



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Tony Evers, Governor  
Mark V. Afable, Commissioner

Wisconsin.gov

Legal Unit  
125 South Webster Street • P.O. Box 7873  
Madison, Wisconsin 53707-7873  
Phone: (608) 267-9586 • Fax: (608) 264-6228  
oci.wi.gov

TO: Legislative Reference Bureau  
1 East Main Street, Suite 200  
Madison, WI 53701-2037

FROM: Richard Wicka, Chief Legal Counsel  
Office of the Commissioner of Insurance

DATE: March 4, 2020

SUBJECT: Sections Ins 3.17 (6) and (8), Wis. Adm. Code, relating to the reserve standards for accident and sickness insurance and affecting small business.

Clearinghouse Rule No. 19-142

This rule is in final draft form and has been submitted to the chief clerk of each house of the legislature. Please publish a statement to this effect in the Wisconsin Administrative Register, pursuant to Wis. Stat. § 227.19 (2). We have e-mailed you an electronic copy of the text of the rule.

For additional information or if you do not receive the e-mail, please contact Karyn Culver at (608) 267-9586 or [karyn.culver@wisconsin.gov](mailto:karyn.culver@wisconsin.gov).

## PROPOSED ORDER AMENDING AND CREATING A RULE

### Office of the Commissioner of Insurance – Agency 145

The Office of the Commissioner of Insurance proposes an order to amend s. Ins 3.17 (6) (b) and 8 (b); and to create s. Ins 3.17 (6) (bm) and (8) (bm), Wis. Adm. Code, relating to the reserve standards for accident and sickness insurance and affecting small business.

The statement of scope for this rule SS: 113-18, was approved by the Governor on November 1, 2018, published in Register No. 755A3 on November 19, 2018, and approved by the Deputy Commissioner on December 12, 2018. The proposed rule was approved by the Governor on February 27, 2020, to submit to the legislature and was submitted to the legislature on March 4, 2020.

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

#### **Statutes interpreted:**

Sections 623.04, 623.06 (8m), Stats.

#### **Statutory authority:**

Sections 601.41 (3), 601.42 (1g), 623.04, 623.06 (8m), Stats.

#### **Explanation of OCI's authority to promulgate the proposed rule under these statutes:**

Section 623.04, Stats., requires the Commissioner to promulgate any rules "specifying the liabilities required to be reported in the financial statements submitted under s. 601.42 (1g) (a), Stats., and the methods of valuing them. In the case of life insurance such methods shall be consistent with s. 623.06, Stats."

Additionally, s. 601.41 (3) (a), Stats., grants the Commissioner "rule-making authority under s. 227.11 (2), Stats." Further, s. 601.42 (1g), Stats., gives the Commissioner the authority to require from those subject to regulation, among other things, "statements, reports, answers to questionnaires, and other information, and evidence thereof, in whatever reasonable form the commissioner designates, and at such reasonable intervals as the commissioner chooses, or from time to time." Finally, s. 601.42 (2), Stats., states that [T]he commissioner may prescribe forms from the reports under subs. (1g) and (1r) and specify who shall execute or certify such reports."

**Related statutes or rules:**

Sections 601.41 (3), 601.42 (1g), 623.04, 623.06 (8m), Stats.

**The plain language analysis and summary of the proposed rule:**

The proposed rule permits insurers writing accident and sickness insurance to calculate claim and contract reserves for health insurance policies issued prior to January 1, 2017 to either comply with the minimum requirements in the National Association of Insurance Commissioners (NAIC) Accounting Practices and Procedures Manual (APPM) Appendix A-010 or the existing requirements set forth in s. Ins 3.17 (6) (b) or (8) (b), Wis. Adm. Code, respectively. Section 623.06 (8m), Stats., established s. Ins 3.17, Wis. Admin. Code, as the reserve standard for contracts issued after November 13, 2015 and prior to January 1, 2017, and the NAIC Valuation Manual as the standard for contracts issued January 1, 2017, or later. Section Ins 3.17, Wis. Adm. Code, does not currently authorize the use of the 2013 Individual Disability Income Valuation Table (IDIVT) and the 2012 Group Long-Term Disability Valuation Table (GLTDVT) for calculating disability claim reserves. Both the APPM and the Valuation Manual authorize the use of the updated tables.

