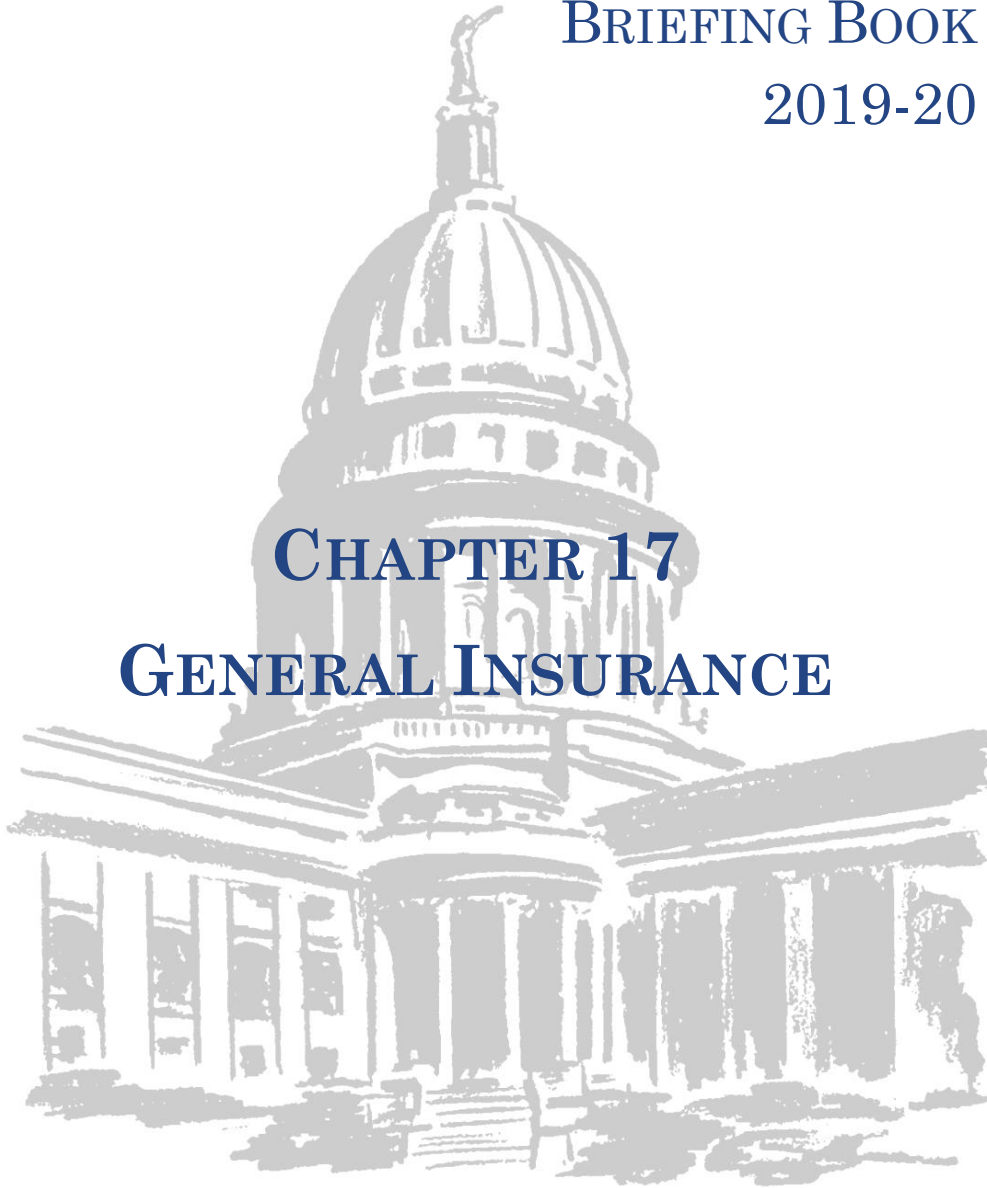


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CHAPTER 17
GENERAL INSURANCE



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INTRODUCTION

This chapter briefly describes the duties of the Office of the Commissioner of Insurance (OCI), provides an overview of major types of insurance, including property and casualty, disability, and life insurance, and briefly describes certain state insurance funds. This chapter does not discuss health insurance, which is covered in Chapter 18, *Health Care and Health Insurance*.

