



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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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: December 18, 2019

SUBJECT: Section Ins 40 and 53, Wis. Adm. Code, relating to holding company supervision amendments and corporate governance disclosure requirements for NAIC accreditation and affecting small business.  
Clearinghouse Rule No. 19-013

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 Wis. Stat. § 227.19 (2). We have e-mailed you an electronic copy of the text of the rule.

For additional information or if you do not receive the e-mail, please contact Karyn Culver at (608) 267-9586 or [karyn.culver@wisconsin.gov](mailto:karyn.culver@wisconsin.gov).

## PROPOSED ORDER AMENDING AND CREATING A RULE

### Office of the Commissioner of Insurance

**Rule No.** Agency 145 – Ins 40 and 53, Wis. Adm. Code, proposes an order to **amend** INS 40.01 and 40.05; and to **create** INS 40.01 (5m) and (7m), 40.07 to 40.09, ch. 53 (title) and chapter, Wis. Adm. Code, relating to holding company supervision amendments and corporate governance disclosure requirements for NAIC accreditation and affecting small business.

The statement of scope for this rule SS: 080-18, was approved by the Governor on July 9, 2018, published in Register No. 751A3, on July 16, 2018, and approved by the Commissioner on August 28, 2018. The proposed rule was approved by the Governor on December 5, 2019 to submit to the legislature and was submitted to the legislature on December 18, 2019.

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

#### **Statutes interpreted:**

Sections 610.80, 617.12, 617.215, Stats.

#### **Statutory authority:**

Sections 601.41 (3) (a), 601.42, 610.80, 617.12, 617.215, Stats.

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

The commissioner has the general authority to promulgate rules necessary to administer and enforce chs. 600 to 655, Stats., and as provided under ss. 227.11 (2) (a) and 601.41, 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 for the reports under subs. (1g) and (1r) and specify who shall execute or certify such reports."

Section 610.80, Stats., was recently enacted as a result of 2017 Wis. Act 313, establishing the requirement for an annual corporate governance disclosure. Section 610.80

(7), Stats., states, “[T]he commissioner may promulgate any rules necessary to carry out the purposes of this section.” The proposed rule would create ch. Ins 53, Wis. Adm. Code, to delineate the requirements for the annual disclosure for corporate governance and specify timing and the form as prescribed by the commissioner in order for OCI to comply with the statutory requirements contained in 2017 Wis. Act 313.

Section 617.215 (2) (a) 3., Stats., authorizes the commissioner to “clarify the functions of a supervisory college and the role of other regulators, including the establishment of a group-wide supervisor.” Further, s. 617.12 (2), Stats., authorizes the commissioner “to promulgate rules requiring insurers to report their enterprise risk, including the form of the report and the manner and process for filing the report.” The NAIC model regarding group-wide supervision of internationally active insurance groups falls within the regulation of insurance holding companies and intercorporate transactions and therefore is applicable.

The OCI is proposing rules that will address several financial regulations implementing newly required accreditation standards for the financial supervision of insurers. Specifically the proposed rules will create ch. Ins 53, Wis. Adm. Code, to implement the corporate governance annual disclosures as established in 2017 Wis. Act 313 that created s. 610.80, Stats.; amend various sections of ch. Ins 40, Wis. Adm. Code, to reflect changes to the holding company system for group-wide supervision of internationally active insurance groups. The proposed changes will bring the office into compliance with the National Association of Insurance Commissioners (NAIC) Financial Regulation Standards and Accreditation Program requirements that are a necessary component of the accreditation of the office.

Accreditation is a certification given to a state insurance department once it has demonstrated that it has met legal, financial and organizational standards. Accreditation is important to retain OCI’s ability to oversee its domestic insurers including those doing a multi-state business. At the same time the proposed rules reduce burdens on some insurers by creating consistency across states for those insurers doing business in multiple states.

**Related statutes or rules:**

Sections 610.80 and 617.215 (2) (a) 3., Stats.

**Plain language analysis:**

The objectives of the proposed rules are to improve the regulation of internationally active insurance groups that include at least one Wisconsin insurer, and to specify filing procedures and the contents of the corporate governance annual report which insurers are required to file under s. 610.80, Stats.

