coverage to more than 25 persons employed in Wisconsin, the fund documents must be submitted with the annual statement for the first year in which more than 25 persons employed in Wisconsin are covered.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1), Register, November, 1978, No. 275, eff. 12-1-78.

Ins 8.05 Registration cancellation. When a registered employe welfare fund is merged or consolidated with another fund, or is terminated, or ceases to cover any person employed in Wisconsin, the trustee of such fund must file written notice of such action with the commissioner of insurance within 30 days after its occurrence. Such notice shall be verified by the oath of the trustee of the fund, or if there is more than one trustee, then by the oaths of at least 2 trustees. If more than 25 persons employed in Wisconsin were covered by such fund, the notice shall include a certified true copy of the resolution of the trustees or of the board of directors of the employer or similar authority under which such action was taken.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62.

Ins 8.06 Annual statement and notice of number of fund participants in Wisconsin, when required. (1) An annual statement on form No. 71-9 must be filed under s. 641.13, Stats., by the trustee of every employe welfare fund subject to ch. 641, Stats., for each fiscal year of the fund during which coverage is provided to more than 25 persons employed in Wisconsin. The annual statement must be filed within 5 months after the close of the fiscal year of the fund.

(2) The trustee of every employe welfare fund subject to ch. 641, Stats., within 5 months after the close of its first fiscal year during which less than 26 persons employed in Wisconsin were covered, must file a written notice with the commissioner of insurance that less than 26 persons employed in Wisconsin participated in the fund during such year. Such notice will remain in effect for all subsequent years until the first year thereafter during which more than 25 persons employed in Wisconsin participate at any time. The filing of a notice under this rule does not relieve the trustee of a fund from the responsibility to file an annual statement for any year during which more than 25 persons employed in Wisconsin participate in the fund. If an annual statement must be filed

Register, April, 1992, No. 436

for any year after a notice has been filed, the procedure of filing a notice will again apply for the first year thereafter during which coverage is provided to less than 26 persons employed in Wisconsin. Such renewed notices shall have the same force and effect as an initial notice.

(3) When an employe welfare plan which covers more than 25 persons employed in Wisconsin is terminated and fund assets are completely distributed or paid over to another fund, an annual statement must be filed under s. 641.13, Stats., within 5 months after the date of final distribution of the fund. Such annual statement must report the affairs of the fund from the date of the last previous annual statement and must reflect the final accounting of the fund for the transfer or distribution of all its assets.

(4) When an employe welfare plan is terminated but assets are held for distribution at a later date, the fund remains subject to ch. 641, Stats., as long as at least one Wisconsin employe participates. Annual statements must be filed by the trustee of any such fund for every year in which more than 25 persons employed in Wisconsin participate at any time. Notice under sub. (2) must be given for the first fiscal year in which less than 26 persons employed in Wisconsin participate. Notice of termination of the fund must be given in accordance with s. Ins 8.05.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, November, 1978, No. 275, eff. 12-1-78.

Ins 8.07 "Persons employed in this state". The term "persons employed in this state" as used in ch. 641, Stats., includes both active employes in Wisconsin and retired or terminated persons participating in the fund who were employed in Wisconsin at the time of retirement or other separation. The term includes anyone whether or not a resident of Wisconsin, who is employed at a place of business maintained by an employer in the state of Wisconsin; however, an employe who is not regularly employed at a place of business maintained by an employer shall be deemed to be employed in Wisconsin if service is performed solely within Wisconsin, or if service is performed partly within Wisconsin and partly outside of Wisconsin and

(1) The service outside of Wisconsin is incidental to service within Wisconsin (for example, is occasional, temporary or transitory in nature) or

(2) The base of operations is in Wisconsin, or

(3) If there is no base of operations, then the place from which the service is directed or controlled is in Wisconsin.

Note: Example: A seller who spends 20% of the hours of employment in Wisconsin and who works from a base of operations in Wisconsin would be "employed in this state". A seller who spends 50% of the hours of employment in Wisconsin but who works from a base of operations outside of Wisconsin would not be "employed in this state". A seller whose service is performed primarily in Wisconsin (service outside of the state is only occasional) is "employed in this state" even though the base of operations is in another state or is directed or controlled from another state.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (intro.), Register, November, 1978, No. 275, eff. 12-1-78; correction made under s. 13.93 (2m) (b) 5, Stats., Register, April, 1992, No. 436.

