

NOTICE OF PRELIMINARY PUBLIC HEARING
OFFICE OF THE COMMISSIONER OF INSURANCE

The Office of the Commissioner of Insurance announces that it will hold a preliminary public hearing on a Statement of Scope for ch. Ins 19, Wis. Adm. Code, relating Wisconsin Healthcare Stability Plan. In accordance with s. 227.136, Stats., the Commissioner is seeking public input through the hearing and comment period regarding the content of the proposed rule as described in the permanent Statement of Scope at the time and place shown below.

Hearing Information:

Date: March 21, 2019
Time: 10:30 am
Location: Office of the Commissioner of Insurance
125 S. Webster St., 2nd Floor Rm. 250
Madison, WI 53703

Accessibility:

Pursuant to the American with Disabilities Act reasonable accommodations including the provision of informational materials in an alternative format, will be provided for individuals with disabilities upon request. Please call Karyn Culver at (608) 267-9586 with specific information on your request at least 5 days before the date of the hearing. There is also handicap access to the hearing location.

Appearances at the Hearing and Submittal of Written Comments:

Persons wishing to testify or provide oral or written comments regarding the Statement of Scope for the proposed administrative rule may appear during the hearing. Additionally comments may be submitted at <https://docs.legis.wisconsin.gov/code>, or <https://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx>.

For additional information please contact Julie E. Walsh at (608) 264-8101 or email at Julie.Walsh@wisconsin.gov in the OCI Legal Unit.

Deadline for submitting comments is April 1, 2019, by 4:00 pm.


Initial Regulatory Flexibility Analysis:

The Office of the Commissioner of Insurance (OCI) is seeking comment for the permanent rule that will be developed following this public hearing and comment period. The OCI issued an Emergency Rule implementing ch. Ins 19, Wis. Adm. Code, regarding the Wisconsin Healthcare Stability Plan (WIHSP) on December 3, 2018. This permanent Statement of Scope proposes to finalize the Emergency rule and make any necessary changes to facilitate smooth implementation of the WIHSP.

Agency Small Business Regulatory Coordinator:

The OCI small business coordinator is Kate Ludlum and she may be reached at Kate.Ludlum@wisconsin.gov or (608) 264-6232.

This Notice of Preliminary Public Hearing is approved on March 5, 2019.



Mark V. Afable, Commissioner



Tony Evers

Office of the Governor | State of Wisconsin

February 22, 2019

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 scope from the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors, submitted April 25, 2018, relating to designer permits (Wis. Admin. Code Ch. A-E 5);
- A statement of scope from the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors, submitted April 25, 2018, relating to professional land surveyor licensure (Wis. Admin. Code Ch. A-E 6);
- A statement of scope from the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board, submitted July 24, 2018, relating to examinations (Wis. Admin. Code Chs. MPSW 1, 3, and 5);
- A statement of scope from the Occupational Therapists Affiliated Credentialing Board, submitted August 6, 2018, relating to biennial registration (Wis. Admin. Code Ch. OT 3);
- A statement of scope from the Radiography Examining Board, submitted August 6, 2018, relating to requirements for license and permit renewal and reinstatement (Wis. Admin. Code ch. RAD 7);
- A statement of scope from the Pharmacy Examining Board, submitted September 26, 2018, relating to requirements for controlled substances (Wis. Admin Code Ch. Par 8);
- A statement of scope from the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Professional Land Surveyors, submitted October 2, 2018, relating to architect registration (Wis. Admin Code Ch. A-E 9);

- A statement of scope from the Department of Safety and Professional Services, submitted November 12, 2018, relating to an update to uniform dwelling (one- and two-family dwellings) code and manufactured home communities (Wis. Admin Code Chs. SPS 320 to 326);
- A statement of scope from the Office of Commissioner of Insurance, submitted January 30, 2019, relating to the Wisconsin Healthcare Stability Plan (Wis. Admin. Code Ch. INS 19); and
- A statement of scope from the Department of Children and Families, submitted February 15, 2019, relating to child care licensing and certification updates (Wis. Admin. Code chs. DCF 12, 202, 250, 251, and 252).

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

- A proposed rule from the Department of Agriculture, Trade, and Consumer Protection, dated November 15, 2018, relating to food processing plants (Wis. Admin. Code chs. 55, 70, 65, 71, and 75);
- A proposed rule from the Medical Examining Board, dated January 17, 2019, relating to continuing medical education for physicians (Wis. Admin. Code ch. Med 13);
- A proposed rule from the Medical Examining Board, dated January 17, 2019, relating to perfusionists (Wis. Admin. Code ch. Med 22);
- A proposed rule from the Department of Natural Resources, dated January 23, 2019, relating to volatile organic compound control regulations for lithographic printing (Wis. Admin. Code chs. NR 422, 423, 439, and 484);
- A proposed rule from the Optometry Examining Board, dated February 19, 2019, relating to examination on the Treatment and Management of Ocular Disease (Wis. Admin. Code chs. Opt 3, 4, 6 and 7);
- A proposed rule from the Department of Children and Families, submitted February 19, 2019, relating to a correction affecting the determination of child support (Wis. Admin. Code ch. DCF 150);
- A proposed rule from the Medical Examining Board, dated February 20, 2019, relating to sports physician licensure exemption (Wis. Admin. Code ch. Med 25); and
- A proposed rule from the Medical Examining Board, dated February 21, 2019, relating to respiratory care practitioners (Wis. Admin. Code ch. Med 20).

