

★★★ NOTICE OF RULEMAKING HEARING ★★★

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41(3), Stats., and the procedures set forth in under s. 227.24 (4), Stats., OCI will hold a public hearing to consider the adoption of the attached proposed emergency rule affecting ch. Ins 18, Wis. Adm. Code, relating to the repeal of EmR 1117 and affecting small business.

HEARING INFORMATION

Date: January 26, 2012
Time: 10:00 a.m., or as soon thereafter as the matter may be reached
Place: OCI, Room 227, 125 South Webster St 2nd Floor, Madison, WI

Written comments can be mailed to:

Julie E. Walsh
Legal Unit - OCI Rule Comment for Emergency Rule Ch. Ins 18
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Written comments can be hand delivered to:

Julie E. Walsh
Legal Unit - OCI Rule Comment for Emergency Rule Ch. Ins 18
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Comments can be emailed to:

Julie E. Walsh
julie.walsh@wisconsin.gov

Comments submitted through the Wisconsin Administrative Rule Web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in this Notice of Hearing.

SUMMARY OF PROPOSED RULE & FISCAL ESTIMATE

For a summary of the rule see the analysis contained in the attached proposed rulemaking order. There will be no state or local government fiscal effect. The full text of the proposed changes, a summary of the changes and the fiscal estimate are attached to this Notice of Hearing.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an effect on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected:
Independent review organizations.
- b. Description of reporting and bookkeeping procedures required:
None beyond those currently required.
- c. Description of professional skills required:
None beyond those currently required.

Notice is hereby further given that pursuant to s. 227.14(2g), Stats., the proposed rule may have an economic impact on small businesses.

OCI SMALL BUSINESS REGULATORY COORDINATOR

The OCI small business coordinator is Louie Cornelius and may be reached at phone number (608) 264-8113 or at email address Louie.Cornelius@wisconsin.gov

CONTACT PERSON

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, OCI, at: inger.williams@wisconsin.gov, (608) 264-8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, Governor
Theodore K. Nickel, Commissioner

Wisconsin.gov

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STATE OF WISCONSIN

OFFICE OF THE COMMISSIONER OF INSURANCE

SS

I, Theodore K. Nickel, Commissioner of Insurance and custodian of the official records, certify that the annexed emergency rule affecting ch. Ins 18, Wis. Adm. Code, relating to repeal of EmR 1117 and affecting small business, is duly approved and adopted by this Office on December 27, 2011.

I further certify that I have compared this copy with the original on file in this Office and that it is a true copy of the original, and the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street, Madison, Wisconsin, on December 27, 2011.

Theodore K. Nickel
Commissioner of Insurance

**PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE
REPEALING A RULE**

To repeal EmR 1117;

Relating to repeal of EmR 1117 and affecting small business.

FINDING OF EMERGENCY

The Commissioner of Insurance finds that an emergency exists and that the attached proposed emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Emergency Rule 1117 (EmR 1117), was effective November 16, 2011 and is to be first applicable on January 1, 2012. EmR 1117 contained provisions modifying Wisconsin's insurance regulations governing grievances and independent review processes to comply with federal law provisions of 42 USC 300gg 19 (a) and (b), as implemented by 45 CR 147.136, as amended. It has been determined that this may not be in the best interest of the state.

The proposed emergency rule will repeal EmR 1117 in its entirety and maintain Wisconsin's prior existing regulations and oversight of the grievance and independent review process. To avoid full implementation of EmR 1117 and industry and consumer confusion, the Commissioner has determined that this emergency rule must be effective prior to January 1, 2012.

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

1. Statutes interpreted:

ss. 600.01, 628.34 (12), 632.73, 632.76, 632.81, 632.83, 632.835, and 632.84, Stats.

2. Statutory authority:

ss. 600.01 (2), 601.41 (3), 628.34 (12), 632.73, 632.76, 632.81, 632.835 (5) and (8), and 632.84, Stats.

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

The OCI has authority to promulgate rules interpreting s. 632.83 and 632.835, Stats., implementing grievance and independent review requirements and procedures. In addition s. 632.835, Stats., permits the OCI to promulgate rules for the certification of independent review organizations.

4. Related statutes or rules:

None.

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

The proposed emergency rule reinstates all provisions of ch. Ins 18, Wis. Adm. Code as it existed prior to November 16, 2011.

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:

Amendments to the Public Health Service Act (42 USC 300gg-19 (a) and (b)) created an internal appeal and external review right for consumers covered by group or individual health insurance. Section 2719 of the Public Health Service Act is implemented by interim final rules and guidance as issued by the US Department of Health and Human Services (45 CFR 147.136, as amended).

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

Illinois: Effective August 26, 2011, Illinois passed House Bill 224 further implementing the Patient Protection and Affordable Care Act (PPACA) by including provisions for preexisting conditions and rescissions and modifying review timeframes to comply with federal requirements. This builds on Illinois' managed care reform and patients right act 215 ILCS 134, providing to insureds for insured enrolled in health maintenance organizations a right to external review of medical necessity determinations. Also on January 5, 2010, Illinois enacted the health carrier external review act that broadens the right to external review to all Illinois residents enrolled in health insurance plans under 215 ILCS 180.