Both of the changes are to bring Wisconsin into alignment with NAIC model regulations. Wisconsin must adopt them in substantively the same form as the NAIC model regulations if the OCI is to remain a state insurance regulatory agency that is accredited by the NAIC. It is a goal of the OCI and a benefit to domestic insurers for OCI to maintain its accreditation because as a NAIC accredited state, domestic insurers are only subject to certain filing requirements with OCI and financial examination by OCI. Without accreditation, domestic insurers could be subject to financial examination and filing requirements for all jurisdictions in which they operate. This could include examination from all 56 U.S. jurisdictions for some insurers. Without accreditation, the cost of doing business for Wisconsin's domestic insurance industry would increase because their regulation by other states would increase. In order to maintain accreditation, OCI must adopt certain standard regulations developed by the NAIC. In addition, the proposed changes are similar to those adopted or that will be adopted in other states and work to promote uniformity for insurance holding company systems operating across multiple states.

Wisconsin's current ch. Ins 40, Wis. Adm. Code, generally follows the NAIC Insurance Holding Company System Regulatory Model Act (Model Act) and Insurance Holding Company System Model Regulation (Model Regulation). The NAIC recently made changes to its Model Act to improve the coordination of regulatory efforts when internationally active insurance

groups are involved. The proposed rule changes in ch. Ins 40, Wis. Adm. Code, would authorize the commissioner to act as, or designate the regulatory official of another jurisdiction to act as, the group-wide supervisor of any internationally active insurance group that includes at least one Wisconsin insurer. A similar cooperative regulatory approach is already used on an interstate level. The rule change would expand this type of approach to include foreign jurisdictions that meet certain regulatory criteria. In addition, it would enable Wisconsin to maintain its NAIC accreditation.

Secondly, the NAIC recently created the NAIC Corporate Governance Annual Disclosure Model Act, the goal of which is to require an annual filing that would enable the commissioner to gain a better understanding of an insurer's corporate governance framework. In 2017, Wisconsin enacted s. 610.80, Stats, which generally follows the Model Act. The NAIC also created the Corporate Governance Annual Disclosure Model Regulation, which sets forth procedures for filing and the required contents of the corporate governance annual disclosure. The proposed rules creating ch. Ins 53, Wis. Adm. Code, follow the provisions of the Model Regulation, and are necessary in order for s. 610.80, Stats, to take effect. The rules are also required for Wisconsin to maintain its NAIC accreditation.

**Summary of and preliminary comparison with any existing or proposed federal statutes and regulations:**

Accredited insurance departments are required to undergo a comprehensive review by an independent review team every five years. To ensure the office continues to meet financial solvency oversight standards and accreditation standards the office is required to have adequate statutory and administrative authority to regulate an insurer's corporate and financial affairs and the necessary resources to carry out that authority.

OCI is proposing implementation of both the NAIC updated model holding company regulation and the NAIC corporate governance annual disclosure model regulation. Specifically,

both changes will create new provisions that are not currently covered in existing rules.

Following the enactment of s. 610.80, Stats., which established the requirements of an annual corporate governance disclosure, the proposed ch. Ins 53, Wis. Adm. Code, would delineate the requirements for that annual disclosure and specify the timing and the form as prescribed by the commissioner in order for OCI to comply with the statutory requirements. The proposed changes to ch. Ins 40, Wis. Adm. Code, would allow the commissioner to act as, or recognize another regulator to act as, a group-wide supervisor of an internationally active insurance group, resulting in more efficient regulation and better cooperation with other regulators.

**Summary of any public comments and feedback on the statement of scope of the proposed rule that the agency received at any preliminary public hearing and comment period held under s. 227.136, Stat., and a description of how and to what extent the agency took those comments and that feedback into account in drafting the proposed rule.**

The office gave notice of a preliminary public hearing on a statement of scope for s. Ins 40 and ch. 53, Wis. Adm. Code, relating to holding company supervision amendments and corporate governance disclosure requirements for NAIC accreditation and affecting small business. The notice was published in the Wisconsin Administrative Register on July 30, 2018, in Register No. 751A3. A public hearing was held on July 30, 2018 at 3:00 pm. Notice as also published on the office's website. The public could provide oral or written testimony and a public comment period was open until 4:00 pm on August 14, 2018.

