



Wisconsin Office of the
COMMISSIONER
OF INSURANCE

Tony Evers, Governor of Wisconsin
Nathan Houdek, Commissioner of Insurance

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: January 4, 2023

SUBJECT: Section Ins 9.08, Wis. Adm. Code, relating to financial and other reporting
requirement modifications for health maintenance organizations

Clearinghouse Rule No. 22-070

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 s. 227.19 (2), Wis. Stat.

For additional information, please contact Karyn Culver at karyn.culver@wisconsin.gov.

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

Office of the Commissioner of Insurance

Rule No. Agency 145 – S. Ins 9.08.

The Commissioner of Insurance proposes an order to repeal Ins 9.08 (4), to amend Ins 9.08 (1) (intro.) and (4) (note), and to create Ins 9.08 (1m), relating to financial and other reporting requirement modifications for health maintenance organizations.

The statement of scope for this rule, SS 158-20, was approved by the Governor on December 11, 2020, published in Register No.780A3 on December 21, 2020, and approved by the Commissioner on January 13, 2021. The proposed rule was approved by the Governor on December 22, 2022, to submit to the legislature, and submitted to the legislature on January 4, 2023.

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

1. Statutes interpreted:

Sections 601.42 (1g), 609.94, 609.96, and 609.97, Stats.

2. Statutory authority:

Sections 601.41 (3), 601.42 (1g), 609.94 (2), 609.96 (1) (b) and (2), 609.97 (2), and 623.04, Stats.

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

Section 609.96 (2), Stats., provides that an HMO "shall have an initial expendable surplus ... or such other percentage as the commissioner specifies by rule promulgated or order issued." Section 609.97 (2), Stats., states that "[t]he commissioner may require a greater amount or permit a lesser amount than is specified ... by rule promulgated, or order issued." Each of these sections provide the commissioner with the authority to promulgate rules requiring the filing of annual statements and reports on forms identified by the commissioner. Sections 601.42 (1g) (a), Stats., authorizes the commissioner to require insurers to submit statements, reports, and like materials. Section 623.04, Stats., authorizes the commissioner to "promulgate rules specifying the liabilities required to be reported by insurers in the financial statements submitted under s. 601.42 (1g) (a)."

4. Related statutes or rules:

Sections Ins 50.05 and 50.20, Wis. Admin. Code.

5. Comments received during the preliminary comment period or public hearing on the statement of scope

None

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

The proposed rule will eliminate some filing requirements for Medicare and Medicaid only HMOs including filing certified public accountant special procedures opinions and audit opinions of covered expenses. It will also update the language to reflect that limited service health organizations (LSHO) file the national association of insurance commissioners health blank form not a separate LSHO blank for their annual statements to the office.

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:**

N/A

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

Illinois: 215 ILL.Comp.Stat. 125 (HMO Act)

Iowa: Iowa Code ch. 514B (governing HMOs)

Michigan: Mich.Comp.Laws ss. 500.3501-3580 (governing HMOs)

Minnesota: Minn. Stat. ch. 62D (governing HMOs)

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:**

OCI considered the balance between effective regulation and the increased costs those regulations impose. OCI determined that outside opinions on expenses were not necessary for Medicare and Medicaid only HMOs given the more limited risk these entities bear.

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:**

This rule will have little or no effect on small businesses. Insurers affected by the proposed rule changes may experience a slight decrease in administrative costs as the proposals provide reporting and filing relief and clarifications and updates that do not add financial burden to insurers, consumers or licensees.

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

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

11. **Agency contact person:**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the web site at: <https://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx> or by contacting Karyn Culver at:

Phone: (608) 267-9586

Email: karyn.culver@wisconsin.gov

Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474

Mail: PO Box 7873, Madison, WI 53707-7873

12. **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 November 14, 2022.

Written comments can be mailed or hand-delivered to:

Legal Unit - OCI Rule Comment for Rule Ins 9

Office of the Commissioner of Insurance

125 South Webster St – 2nd Floor

Madison WI 53703-3474

Email address: sharone.assa1@wisconsin.gov

For additional information please contact: sharone.assa1@wisconsin.gov

Text of Rule:

SECTION 1. Ins 9.08 (1) (intro.) is amended to read:

(1) ANNUAL STATEMENT. All insurers authorized to write health maintenance organization business and insurers licensed to write only limited service health organization business shall file with the commissioner by March 1 of each year an annual statement for the preceding year. A health maintenance organization insurer and limited service health organization insurer shall use the current health ~~maintenance organization~~ annual statement blank prepared by the national association of insurance commissioners.