Iowa: Effective March 23, 2011, Iowa enacted House File 597 to enact new procedures for external review in order to comply with federal law. Iowa updated its regulations 191- ch. 76 effective July 8, 2011 and is compliant with federal requirements.

Michigan: Effective October 1, 2000, Michigan offers external review for adverse determinations based upon medical necessity that are unresolved internally by the plan. 2000 PA 251, MCL 550.1911. Michigan is compliant with federal requirements.

Minnesota: Effective 2000 Minnesota enacted a law that provides external review relating to medical necessity determinations from managed care plans and indemnity carriers. Minn. Stat. 72A.327. Minnesota is compliant with federal requirements

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:

The office reviewed state and federal law and regulations that reflect the National Association of Insurance Commissioners Uniform Health Carrier External Review Model Act and the Department of Labor's regulations for ERISA plans. Insurers and independent review organizations are required to comply with the federal requirements and state requirements by promulgation of this emergency rule. This rule reinstates ch. Ins 18 Wis. Adm. Code, as it read prior to November 16, 2011.

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 independent review organizations are certified by the commissioner's designee to conduct independent reviews in the state and several are small businesses. The additional cost for complying with this rule is no different for an independent review organization cost for complying with the federal law. Further, if there is additional cost it will be primarily borne by large insurers who are required to pay for the cost of an independent review, not the independent review organizations. The proposed rule places few additional requirements on the independent review organizations and in clarifying what is and is not eligible for reviews, the costs incurred will be limited.

10. See the attached Private Sector Fiscal Analysis.

11. A description of the Effect on Small Business:

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

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: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110
Email: inger.williams@wisconsin.gov
Address: 125 South Webster St – 2nd 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 the 14th day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

Julie E. Walsh
Legal Unit - OCI Rule Comment for Rule ch. Ins 18
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Street address:

Julie E. Walsh
Legal Unit - OCI Rule Comment for Rule ch. Ins 18
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Email address:

Julie E. Walsh
julie.walsh@wisconsin.gov

Web site: <http://oci.wi.gov/ocirules.htm>

The proposed rule changes are:

SECTION 1. Repeal EmR 1117.

SECTION 2. These changes first apply to claims occurring on or after January 1, 2012.

SECTION 3. This chapter may be enforced under ss. 601.41, 601.64, 601.65, 628.10, Stats., or ch. 645, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

SECTION 4. These emergency rule changes will take effect on December 29, 2011, as provided in s. 227.24 (1) (c), Stats.

Dated at Madison, Wisconsin, this ____ day of _____, 2011.

Theodore K. Nickel
Commissioner of Insurance

**Office of the Commissioner of Insurance
Private Sector Fiscal Analysis**

Chapter Ins 18 relating to repeal of EmR 1117 and affecting small business.

This rule change will have no significant effect on the private sector regulated by OCI.

ADMINISTRATIVE RULES – FISCAL ESTIMATE

1. Fiscal Estimate Version

Original Updated Corrected

2. Administrative Rule Chapter Title and Number

Chpt Ins 18, Grievances and Independent Review Organizations Certification and Review Procedures

3. Subject

Repeal of EmR 1117

4. State Fiscal Effect:

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs	May be possible to absorb within agency's budget.
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		<input type="checkbox"/> Decrease Costs	

5. Fund Sources Affected:

GPR FED PRO PRS SEG SEG-S

6. Affected Ch. 20, Stats. Appropriations:

NA

7. Local Government Fiscal Effect:

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Decrease Costs

8. Local Government Units Affected:

Towns Villages Cities Counties School Districts WTCS Districts Others: NA

9. Private Sector Fiscal Effect (small businesses only):

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs	May have significant economic impact on a substantial number of small businesses
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Decrease Costs	

10. Types of Small Businesses Affected:

Independent review organizations.

11. Fiscal Analysis Summary

No fiscal impact on the state, insurers or small businesses regulated by OCI

12. Long-Range Fiscal Implications

None

13. Name - Prepared by Julie E. Walsh	Telephone Number 608-264-8101	Date 12/27/2011
14. Name – Analyst Reviewer	Telephone Number	Date
Signature –Secretary or Designee	Telephone Number 608-267-3782	Date

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



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

December 27, 2011

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

RE: Emergency Rule Repealing EmR 1117

Dear Commissioner Nickel,

I hereby approve the proposed emergency rule repealing EmR 1117 submitted on December 27, 2011, pursuant to Wisconsin Statutes § 227.24. You may file the emergency rule for publication by the Legislative Reference Bureau pursuant to Wisconsin Statutes § 227.24(1)(e)1g.

Sincerely,

Scott Walker
Governor