The office received one comment that was a general statement of support and did not request or suggest modifications to the statement of scope, therefore no further action was taken by the office.

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

**Illinois:** 50 IL ADC 1250.30 regarding corporate governance. No pending laws or regulations regarding supervision of internationally active insurance groups.

**Iowa:** Iowa Admin Code R. 191-111.1-191-111.5 implementing Iowa Code § 521H for corporate governance annual disclosures. Iowa Code § 521A.6B addresses the supervision of internationally active insurance groups.

**Michigan:** No pending laws or regulations regarding supervision of internationally active insurance groups, Michigan enacted HB-6520 on December 6, 2018, M.C.L.A. 500.1755 creating ch. 17A and s. 3032 regarding corporate governance annual disclosure effective January 1, 2020

**Minnesota:** M. S. A. § 60D.217 regarding groupwide supervision of internationally active insurance groups.

**A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule:**

The OCI has reviewed NAIC models and insurer's financial information to support the analysis that this rule change is beneficial to the state of Wisconsin and its insurance industry.

**Analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses or in preparation of an economic impact analysis:**

The proposed rules will implement provisions that all states will need to have in place for accreditation purposes. For insurers subject to the jurisdiction of the commissioner that do the business of insurance in many states including Wisconsin the requirements proposed will be consistent with other states' requirements. For insurers that do the business of insurance solely within the state of Wisconsin, the requirements would be imposed only as applicable. The proposed rules are expected to have a negligible economic impact since no special expertise will be required to complete the reporting. Specifically, insurers will not be required to incur costs for retaining actuaries or certified public accountants as a result of the proposed rules. The information may be supplied by the insurers in a form convenient to them as the Commissioner will delineate the content and not the structure of the reports.

**Effect on small business:**

The rule is not likely to have a significant impact on small businesses that are insurers or that are insured by businesses subject to the proposed rule as little to no economic impact is anticipated and therefore will not be passed on to insureds. Under the proposed rule and NAIC

models small businesses including town mutual and fraternal organizations will be required to file the annual corporate governance disclosures. This is a new requirement and one that initially will require time but no special expertise. The OCI considered alternatives to lessen the impact on small businesses; however, as this is an accreditation requirement the OCI cannot exempt or lessen the requirements for any of the licensed insurers doing business in the state.

**A copy of any comments and opinion prepared by the Board of Veterans Affairs under s. 45.03 (2m), Stats., for rule proposed by the Department of Veterans Affairs.**

None.

**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 under Rule-Making Information at:  
**<https://oci.wi.gov/Pages/RegulationHome.aspx>**

or by contacting Karyn Culver, Paralegal, at:

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**The proposed rule changes are:**

**SECTION 1. Ins 40.01 (5m) and (7m) are created to read:**

**Ins 40.01 (5m)** “Group-wide supervisor” means the regulatory official who is authorized to conduct and coordinate group-wide supervision activities and who is determined or acknowledged by the commissioner to have sufficient significant contacts with the internationally active insurance group.

**(7m)** “Internationally active insurance group” means an insurance holding company system that includes an insurer registered consistent with s. Ins 40.03 and all the following:

(a) Premiums written in at least three countries.

(b) The percentage of gross premiums written outside the United States is at least 10 percent of the insurance holding company’s total gross written premiums.



(c) Based on a 3-year rolling average, either the total assets of the insurance holding company system are at least \$50 billion dollars, or the total gross written premiums of the insurance holding company system are at least \$10 billion dollars.

**SECTION 2. Ins 40.05 is amended to read:**

**Ins 40.05 Privileged information.** The information required to be filed with the commissioner under to ss. Ins 40.02 and, Ins-40.025, 40.07, and 40.08, is required pursuant to s. 601.42, Stats., and is subject to s. 601.465, Stats.

