

CR 10-077

**ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE
RENUMBERING AMENDING AND CREATING A RULE**

To repeal Ins 51.01 (9) (a) 3.

To renumber Ins 51.01 (9) (a) 4. 5. and 6.

To amend Ins 51.01 (4) (a) 2. and 51.01 (10) and 51.01 (14);

To create Ins 51.01 (4) (a) 3. and 4. and Ins 51.60 (3) (c), Wis. Adm. Code,

Relating to the risk-based capital of health insurers, property and casualty insurers and fraternal insurers.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

1. Statutes interpreted:

ss. 600.01, 623.11, Stats.

2. Statutory authority:

ss. 601.01, 601.41 (3), 601.42, 611.19 (1), 614.13, 614.19, 618.21, 623.02 and 623.11, Stats.

3. Explanation of OCI's authority to promulgate the proposed rule under these statutes:

The commissioner may establish by rule minimum ratios for determination of the amount of compulsory surplus that an insurer is required to have in order not to be financially hazardous under s. 645.41, Stats., as an amount that will provide reasonable security against contingencies affecting the insurer's financial position, in relation to any relevant variables as set forth in s. 623.11 (2), Stats. The national association of insurance commissioners (NAIC) has by model regulation suggested updated ratios to apply to health insurers and property and casualty insurers. The commissioner has determined that solvency monitoring of fraternal insurers will be enhanced by including the insurers in risk-based capital (RBC) reporting requirements.

4. Related statutes or rules:

None.

5. The plain language analysis and summary of the proposed rule:

The proposed rule will modify the RBC requirements for insurers to include under the definition of a company action level event a trend test for property and casualty insurers and health insurers. The NAIC has amended instructions for property and casualty insurers and health insurers to include a trend test to improve the monitoring of insurer solvency. Under

the proposed rule a company action level event would occur if the insurer's adjusted capital is between 2.0 and 3.0 times the authorized control level RBC and the insurer triggers a negative trend test determined in accordance with NAIC instructions.

Under the current rule, fraternal insurers are exempt from the RBC filing requirements, unless the commissioner finds that inclusion would improve solvency monitoring. The proposed rule will remove the general exemption and fraternal insurers will be subject to the same RBC reporting requirements as life insurers.

6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There are no comparable federal regulations that are intended to address capital requirements for insurers.

7. Comparison of similar rules in adjacent states as found by OCI:

Illinois: 215 IL Comp. Stat. 5/35 A-1-70, contains capital requirements for insurers comparable to the existing Wisconsin rule. To date there has been no formal adoption of language similar to the proposed rule.

Iowa: Iowa Code ch. 521 F, contains capital requirements for insurers comparable to the existing Wisconsin rule. To date there has been no formal adoption of language similar to the proposed rule.

Michigan: Mich. Comp. Laws s. 550:1204 a., contains capital requirements for insurers comparable to the existing Wisconsin rule. To date there has been no formal adoption of language similar to the proposed rule.

Minnesota: Minn. Stat. s. 60.A.50, contains capital requirements for insurers comparable to the existing Wisconsin rule. To date there has been no formal adoption of language similar to the proposed rule.

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

NAIC models, insurer's financial information.

9. See the attached Private Sector Fiscal Analysis.

10. A description of the Effect on Small Business:

This rule will have little or no effect on small businesses.

11. Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at:

<http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, OCI Services Section, at:

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Email: inger.williams@wisconsin.gov

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The rule changes are:

SECTION 1. Ins 51.01 (4) (a) 2. is amended to read:

Ins 51.01 (4) (a) 2. If a life or health insurer that completes the life annual statement for the reporting year, the insurer has total adjusted capital which is greater than or equal to its company action level risk based capital but less than the product of its authorized control level risk based capital and 2.5 and has a negative trend.

SECTION 2. Ins 51.01 (4) (a) 3. and 4. are created to read:

Ins 51.01 (4) (a) 3. If a health insurer that completes the health annual statement for the reporting year, the insurer has total adjusted capital which is greater than or equal to its company action level risk based capital but less than the product of its authorized control level risk based capital and 3.0 and has a negative trend.

4. If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its company action level risk based capital but less than the product of its authorized control level risk based capital and 3.0 and has a negative trend.

SECTION 3. Ins 51.01 (9) (a) 3. is repealed.

SECTION 4. Ins 51.01 (9) (a) 4., 5. and 6. are renumbered Ins 51.01(9) (a) 3. 4. and 5.

SECTION 4. Ins 51.01 (10) and (14) are amended to read:

Ins 51.01 (10). "Life or health insurer" means any insurer licensed to write life, annuity or health insurance or 2 or more of those lines, ~~or a licensed property and casualty insurer writing only accident and health insurance.~~ A "life or health insurer" includes a fraternal insurer but does not include a health maintenance organization insurer as defined in s. 600.03 (23c), Stats., or an insurer writing only limited service health organization business as defined in s. 609.01 (3), Stats.

(14) "Negative trend" means ~~with respect to a life or health insurer, trend over a period of time which is negative,~~ an adverse trend test result, as determined in accordance with the trend test calculation included in the risk based capital instructions.

SECTION 5. Ins 51.60 (3) (c) is created to read:

Ins 51.60 (3) (c). Any domestic fraternal insurer writing \$2,000,000 or less in direct annual premium and that assumes no reinsurance in excess of 5% of direct premium.

SECTION 6. This section may be enforced under ss. 601.41, 601.64, Stats., or ch. 645, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

SECTION 7. 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 14th day of October, 2010.

Kimberly A. Shaul
Deputy Commissioner of Insurance

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Section Ins 51.01 relating to the risk-based capital of health insurers,
property and casualty insurers and fraternal insurers

This rule change will have no significant effect on the private sector regulated by OCI.