Health claim reserves traditionally have been determined based on the incurred date of the claim and not the issue date of the policy. However, under the current Wisconsin requirements, if a new claim is made on a policy that was issued before January 1, 2017, the insurer would be required to use the reserve standard currently existing under s. Ins 3.17 (6) (b), Wis. Adm. Code, rather than the updated tables adopted by the NAIC. If a claim is made on a policy that was issued after January 1, 2017, the insurer would use the reserve standard based on the applicable new NAIC table. Therefore, two claims with the same incurred date would be valued in two different ways as a result of the policy issue date. To bridge this gap, the proposed rule will permit insurers to use either the NAIC APPM tables or the standard valuation calculation contained in s. Ins 3.17, Wis. Adm. Code, as appropriate, for claims and contract reserves related to the accident and sickness policies issued prior to January 1, 2017.

**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:**

None.

**Summary of any public comments and feedback on the statement of scope of the proposed rule that the agency received at any preliminary public hearing and comment period held under s. 227.136, Stat., and a description of how and to what extent the agency took those comments and that feedback into account in drafting the proposed rule.**

The Office held a public hearing on November 28, 2018. Notice was also published on OCI's website. No members of the public appeared at the hearing. The Office did receive one comment in favor of the Office promulgating the rule from counsel to the Wisconsin Council of Life Insurers during the open comment period. The comment provided only general support for the promulgation of this rule without specific comments related to drafting.

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

- Illinois: 215 ILCS 5/223 (8), automatically updates valuation tables on January 1 after the NAIC Valuation Manual is adopted by the NAIC. IL Admin. Code title 50 §2004.10 permits the use of both the APPM and NAIC valuation manual.
- Iowa: I.C.A. § 508.36 (14) (c), automatically updates valuation tables on January 1 after the NAIC Valuation Manual is adopted by the NAIC.
- Michigan: MI ST § 500.836b (1) (c), automatically updates valuation tables on January 1 after the NAIC Valuation Manual is adopted by the NAIC.
- Minnesota: M.S.A. § 61A.25 Subd. 10 (c), automatically updates valuation tables on January 1 after the NAIC Valuation Manual is adopted by the NAIC.

**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:**

An unintended consequence of the 2015 revisions to s. 623.06, Stats., is that companies that write disability insurance are unable to smoothly transition to the newest disability valuation tables. The proposed rule repairs that gap in the current regulatory structure. The regulatory approach provides flexibility to insurers in accounting for claim reserves on a consistent basis without any unnecessary differentiation based on the issue date of the underlying policy and promotes consistency with NAIC standards and with other states' regulations and laws.

**Analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses or in preparation of an economic impact analysis:**

The rule is unlikely to have a significant impact on small businesses as the effect on calculated reserves is not expected to be material. The purpose of the changes is to create easier and more logical record-keeping and to promote consistency with the standards of other states.

**Effect on Small Business:**

The rule is unlikely to have any impact on small businesses as the insurers affected by the rule changes are larger businesses and the rule does not increase costs to the insurers that might have been passed through to small business or individuals.

**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: <https://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx> or by contacting

Karyn Culver at:

Phone: (608) 267-9586  
Email: [karyn.culver@wisconsin.gov](mailto:karyn.culver@wisconsin.gov)  
Address: 125 South Webster St – 2<sup>nd</sup> Floor, Madison WI 53703-3474  
Mail: PO Box 7873, Madison, WI 53707-7873

**Place where comments are to be submitted and deadline for submission:**

Persons wishing to testify or provide oral or written comments regarding the proposed administrative rule may appear during the hearing. Additionally, the rule may be reviewed, and comments made at <https://docs.legis.wisconsin.gov/code> or sent to the following:

The deadline for submitting comments is 4:00 p.m. on the December 16, 2019.

Written comments can be mailed or hand-delivered to:

Julie Walsh  
Legal Unit - OCI Rule Comment for Rule Ins xxx  
Office of the Commissioner of Insurance  
125 South Webster St – 2<sup>nd</sup> Floor

Madison WI 53703-3474

Email address:

Julie Walsh  
Julie.Walsh@wisconsin.gov

For additional information please contact Julie Walsh at (608) 264-8101 or at Julie.Walsh@wisconsin.gov.