Ins 8.08 Availability of information to fund participants. The following information shall be available to all fund participants, including covered employes and their beneficiaries, contributing employers and participant-Register, April, 1992, No. 436

ing labor organizations, in the office of the fund at all reasonable hours: (In the case of a fund which is administered solely by an employer or union, a separate fund office may not be maintained. In such case the following information must be available at the principal office of the employer or union in this state.)

(1) Copy of registration statement under s. 641.08, Stats., including all current fund documents specified by such statement. A fund which covers less than 26 persons employed in Wisconsin must maintain such documents although it is not required to file them with the commissioner of insurance under s. Ins 8.04.

(2) Copies of annual statements under s. 641.13, Stats., for the 3 latest fiscal years.

(3) Copy of latest report of examination of the fund by the commissioner of insurance.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1) and (2), Register, November, 1978, No. 275, eff. 12-1-78.

Ins. 8.09 Preservation of records. The trustee of every employe welfare fund subject to ch. 641, Stats., shall maintain the books and records of such fund in sufficient detail to permit a thorough examination of the operations of such fund by the commissioner of insurance for a period of 5 years after the close of the fiscal year of such fund in which the entries in such books or records are made. Such books and records shall include all journals, ledgers, checks, vouchers, invoices, receipts, bank statements, minutes, resolutions, agreements, contracts and other records of original or final entry. The preservation of photographic reproductions of such records shall constitute compliance with the requirements of this rule.

History: Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, November, 1978, No. 275, eff. 12-1-78.

Ins 8.10 Advisory council on employe welfare plans. (1) **PURPOSE.** The purpose of this rule is to create an advisory council on employe welfare plans to be appointed by the commissioner of insurance pursuant to ss. 15.04 (3) and 601.20, Stats.

(2) **MEMBERSHIP.** This council shall consist of the commissioner or a member of his or her staff designated by the commissioner and 8 other members having competence in the field of employe welfare funds, 2 to be representatives of management, 2 to be representatives of employes, and 4 to be representatives of the general public.

(3) **TERM.** Members of the council shall be appointed to serve for a term of 2 years except that the initial appointments under this rule shall be 4 members for a one-year term and 4 members for a 2-year term.

(4) **DUTIES.** It shall be the duty of the council to:

(a) Advise the commissioner with respect to the carrying out of functions under ch. 641, Stats.,

(b) Review the administration of ch. 641, Stats., and

(c) Make such reports and recommendations to the commissioner with respect thereto as it deems necessary in the public interest.

Register, April, 1992, No. 436

(5) **CHAIRPERSON.** The commissioner or designee shall serve as chairperson.

(6) **MEETINGS.** The council shall meet at least twice each year when called by the commissioner and at such other times when requested by the commissioner or 2 or more members.

(7) **EXPENSE REIMBURSEMENT.** Members of the council shall receive no salary or compensation for service on the council but shall be reimbursed for their actual and necessary expenses in attending meetings or while performing other duties as directed by the commissioner.

History: Cr. Register, July, 1970, No. 175, eff. 8-1-70; am. (4)(a) and (b), Register, November, 1973, No. 275, eff. 12-1-78; corrections made under s. 13.93 (2m) (b) 5, Stats., Register, April, 1992, No. 436.

Ins 8.11 County and school district self-insured employe health care benefits: excess or stop-loss insurance requirements. (1) **PURPOSE.** This section interprets ss. 59.07 (2) (c) and 120.13 (2) (c), Stats., for the purpose of prescribing detailed requirements for excess or stop-loss insurance for self-insured employe health care benefit plans provided by counties or school districts.

(2) **SCOPE.** This section applies to any county or school district that alone or together with one or more counties or one or more school districts provides employe health care benefits on a self-insured basis to less than 1,000 covered employes.

(3) **DEFINITIONS.** In this section:

(a) "Aggregate claims" means total actual claim amounts incurred under the employe health care benefit plan during a benefit period.

