

# STATEMENT OF SCOPE

## OFFICE OF THE COMMISSIONER OF INSURANCE

Rule No.: 145 Section Ins 3.40

Relating to: Coordination of benefits and affecting small business

Rule Type: Permanent

### 1. Finding/nature of emergency:

NA

### 2. Detailed description of the objective of the proposed rule:

The Office intends to repeal and recreate s. Ins 3.40, Wis. Adm. Code, in order to update the coordination of benefit definitions and provisions to more closely align State requirements with the current National Association of Insurance Commissioners (NAIC) model regulation. The last substantive revision occurred in 1989 rendering Wisconsin's current rule inconsistent with other states and lacking helpful guidance on recent state and federal law changes including coverage for dependents to age 26, coordination with dental coverage and inclusion of individual health coverage. Updating the rule will result in less administrative cost to insurers while maintaining order in the coordination of benefits for the protection of insureds.

### 3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Section Ins 3.40, Wis. Adm. Code, relates to coordinating benefits when a person is covered by two or more health, disability, automobile medical benefits insurance policies. The coordination rule assists in determining which plan is primary and pays first and which plan is secondary. Without coordination of benefits insureds could collect maximum benefits from both policies and make a profit on their sickness or injury. To curtail this, insurers could design their policies to pay only excess benefits. However, if both insurers took that position benefit payments could be delayed while insurers determined which company should provide primary coverage.

The NAIC initially responded to the rise of issues by drafting and adopting the Coordination of Benefits (COB) Guidelines in the early 70s and current NAIC Coordination of Benefits Model Regulation was adopted in 2005 and is currently in the final stages before adoption of newly updated COB model regulation was most recently adopted in October 2013.

Updates to the Model Regulation include limiting financial gain by insureds, permitting coordination of individual health policies, coordination of dependent coverage to age 26, consideration of high deductible health plans and expanded definitions of "allowable expense" and "plans."

### 4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The statutory authority for this rule is ss. 227.11 (2) (a), and 601.41 (3), Wis. Stats., that provides for the commissioner's rule making authority in general. Also, s. 631.23, Wis. Stat., states that the Commissioner may "promulgate authorized clauses by rule based upon a finding as articulated in s. 631.23 (1) (a) to (d), Wis. Stats. The Commissioner has found that the coordination of benefits clauses are necessary to provide certainty of meaning and orderly and timely handling of claims. Regulation of

contract forms will be more effective, litigation will be substantially reduced if there is uniformity regarding coordination of benefits provisions in health insurance policies, and costs incurred by insurers should decrease when the requirements for coordination of benefits more closely aligns with the NAIC model regulation.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

200 hours and no other resources are necessary to develop the rule.

**6. List with description of all entities that may be affected by the proposed rule:**

The rule applies to all insurers offering health care and disability insurance coverage including individual and group health and dental care coverage, medical benefits under automobile contracts, and Medicare and other federal governmental plans. Agents authorized to sell these types of insurance will need to be aware of the changes. Employers offering health care insurance may be impacted and benefit from updating coordination of coverage.

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

The Office is unaware of existing or proposed federal regulation intended to address the coordination of benefits.

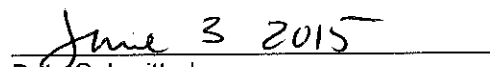
**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The rule is not likely to have a significant impact on small businesses but to the extent there is an impact it will likely be positive through reduction in duplication. Insurers that meet the definition of small businesses will also likely experience a decrease in costs from reduced duplication of benefits. Additionally as the rule will implement the NAIC model regulation, insurers doing business in other states will be able to reduce costs since the coordination requirements will be uniform and not uniquely required by Wisconsin.

**Contact Person:** Julie E. Walsh, Senior Attorney, 608-264-8101.



Daniel J. Schwartzer  
Deputy Commissioner



Date Submitted



**SCOTT WALKER**  
**OFFICE OF THE GOVERNOR**  
**STATE OF WISCONSIN**

P.O. Box 7863  
MADISON, WI 53707

July 14, 2015

Ted Nickel  
Commissioner of Insurance  
Office of the Commissioner of Insurance  
125 South Webster Street  
Madison, Wisconsin 53703-3474

**RE: Scope Statement for Ins 3.40 relating to coordination of benefits and affecting small business**

Dear Commissioner Nickel,

I hereby approve the statement of scope submitted on June 3, 2015, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapter Ins 3.40 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker  
Governor



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, Governor  
Theodore K. Nickel, Commissioner

Wisconsin.gov

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August 11, 2015

Section Ins 3.40, Wis. Adm. Code, relating to coordination of benefits and affecting small business

Statement of Scope of a Proposed Rule SS 061-15

In accordance with s. 227.135 (1) and (2), Stats., I hereby certify that I am the individual with the policy-making powers for the Office of the Commissioner of Insurance, that the above-listed Statement of Scope was published in the Wisconsin Administrative Register No. 715B on July 21, 2015, and that I approve of this statement of scope.

Work may now commence on this proposed rule.

Daniel J. Schwartz, Deputy Commissioner  
Office of the Commissioner of Insurance

Attachment: 1 copy Statement of Scope of a Proposed Rule