SECTION 2. Ins 9.08 (1m) is created to read:

Ins 9.08 (1m) MEDICARE AND MEDICAID HEALTH MAINTENANCE ORGANIZATIONS. A health maintenance organization insurer that writes 100% of its business to Medicare or Medicaid recipients, or a combination of the two, is not required to include a special procedures opinion from a certified public accountant as required by sub. (1) (a) or an audit opinion concerning the statement of covered expenses as required by sub. (1) (c).

SECTION 3. Ins 9.08 (4) is repealed.

SECTION 4. Ins 9.08 (4) (note) is amended to read:

Note: The ~~list of the forms~~ form described in ~~subs. sub. (1) and (4)~~ may be obtained from the Office of the Commissioner of Insurance, P. O. Box 7873, Madison, WI 53707-7873.

SECTION 5. EFFECTIVE DATE. The rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin 1/4/2023 | 9:40 AM CST.

DocuSigned by:

Rachel Cissne Carabell

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Rachel Cissne Carabell

Deputy Commissioner of Insurance

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

☒ Repeal ☒ Modification

2. Administrative Rule Chapter, Title and Number

Ins. 9.08

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

3/1/2000

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 will eliminate some filing requirements for Medicare- and Medicaid-only HMOs, including filing certified public accountant special procedures opinions and audit opinions of covered expenses. The proposed rule will also update the language to reflect that limited service health organizations (LSHO) file the national association of insurance commissioners health blank form, not a separate LSHO blank, for their annual statements to the office.

5. Describe the Rule's Enforcement Provisions and Mechanisms

This rule shall be enforced through OCI's general enforcement authority under s. 601.64, Stats.

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

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.

It is anticipated that there will be no impact on small businesses. Affected insurers may experience a slight decrease in administrative costs.

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.

By August 12, 2022 letter, the Alliance of Health Insurers has stated its support for this rule because the rule would slightly reduce the financial burden on affected HMOs. OCI has received no other comments.

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:

10. Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

11. Chapter 20, Stats. Appropriations Affected

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

There are no anticipated costs to small businesses, affected insurers, or OCI. Affected insurers may benefit from small

EXISTING ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

savings in administrative costs.

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

There are no significant long-range implications for OCI, regulated entities, or other stakeholders.

16. Compare With Approaches Being Used by Federal Government

N/A

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

N/A

18. Contact Name	19. Contact Phone Number
Sharone Assa	(608) 264-8129

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



Tony Evers

Office of the Governor | State of Wisconsin

December 22, 2022

By Electronic Mail Only

Dear Secretaries and Agency Heads:

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

- A statement of emergency and permanent scope by the Department of Children and Families, submitted December 5, 2022, relating to child care subsidy copayments and registration fees (Wis. Admin. Code ch. DCF 201); and
- A statement of scope by the Naturopathic Doctors Examining Board, submitted December 7, 2022, relating to naturopathic doctors (Wis. Admin. Code chs. Nat Med 1 to 10).

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

- A proposed emergency rule by the Natural Resources Board, submitted December 14, 2022, relating to the use of new cement formulations for the construction of water wells and affecting small business (Wis. Admin. Code ch. NR 812); and
- A proposed emergency rule by the Natural Resources Board, submitted December 14, 2022, relating to disposal of material dredged from the Great Lakes (Wis. Admin. Code chs. NR 500 and 520); and
- A proposed emergency rule by the Dentistry Examining Board, submitted November 21, 2022, relating to certification of expanded function dental auxiliaries (Wis. Admin. Code chs. DE 1, 5, 13, and 16); and
- A proposed rule by the Office of Commissioner of Insurance, submitted November 29, 2022, relating to financial and other reporting requirement modifications for health maintenance organizations (Wis. Admin. Code ch. Ins 9); and
- A proposed rule by the Athletic Trainers Affiliated Credentialing Board, submitted December 7, 2022, relating to reciprocal credentials for service members, former service members, and their spouses (Wis. Admin. Code ch. AT 2); and
- A proposed rule by the Pharmacy Examining Board, submitted December 16, 2022, relating to name and address change, floor design, procedures for disciplinary proceedings, superseded references, and technical correction (Wis. Admin. Code chs. Phar 5-7, 11 and 12).