**SECTION 3. Ins 40.07 to 40.09 are created to read:**

**Ins 40.07 Designation of the group-wide supervisor of internationally active insurance groups. (1) (a)** The commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with this section. The commissioner may acknowledge that another regulatory official is a more appropriate group-wide supervisor when the internationally active insurance group meets any of the following requirements:

1. Does not have substantial insurance operations in the United States.
2. Has substantial insurance operations in the United States, but not in Wisconsin.
3. Has substantial insurance operations in the United States and Wisconsin, but the commissioner has determined pursuant to the factors set forth in sub. (2) and s. Ins 40.08 (2), that another regulatory official is the appropriate group-wide supervisor.

**(b)** An insurance holding company system that does not qualify as an internationally active insurance group may request that the commissioner either act as the group-wide supervisor or acknowledge another regulatory official as the group-wide supervisor.

**(2)** When determining the appropriate group-wide supervisor, the commissioner shall consider the following factors, in cooperation with other state, federal and international regulatory officials involved with supervision of the internationally active insurance group and its members, and in consultation with the internationally active insurance group:

- (a)** The place of domicile of the insurers within the internationally active insurance group

that hold the largest share of the group's written premiums, assets or liabilities.

**(b)** The place of domicile of the top-tiered insurer in the insurance holding company system of the internationally active insurance group.

**(c)** The location of the executive offices or largest operational offices of the internationally active insurance group.

**(d)** Whether the regulatory system of a regulatory official who is acting, or is interested in acting, as the group-wide supervisor is substantially similar to the laws of Wisconsin or is sufficient for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials.

**(e)** Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

**(3)** In the event of a material change in the internationally active insurance group the commissioner shall make a determination to act as the group-wide supervisor or acknowledge another regulatory official as the appropriate group-wide supervisor for the internationally active insurance group pursuant to subs. (1) and (2).

**(4)** The commissioner is authorized to collect from any insurer registered under s. Ins 40.03, all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered as required by s. Ins 40.03, and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than 30 days to provide the commissioner with additional information pertinent to the pending determination. The commissioner shall publish on its Internet website the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.

**Ins 40.08 Duties of the group-wide supervisor. (1)** If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:

**(a)** Assess the enterprise risks within the internationally active insurance group to ensure the following:

1. The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management.

2. Reasonable and effective risk mitigation measures are in place.

**(b)** Request information necessary and appropriate to assess enterprise risk from any member of an internationally active insurance group subject to the commissioner's supervision, including information about the members of the internationally active insurance group regarding the following:

1. Governance, risk assessment and management.

2. Capital adequacy.

3. Material intercompany transactions.

**(c)** Coordinate and compel, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, the development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance.

**(d)** Communicate with other state, federal and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions in s. Ins 40.05, and through supervisory colleges under s. 617.215, Stats.

**(e)** Enter into agreements with, or obtain documentation from, any insurer registered under s. Ins 40.03, any member of the internationally active insurance group, and any other state, federal and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in Wisconsin is doing business in Wisconsin or is otherwise subject to the jurisdiction of Wisconsin.

**(f)** Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the commissioner.

**(2)** If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the commissioner is authorized to reasonably cooperate, including through supervisory colleges, with group-wide supervision undertaken by the group-wide supervisor, when the following provisions are met:

**(a)** The commissioner's cooperation is in compliance with the laws of Wisconsin.

**(b)** The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the commissioner is authorized to refuse recognition and cooperation.

**(3)** The commissioner is authorized to enter into agreements with, or obtain documentation from, any insurer registered as required by s. Ins 40.03, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance group that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

**Ins 40.09 Insurer's duty to pay reasonable expenses. (1)** An insurer registered under s. Ins 40.03 that is also subject to ss. Ins 40.07 to 40.08, shall pay, pursuant to s. Ins 16.01 (6) (d), the reasonable expenses of the commissioner's participation in the administration of the internationally active group, including any of the following:

(a) The commissioner's expenses from the engagement of attorneys, actuaries and any other professionals.

(b) The commissioner's reasonable travel expenses.

**SECTION 4. Ins Ch. 53 (title) and chapter are created to read:**

**Ins 53 (title)**

CHAPTER INS 53

CORPORATE GOVERNANCE ANNUAL DISCLOSURES

**Ins 53.01 Purpose.** The purpose of these regulations is to set forth the procedures for filing, and the required contents of, the corporate governance annual disclosure, deemed necessary by the commissioner to carry out the provisions of s. 610.80, Stats.

