



# State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, Governor  
Theodore K. Nickel, Commissioner

Wisconsin.gov

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## Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

On March 16, 2017, the Office of the Commissioner of Insurance (OCI) submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Stats.

### Analysis

The proposed rules seek to repeal Ins 3.70, 5.45 (1) (b), 6.52 Form B, 8.42 (4) (a), (b) and (7) (c) (1), 8.59 (4), 8.60 (1) (a), (d) and (e), 8.61 (2) and (6), 8.68 (3) (b) and (c) and 9.40 (1) (a), (5) and (6); to renumber, consolidate and amend Ins 8.42 (4) (intro.) and (c) and 8.42 (4), 9.40 (1) (intro.) and (b) and 9.40 (1); to amend Ins 3.651 (2) (Note), 3.75 (6), 6.52 (5), ch. 6 Appendix 1 and Appendix 2, 7.02, 7.06 (Note), 8.40, 8.42 (13), 8.68 (4), 16.01 (4) (c), (6) (a) and (7) (a) and (b), 50.01 (1r) and 50.14 (2); and to create Ins 16.01 (7) (c), 50.01 (6g), 50.15 (2m), 50.155 and 50.18 (8), Wis. Adm. Code, relating to certain reporting requirements, electronic filing and obtaining information, increasing minimum annual assessment for OCI insurer examinations, other technical corrections and affecting small business.

### Statement of Scope

The scope statement for this rule, SS 069-15, was approved by the Governor on July 23, 2015, published in Register No. 716A2, on August 10, 2015, and approved by the Deputy Commissioner on August 26, 2015.

### Agency Procedure for Promulgation

A public hearing is required and will be held on **Wednesday, April 26, 2017 at 10:00 a.m.** at the Office of the Commissioner of Insurance, Room 227, 125 South Webster St., Madison, Wisconsin 53703.

### Agency Organizational Unit Primarily Responsible for Promulgating Rule

Legal Unit  
Office of the Commissioner of Insurance  
125 S. Webster St.  
Madison, Wisconsin

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### Agency Contact Person

OCI Attorney Alice Shuman-Johnson, may be contacted by email or by phone at:  
[alice.shumanjohnson@wi.gov](mailto:alice.shumanjohnson@wi.gov) or (608) 266-9892



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## Notice of Hearing

The Office of the Commissioner of Insurance announces that it will hold a public hearing on permanent rules to repeal Ins 3.70, 5.45 (1) (b), 6.52 Form B, 8.42 (4) (a), (b) and (7) (c) (1), 8.59 (4), 8.60 (1) (a), (d) and (e), 8.61 (2) and (6), 8.68 (3) (b) and (c) and 9.40 (1) (a), (5) and (6); to renumber, consolidate and amend Ins 8.42 (4) (intro.) and (c) and 8.42 (4), 9.40 (1) (intro.) and (b) and 9.40 (1); to amend Ins 3.651 (2) (Note), 3.75 (6), 6.52 (5), ch. 6 Appendix 1 and Appendix 2, 7.02, 7.06 (Note), 8.40, 8.42 (13), 8.68 (4), 16.01 (4) (c), (6) (a) and (7) (a) and (b), 50.01 (1r) and 50.14 (2); and to create Ins 16.01 (7) (c), 50.01 (6g), 50.15 (2m), 50.155 and 50.18 (8), Wis. Adm. Code, relating to certain reporting requirements, electronic filing and obtaining information, increasing minimum annual assessment for OCI insurer examinations, other technical corrections and affecting small business, at the time and place shown below.

### Hearing Information

**Date:** April 26, 2017

**Time:** 10 a.m.

**Location:** Office of the Commissioner of Insurance, Room 227, 125 South Webster St. 2<sup>nd</sup> Floor, Madison, Wisconsin.

### Accessibility

Handicap access is available at the hearing location.

### Appearances at the Hearing and Submittal of Written Comments

Written comments can be mailed to:

Alice M. Shuman-Johnson  
Legal Unit - OCI Rule Comment for Rule Ins 3.651  
Office of the Commissioner of Insurance  
PO Box 7873  
Madison WI 53707-7873

Written comments can be hand-delivered to:

Alice M. Shuman-Johnson  
Legal Unit - OCI Rule Comment for Rule Ins 3.651  
Office of the Commissioner of Insurance  
125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53703-3474

Comments can be emailed to:

Alice M. Shuman-Johnson  
[alice.shumanjohnson@wisconsin.gov](mailto:alice.shumanjohnson@wisconsin.gov)

The deadline for submitting comments is 4:00 p.m. on May 10, 2017.

The rules may be reviewed and comments made at: <http://docs.legis.wisconsin.gov/code> or at the OCI Web site: <https://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx> no later than 4:00p.m. on May 10, 2017.

### **Initial Regulatory Flexibility Analysis**

The proposed rule may have an effect on small businesses, as defined under s. 227.114 (1), Stats.

1. Description of the types of small businesses that will be affected by the rule:  
Small business insurers.
2. Description of the proposed reporting, bookkeeping and other procedures required for compliance with the rule: None beyond those currently required.
3. Description of the types of professional skills necessary for compliance with the rule:  
None beyond those currently required.