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**The proposed rule changes are:**

**SECTION 1. Ins 3.17 (6) (b) (intro.) is amended to read:**

**Ins 3.17 (6) (b)** ~~Minimum~~ Except as provided in par. (bm), minimum standards for claim reserves are as follows:

**SECTION 2. Ins 3.17 (6) (bm) is created to read:**

**Ins 3.17 (6) (bm) 1.** The minimum claim reserve standards for contracts issued prior to January 1, 2017, at the option of the insurer, shall be either the reserving requirements as set forth in par. (b), or the reserving requirements set forth in the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, Appendix A-010.

2. The minimum claim reserve standards for contracts issued on or after January 1, 2017, shall be the standards set forth in the National Association of Insurance Commissioners Valuation Manual as defined in s. 623.06 (1) (j), Stats.

**SECTION 3. Ins 3.17 (8) (b) (intro.) is amended to read:**

**Ins 3.17 (8) (b)** ~~The~~ Except as provided in par. (bm), the basis for determining minimum standards for contract reserves are as follows:

**SECTION 4. Ins 3.17 (8) (bm) is created to read:**

**Ins 3.17 (8) (bm) 1.** The minimum contract reserve standards for accident and sickness contracts issued prior to January 1, 2017, at the option of the insurer, shall be either the reserving requirements as set forth in par. (b), or the reserving requirements set forth in the

National Association of Insurance Commissioners Accounting Practices and Procedures Manual, Appendix A-010.

2. The minimum contract reserve standards for contracts issued on or after January 1, 2017, shall be the standards set forth in the National Association of Insurance Commissioners Valuation Manual as defined in s. 623.06 (1) (j), Stats.

**SECTION 5. EFFECTIVE DATE.** This rule is effective on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register in accordance with s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this 4<sup>th</sup> day of March 2020.



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Mark V. Afable  
Commissioner

## EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis

Repeal     Modification

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2. Administrative Rule Chapter, Title and Number

Ch Ins 3 Casualty Insurance s. Ins 3.17

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3. Date Rule promulgated and/or revised; Date of most recent Evaluation

Ins 3.17 - April 1992

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4. Plain Language Analysis of the Rule, its Impact on the Policy Problem that Justified its Creation and Changes in Technology, Economic Conditions or Other Factors Since Promulgation that alter the need for or effectiveness of the Rule.

The proposed rule permits insurers writing accident and sickness insurance to calculate claim and contract reserves for health insurance policies issued prior to January 1, 2017 to comply with either the minimum requirements in the National Association of Insurance Commissioners (NAIC) Accounting Practices and Procedures Manual (APPM) Appendix A-010 or the existing requirements set forth in s. Ins 3.17 (6) (b) or (8) (b), Wis. Adm. Code, respectively. Section 623.06 (8m), Stats., established s. Ins 3.17, Wis. Admin. Code, as the reserve standard for contracts issued after November 1, 2015 and prior to January 1, 2017. Section Ins 3.17, Wis. Adm. Code, does not currently authorize the use of the 2013 Individual Disability Income Valuation Table and the 2012 Group Long-Term Disability Valuation Table for calculating disability claim reserves. Both the APPM and the Valuation Manual authorize the use of the updated tables. To bridge this gap, the proposed rule will permit insurers to use either the NAIC APPM tables or the standard valuation calculation contained in s. Ins 3.17, Wis. Adm. Code, for claims and contract reserves related to the accident and sickness policies issued prior to January 1, 2017.

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5. Describe the Rule's Enforcement Provisions and Mechanisms

The rule interprets ss. 623.04 and 623.06 (8m), Stats., that are enforced under s. 601.41 (4) and 601.64, Wis. Stats.

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6. Repealing or Modifying the Rule Will Impact the Following  
(Check All That Apply)

State's Economy

Local Government Units

Specific Businesses/Sectors

Public Utility Rate Payers

Small Businesses

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7. Summary of the Impacts, including Compliance Costs, identifying any Unnecessary Burdens the Rule places on the ability of Small Business to conduct their Affairs.

The rule addresses an unintended consequence of s. 623.06, Stats., that created a gap between valuation tables. The proposed rule will allow disability insurers to smoothly transition to the newest disability valuation tables by providing a bridge between valuation tables. Additionally, the proposed rule permits insurers to use the NAIC APPM table or the standard valuation calculation in s. Ins 3.17. This will reduce burdens for insurers bridging between the tables established in statute and provide consistent treatment of claims.

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8. List of Small Businesses, Organizations and Members of the Public that commented on the Rule and its Enforcement and a Summary of their Comments.