(b) "Aggregate deductible" means the aggregate amount of liability specified in the excess or stop-loss insurance contract at or below which the county or school district remains liable for payments for eligible claims.

(c) "Benefit period" means a twelve-month accounting or reporting period of the employe health care benefit plan.

(d) "Coinsurance" means a fixed percentage of each claim established in the employe health care benefit plan which the county or school district is obligated to pay for each person covered in the plan.

(e) "Covered employes" means employes participating in an employe health care benefit plan.

(f) "Employes eligible to participate" means employes who are eligible to be covered employes under the terms of the employe health care benefit plan.

(g) "Employe health care benefit plan" means a self-insured plan established by one county or school district or jointly by two or more counties or two or more school districts to provide health care benefits to employes eligible to participate in the plan.

(h) "Expected claims" means the most accurate actuarial estimate of aggregate claims during a benefit period.

Register, April, 1992, No. 436

(i) "Incurred" means to have provided or furnished a service or item to an employe or dependent covered under an employe health care benefit plan for which a charge for a covered expense is made.

(j) "Maximums" means the largest total amount of claims per person established by the employe health care benefit plan which the county or school district is obligated to pay.

(k) "Paid basis" means the application of a claim payment to the aggregate deductible for the benefit period in which the payment is actually made, regardless of when the claim is incurred.

(l) "Quota share reinsurance" means insurance purchased for the employe health care benefit plan which pays the plan a pre-determined fixed percentage of each claim.

(4) EXCESS OR STOP-LOSS INSURANCE REQUIREMENTS. (a) Excess or stop-loss insurance required by s. 120.13 (2) (c), Stats., shall provide coverage for all claims incurred during the term of the policy or contract at a level at which an actuary has certified that the probability that aggregate claims will exceed 125% of expected claims is less than 5%.

(b) Each employe health care benefit plan shall be covered by one excess or stop-loss insurance policy that satisfies par. (a), regardless of the number of counties or school districts participating in the plan.

(c) Notwithstanding par. (a), a county or school district that self-insures employe health benefits under a plan in which an actuary has certified that the probability that aggregate claims will exceed 125% of expected claims is less than ½% need not purchase excess or stop-loss insurance.

(5) EXCESS OR STOP-LOSS INSURANCE PROVIDED ON A PAID BASIS. (a) Excess or stop-loss insurance required by s. 120.13 (2) (c), Stats., may provide coverage on a paid basis.

(b) Upon termination for any reason of an excess or stop-loss insurance policy that provides coverage on a paid basis, the policy shall apply all claims incurred but not paid prior to the termination of the policy to the aggregate deductible of the benefit period in which the service or item was provided or furnished to an employe or dependent under the self-insured employe health care benefit plan.

(6) ACTUARIAL CERTIFICATION. (a) Every county or school district with a plan that is subject to s. 120.13 (2) (c), Stats., shall file with the commissioner of insurance within 30 days after the effective date of the self-insured employe health care benefit plan, every 3 years thereafter and whenever a material change occurs to the plan, an actuarial certification that includes information on:

1. The number of employes eligible to participate in the plan and the number of covered employes in the plan.

2. A description of the plan's coverage including but not limited to an outline of benefits provided, deductibles, coinsurance, maximums and quota share reinsurance, if any.

3. A statement that the plan satisfies the excess or stop-loss insurance requirements specified in sub. (4).

4. Except for a county or school district with a plan subject to s. 641.08, Stats., a copy of the excess or stop-loss insurance contract and of the plan for self-insuring.

Note: A county or school district with a plan subject to ch. 641, Stats., must already file this information with the commissioner.

(b) The actuarial certification required in par. (a) may be filed by an actuary employed by the excess or stop-loss insurer or by an actuary independent of the excess or stop-loss insurer.

(c) Two or more counties or 2 or more school districts that jointly establish an employee health care benefit plan shall designate the individual who will file the actuarial certification required in par. (a). Only one actuarial certification shall be filed for the plan.

Note: The commissioner of insurance will utilize the following tables to evaluate actuarial certifications for accuracy and compliance with this section. The following example illustrates the application of the tables. This example only gives a basic description of how to use the following tables. It may be necessary to extrapolate or interpolate from the information given in the tables in order to apply the tables to a particular plan. An actuary or other qualified person should be consulted to be certain that a plan meets the requirements of sub. (4). Also note that no table provides a description of dental or vision plan benefits. Under sub. (4) (c), many dental or vision plans may not need to purchase stop-loss insurance.