**Agency Small Business Regulatory Coordinator:** The OCI Small Business Regulatory Coordinator is Kate Ludlum, Funds and Program Management, who may be contacted by phone at: (608) 264-6232, or by email at: [kate.ludlum@wi.gov](mailto:kate.ludlum@wi.gov)

### **Agency Contact Person:**

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

<https://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx>

or by contacting Karyn Culver, OCI Legal Unit, at:

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

**PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF  
INSURANCE REPEALING, RENUMBERING CONSOLIDATING AND  
AMENDING, AMENDING, AND CREATING A RULE**

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

The Office of the Commissioner of Insurance proposes an order to repeal Ins 3.70, 5.45 (1) (b), 6.52 Form B, 8.42 (4) (a), (b) and (7) (c) (1), 8.59 (4), 8.60 (1) (a), (d) and (e), 8.61 (2) and (6), 8.68 (3) (b) and (c) and 9.40 (1) (a), (5) and (6); to renumber, consolidate and amend Ins 8.42 (4) (intro.) and (c) and 8.42 (4), 9.40 (1) (intro.) and (b) and 9.40 (1); to amend Ins 3.651 (2) (Note), 3.75 (6), 6.52 (5), ch. 6 Appendix 1 and Appendix 2, 7.02, 7.06 (Note), 8.40, 8.42 (13), 8.68 (4), 16.01 (4) (c), (6) (a) and (7) (a) and (b), 50.01 (1r) and 50.14 (2); and to create Ins 16.01 (7) (c), 50.01 (6g), 50.15 (2m), 50.155 and 50.18 (8), Wis. Adm. Code, relating to certain reporting requirements, electronic filing and obtaining information, increasing minimum annual assessment for OCI insurer examinations, other technical corrections and affecting small business.

The statement of scope for this rule SS 069-15 was approved by the Governor on July 23, 2015, published in Register No. 716A2 on August 10, 2015, and approved by the Deputy Commissioner on August 26, 2015.

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

**1. Statutes interpreted:**

ss. 601.41 (3), 601.42, 601.45 (1), Stats.

**2. Statutory authority:**

ss. 601.41 (3), 601.42 (2), 611.54 (1), 631.28, 609.20 (1m), 601.45 (1), 623.02, 623.03 and 623.04, Stats.

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

The statutory authority for these rules are ss. 227.11 (2) (a) and 601.41(3), Stats., which provide the commissioner's rulemaking authority in general.

Specifically, s. 611.54 (1), Stats., provides authority for the commissioner's rulemaking authority for s. Ins 6.52 rule change

regarding insurer reporting requirements of biographical data on insurance company officers and directors. Section 611.54 (1) states “the name of any person selected as a director or principal officer of a [insurance] corporation, together with such pertinent biographical and other data as the commissioner requires by rule shall be reported to the commissioner immediately after selection.”

Specific rulemaking authority for Ins 6.85 rule change: Section 631.28(1), Stats., requires all insurers to provide notice to its insureds of the right to file a complaint with OCI. Section 631.28 (2), Stats., states: “The commissioner shall promulgate rules specifying the contents of the notice... under sub. (1)... The rules shall describe how a policyholder, insured or other person may make a complaint with the office...”

Specific rulemaking authority for Ins Chapter 7 and (Note): Section 227.01 (13), Stats., defines a “rule” to mean “a regulation, standard, statement of policy,... which has the effect of law and which is issued by the agency to implement, interpret, or make specific legislation enforced or administered by the agency...” Section 227.01 (3), Stats., further provides the definition of a “rule” “does not include ...any action or inaction of an agency... which:

(j) Relates to the form and contents of reports, records or accounts of a state...agency.

(q) Is a form the content or substantive requirements of which are prescribed by a rule or statute.”

Also, s. 227.23, Stats., provides: “A form imposing a requirement which meets the definition of a rule shall be treated as a rule for the purposes of this chapter, except that: (3) It need not be published in the code and register in its entirety, but may be listed by title or description together with a statement as to how it may be obtained.”

Specific rulemaking authority for Ins 9.40 rule changes: Section 609.20 (1m), Stats., provides the commissioner “may promulgate rules relating to ...defined network plans” to effectuate certain purposes of Chapter 609 of the statutes. Further, s. 609.38, Stats., provides “the commissioner shall by rule develop standards for defined network plans for compliance with the requirements of this chapter.”

Specific rulemaking authority for Ins 16.01 (4) (c), 6 (a) and (7) (a), (b), (c) rule changes: Section 601.45 (1), Stats., provides the “reasonable costs of examinations ... shall be paid by examinees... as the commissioner may by rule prescribe.”

Specific rulemaking authority for Ins. 50.14 (2), Ins 50.15, 50.155, and 50.18 rule changes: Section 601.42, Stats., authorizes the commissioner to request statements, reports, and other information from regulated persons. Section 601.42 (2), Stats., authorizes the commissioner to prescribe forms for these reports. Sections 623.03

and 623.04, Stats., authorize the commissioner to promulgate rules regarding the valuation of assets and liabilities. Section 623.02 allows the commissioner to promulgate standards for accounting rules.

**4. Related statutes or rules:**

Please see listing of rules and related statutes noted in #3 above.

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

This proposed rule makes a number of technical corrections to a number of current rules by inserting OCI's current mailing address, adding OCI's website so consumers may make complaints and obtain insurance forms electronically. This proposed rule deletes insurance forms no longer in use from the rule that lists insurance forms and repeals all rule references to the Health Insurance Risk Sharing Plan (HIRSP) which was eliminated by 2013 Act 20. Currently OCI has two different forms required to be filed by domestic insurers providing biographical information on new officers and directors -- one for an insurer *before* it is organized and a second form for new officers and directors *after* the insurer is organized. The proposed rule eliminates one form (form B) and replaces it with the more informative current form A. Therefore, the proposed rule requires form A to be filed for new officers and directors of insurers both before and after the insurer is organized.