The Wisconsin Council of Life Insurers that represent both domestic and nondomestic life insurers licensed in Wisconsin explained the issue and stated that without a change to the regulation companies would not be able to revalue in-force claims consistent with the new valuation table and would result in insurers incurring additional expenses. Under the proposed rule, insurers can calculate reserves following the most updated rules and in a uniform manner with a result reducing insurer costs for functions like computer programming. Therefore the proposed rule will result in a modest reduction in costs for insurers. The American Council of Life Insurers (ACLI), that advocates for 280 member companies, stated that the proposal will update the minimum reserve standard to recognize several NAIC valuation tables. Failure to update would be more costly to insurers over time. The ACLI fully supports the proposed amendment with updated uniform valuation /reserve standards will help reduce carrier programming costs which could lead to future products being priced incorporating those savings to the benefit of consumers, employers and individuals purchasing disability policies.



## EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

9. Did the Agency consider any of the following Rule Modifications to reduce the Impact of the Rule on Small Businesses in lieu of repeal?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe: While updating the valuation tables the Office added insurer flexibility to minimize any impact on small businesses.

10. Fund Sources Affected

- GPR    FED    PRO    PRS    SEG    SEG-S

11. Chapter 20, Stats. Appropriations Affected

None

12. Fiscal Effect of Repealing or Modifying the Rule

- No Fiscal Effect    Increase Existing Revenues    Increase Costs  
 Indeterminate    Decrease Existing Revenues    Could Absorb Within Agency's Budget  
 Decrease Cost

13. Summary of Costs and Benefits of Repealing or Modifying the Rule

The benefit of the rule is a smooth transition between valuation tables for insurers writing disability insurance and without having to incur costs to adjust claims caught between the timeframes for the valuation tables. Additionally, the changes will create easier and more logical record-keeping and promote consistency with the standards of other states. The overall economic impact is expected to result in a slight reduction in costs for insurers.

14. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No

15. Long Range Implications of Repealing or Modifying the Rule

This rule addresses a finite gap between valuation tables for claims arising from policies issued before January 1, 2017 and policies issued after January 1, 2017, allowing them to be treated consistently by the insurer.

16. Compare With Approaches Being Used by Federal Government

None

17. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

All neighboring states have statutes that automatically update the valuation tables. This modification will be similar to the requirements in other states by addressing the gap created when the newest valuation tables were adopted.

18. Contact Name

Julie E. Walsh

19. Contact Phone Number

608-264-8101

This document can be made available in alternate formats to individuals with disabilities upon request.



# Tony Evers

Office of the Governor | State of Wisconsin

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February 27, 2020

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following statement of scope pursuant to Wis. Stat. § 227.135(2):

- A statement of scope by the Chiropractic Examining Board, submitted January 30, 2020, relating to continuing education (Wis. Admin. Code ch. Chir 5).

On this day, I approved the following proposed administrative rules pursuant to Wis. Stat. § 227.185:

- A proposed rule by the Department of Public Instruction, submitted on February 25, 2020, relating to changes to PI 34 as a result of 2019 Wisconsin Act 44 (Wis. Admin. Code ch. PI 34); and
- A proposed rule by the Department of Public Instruction, submitted February 10, 2020, relating to expanding the assessment of pedagogical knowledge in educator preparation programs (Wis. Admin. Code ch. PI 34); and
- A proposed rule by the Department of Children and Families, submitted on February 19, 2020, relating to kinship care and long-term kinship care (Wis. Admin. Code ch. DCF 58); and
- A proposed rule by the Office of the Commissioner of Insurance, submitted on January 24, 2020, relating to the Injured Patients and Families Compensation Fund refund procedures and ISO code modifications (Wis. Admin. Code ch. INS 17); and
- A proposed rule by the Office of the Commissioner of Insurance, submitted January 24, 2020, relating to the reserve standards for accident and sickness insurance and affecting small business (Wis. Admin. Code ch. INS 317); and
- A proposed rule by the Department of Natural Resources, submitted on January 23, 2019, relating to the 2019 Bureau of Wildlife Management housekeeping rule (Wis. Admin. Code chs. NR 8, 10, 11, 12, 16, 17, 19, and 45); and
- A proposed rule by the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors, submitted on January 8, 2020, relating to architect registration examinations (Wis. Admin. Code ch. A-E 3); and