**Ins 53.02 Definitions.** In addition to definitions contained in s. 610.80 (1), Stats., the following definitions shall apply in this chapter:

(1) "Commissioner" means the Wisconsin insurance commissioner.

(2) "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined at s. 622.03 (2), Stats.

(3) "Senior management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and shall include, for example, the Chief Executive Officer (CEO), Chief Financial Officer, Chief Operating Officer, or any other "C" level executives.

**Ins 53.03 Filing procedures.** Each year following the initial filing of the corporate governance annual disclosure, the insurer or insurance group shall file an amended version of the previously filed disclosure indicating where changes have been made. If no changes were

made in the information or activities reported by the insurer or insurance group, the filing should so state.

**Ins 53.04 Contents of the corporate governance annual disclosure. (1)** The insurer or insurance group shall be as descriptive as possible in completing the corporate governance annual disclosure, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices.

**(2)** The corporate governance annual disclosure shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of all of the following:

**(a)** The board and its various committees that are ultimately responsible for overseeing the insurer or insurance group and the level at which oversight occurs, for example, the ultimate control level, intermediate holding company level, or legal entity level. The insurer or insurance group shall describe and discuss the rationale for the current board size and structure.

**(b)** The duties of the board and each of its significant committees and how they are governed, including bylaws, charters, informal mandates, as well as how the board's leadership is structured, including a discussion of the roles of CEO and chairman of the board within the organization.

**(c)** The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees including a discussion of the following factors:

1. How the qualifications, expertise and experience of each board member meet the needs of the insurer or insurance group.

2. How an appropriate amount of independence is maintained on the board and its significant committees.

3. The number of meetings held by the board and its significant committees over the

past year as well as information on director attendance.

4. How the insurer or insurance group identifies, nominates and elects members to the board and its committees. The discussion should include, for example:

a. Whether a nomination committee is in place to identify and select individuals for consideration.

b. Whether term limits are placed on directors.

c. How the election and re-election processes function.

d. Whether a board diversity policy is in place and if so, how it functions.

5. The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance including any board or committee training programs that have been put in place.

**(d)** The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of the following factors:

1. Any processes or practices including, as an example, the suitability standards, to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

a. Identification of the specific positions for which suitability standards have been developed and a description of the standards employed.

b. Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.

2. The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example, the following:

a. Compliance with laws, rules, and regulations.

b. Proactive reporting of any illegal or unethical behavior.

3. The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the

organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the commissioner to understand how the organization ensures that compensation programs do not encourage or reward excessive risk taking. Elements to be discussed may include, for example, all of the following:

- a. The board's role in overseeing management compensation programs and practices.
- b. The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid.
- c. How compensation programs are related to both company and individual performance over time.
- d. Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels.
- e. Any claw back provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted.
- f. Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

4. The insurer's or insurance group's plans for CEO and senior management succession.

**(e)** The insurer or insurance group shall describe the processes by which the board, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of the following:

1. How oversight and management responsibilities are delegated between the board, its committees and senior management.
2. How the board is kept informed of the insurer's strategic plans, the associated risks,



and steps that senior management is taking to monitor and manage those risks.

3. How reporting responsibilities are organized for each critical risk area. The description should allow the commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description shall include the following critical risk areas of the insurer:

a. Risk management processes. An own risk and solvency assessment summary report filer may refer to its assessment summary report under s. 622.09, Stats.

b. Actuarial function.

c. Investment decision-making processes.

d. Reinsurance decision-making processes.

e. Business strategy and finance decision-making processes.

f. Compliance function.

g. Financial reporting and internal auditing.

h. Market conduct decision-making processes.

**SECTION 5. EFFECTIVE DATE.** A rule is effective on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register in accordance with s. 227.22 (2), Stats.

Dated at Madison, Wisconsin, this 18<sup>th</sup> day of December, 2019.

  
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Mark V. Afable  
Commissioner

## 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

145 Chs Ins 40 Insurance holding company system regulation and Ins 53 Corporate governance annual disclosures

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

Ins 40.01 and 40.05 revised September 2015. All other proposed changes to Ins 40 are newly created and ch. Ins 53 is newly created.