Example

Assume a school district has a self-insured employee health care benefit plan that covers 250 employees and family members. The plan offers individual specific stop-loss of \$25,000 and provides benefits with a \$500.00 deductible per person, 80% coinsurance and \$1,000.00 out-of-pocket limit per person.

The plan's stop-loss coverage and benefit package are the same as that used in Table 7. Therefore, use Table 7 for determining whether the plan meets the requirements in sub. (4).

In Table 7, use the 125 percent of mean line. Since sub. (4) (a) deals with "125% of expected claims," refer to the 125% of mean line when using any of the tables.

To determine whether the probability that aggregate claims will exceed 125% of expected claims is less than 5%, subtract the decimal numbers shown in the tables from the number "1". For example, for a plan offering the benefits described in Table 7 and having 25 employees, the probability that aggregate claims will exceed 125% of expected claims is 28% (1 minus .72 = .28). It is 26% for 50 employees (1 minus .74), 23% for 100 employees (1 minus .77), etc.

In this example, the plan covers 250 employees. Table 7 shows that at 250 employees, the probability that aggregate claims will exceed 125% of expected claims is 18% (1 minus .82).

In order to comply with the rule, this probability must be less than 5%. In this example, the probability is 18%. Therefore, the school district or county must purchase aggregate stop-loss insurance at a level sufficient to bring this probability down to less than 5%. Stop-loss insurance is sold at various levels, including a level at which the probability that aggregate claims will exceed 125% of expected claims is less than 5%. At a minimum, the school district or county should purchase stop-loss insurance at this level.

Table 8.11-1

STATE OF WISCONSIN

Distribution of Medical Claim

Individual Specific Stop Loss Level: \$5,000

July 1, 1987

Probability that Medical Claims are
Less Than a Given Percent of Mean

\$0 Deductible, 100 Percent Coverage

Percent of Mean	Employees				
	100	250	500	1,000	5,000
50%	.04	.01	.00	.00	.00
75	.19	.14	.06	.01	.00
100	.53	.52	.51	.51	.51
105	.60	.61	.63	.70	.86
110	.67	.69	.74	.84	.96
115	.73	.77	.83	.92	.99
120	.78	.83	.89	.97	1.00
125	.83	.87	.94	.99	1.00
130	.86	.90	.96	1.00	1.00
150	.95	.98	1.00	1.00	1.00

WISCONSIN ADMINISTRATIVE CODE

Table 8.11-2

STATE OF WISCONSINDistribution of Medical ClaimIndividual Specific Stop Loss Level: \$10,000July 1, 1987Probability that Medical Claims areLess Than a Given Percent of Mean\$0 Deductible, 100 Percent Coverage

<u>Percent of Mean</u>	<u>Employees</u>				
	<u>100</u>	<u>250</u>	<u>500</u>	<u>1,000</u>	<u>5,000</u>
50%	.05	.01	.00	.00	.00
75	.21	.14	.06	.01	.00
100	.53	.52	.52	.51	.51
105	.60	.61	.63	.69	.85
110	.66	.69	.74	.83	.96
115	.72	.76	.83	.91	.99
120	.77	.82	.89	.96	1.00
125	.82	.86	.93	.99	1.00
130	.85	.90	.96	1.00	1.00
150	.94	.98	1.00	1.00	1.00

Table 8.11-3

STATE OF WISCONSIN

Distribution of Medical Claim

Individual Specific Stop Loss Level: \$25,000

July 1, 1987

Probability that Medical Claims are
Less Than a Given Percent of Mean

\$0 Deductible, 100 Percent Coverage

Percent of Mean	Employees				
	100	250	500	1,000	5,000
50%	.06	.01	.00	.00	.00
75	.24	.15	.07	.01	.00
100	.54	.53	.53	.52	.52
105	.60	.61	.63	.68	.83
110	.66	.70	.73	.82	.95
115	.71	.75	.81	.90	.99
120	.76	.80	.87	.95	1.00
125	.80	.85	.92	.98	1.00
130	.83	.89	.95	.99	1.00
150	.92	.97	1.00	1.00	1.00