- A proposed rule by the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors, submitted January 8, 2020, relating to minimum standards for property surveys (Wis. Admin. Code ch. A-E 7); and
- A proposed rule by the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board, submitted on February 24, 2020, relating to unprofessional conduct (Wis. Admin. Code ch. MPSW 20); and
- A proposed rule by the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors, submitted on January 8, 2020, relating to landscape architect registration (Wis. Admin. Code ch. A-E 9); and
- A proposed rule by the Controlled Substances Board, submitted February 12, 2020, relating to special use authorizations (Wis. Admin. Code ch. CSB 3); and
- A proposed rule by the Controlled Substances Board, submitted on February 12, 2020, relating to operation of prescription drug monitoring program (Wis. Admin. Code ch. CSB 4); and
- A proposed rule by the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board, submitted on December 18, 2019, relating to examinations (Wis. Admin. Code chs. MPSW 1, 3 and 5); and
- A proposed rule by the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board, submitted December 18, 2019, relating to the practice requirement for licensure as a clinical social worker (Wis. Admin. Code ch. MPSW 3); and
- A proposed rule by the Pharmacy Examining Board, submitted on February 12, 2020, relating to storage (Wis. Admin. Code ch. Phar 6); and
- A proposed rule by the Psychology Examining Board, submitted on January 9, 2020, relating to continuing education audits, and the renewal and reinstatement of licenses (Wis. Admin. Code ch. Psy 4); and
- A proposed rule by the Accounting Examining Board, submitted February 3, 2020, relating to examinations (Wis. Admin. Code ch. Accy 2); and
- A proposed rule by the Cemetery Board, submitted on January 29, 2020, relating to maintenance of burial records (Wis. Admin. Code ch. CB 2); and
- A proposed rule by the Cemetery Board, submitted January 29, 2020, relating to change of trustee of care fund and preneed trust funds (Wis. Admin. Code chs. CB 1, 4, and 5); and
- A proposed rule by the Cemetery Board, submitted on January 29, 2020, relating to mausoleums (Wis. Admin. Code ch. CB 6); and
- A proposed rule by the Department of Safety and Professional Services, submitted on February 7, 2020, relating to the inspection and testing of fire and smoke dampers (Wis. Admin. Code chs. SPS 305, 314 and 361); and
- A proposed rule by the Department of Safety and Professional Services, submitted February 25, 2020, relating to the educational approval program (Wis. Admin. Code chs. SPS 401, 404, 407 and 411); and
- A proposed rule by the Funeral Directors Examining Board, submitted January 24, 2020, relating to licensure and standards of practice for funeral directors and funeral director apprentices (Wis. Admin. Code chs. FD 1 and 2); and
- A proposed rule by the Funeral Directors Examining Board, submitted January 24, 2020, relating to continuing education for funeral directors (Wis. Admin. Code ch. FD 4).

Please direct any questions about this letter to my policy director, Jenni Dye.

Sincerely,

A handwritten signature in black ink that reads "Tony Evers". The signature is written in a cursive, slightly slanted style.

Tony Evers  
Governor

Cc: Ryan Nilsestuen, chief legal counsel ([ryan.nilsestuen1@wisconsin.gov](mailto:ryan.nilsestuen1@wisconsin.gov))  
Jenni Dye, policy director ([jenni.dye@wisconsin.gov](mailto:jenni.dye@wisconsin.gov))  
DOA State Budget Office ([SBOAdminRules@spmail.enterprise.wistate.us](mailto:SBOAdminRules@spmail.enterprise.wistate.us))  
Carl Bryan, DPI ([carl.bryan@dpi.wi.gov](mailto:carl.bryan@dpi.wi.gov))  
DSPS ([DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov))  
Elaine Pridgen, DCF ([elaine.pridgen@wisconsin.gov](mailto:elaine.pridgen@wisconsin.gov))  
Nathan Houdek, OCI ([nathan.houdek@wisconsin.gov](mailto:nathan.houdek@wisconsin.gov))  
Emma Esch, DNR ([emma.esch@wisconsin.gov](mailto:emma.esch@wisconsin.gov))



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**WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE**

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**Scott Grosz**  
*Clearinghouse Director*

**Anne Sappenfield**  
*Legislative Council Director*

**Margit S. Kelley**  
*Clearinghouse Assistant Director*

**Jessica Karls-Ruplinger**  
*Legislative Council Deputy Director*

**CLEARINGHOUSE REPORT TO AGENCY**

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 19-142**

AN ORDER to create Ins 3.17 (6) (bm) and (8) (bm), relating to the reserve standards for accident and sickness insurance, and affecting small business.