This proposed rule eliminates as unnecessary in the current health insurance marketplace a requirement that all HMOs annually submit HEDIS (Health Plan Employer Data and Information Set) quality assurance data to OCI. Also eliminated is a requirement that a very limited number of defined network plans submit annually to OCI a "standardized data set" of quality outcome data.

Under current rules, each year OCI bills domestic insurers for their proportionate share of the estimated total cost of administering that year's examinations program in an amount generally determined by comparing each insurer's premium volume. The current rule provides that "in the event the sum of the previous year's assessment exceeds the actual cost of administering the insurer examinations program, the amount of the excess shall be applied as an offset to the estimated cost for the next year's examination program." The proposed rule change provides that if the sum of a year's billings for insurer examinations by OCI "differs" from the actual cost of administering the examinations program, the difference (*plus or minus*) will be applied as an "adjustment" to the estimated cost for the next year's examinations program. The proposed rule also modernizes a rule section by making clear that the commissioner may obtain CPA work papers pertaining to an insurer's annual audit in electronic form.

OCI financial examiners perform a financial examination of all domestic insurers at a minimum of once every five years. The

proposed rule increases the minimum annual amount OCI may charge for its examinations of domestic insurers to an amount that more accurately reflects the actual minimum administrative costs of OCI examining domestic insurers. The new minimum amounts will also more equitably distribute the examination costs among insurers. The current minimum annual billing for OCI examinations is \$1,000 for domestic insurers located primarily out of state and \$300 for all other domestic insurers. These amounts have not been updated since 1999 and 1977, respectively. The proposed rule increases the annual minimum amount for domestic insurers located primarily out of state to \$10,000 and the minimum amount for all other domestic insurers to \$3,000 per year. This proposed rule change will not result in an increase to the aggregate amount charged the domestic insurance industry for administering OCI's examinations program.

Finally, the proposed rule adopts an NAIC model law requiring large insurers (with over \$500,000,000 of gross annual premiums) to have an independent internal audit function with an effective date of January 1, 2018. This is a good business and solvency practice, which most large insurers already have in place, to OCI's knowledge. The rule is also anticipated to be an NAIC accreditation requirement. NAIC accreditation is an important benefit to the domestic insurance industry as it ensures that Wisconsin insurers are only subject to financial examination by Wisconsin as other state regulators will adopt Wisconsin's financial examination if Wisconsin is an NAIC accredited state.

**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:**

OCI is unaware of any proposed or existing federal regulation that is intended to address the activities to be regulated by this proposed rule.

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

**a) With respect to a minimum annual assessment for insurer examinations:**

**Illinois:** 215 ILCS 5/Sec 3, 6, 7 and 9. Illinois does not have a set minimum assessment based on actual minimum cost of an examination in the way Wisconsin does. Illinois assesses all insurers, domestic and non-domestic, licensed to do business in the state. The assessment funds the cost of financial examinations and financial condition analyses and funds the costs and expenses of the Interstate Receivership Commission.

For domestic insurers, annual assessment amounts are variable and based on the amount of an insurer's nationwide direct premiums or admitted assets (whichever is greater) and, in some cases, reinsurance assumed premiums. For example, on the low end, if the premium is less than \$500,000 and there is no reinsurance assumed

premium, the annual assessment equals \$150. On the high end, if the premium is \$100,000,000 or more, the annual assessment equals \$37,500.

For non-domestic insurers, annual assessment amounts are also variable, and are based on the amount of an insurer's Illinois direct premiums and nationwide reinsurance assumed premiums. Again, the minimum assessment is \$150 on the low end of direct premium amount and \$37,500 on the high end. Also, assessments billed to non-domestic insurers within the same affiliated group cannot exceed \$250,000.

In addition to annual assessments, Illinois bills insurers for the following additional examination-related expenses:

1. Electronic data processing costs;
2. Lodging and travel expenses;
3. Outside consultants/contractors used in examinations; and
4. Performance examination costs (e.g. market regulation exams).

**Iowa:** Chptr 507.8, Iowa Code. Iowa does not use an annual assessment, so has no minimum assessment. Rather, upon completing an examination, the Iowa commissioner prepares a bill of all costs incurred in performing the examination and in preparing the subsequent report. The examined insurer is then responsible for paying the charged amount. Iowa uses outside contractors to conduct some of its out of state examinations.

**Michigan:** 500.224, mcl. Michigan assesses all insurers, domestic and non-domestic, licensed to do business in the state. The assessments fund the state's insurance department operations, with two-thirds of every assessment going toward solvency regulation.

Annual assessment amounts are variable and based on a formula that accounts for all in-state annuity considerations written and all in-state direct premiums underwritten. Regardless of the formula output, the assessment cannot exceed 80% of the gross appropriations for the insurance bureau. Also, the minimum fee is \$250, regardless of the formula output.

Furthermore, Michigan bills out-of-state insurers for the expenses and reasonable costs incurred in conducting an examination, for which Michigan often uses outside consultants/contractors.

**Minnesota:** 60A.03 subd 5, Minnesota Statutes. Minnesota does not use an annual assessment and so has no minimum annual assessment. Minnesota uses all outside contractors to conduct its examinations. All examined insurers are required to pay the "necessary expenses" of the persons engaged in the examination, including the per diem salaries of those persons.