Insurance is largely regulated by the states, rather than the federal government. The McCarran-Ferguson Act of 1945 outlines the roles of state and federal government in insurance regulation, and specifies that states generally retain regulatory authority over insurance. The Act reverses the usual preemption of state law by federal law that occurs under the Supremacy Clause of the U.S. Constitution. Absent a congressional act specifically relating to the business of insurance, such as the Affordable Care Act, McCarran-Ferguson provides that state law controls over conflicting federal legislation. [15 U.S.C. s. 1012.]

OFFICE OF THE COMMISSIONER OF INSURANCE

OCI was established through legislation enacted in 1870. OCI is vested with broad powers to ensure that the insurance industry meets the insurance needs of Wisconsin citizens. [s. 601.01, Stats.] As summarized by OCI, its major functions include:

OCI's website has numerous publications for consumers, agents, and insurers, available at: <https://oci.wi.gov/>

- Reviewing insurance policies that are sold in Wisconsin to determine if they meet the requirements of Wisconsin laws.
- Conducting examinations of domestic and foreign insurers to assure compliance with Wisconsin laws.
- Monitoring the financial solvency of licensed companies to ensure availability of coverage for consumers.
- Issuing licenses for companies, agents, brokers, and others.
- Assisting and educating consumers.
- Researching special insurance issues to assess the impact on Wisconsin.
- Operating the State Life Insurance Fund that is available to all Wisconsin residents and the Injured Patients and Families Compensation Fund that insures health care providers for medical malpractice.

INSURANCE DELIVERY

Insurance Agents

In Wisconsin, there are essentially two types of licensed insurance intermediaries who can help individuals obtain insurance policies from insurers. [s. 628.02 (3) and (4), Stats.]

One type of intermediary is a “broker,” who works on behalf of the individual person who is applying for insurance. A broker does not act on behalf of the insurance company, though the broker may process certain paperwork and collect premiums. A broker is under no obligation to a particular company, and may generally procure insurance with companies selected by the individual. As a result, a broker is frequently referred to as an “independent insurance agent.”

The other type of intermediary is an “agent,” who works on behalf of an insurance company. An agent does not act on behalf of an individual, but rather has certain duties and obligations to the insurance company. An agent typically has a fixed relationship with the insurance company that the agent represents, and works under contract with that particular insurance company.

Insurance Providers

Insurance generally may be offered only by an authorized insurer that is licensed to offer insurance in the state. [s. 601.04, Stats.] All insurers licensed to do business in Wisconsin must comply with state laws and regulations, including financial and accounting requirements, marketing regulations, and forms approvals.

A “risk-retention group” is a specific type of insurance provider for members of a group who are related by a common business. A risk-retention group is formed as a corporation or limited liability company, and spreads and shares liability exposure among its members. Under federal law, a state may regulate the formation and operation of a group that is formed within the state, but may impose only specific, limited requirements on a group that is formed in another state. [15 U.S.C. ss. 3901 to 3906.]

A “self-insurer,” sometimes referred to as a self-funded plan, pays claims and judgments directly from its own funds.

This method is sometimes used by businesses or governmental units for auto insurance, worker’s compensation, and health insurance. A self-insured plan is generally not considered to be insurance, and is therefore often subject to different laws and regulations from licensed insurers.

In specific circumstances, a “surplus lines insurer” may offer insurance if certain requirements are followed. Surplus lines insurance is a specific type of insurance that is

Many OCI filing forms and processes follow models prepared by the National Association of Insurance Commissioners (NAIC), in order to provide standardization and nationally recognized practices.

provided only for risks that are declined by standard underwriting processes, typically for high risks. 2017 Wisconsin Act 16 removed a limitation that authorized only nondomestic insurers to offer surplus lines insurance, and instead authorizes domestic insurers to offer surplus lines insurance, subject to certain requirements. [s. 618.41, Stats.]

Other types of organizations that may provide insurance include domestic stock and mutual insurance corporations, town mutuals, service insurance corporations, and fraternal organizations. [chs. 611 to 614, Stats.]

TYPES OF INSURANCE COVERAGE

Wisconsin's statutory provisions related to insurance and the powers and duties of OCI are set forth in chs. 600 to 655, Stats. OCI's administrative rules are set forth in chs. Ins 1 to 57, Wis. Adm. Code. The statutes and rules affect various types of insurance. A few of the most common types of insurance coverage in specific lines are briefly described below.

Auto Insurance

All Wisconsin drivers must have motor vehicle liability insurance coverage, with limited exceptions for drivers who post sufficient bond or self-insure. [ss. 344.33 (2), 344.61 to 344.67, and 632.32, Stats.]