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

11-13-2019 RECEIVED BY LEGISLATIVE COUNCIL.

12-03-2019 REPORT SENT TO AGENCY.

MSK:DM

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]  
Comment Attached            YES                             NO
  
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]  
Comment Attached            YES                             NO
  
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]  
Comment Attached            YES                             NO
  
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]  
Comment Attached            YES                             NO
  
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]  
Comment Attached            YES                             NO
  
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]  
Comment Attached            YES                             NO
  
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]  
Comment Attached            YES                             NO



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Scott Grosz  
Clearinghouse Director

Margit Kelley  
Clearinghouse Assistant Director

Anne Sappenfield  
Legislative Council Director

Jessica Karls-Ruplinger  
Legislative Council Deputy Director

### CLEARINGHOUSE RULE 19-142

#### 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.]**

#### **2. Form, Style and Placement in Administrative Code**

The agency could consider whether a different ordering of provisions would improve a reader’s ability to quickly ascertain the applicable standard, particularly if the new standard going forward were placed first, rather than last. For example, in both s. Ins 3.17 (6) and (8), a new par. (am) could be created to specify that for contracts issued on or after January 1, 2017, the valuation manual must be used. The introductory statements to both instances of par. (b) could then be amended to something along the following lines: “The minimum ... reserve standards for contracts issued prior to January 1, 2017, at the option of the insurer, shall be either the reserve requirements set forth in the National Association of Insurance Commissioners’ Accounting Practices and Procedures Manual or as follows:”.

#### **3. Conflict With or Duplication of Existing Rules**

If the ordering of provisions in the proposed rule is maintained, the agency should amend both s. Ins 3.17 (6) (b) (intro.) and (8) (b) (intro.) in the existing rule to include the phrase “Except as provided in par. (bm),” at the beginning of these paragraphs to identify how the newly created provisions interact with the existing rule. The rule caption’s listing of affected provisions should also be updated to reflect the addition of the amendments to these provisions.

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

a. In s. Ins 3.17 (6) (bm) and (8) (bm), the agency could consider specifying a particular edition or date of the manual that would apply to a claims or contracts period. For example, a

phrase along the following lines could be added to each reference to a manual: “with any changes to the manual in effect on January 1 of the year in which the claim was incurred.”.

b. The agency should consider revising s. Ins 3.17 (6) (bm) 2. and (8) (bm) 2. to utilize the definition of “valuation manual” that is given in s. 623.06 (1) (j), Stats. For example, “The minimum ... reserve standards ... shall be the standards set forth in the valuation manual, as defined in s. 623.06 (1) (j), Stats.”.

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

a. In the analysis for the proposed rule, the plain language summary states that s. 623.06 (8m), Stats., establishes s. Ins. 3.17 as the reserve standard for contracts issued after November 1, 2015. However, the date listed in s. 623.06 (8m) is November 13, 2015. Should the plain language summary be revised to the date given by statute?

b. In the analysis for the proposed rule, it appears that the date given in the summary of preliminary comments on the scope statement should be revised from “2108” to “2018”. The agency could also consider revising the last sentence in this paragraph to correct grammatical errors.

c. In the text of the proposed rule, should there be an apostrophe after the “s” in “Commissioners” in each reference to the National Association of Insurance Commissioners’ manuals?

d. In the treatment clause for SECTION 1 of the proposed rule, there should be a space between the word “SECTION” and the SECTION number.





State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Tony Evers, Governor  
Mark V. Afable, Commissioner

Wisconsin.gov

January 18, 2020

Legal Unit  
125 South Webster Street • P.O. Box 7873  
Madison, Wisconsin 53707-7873  
Phone: (608) 267-9586 • Fax: (608) 264-6228  
oci.wi.gov

Report on section Ins 3.17, Wis. Adm. Code, relating to the reserve standards for accident and sickness insurance and affecting small business.

**Clearinghouse Rule No. 19-142**  
Submitted Under s. 227.19 (3), Stats.

(The proposed rule-making order is attached.)