WISCONSIN ADMINISTRATIVE CODE

Table 8.11-4

STATE OF WISCONSINDistribution of Medical ClaimIndividual Specific Stop Loss Level: Unlimited

July 1, 1987

Probability that Medical Claims areLess Than a Given Percent of Mean\$0 Deductible, 100 Percent Coverage

Percent of Mean	Employees				
	100	250	500	1,000	5,000
50%	.07	.02	.00	.00	.00
75	.29	.19	.10	.02	.00
100	.59	.56	.56	.55	.53
105	.63	.63	.64	.68	.80
110	.69	.70	.73	.79	.93
115	.73	.75	.80	.87	.98
120	.76	.79	.85	.92	1.00
125	.80	.84	.89	.95	1.00
130	.83	.87	.92	.97	1.00
150	.91	.95	.98	1.00	1.00

Table 8.11-5

STATE OF WISCONSIN

Distribution of Medical Claim

Individual Specific Stop Loss Level: \$5,000

July 1, 1987

Probability that Medical Claims are

Less Than a Given Percent of Mean

\$500 Deductible Per Person, 80% Percent Coinsurance

\$1,000 Out-of-Pocket Limit Per Person

Percent of Mean	Employees					
	25	50	100	150	250	500
50%	.22	.13	.06	.05	.01	.00
75	.39	.32	.23	.21	.16	.07
100	.57	.55	.53	.52	.52	.52
105	.60	.60	.60	.60	.61	.63
110	.63	.64	.66	.66	.69	.73
115	.66	.68	.71	.72	.76	.81
120	.69	.72	.76	.77	.81	.88
125	.72	.74	.80	.82	.85	.92
130	.74	.77	.83	.84	.89	.95
150	.82	.87	.92	.94	.97	1.00

WISCONSIN ADMINISTRATIVE CODE

Table 8.11-6

STATE OF WISCONSINDistribution of Medical ClaimIndividual Specific Stop Loss Level: \$10,000July 1, 1987Probability that Medical Claims areLess Than a Given Percent of Mean\$500 Deductible Per Person, 80% Percent Coinsurance\$1,000 Out-of-Pocket Limit Per Person

Percent of Mean	Employees					
	25	50	100	150	250	500
50%	.25	.16	.07	.05	.02	.00
75	.42	.34	.25	.23	.17	.08
100	.58	.55	.55	.53	.53	.53
105	.60	.60	.60	.60	.61	.63
110	.64	.64	.65	.66	.68	.73
115	.67	.67	.70	.72	.74	.80
120	.70	.71	.75	.76	.79	.86
125	.71	.74	.78	.80	.84	.91
130	.74	.77	.82	.84	.89	.94
150	.81	.85	.91	.93	.96	.99

Table 8.11-7

STATE OF WISCONSIN

Distribution of Medical Claim

Individual Specific Stop Loss Level: \$25,000

July 1, 1987

Probability that Medical Claims are

Less Than a Given Percent of Mean

\$500 Deductible Per Person, 80% Percent Coinsurance

\$1,000 Out-of-Pocket Limit Per Person

Percent of Mean	Employees					
	25	50	100	150	250	500
50%	.29	.19	.08	.06	.02	.00
75	.47	.39	.30	.26	.19	.10
100	.61	.58	.56	.55	.54	.53
105	.64	.61	.61	.61	.61	.63
110	.66	.64	.65	.66	.67	.71
115	.68	.68	.70	.70	.73	.78
120	.70	.70	.73	.74	.79	.85
125	.72	.74	.77	.79	.82	.89
130	.74	.76	.80	.82	.86	.93
150	.80	.83	.89	.92	.95	.99

Table 8.11-8

STATE OF WISCONSINDistribution of Medical ClaimIndividual Specific Stop Loss Level: UnlimitedJuly 1, 1987Probability that Medical Claims areLess Than a Given Percent of Mean\$500 Deductible Per Person, 80% Percent Coinsurance\$1,000 Out-of-Pocket Limit Per Person