**b) With respect to proposed rule adopting NAIC model law section requiring large insurance companies to have internal audit function:**

**Illinois:** Has not yet taken action to adopt the NAIC internal audit function requirement for larger insurers.

**Iowa:** Has not yet taken action to adopt the internal audit function requirement.

**Michigan:** Has not yet taken action to adopt the internal audit function requirement.

**Minnesota:** Has not yet taken action to adopt the internal audit function requirement.

**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:**

With regard to increasing the minimum assessment amount for insurer examinations, there has been no increase in the minimum assessment amount since 1999 for domestic insurers primarily located out of state, and no increase since 1977 for all other domestic insurers. OCI made calculations resulting in a determination that its minimum cost to do an examination of a domestic company primarily located out of state is \$10,000 per year and its minimum cost to do an examination of an in-state company is \$3,000 per year.

OCI has determined that 14 of a total of 119 in-state companies were billed the current minimum assessment amount of \$300 for 2016's examinations program. Also, 19 of a total of 61 domestic insurers located primarily out-of-state were billed the current minimum of \$1,000 for 2016's assessment. The new minimum assessment amounts will more fairly and equitably distribute the costs of the examinations program among insurers.

**9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:**

The proposed increase in minimum assessment amounts would have an impact on some domestic insurers. However, based on revenue and ownership structure, very few, if any, domestic insurers meet the definition of small businesses. Furthermore, OCI has delayed the applicability date of the rule changes increasing the minimum assessment amounts and the internal audit function requirement to February 1, 2018 and January 1, 2018, respectively, to allow insurers to make adjustments to comply with these two rule changes. Finally, a possible exemption may be available for a small business insurer under s. 601.45 (4), Stats., which provides that upon insurer request (or on commissioner's own motion) the commissioner may pay all or a part of an examination from the appropriation under

s. 20.145 (1) (g) 1., Stats., when “the commissioner finds that imposition of the costs would place an unreasonable burden on the examinee.”

**10. See the attached Private Sector Fiscal Analysis.**

The rule changes will have no significant effect on the private sector regulated by OCI.

**11. A description of the Effect on Small Business:**

This rule will have little or no effect on small businesses since few, if any, domestic insurers meet the definition of a small business. Furthermore, OCI has delayed the applicability date of the rule changes increasing the minimum assessment amounts and the internal audit function requirement to February 1, 2018 and January 1, 2018, respectively, to allow insurers to make adjustments to comply with these two rule changes, particularly the increase in minimum assessment amount. Finally, as stated earlier, a possible exemption may be available under s. 20.145 (1) (g) 1., Stats., if a small business insurer demonstrates to the commissioner’s satisfaction that imposition of the minimum assessment costs places “an unreasonable burden on the examinee.”

**12. 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, OCI Legal Unit, 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

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

The deadline for submitting comments is 4:00 p.m. on May 10, 2017.

Mailing address:

Alice M. Shuman-Johnson  
Legal Unit - OCI Rule Comment for Rule Ins 3.651  
Office of the Commissioner of Insurance  
PO Box 7873  
Madison WI 53707-7873

Street address:

Alice M. Shuman-Johnson  
Legal Unit - OCI Rule Comment for Rule Ins 3.651  
Office of the Commissioner of Insurance  
125 South Webster St – 2<sup>nd</sup> Floor

Madison WI 53703-3474

Email address:

Alice M. Shuman-Johnson  
alice.shumanjohnson@wisconsin.gov

Web site:

<https://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx>

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**The proposed rule changes are:**

**SECTION 1. Ins 3.651 (2) (Note) is amended to read:**

**Ins 3.651 (2) (Note) Note:** The claim adjustment reason codes referenced in subsections (2), (3) (b) 4. i., (4) (a) 5. f. and (5), form OCI 17-007, may be obtained from the Office of the Commissioner of Insurance, P. O. Box 7873, ~~121 East Wilson Street~~, Madison, Wisconsin 53707-7873 or on the Office of the Commissioner of Insurance website at <http://oci.wi.gov/>.

**SECTION 2. Ins 3.70 is repealed.**

**SECTION 3. Ins 3.75 (6) is amended to read:**

**Ins 3.75 (6) PORTABILITY;~~HIRSP~~.** For an individual who elects continuation of coverage under this section, the period, if any, from the date of the termination of the individual's group policy coverage to the commencement of continuation of coverage under this section shall be disregarded for the purpose of determining the 63-day period under s. 632.746 (3) (b) Stats., ~~and determining eligibility as an eligible individual under ch. 149, Stats.~~

**SECTION 4. Ins 5.45 (1) (b) is repealed.**

**SECTION 5. Ins 6.52 (5) is amended to read:**

**Ins 6.52 (5) REPORTING WITH RESPECT TO NEW OFFICERS AND DIRECTORS SUBSEQUENT TO ORGANIZATION OR ADMISSION.** A report shall be provided by each domestic insurer to which this rule applies with respect to the appointment or election of any new director, trustee or officer elected or appointed within 15 days after such appointment or election. Such report shall be prepared by the company in form and substance substantially in accordance with Form ~~B~~ A, shown at the end of this rule.