An auto insurance policy must contain coverage at specified minimum limits for property damage liability, personal injury liability, and injury caused by an uninsured motorist, as follows:

- Personal injury: \$25,000 per person/\$50,000 per incident.
- Property damage: \$10,000.
- Uninsured: \$25,000 per person/\$50,000 per incident for bodily injury or death.
- Underinsured: Not required, but the insurer must give notice to an insurance purchaser that it is available, and, if purchased, minimum coverage of \$50,000 per person/\$100,000 per incident is required.

A person operating a vehicle on a roadway must be in possession of proof of the insurance and must display the proof upon demand from any traffic officer. The proof can be presented in either printed or electronic format.

Although not required by law, auto insurance coverage may include collision and comprehensive coverage. Collision coverage pays to repair or replace a car in the event the car hits another object (even

Forty-nine states and the District of Columbia require drivers to have motor vehicle liability insurance coverage.

In Wisconsin, the penalty for operating a vehicle without insurance is a forfeiture up to \$500.

if it is the driver's fault). Comprehensive coverage pays for damage to a car by other causes, such as fire, theft, vandalism, hail, or hitting an animal. Optional coverage for medical payments may also be purchased, and is required by law to be offered at the time of auto insurance purchase.

Commercial Liability Insurance (Including Worker's Compensation)

The purpose of commercial liability insurance is to protect a business against losses arising from a claim against the business. This would generally include bodily injury and property damage coverage for premises liability and certain negligent acts. Coverage that is specific to a particular business can be included, such as liquor liability or pollution liability.

A particular type of commercial liability insurance, worker's compensation insurance, is required for nearly every Wisconsin business. It insures against work-related injury and death and is generally the employee's exclusive remedy in such cases. For a brief description of worker's compensation insurance, see Chapter 21, *Labor and Employment Law*.

Credit Insurance

Credit insurance may be sold to a person obtaining a loan or credit card at the same time the loan or credit card is obtained. The insurance pays all or a portion of an outstanding credit balance if a claim is filed due to an event that is covered under the policy, such as death, disability, or unemployment of the person. The payment for the premiums is generally written into the payment for the loan.

Crop Insurance

Prior to planting, a farmer may purchase insurance to cover a portion of damage in the event of hail, drought, or other peril that results in crop loss. Some policies also cover loss in value due to a change in market price. This insurance may be purchased from private insurance companies under plans that are approved and subsidized by the Federal Crop Insurance Corporation. Alternatively, basic crop insurance may be purchased on the private market with more limited coverage options at any time during the growing season.

Crop insurance has expanded under federal law with programs for organic farmers, bioenergy, specialty crops, and livestock policies.

Disability Income Insurance

Disability income insurance replaces some portion of an employee's income for a specified period of time in the event that the employee is unable to work due to a covered injury or illness. This is also sometimes referred to as short-term disability insurance, or income or salary continuation insurance.

Flood Insurance

Flood insurance covers losses to property caused by flooding, such as damage to structures, damage to household mechanicals, and costs of cleanup. Flood insurance is provided to those living in flood hazard areas through the National Flood Insurance Program (NFIP) and is administered by local insurance agents. Participating communities must agree to enforce sound floodplain management standards in order for buildings in the area to be eligible for coverage. Property owners and renters may work with a licensed property or casualty insurance agent to determine if flood insurance is available and advisable for their area; in high-risk areas flood insurance is required.

Homeowners (Including Renters, Condominium, and Mobile Home) Insurance

Homeowners insurance compensates a homeowner or renter in the event of losses to the house and belongings. Some considerations when purchasing homeowner's insurance include the amount of coverage needed, whether the coverage should be based on market value or replacement cost, the deductible amount, and special riders for jewelry, antiques, art, firearms, or other personal property that insurance companies frequently treat separately from ordinary household items.

A number of mobile apps are available for Android and iPhone users to photograph and record descriptions of possessions for a home inventory.

Homeowners insurance also offers protection if someone is injured on the property or in some cases in which the negligence of the homeowner or renter results in injury to a person or damages to the property of another.

Life Insurance

Life insurance provides a benefit in the form of a cash payment or an annuity in the event of the death of the insured. The two main types are term insurance and cash value insurance (sometimes referred to as "whole life"). Term insurance premiums are generally lower in the early years, but the policy provides no residual value at the end of the term. Cash value insurance builds in value over time and can be cashed out prior to death or used to pay premiums in later years.