Percent of Mean	Employees					
	25	50	100	150	250	500
50%	.35	.24	.12	.09	.04	.00
75	.53	.53	.37	.32	.25	.15
100	.67	.66	.61	.59	.58	.57
105	.69	.68	.65	.64	.64	.64
110	.71	.71	.68	.68	.69	.72
115	.72	.72	.72	.72	.73	.78
120	.74	.75	.75	.75	.77	.83
125	.76	.76	.78	.79	.81	.87
130	.77	.78	.80	.81	.84	.90
150	.82	.84	.88	.89	.92	.96

(7) **ACTUARY QUALIFICATIONS.** The actuarial certification specified in sub. (6) shall be signed by an actuary who satisfies the requirements of s. Ins 6.12.

History: Cr. Register, April, 1988, No. 388, eff. 5-1-88.

Subchapter II--Employe Benefit Plan Administrators

Ins 8.20 Purpose. This subchapter interprets and implements ch. 633, Stats.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Ins. 8.22 Definitions. In this subchapter:

- (1) "Administrator" has the meaning given in s. 633.01 (1), Stats.
- (2) "Commissioner" means the commissioner of insurance.

Register, April, 1992, No. 436

(3) "Employe" has the meaning given in s. 633.01 (2), Stats.

(4) "Office" means the office of the commissioner.

(5) "Plan" has the meaning given in s. 633.01 (4), Stats.

(6) "Principal" has the meaning given in s. 633.01 (5), Stats.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Ins 8.24 Exemptions. (1) Each of the following is exempt from ch. 633, Stats., and this subchapter for the portion of its business subject to regulation under the specified sections:

(a) An administrator of one or more self-insured, partially insured or divided insurance worker's compensation plans subject to s. Ind 80.60 or 80.61.

(b) A warrantor or warranty plan administrator, as defined in s. Ins 15.01 (4) (c) or (e), that holds a valid certificate of authority under ch. Ins 15.

(2) An administrator that is partially exempt under sub. (1) (a) or (b) is subject to ch. 633, Stats., and this subchapter for any portion of its business that is outside the scope of the exemption.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Ins 8.26 Licensing. (1) **APPLICATION.** A person applying for a new or renewal license as an administrator shall submit an application to the office in the form prescribed by the office. With the application, the person shall submit all of the following:

(a) With the initial application, a performance bond meeting the requirements of s. Ins 8.28.

(b) With a renewal application, proof that the bond continues to meet the requirements of s. Ins 8.28, if the amount required for the bond has changed.

(c) A financial statement for the administrator's most recently completed fiscal year, prepared according to generally accepted accounting principles. The financial statement shall report the administrator's assets, liabilities and net worth, the results of operations and the changes in net worth for the fiscal year on the accrual basis.

(d) A statement as to whether the administrator does any of the following:

1. Collects premiums or employe contributions on behalf of any principal.

2. Maintains separate fiduciary accounts for each principal.

(e) All of the following information about the administrator, if an individual, or about each officer, director, partner or other individual having comparable responsibilities in the organization, if a corporation or partnership:

1. Whether the individual has been fined or reprimanded or has been the subject of a consent decree in any state by any agency that regulates

Register, April, 1992, No. 436

the business of administrators, insurance, real estate, securities or financial institutions.

2. Whether the individual has had a license to solicit insurance, real estate or securities or to act as an administrator refused, suspended, denied or revoked in any state.

3. Whether the individual has been convicted of a felony or misdemeanor, other than a misdemeanor related to the use of a motor vehicle or the violation of a fish and game regulation.

4. If the individual has ever been employed by an administrator or insurance company, or in the business of real estate, securities or financial institutions, whether his or her employment has been terminated or nonrenewed because of allegations of misconduct or wrongdoing.

(f) If the administrator is an individual, his or her insurance intermediary agent's license number and social security number and a statement that he or she intends to act as an administrator in good faith and in compliance with all applicable laws of this state and rules and orders of the commissioner.

(g) If the administrator is a corporation or partnership, its federal identification number, the state and year of its incorporation or year of its formation and a statement that it intends to act as an administrator in good faith and in compliance with all applicable laws of this state and rules and orders of the commissioner and that it has designated or will designate an individual with direct responsibility for each plan it administers.