**SECTION 6. Ins 6.52 Form B is repealed.**

**SECTION 7. Ins 6 Appendix 1 is amended to read:**

**APPENDIX I**

**KEEP THIS NOTICE WITH YOUR INSURANCE PAPERS**

**PROBLEMS WITH YOUR INSURANCE?**—If you are having problems with your insurance company or agent, do not hesitate to contact the insurance company or agent to resolve your problem.

(INSURER NAME)

(CUSTOMER SERVICE)

(ADDRESS)

(CITY, STATE, ZIP)

(TOLL FREE TELEPHONE NUMBER, if available)

(TELEPHONE NUMBER)

You can also contact the **OFFICE OF THE COMMISSIONER OF INSURANCE**, a state agency which enforces Wisconsin's insurance laws, and file a complaint. You can ~~contact~~ file a complaint electronically with the **OFFICE OF THE COMMISSIONER OF INSURANCE** ~~by contacting~~ at its website at <http://oci.wi.gov/>,

or by contacting:

Office of the Commissioner of Insurance  
Complaints Department  
P. O. Box 7873  
Madison, WI 53707-7873  
1-800-236-8517  
608-266-0103.

**SECTION 8. Ins 6 Appendix 2 is amended to read:**

**APPENDIX 2**

You may resolve your problem by taking the steps outlined in your HMO grievance procedure. You may also contact the **OFFICE OF THE COMMISSIONER OF INSURANCE**, a state agency which enforces Wisconsin's insurance laws, and file a complaint. You can ~~contact~~ file a complaint electronically with the **OFFICE OF THE COMMISSIONER OF INSURANCE** at its website at <http://oci.wi.gov/>,

or by writing to:

Office of the Commissioner of Insurance  
Complaints Department  
P. O. Box 7873  
Madison, WI 53707-7873

or you can call 1-800-236-8517 outside of Madison or 266-0103 in Madison, and request a complaint form.

**SECTION 9. Ins 7.02 is amended to read:**

**Ins 7.02 Bureau of financial analysis and examinations forms.**

**Form**

**Number**

**Title**

~~21-001 Application for Certificate of Authority—Nondomestic~~  
21-002 Application for Certificate of Authority—Domestic Nonprofit HMO  
~~21-003 Application for Certificate of Authority—Gift Annuities~~  
21-004 Application for Limited Certificate of Authority Warranty Plans  
21-005 Application for Certificate of Authority—Domestic  
21-030 Application for Certificate of Authority—Domestic Nonprofit LSHO  
21-031 Application for Certificate of Authority—Nondomestic HMO  
21-032 Application for Certificate of Authority—Domestic for Profit HMO  
21-040 Application for Certificate of Authority—Fraternal  
21-050 Initial Registration for Vehicle Protection Product Warranty  
21-051 Vehicle Protection Product Warranty Annual Registration  
21-063 Application for Continuing Care Permit  
21-064 Application for Initial and Renewal Life Settlement Provider License  
21-190 Application for Admission—Motor Clubs  
~~22-001 Instructions to Prepare Annual Statement Blank According to NAIC Form, Instructions, and Accounting Standards~~  
~~22-006 Investments in Parents, Subsidiaries, and Affiliates—Quarterly~~  
22-007 Comparative Balance Sheet  
22-008 P&C Compulsory and Security Surplus Calculation—Quarterly Statement  
22-009 Life Compulsory and Security Surplus Calculation—Quarterly Statement  
22-010 Fire and Casualty—Domestic Annual Statement Packet  
22-011 Fire and Casualty—Nondomestic Annual Statement Packet  
22-020 Title Annual Statement Packet  
22-030 Fraternal Annual Statement Packet  
22-040 Life and Accident & Health—Domestic Annual Statement Packet  
22-041 Life and Accident & Health—Nondomestic Annual Statement Packet  
22-050 Hospital, Medical & Dental Service or Indemnity Corporation—Annual Statement Packet  
22-051 Life Settlement Provider Annual Statement Packet  
22-055 Employee Welfare Funds Annual Statement Packet  
22-060 Health Maintenance Organization Insurer Annual Statement Packet  
22-065 Limited Service Health Organization Annual Statement Packet  
22-070 Town Mutual Annual Statement Packet  
~~22-080 Gift Annuity Annual Statement Packet~~  
22-090 Mortgage Guaranty—Domestic Annual Statement Packet  
22-091 Mortgage Guaranty—Nondomestic Annual Statement Packet  
22-093 Mortgage Guaranty Insurers Report of Policyholders Position—Quarterly Statement

22-510 Election of Exemption (Opt-Out) 22-520 Election to be Subject to Restrictions (Opt-In)  
22-530 Termination of Exemption (Termination of Opt-Out)  
22-540 Termination of Election to be Subject to Restrictions (Termination of Opt-In)  
26-003 Amendment to Articles of Organization (or Incorporation)—Town Mutual Insurance Companies  
28-060 HMO Companies Compulsory and Security Surplus Calculation—Quarterly

**SECTION 10. Ins 7.06 (Note) is amended to read:**

**Ins 7.06 (Note) Note:** These forms and all other forms currently in use may be obtained from the Office of the Commissioner of Insurance at its website at <http://oci.wi.gov/>, or by writing to P.O. Box 7873, Madison, WI 53707-7878.