Please direct any questions about this letter to my chief legal counsel, Ryan Nilsestuen.

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)
Jenni Dye, policy director (jenni.dye@wisconsin.gov)
Chris Connor, State Budget Office (Christopher.connor@wisconsin.gov)
DSPS Rules Coordinator(s) (dspsadminrules@wisconsin.gov)
Julie Walsh, Office of the Commissioner of Insurance (Julie.walsh@wisconsin.gov)
Tina Feaster, DCF (tina.feaster@wisconsin.gov)
Jolene Ibeling, DCF (jolene.ibeling@wisconsin.gov)
Angela James, DATCP (angela.james@wisconsin.gov)
Steve Ingham (steve.ingham@wisconsin.gov)
Yu-Lien Chu, DNR (yulien.chu@wisconsin.gov)

STATEMENT OF SCOPE

Office of the Commissioner of Insurance

Rule No.: 145 Ch. INS 19

Relating to: Wisconsin Healthcare Stability Plan

Rule Type: Permanent

1. Finding/nature of emergency:

None.

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

The objective is to implement 2017 Wis. Act 138, which created a state-based reinsurance program for health carriers offering comprehensive individual health insurance products in a single risk pool and to replace the emergency rule with a permanent rule. WIHSP will provide reinsurance to qualified insurers for eligible claims between the attachment point and reinsurance cap to mitigate the impact such claims have on premium rates throughout the individual market. The proposed rule establishes requirements of the WIHSP including; timelines, coinsurance rates, data filing requirements, definitions of basic terms, eligible claim requirements and clarifying which plans offered by qualified insurers are eligible to participate in the reinsurance program. Additionally, the proposed rule establishes the payment parameters for the reinsurance program and clarifies the ability for WIHSP to recoup overpayments from third parties such as workers compensation or auto insurance. The proposed rule will also delineate the type and frequency of the data necessary to be collected from insurers in order to determine the pool of claims that may be eligible for reimbursement by the WIHSP. Finally, the proposed rule will establish frequency and scope of periodic audits of the insurers to ensure compliance with the requirements of the program rules.

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:

The 2017 Wis. Act 138 permitted OCI to submit a 1332 State Innovation Waiver ("1332 Waiver") allowing for the operation of a state-based reinsurance plan. The 1332 Waiver was approved on July 29, 2018 effective January 1, 2019, and permits the Commissioner on behalf of the State to pursue innovative strategies to ensure consumers have access to affordable health insurance options. The 1332 Waiver will facilitate stabilization of the marketplace by utilizing minimal state funds and maximizing federal pass-through dollars. To maximize the federal funding, OCI will demonstrate that there will be savings to the federal government through the 1332 Waivers that will allow for the reduced premiums and therefore reduced federal expenditures for advance premium tax credits. The 1332 Waiver allows the federal government to pass back the premium subsidy savings to the State. Based upon preliminary calculations OCI estimates that federal premium tax credits accounted for 75 percent of premiums for ACA single risk pool plans in 2016 and 78 percent of premiums in 2017. It is this amount that the federal government could pass through to Wisconsin to be used to reinsure eligible claims. For the 2019 calendar year the anticipated coinsurance rate will be 50% of claim costs between \$50,000 and \$250,000.

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

Section 601.83 (1) (g), Stats., allows the Commissioner to promulgate any rules necessary to implement the healthcare stability plan provided the Commissioner seeks to maximize federal funding. Specifically,

s. 601.83 (1) (g), Stats., states "[A]dditionally the Commissioner is required to establish the payment parameters to stabilize or reduce premium rates in the individual market, increase participation by health carriers in the individual market, improve access to providers and services for individual pursuant to ss. 601.83 (2) and (3), Stats."

Additionally, s. 601.41 (3) (a), Stats., grants the Commissioner "rule-making authority under s. 227.11 (2)." Further, s. 601.42 (1g), Stats., gives the Commissioner the authority to require from those subject to regulation, among other things, "statements, reports, answers to questionnaires, and other information, and evidence thereof, in whatever reasonable form the commissioner designates, and at such reasonable intervals as the commissioner chooses, or from time to time." Finally, s. 601.42 (2), Stats., states that "[T]he commissioner may prescribe forms from the reports under subs. (1g) and (1r) and specify who shall execute or certify such reports." The proposed rule will require insurers to provide OCI with the necessary enrollment data and aggregate claims data in a timely manner and in a specific form prescribed by the Commissioner in order for OCI to comply with the statutory requirements contained in 2017 Wis. Act 138.

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

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

Consumers purchasing individual health insurance, health care providers serving Wisconsin's citizens, and insurers offering comprehensive individual health insurance coverage through a single risk pool.

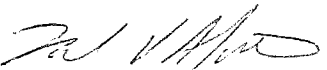
7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The proposal contained in 2017 Wis. Act 138 is similar to other states attempts to gain stability within their respective markets and is intended to replace the federal program that is no longer funded.

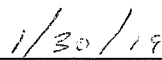
8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The anticipated economic impact of the rule, on an aggregate level, will provide more affordable premium cost to consumers; facilitate fair reimbursement to providers serving insureds, and cost savings to insurers offering products sold through a single risk pool. The overall impact of this program is anticipated to increase insurer choices for consumers and reduce the pace of cost increases for health insurance.

Contact Person: Julie E. Walsh, Senior Attorney, Julie.Walsh@wisconsin.gov



Department Head or Authorized Signature



Date Submitted