Please direct any questions about this letter to my deputy policy director, Katie Domina.

Sincerely,

A handwritten signature in black ink that reads "Tony Evers". The signature is fluid and cursive, with the first name "Tony" and last name "Evers" clearly distinguishable.

Tony Evers
Governor

cc: Ryan Nilsestuen, chief legal counsel (ryan.nilsestuen1@wisconsin.gov)
Katie Domina, deputy policy director (katherine.domina1@wisconsin.gov)
DOA State Budget Office (SBOAdminRules@spmail.wi.gov)
DSPS (DSPSAdminRules@wisconsin.gov)
Nathan Houdek, OCI (nathan.houdek@wisconsin.gov)
Emma Esch, DNR (emma.esch@wisconsin.gov)
Elaine Pridgen, DCF (elaine.pridgen@wisconsin.gov)



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Margit Kelley
Clearinghouse Assistant Director

Anne Sappenfield
Legislative Council 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 22-070

AN ORDER to to repeal Ins 9.08 (4); to amend Ins 9.08 (1) and (note); and to create Ins 9.08 (1m), relating to financial and other reporting requirement modifications for health maintenance organizations.

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

10-11-2022 RECEIVED BY LEGISLATIVE COUNCIL.

10-31-2022 REPORT SENT TO AGENCY.

MSK:TK

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)]

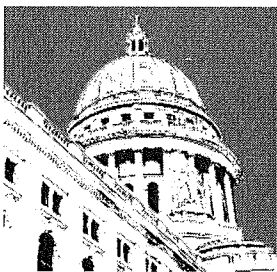
Comment Attached YES ☒ NO ☐

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 ☒



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Margit Kelley
Clearinghouse Assistant Director

Anne Sappenfield
Legislative Council Director

CLEARINGHOUSE RULE 22-070

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

In the analysis for the proposed rule, it appears that the listing of statutes interpreted should be revised to identify ss. 601.42 (1g), 609.94, 609.96, and 609.97, Stats. It also appears that the listing of statutory authority should be revised to identify ss. 609.94 (2), 609.96 (1) (b) and (2), 609.97 (2), and 623.04, Stats.

2. Form, Style and Placement in Administrative Code

a. The rule caption’s listing of affected provisions should be grouped in the following order: to repeal Ins 9.08 (4); to amend Ins 9.08 (1) (intro.) and (4) (note); and to create Ins 9.08 (1m). [s. 1.01 (1) (b), Manual.] Also, s. Ins. 9.08 (1) should be identified more specifically as affecting the introduction, as shown in this comment and in the treatment clause for SECTION 1 of the proposed rule.

b. In the analysis for the proposed rule, the agency should insert a heading and summary for any comments received during a preliminary comment period or public hearing on the statement of scope. The agency should also provide a narrative explanation for the comparison with similar rules in adjacent states. [s. 1.01 (2) (a), Manual.]

c. Following the analysis for the proposed rule, consider removing the phrase “The proposed changes are:” and instead inserting a heading for “Text of Rule”.

d. In SECTION 1 of the proposed rule, amending s. Ins 9.08 (1) (intro.), the subsection title from the existing rule should be shown in the text. [s. 1.10 (2) (c) 3., Manual.]

e. The treatment clause for SECTION 4 of the proposed rule should be revised to include a reference to sub. (4) as follows: “Ins. 9.08 (4) (note) is amended to read”. The agency could alternatively consider revising the treatment of the note to instead renumber and amend it to s. Ins 9.08 (1) (note), to more closely follow the affected material. If the agency does so, the SECTION should be moved to follow SECTION 1, and the rule caption’s listing of affected provisions should be revised to identify the treatment as renumbering and amending the note.

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

a. In the analysis for the proposed rule, the agency should review and revise the placement of semicolons and periods in the explanation of authority to promulgate the proposed rule to provide more coherent sentence structure.

b. In SECTION 2 of the proposed rule, creating s. Ins. 9.08 (1), the reference to “sub.(1)(a)” should appear with spaces as “sub. (1) (a)”, and the reference to “sub.(1)(c)” should appear with spaces as “sub. (1) (c)”.

c. Also in SECTION 2, it is more conventional to specify that a Medicare- or Medicaid-only HMO *is not required to* include a special procedures opinion or audit opinion.

d. In SECTION 4 of the proposed rule, it appears that there is an extra space before “form” and before “may”. Also, the note should end with a period, as is shown in the current text.