**SECTION 11. Ins 8.40 is amended to read:**

**Ins 8.40 Purpose.** This subchapter interprets and implements ch. 635, Stats., ~~and s. 149.12 (2) (e), Stats.~~

**SECTION 12. Ins 8.42 (4) (intro.) and (c) are consolidated, renumbered Ins 8.42 (4) and amended to read:**

**Ins 8.42 (4)** "Late enrollee" means an eligible employee, or dependent of an eligible employee, who does not request coverage under a policy during an enrollment period in which the individual is entitled to enroll in the policy, and who subsequently requests coverage under the policy, regardless of whether the enrollment period was held prior to, on or after the law's effective date. "Late enrollee" does not include an individual who ~~is~~ is a new entrant under sub. (7) (b) or (c).

**SECTION 13. Ins 8.42 (4) (a) and (b) and (7) (c) 1. are repealed.**

**SECTION 14. Ins 8.42 (13) is amended to read:**

**Ins 8.42 (13)** "Underwritten individual" means an individual who, prior to the law's effective date, requested but was excluded from coverage, or denied coverage, under a policy, whether issued by the current insurer or a preceding insurer, and continued to be and is an eligible employee, or dependent of an eligible employee, of the small employer. ~~"Underwritten individual" does not include a person who is covered under the plan established under ch. 149, Stats., on February 1, 1994.~~

**SECTION 15. Ins 8.59 (4) is repealed.**

**SECTION 16. Ins 8.60 (1) (a), (d), and (e) are repealed.**

**SECTION 17. Ins 8.61 (2) and (6) are repealed.**

**SECTION 18. Ins 8.68 (3) (b) and (c) are repealed.**

**SECTION 19. Ins 8.68 (4) is amended to read:**

**Ins 8.68 (4)** A small employer insurer shall provide written notice of the information described under sub. (3) (a) ~~to (e)~~ to each small employer who applies for a basic health benefit plan within 10 working days of the date the small employer insurer receives the small employer's application. The small employer insurer shall provide the notice directly or through an authorized insurance intermediary. The small employer insurer shall provide the employer with sufficient copies of the notice to distribute to each eligible employee and shall ask the employer to promptly distribute a copy to each eligible employee. The small employer insurer shall make reasonable efforts to obtain, within 20 business days after the small employer insurer issues a basic health benefit plan to a small employer, certification that the small employer promptly distributed the notice to all eligible employees.

**SECTION 20. Ins 9.40 (1) (intro.) and (b) are consolidated, renumbered Ins 9.40 (1) and amended to read:**

**Ins. 9.40 Required quality assurance and remedial action plans. (1)** In this section: (b) ~~“Quality~~ “quality assurance” means the measurement and evaluation of the quality and outcomes of medical care provided.

**SECTION 21. Ins 9.40 (1) (a), (5), and (6) are repealed.**

**SECTION 22. Ins 16.01 (4) (c) is amended to read:**

**Ins 16.01 (4) (c)** In the event that the sum of a year's billings under this rule ~~exceeds~~ differs from the actual cost of administering the insurer examinations program, the amount of the ~~excess~~ difference shall be applied as an ~~offset~~ adjustment to the estimated cost for the next year's examinations program.

**SECTION 23. Ins. 16.01 (6) (a) is amended to read:**

**Ins. 16.01 (6) (a)** The amount to be billed each domestic insurer subject to this rule shall be determined so that the billing is equal to a constant of proportionality times the square root of the insurer's premiums, where the constant of proportionality is determined each year so that the total of all billings equals the estimated cost of administering the insurer examinations program described in sub. (4). The formula is stated algebraically as follows:

$$A = \cancel{k \times P} \ k \times \sqrt{P}$$

where A = Annual Amount to be billed each domestic insurer  
k = Constant of Proportionality

P = Net Premiums Earned or Premiums and Annuity Considerations Reported in the applicable annual statement, for business of the second calendar year preceding the year of billing.

**SECTION 24. Ins 16.01 (7) (a) and (b) are amended to read:**

**Ins 16.01 (7) (a)** The maximum annual billing for any insurer shall be 1% of net premiums earned or premiums and annuity considerations reported in the applicable annual statement listed in s. Ins. 7.02 for business of the second calendar year preceding the year of billing, ~~subject to a requirement that the minimum bill is \$1000 for domestic insurers located primarily out of state for examination purposes and \$300 for all other domestic insurers.~~

(b) The annual bill for any insurer billed the previous year shall not exceed 1.2 times the immediately preceding year's bill adjusted for premium growth by multiplying by a factor equal to the second prior year's premium divided by the third prior year's premium. In calculating this adjustment, the year a billing is due shall be considered the current year. This paragraph does not apply if the second prior year's premium is less than the third prior year's premium.

**SECTION 25. Ins 16.01 (7) (c) is created to read:**

**Ins 16.01 (7) (c)** Notwithstanding the limitations in pars. (a) and (b), the minimum annual bill shall be \$10,000 for domestic insurers located primarily out of state for examination purposes and \$3,000 for all other domestic insurers. This paragraph first applies to annual billings beginning February 1, 2018.

**SECTION 26. Ins 50.01 (1r) is amended to read:**

**Ins 50.01 (1r)** "Audit committee" means a committee or equivalent body established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, the internal audit function of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of the controlled insurers solely for the purposes of this chapter at the election of the controlling person under s. Ins 50.15 (6). If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

**SECTION 27. Ins 50.01 (6g) is created to read:**

**Ins 50.01 (6g)** "Internal audit function" means a person or persons who provide independent, objective, and reasonable assurance designed to add value and improve an organization's operations and accomplish its



objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

**SECTION 28. Ins 50.14 (2) is amended to read:**

**Ins 50.14 (2)** The commissioner may ~~photocopy~~ obtain copies of work papers and retain the copies. If copies of work papers are requested in electronic format, the electronic copies must be as fully functional as the original documents. Password protection is acceptable for access to electronic work papers, but passwords on individual documents, or that disable features of individual documents, are not permitted. All working papers and communications obtained by the commissioner under this section may be treated by the commissioner as confidential under s. 601.465, Stats.