Long-Term Care Insurance

The OCI Guide to Long-Term Care is available at:

<https://oci.wi.gov/Pages>

Long-term care insurance generally provides coverage for medical and other services needed for an extended illness or disability. The policy may cover a variety of levels of care, much of which may not be covered by Medicare. A

policy must cover institutional care in a nursing home or other facility, and home health care or other community-based services. Long-term care services are most commonly used by elderly persons, but could be needed for an extended illness or disability at any age. For more information on long-term care programs and services for the elderly, generally, see Chapter 20, *Human Services and Aging*.

Portable Electronics

Wisconsin law allows a vendor of portable electronics to sell insurance for portable electronic devices without a license so long as certain supervision, disclosure, and other procedural steps are followed. The insurance may be obtained at a store at the same time an electronic device is purchased. The insured value may be up to \$5,000. [s. 632.975, Stats.]

Travel Insurance

OCI regulates a specific type of license, known as a “travel insurance producer” license. Travel insurance policies provide coverage for risks associated with planned travel, including trip cancellation, loss of baggage, and sickness or accident. Under the licensing structure, a travel agent or travel service may work with a licensed travel insurance agent so that the travel agent or travel service may offer travel insurance with its services. [s. 632.977, Stats.]

STATE PROGRAMS

Segregated Insurance Funds

OCI administers the State Life Insurance Fund under ch. 607, Stats., and the Injured Patients and Families Compensation Fund under s. 655.27, Stats. The State of Wisconsin Investment Board is responsible for investing and managing the monies in each trust fund.

Wisconsin is the only state that offers life insurance to its residents through a state-run program.

The **State Life Insurance Fund** offers a maximum of \$10,000 of life insurance coverage to state residents who purchase a policy from the fund. Both term and whole life policies are offered.

The **Injured Patients and Families Compensation Fund** provides medical malpractice protection to health care providers for claims in excess of \$1,000,000 per claim or \$3,000,000 annual aggregate for each policy year. Health care providers obtain primary medical malpractice insurance from private insurance companies or risk retention groups. The fund is intended to curb the cost of health care as a result of medical malpractice claims, and to ensure that proper claims are satisfied.

OCI additionally administers the **Local Government Property Insurance Fund**, which was discontinued by 2017 Wisconsin Act 59, the 2017-2019 Biennial Budget Act. No new coverage has been offered since July 1, 2017, and all claims must be filed by July 1, 2019. The fund had offered property insurance for tax-supported local government property, such as government buildings, schools, libraries, and motor vehicles. [ch. 605, Stats.]

Risk-Sharing Plans

Wisconsin offers risk-sharing plans for individuals who do not meet underwriting conditions and are unable to obtain coverage on their own. Unless exempt, each insurer in the identified lines of insurance participates in their respective plans and shares an equitable distribution of risks. [s. 619.01, Stats.] These programs, overseen by OCI, include:

- The Wisconsin Automobile Insurance Plan (WAIP). An application to the plan may be made through any licensed property and casualty insurance agent.
- The Wisconsin Worker’s Compensation Insurance Pool. The Wisconsin Compensation Rating Bureau administers the pool.
- The Wisconsin Insurance Plan, for basic property insurance. An application may be made through any licensed property and casualty insurance agent.
- The Wisconsin Health Care Liability Insurance Plan, for medical professionals. The program is privately managed by Wausau MedMal Management Services, LLC.

Wisconsin Healthcare Stability Plan

2017 Wisconsin Act 138 established a state-based reinsurance program called the Wisconsin Healthcare Stability Plan (WIHSP). Under the program, an insurance company that offers individual health insurance policies may receive reinsurance payments to offset claims for covered benefits if a person’s claims exceed a calculated amount. OCI must administer the plan, in consultation with an actuarial firm, subject to approval under the federal Affordable Care Act. [s. 601.83, Stats.]

The goals of the reinsurance program are to stabilize or reduce premiums in the individual market, increase participation by health insurers, improve access to providers and services, and mitigate the impact of high-risk individuals on premiums.

OCI submitted a waiver request to the federal government on April 18, 2018. According to the request, the anticipated first plan year for the program will begin on January 1, 2019.

For more information on WIHSP, see Chapter 18, *Health Care and Health Insurance*.