**(a) A detailed statement of basis for the proposed rule and how the rule advances relevant statutory goals or purposes:**

The proposed rule permits insurers writing accident and sickness insurance to calculate claim and contract reserves for health insurance policies issued prior to January 1, 2017 to either comply with the minimum requirements in the National Association of Insurance Commissioners (NAIC) Accounting Practices and Procedures Manual (APPM) Appendix A-010 or the existing requirements set forth in s. Ins 3.17 (6) (b) or (8) (b), Wis. Adm. Code, respectively. Section 623.06 (8m), Stats., established s. Ins 3.17, Wis. Admin. Code, as the reserve standard for contracts issued after November 13, 2015 and prior to January 1, 2017. Section Ins 3.17, Wis. Adm. Code, does not currently authorize the use of the 2013 Individual Disability Income Valuation Table (IDIVT) and the 2012 Group Long-Term Disability Valuation Table (GLTDVT) for calculating disability claim reserves. Both the APPM and the Valuation Manual authorize the use of the updated tables.

Health claims reserves traditionally have been determined based on the incurred date of the claim and not the issue date of the policy. However, under the current Wisconsin requirements, if a new claim is made on a policy that was issued before January 1, 2017, the insurer would be required to use the reserve standard currently existing under s. Ins 3.17 (6) (b), Wis. Adm. Code, rather than the updated tables adopted by the NAIC. If a claim is made on a policy that was issued after January 1, 2017, the insurer would use the reserve standard based on the applicable new NAIC APPM table. Therefore, two claims with the same incurred date would be valued in two different ways as a result of the policy issue date. To bridge this gap, the proposed rule will permit insurers to use either the NAIC APPM tables or the standard valuation calculation contained in s. Ins 3.17, Wis. Adm. Code, as appropriate, for claims and contract reserves related to the accident and sickness policies issued prior to January 1, 2017.

**(b) Summary of the public comments and the agency's responses to those comments:**

**Comment:** Wisconsin Council of Life Insurers requested a definition of the term "insurance group" be added to the rule.

**Response:** The Office added a definition consistent with the comment received.

**Comment:** American Council of Life Insurers commented on the Legislative Council's comments and did not disagree with the section 5 corrections with the exception of the suggestion for treatment of the word "Commissioners." They did not oppose the other suggested changes but did not believe the other changes to be necessary.

Response: The Office agreed with the comments but did include some of the edits suggested by the Legislative Council.

**(c) An explanation of any modifications made in proposed rule as a result of public comments or testimony received at a public hearing:**

None.

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

**Appearances for:**

None

**Appearances against:**

None

**Appearances for information:**

None

**Registrations for:**

None

**Registrations against:**

None

**Registrations neither for nor against:**

Kelsey Avery, Wisconsin Association of Health Plan

**Letters received:**

Steven Clayburn, American Council of Life Insurers (ACLI)  
Gregory Gurlik, Northwestern Mutual Life Insurance Company  
Connie O'Connell, Wisconsin Council of Life Insurers

**(e) An explanation of any changes made to the plain language analysis of the rule under s. 227.14 (2), Stats., or to any fiscal estimate prepared under s. 227.14 (4), Stats**

None, other than as identified by the Legislative Council staff.

**(f) The response to the Legislative Council staff recommendations indicating acceptance of the recommendations and a specific reason for rejecting any recommendation:**

The Office considered all recommendations and made changes including the following:

Section 2, the legislative council suggested the agency consider reordering the provisions. The Office, consistent with comments received from the American Council of Life Insurers, will retain the current order of the provisions.

Section 3, all comments contained in Section 3 were complied with and corrected.

Section 4, The comment in b. was complied with, however, the comment in a., adding an edition or date of the manual, would limit the life of the rule and did not add clarity to the current provision.

Section 5, the Office complied with and corrected the comments contained in pars. a., b., and d. However, the recommendation in c. is not an accurate grammatical correction for the references to the NAIC in the proposed rule.

**(g) The response to the report prepared by the small business regulatory review board:**

The small business regulatory review board did not prepare a report.

**(h) Final Regulatory Flexibility Analysis**

A Final Regulatory Flexibility Analysis is not required because the rule is unlikely to have any impact on small businesses as the rule addresses reserving requirements for insurers and the reserving does not increase costs to the insurers or its insureds.

**(i) Fiscal Effect**

See fiscal estimate and economic impact analysis attached to proposed rule.

Attachment: Legislative Council Staff Recommendations