**SECTION 29. Ins 50.15 (2m) is created to read:**

**Ins 50.15 (2m)** The audit committee shall be responsible for overseeing the insurer's internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities if required by s. Ins 50.155.

**SECTION 30. Ins 50.155 and is created to read:**

**Ins 50.155 Internal audit function requirements. (1)** An insurer is exempt from the requirements of this section if both of the following conditions are true:

(a) The insurer has total annual direct written and unaffiliated assumed premiums, including international direct and assumed premiums but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000.

(b) The insurer is a member of a group of insurers and the group has total annual direct written and unaffiliated assumed premiums, including international direct and assumed premiums but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000.

**(2)** An insurer or group of insurers shall establish an internal audit function providing independent, objective, and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management, and internal controls. This assurance shall be provided by performing general and specific audits, reviews, and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

**(3)** In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function will not defer ultimate judgment on audit matters to others, and the insurer or group of insurers shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

**(4)** The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits, and the appropriateness of corrective actions implemented by management as a result of audit findings.

**(5)** If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level.

**SECTION 31. Ins 50.18 (8) is created to read:**

**Ins 50.18 (8)** The requirements of s. Ins 50.155 first apply on January 1, 2018. If an insurer or group of insurers that was exempt under s. Ins 50.155 (1) no longer qualifies for such exemption, it shall have one year following the year the threshold is exceeded to comply with the internal audit requirements.

**SECTION 32.** Effective Date. These changes will take effect on the first day of the month after publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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Theodore K. Nickel  
Commissioner of Insurance

## 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

to repeal Ins 3.70, 5.45 (1) (b), 6.52 Form B, 8.42 (4) (a), (b) and (7) (c) (1), 8.59 (4), 8.60 (1) (a), (d) and (e), 8.61 (2) and (6), 8.68 (3) (b) and (c) and 9.40 (1) (a), (5) and (6); to renumber, consolidate and amend Ins 8.42 (4) (intro.) and (c) and 8.42 (4), 9.40 (1) (intro.) and (b) and 9.40 (1); to amend Ins 3.651 (2) (Note), 3.75 (6), 6.52 (5), ch. 6 Appendix 1 and Appendix 2, 7.02, 7.06 (Note), 8.40, 8.42 (13), 8.68 (4), 16.01 (4) (c), (6) (a) and (7) (a) and (b), 50.01 (1r) and 50.14 (2); and to create Ins 16.01 (7) (c), 50.01 (6g), 50.15 (2m), 50.155 and 50.18 (8), Wis. Adm. Code, relating to certain reporting requirements, electronic filing and obtaining information, increasing minimum annual assessment for OCI insurer financial examinations, other technical corrections and affecting small business.

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

Section Ins 3.70 promulgated 9-1998; s. 5.45 (1) (b) promulgated 3-1996; s. 6.52 (5) Form B- promulgated 6-1973; s. 8.42 (4) (a), (b) and (7) (13) promulgated 10-1992; s. 8.59 (4) promulgated 11-1993; s. 8.60 (1) promulgated-11-1993; s. 8.61 (2) promulgated 11-92; s. 8.68 (3) (b), (c), (4), promulgated 11-1993; s. 9.40 (1), (5), (6)-promulgated 2-2000; s. 3.651 (2) (Note) promulgated 8-1993; s. 3.75 (6) promulgated 10-2009; ch. 6 Appendix 1, Appendix 2 promulgated 2-1993; ss. 7.02 and 7.06 (Note) promulgated 1-1992; s. 8.40 promulgated 10-1992; s 16.01 (4), (6) and (7) promulgated 12-1977;  
s. 50.01 promulgated 7-1993; s. 50.14 (2) promulgated 7-1993; s. 50.15 promulgated 12-2008.

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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.

These proposed rule changes make a number of technical changes or corrections to current rules by, for example, adding the OCI's website to rules so consumers may make complaints electronically, deleting insurance forms no longer in use and deleting all rule references to the HIRSP risk sharing plan which was eliminated by legislative act. The rule also modernizes a rule section by making clear that the Commissioner may obtain CPA work papers concerning an insurer's annual audit in electronic form. The proposed rule also increases the minimum annual amount OCI may charge for its financial examinations of domestic insurers to an amount that more accurately represents the actual minimum administrative costs to OCI to run its financial examinations program. The proposed rule increases the annual minimum amount for domestic insurers located primarily out of state to \$10,000 per year, and the minimum for all other domestic insurers to \$3,000 per year. Finally, the proposed rule adopts an NAIC model law requiring large insurers to have an independent internal audit function effective January 1, 2018.

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5. Describe the Rule's Enforcement Provisions and Mechanisms

Section 601.41 (1), Stats., requires the Insurance Commissioner to administer and enforce Wisconsin insurance laws and rules. The Commissioner has authority to issue "such prohibitory, mandatory and other orders as are necessary to secure compliance with the law." s. 601.41(4), Stats. The Commissioner has authority to bring an administrative action to enforce an order issued by the Commissioner and also to seek a monetary forfeiture and/or a limitation or revocation of an insurance license for violation(s) of a statute or rule or an order of the Commissioner. s. 601.64 (3), Stats. When an order is issued without a hearing, any person aggrieved by the order may demand a hearing within 30 days after the date on which the notice of the order was mailed. s. 601.62 (3), Stats.