ADDITIONAL REFERENCES

1. For questions, comments, or complaints relating to insurance companies or agents conducting business in Wisconsin, contact OCI, P.O. Box 7873, Madison, Wisconsin

53707-7873, (608) 266-0103, or toll free at (800) 236-8517. A complaint may also be filed online at: <https://ociaccess.oci.wi.gov/complaints/public>.

2. WAIP has information available at: www.waip.org.
3. The Wisconsin Insurance Plan for basic property insurance is available at: <https://wisinsplan.com>.
4. The Legislative Audit Bureau has prepared the following audits relating to state insurance programs, available at <http://www.legis.wisconsin.gov/lab>:
 - *Injured Patients and Families Compensation Fund* (Audit Report 16-4).
 - *Local Government Property Insurance Fund* (Audit Report 15-16).
 - *State Life Insurance Fund* (Audit Report 16-12).
5. The Insurance Information Institute (I.I.I.) provides consumer and insurance industry information, and links to home inventory software and apps, at www.iii.org.
6. The NAIC provides information regarding the insurance industry generally and insurance practices in all 50 states at: www.naic.org.
7. The NAIC Consumer Information Source is available at: <https://eapps.naic.org/cis>.
8. The NFIP has resources on flood insurance, and is available at: <https://www.floodsmart.gov>.

GLOSSARY

Adjuster: An employee or contractor working for an insurance company who inspects claims and establishes the company liability in a claim.

Agent: A person who negotiates and sells insurance contracts on behalf of one or more insurance companies.

Annuity: A payment benefit sold by insurance companies that makes a periodic (usually monthly) payment for the life of a person or for a predetermined period of time.

Anti-stacking provision: Insurance contract provision that prohibits adding multiple sets of limits to a single loss event.

Authorized insurer: An authorized insurer is an insurer that holds a valid certificate of authority to do insurance business in this state. This term is synonymous with a “licensed insurer.”

Beneficiary: The person or entity named in an insurance policy as the recipient of insurance money as the result of a covered event.

Broker: An individual representing insurance purchasers to arrange for coverage that meets the customer's needs.

Cancellation: Termination of an insurance policy before its expiration date.

Collision coverage: Auto insurance coverage that pays for damage to the policyholder's vehicle caused by a collision with another vehicle or object.

Comprehensive coverage: Auto insurance coverage that pays for damage to the policyholder's vehicle for losses caused by fire, theft, vandalism, and other incidents not involving collision with another vehicle or object.

Domestic insurer: Insurance corporation organized under the laws of this state.

Financial responsibility law: A law requiring a person involved in an automobile accident to furnish security up to certain minimum dollar limits.

Foreign insurer: Insurance corporation organized under the laws of another state.

Homeowners insurance: Policy covering damage to the insured's property and providing liability coverage for injuries and acts of negligence.

Liability: Individual responsibility for causing injury or property damage.

Liability insurance: Insurance covering legal liability for injury or property damage caused by the insured.

Reducing clause: Provision in an insurance contract that reduces recovery by amounts received from other sources (such as the other party or worker's compensation).

Rider: Special provisions added to a policy that are not contained in the original policy contract. Riders are frequently used in homeowners insurance for items such as jewelry, antiques, or firearms.

Subrogation: The right of an insurance company to recover money paid on a claim from a third party. A common example occurs in uninsured motorist coverage, where the policyholder is paid by their own insurer and the insurer takes action to collect from the uninsured, at-fault party.

Term insurance: Life insurance for a given period of time, with no investment component that would provide residual or cash value. If the insured survives the policy term, the insurer pays nothing.

Umbrella policy: A policy providing additional liability coverage after the limits of another policy are reached (such as a home or auto policy). These policies frequently provide coverage in many situations not covered by the other liability insurance policies.

Unauthorized insurer: An unauthorized insurer is one that does not hold a valid certificate of authority to do insurance business in this state.

Underinsured motorist (UIM) coverage: An auto insurance policy under which the insurance company will pay damages to the insured for which another motorist is liable in

an amount up to the point that total recovery equals the insured's UIM limits. If, for example, an at-fault driver had \$50,000 of liability coverage and caused \$70,000 worth of damage, a \$100,000 UIM policy would pay the additional \$20,000 to cover what the other party's insurance did not.

Uninsured motorists coverage: A policy that will pay bodily injury damages to the insured for which another motorist is liable if that motorist is uninsured or cannot be identified.

Whole life insurance: Life insurance that remains in force during the insured's entire lifetime, provided premiums are paid as specified in the policy. Whole life insurance also builds a savings called the cash value.

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