(h) If the administrator is an individual who is not a resident of this state or a corporation or partnership that is not organized under the laws of this state, a statement that the administrator agrees to be subject to the jurisdiction of the commissioner and the courts of this state with respect to all matters pertaining to activities as an administrator and to accept service of process as provided under ss. 601.72 and 601.73, Stats.

(i) Any other information requested by the office.

(j) The fee specified under s. 601.31 (1) (w), Stats., which shall be nonrefundable.

(2) **RENEWAL APPLICATION DEADLINE.** An administrator shall submit a renewal application on or before August 1 of each year.

Note: Notwithstanding sub. (2), as effective May 1, 1992, a license issued to an administrator under s. 633.14, Stats., before August 1, 1992, remains in effect until August 1, 1993.

(3) **APPLICATION REVIEW.** The office shall review and approve or disapprove each complete application within 60 days after its receipt.

Note: The application form, which includes a sample performance bond format, OCI 30-001, may be obtained from the Office of the Commissioner of Insurance, P.O. Box 7872, Madison, Wisconsin 53707-7872.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Ins 8.28 Performance bond requirements. (1) A performance bond required under s. 633.14 (1) (b) or (2) (b), Stats., shall be continuous in form, shall be issued by an insurer authorized to do a surety business in this state and shall be in favor of the commissioner and payable to any resident of this state who is the beneficiary of an employe benefit plan
Register, April, 1992, No. 436

administered by the administrator and to any such employe benefit plan on behalf of the residents of this state who are its beneficiaries in the event of injury caused by a failure of the administrator to fulfill its responsibilities as an administrator.

(2) If the administrator collects premiums or employe contributions on behalf of any principal, or commingles funds belonging to more than one principal, the performance bond shall be in the greater of the following amounts:

(a) \$25,000.

(b) Ten percent of the total amount of projected premiums, charges and claim funds the administrator expects to handle on behalf of residents of this state during the fiscal year following the year for which a financial statement is submitted under s. Ins 8.26 (1) (c). A bond under this paragraph need not exceed \$500,000.

(3) If the administrator does not collect premiums or employe contributions on behalf of any principal, and maintains a separate fiduciary account for each principal, the performance bond shall be in the greater of the following amounts:

(a) \$15,000.

(b) Five percent of the total amount of projected claim funds the administrator expects to handle on behalf of residents of this state during the fiscal year following the year for which a financial statement is submitted under s. Ins 8.26 (1) (c). A bond under this paragraph need not exceed \$250,000.

(4) An administrator may exclude from the calculations required under sub. (2) (b) or (3) (b) all amounts handled as administrator for any of the following:

(a) Self-insured, partially insured or divided insurance worker's compensation plans subject to s. Ind 80.60 or 80.61.

(b) Warranty plans subject to ch. Ins 15.

Note: Notwithstanding s. Ins 8.28, as created by an emergency rule effective October 1, 1991, a bond meeting the requirements of s. Ins 8.28, effective May 1, 1992, shall satisfy the bond requirements for an administrator required to submit an initial license application before May 1, 1992.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Ins 8.30 Notification to office. An administrator shall notify the office in writing of any of the following within 30 days after the date of the occurrence:

(1) The cessation of business activities as an administrator. A notification under this subsection shall include the name and address of the custodian of the administrator's business records and the location of those records.

(2) Any change in the administrator's business mailing address or the location of its business records.

(3) Formal administrative action in this state or another state by an agency that regulates the business of administrators, insurance, real estate, securities or financial institutions against the administrator or any

Register, April, 1992, No. 436

officer, director, partner or other individual having comparable responsibilities in the corporation or partnership.

(4) The conviction in this state or another state of a felony or misdemeanor, other than a misdemeanor related to the use of a motor vehicle or the violation of a fish and game regulation, of the administrator or any of the officers, directors, partners or other persons having comparable responsibilities in the corporation or partnership.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Ins 8.32 Audit. In order to determine whether the financial resources of an administrator are adequate to safeguard the interests of the public and persons covered by a plan, or to determine the appropriate bond amount under s. Ins 8.28, the office may order the administrator to submit financial statements that have been audited by a certified public accountant.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.