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

<input type="checkbox"/> State's Economy	<input checked="" type="checkbox"/> Specific Businesses/Sectors
<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers
	<input checked="" type="checkbox"/> 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.

## EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

The only proposed rule change which may have a financial impact on some domestic insurers is the increase in annual minimum assessment amounts for OCI financial examinations proposed s. Ins. 6.01 (7) (c). No unnecessary burden is anticipated to be placed on small businesses as very few, if any, domestic insurers meet the definition of small businesses. OCI has delayed the applicability date of this rule change to February 1, 2018 to allow insurers some time to make adjustments to comply.

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.

OCI solicited comments through publication requesting comments from the public and interested parties using the OCI website. OCI also sent emails to 48 interested parties including, insurers, insurer organizations, law firms, Wisconsin Counties Association, Wisconsin Manufacturers and Commerce, and others.

One comment was received from the Wisconsin Council of Life Insurers which stated "We have not identified a fiscal impact associated with the proposed rule at this time."

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: OCI delayed the applicability date of s. Ins. 16.01 (7) (c), the increased minimum annual assessment for OCI financial examinations, to February 1, 2018 to allow insurers to make adjustments to comply with the rule change.

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 benefits of increasing the annual minimum assessments in s. Ins. 16.01 (7) (c) include that the increased minimum more accurately reflects the actual costs of OCI financial examinations program. Also, the new amounts more equitably distribute the costs of OCI's financial examinations program among 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

Section 16.01(7) (c)--The increased annual minimum assessments for financial examinations will allow OCI to continue to monitor the financial health and solvency of domestic insurers and more equitably distribute the costs of the program among insurers.

16. Compare With Approaches Being Used by Federal Government

The Federal Government does not address the subject matter of these proposed rules.

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

a) With respect to a minimum annual assessment for insurer examinations-[ proposed s. Ins. 16.01(7) (c)]:

ILLINOIS: 215 ILCS 5/Sec 3, 6, 7 and 9. Illinois does not have a set minimum assessment based on actual minimum cost of an examination in the way Wisconsin does. Illinois assesses all insurers, domestic and non-domestic, licensed to do business in the state. The assessment funds the cost of financial examinations and financial condition analyses and funds the costs and expenses of the Interstate Receivership Commission.

## **EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis**

For domestic insurers, annual assessment amounts are variable and based on the amount of an insurer's nationwide direct premiums or admitted assets (whichever is greater) and, in some cases, reinsurance assumed premiums. For example, on the low end, if the premium is less than \$500,000 and there is no reinsurance assumed premium, the annual assessment equals \$150. On the high end, if the premium is \$100,000,000 or more, the annual assessment equals \$37,500.

For non-domestic insurers, annual assessment amounts are also variable, and are based on the amount of an insurer's Illinois direct premiums and nationwide reinsurance assumed premiums. Again, the minimum assessment is \$150 on the low end of direct premium amount and \$37,500 on the high end. Also, assessments billed to non-domestic insurers within the same affiliated group cannot exceed \$250,000.

In addition to annual assessments, Illinois bills insurers for the following additional examination-related expenses:

1. Electronic data processing costs;
2. Lodging and travel expenses;
3. Outside consultants/contractors used in examinations; and
4. Performance examination costs (e.g. market regulation exams).

IOWA: Chptr 507.8, Iowa Code. Iowa does not use an annual assessment, so has no minimum assessment. Rather, upon completing an examination, the Iowa commissioner prepares a bill of all costs incurred in performing the examination and in preparing the subsequent report. The examined insurer is then responsible for paying the charged amount. Iowa uses outside contractors to conduct some of its out of state examinations.

MICHIGAN: 500.224, mcl. Michigan assesses all insurers, domestic and non-domestic, licensed to do business in the state. The assessments fund the state's insurance department operations, with two-thirds of every assessment going toward solvency regulation.

Annual assessment amounts are variable and based on a formula that accounts for all in-state annuity considerations written and all in-state direct premiums underwritten. Regardless of the formula output, the assessment cannot exceed 80% of the gross appropriations for the insurance bureau. Also, the minimum fee is \$250, regardless of the formula output.

Furthermore, Michigan bills out-of-state insurers for the expenses and reasonable costs incurred in conducting an examination, for which Michigan often uses outside consultants/contractors.

MINNESOTA: 60A.03 subd 5, Minnesota Statutes. Minnesota does not use an annual assessment and so has no minimum annual assessment. Minnesota uses all outside contractors to conduct its examinations. All examined insurers are required to pay the "necessary expenses" of the persons engaged in the examination, including the per diem salaries of those persons.

b) With respect to proposed rule adopting NAIC model law section requiring large insurance companies to have internal audit function [proposed s. Ins. 50.155]:

ILLINOIS: Has not yet taken action to adopt the NAIC internal audit function requirement for larger insurers.

IOWA: Has not yet taken action to adopt the internal audit function requirement.

MICHIGAN: Has not yet taken action to adopt the internal audit function requirement.

MINNESOTA: Has not yet taken action to adopt the internal audit function requirement.

18. Contact Name

Alice Shuman-Johnson, OCI Attorney

19. Contact Phone Number

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