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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.

The objectives of the proposed rules are: to improve the regulation of internationally active insurance groups that include at least one Wisconsin insurer; and to specify filing procedures and the contents of the corporate governance annual report which insurers are required to file under s. 610.80, Stats. First, the proposed changes to Ins 40 improve the coordination of regulatory efforts when internationally active insurance groups are involved. Additionally, the revisions authorize the commissioner to act as, or designate the regulatory official of another jurisdiction to act as, the group-wide supervisor of any internationally active insurance group that includes at least one Wisconsin insurer. A similar cooperative regulatory approach is already used on an interstate level. The rule change would expand this type of approach to include foreign jurisdictions that meet certain regulatory criteria. In addition, it would enable Wisconsin to maintain its NAIC accreditation.

Secondly, the NAIC recently created the NAIC Corporate Governance Annual Disclosure Model Act, the goal of which is to require an annual filing that would enable the commissioner to gain a better understanding of an insurer's corporate governance framework. In 2017, Wisconsin enacted s. 610.80, Stats, which generally follows the Model Act. The NAIC also created the Corporate Governance Annual Disclosure Model Regulation, which sets forth procedures for filing and the required contents of the corporate governance annual disclosure. The proposed rules creating ch. Ins 53, follow the provisions of the Model Regulation, and are necessary in order for s. 610.80, Stats, to take effect. The rules are also required for Wisconsin to maintain its NAIC accreditation.

Both of the changes are to bring Wisconsin into alignment with NAIC Model Regulations. Wisconsin must adopt them in substantively the same form as the NAIC Model Regulations if the Wisconsin Office of the Commissioner of Insurance (OCI) is to remain a state insurance regulatory agency that is accredited by the NAIC.

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5. Describe the Rule's Enforcement Provisions and Mechanisms

The rule interprets ss. 610.80 and 617.215 (2) (a) 3., Wis. Stats., that are enforced under s. 601.41 (4) and 601.64, Wis. Stats.

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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

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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.

Under the proposed rule and NAIC models small businesses including town mutual and fraternal organizations will be required to file the annual corporate governance disclosures. This is a new requirement and one that initially will require time but not special expertise. The OCI considered alternatives to lessen the impact on small businesses; however as this is an accreditation requirement the OCI cannot exempt or lessen the requirements for any of the licensed insurers doing business in the state.

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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.

## EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

The request for comment on the proposed rule was sent to 50 organizations and individuals. Additionally the OCI posted the Request for Comment on its public website. The OCI received one comment on the rule from the Wisconsin Council of Life Insurers commenting on the use of the term "insurance group." The OCI has revised the rule to address this concern.

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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: The rules change minimum necessary to retain financial regulatory oversight and accreditation.

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10. Fund Sources Affected

- GPR    FED    PRO    PRS    SEG    SEG-S

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11. Chapter 20, Stats. Appropriations Affected

None

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12. Fiscal Effect of Repealing or Modifying the Rule

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> No Fiscal Effect         | <input type="checkbox"/> Increase Existing Revenues | <input type="checkbox"/> Increase Costs                      |
| <input checked="" type="checkbox"/> Indeterminate | <input type="checkbox"/> Decrease Existing Revenues | <input type="checkbox"/> Could Absorb Within Agency's Budget |
|   |   | <input type="checkbox"/> Decrease Cost                       |

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13. Summary of Costs and Benefits of Repealing or Modifying the Rule

Under the proposed rule and NAIC models small businesses including town mutual and fraternal organizations will be required to file the annual corporate governance disclosures. This is a new requirement and one that initially will require time but not require special expertise. The OCI considered alternatives to lessen the impact on small businesses; however as this is an accreditation requirement the OCI cannot exempt or lessen the requirements for any of the licensed insurers doing business in the state.

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14. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No

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15. Long Range Implications of Repealing or Modifying the Rule

Wisconsin will retain accreditation benefiting domestic insurers since as an NAIC accredited state, domestic insurers are only subject to certain filing requirements with OCI and financial examination by OCI. Without accreditation, domestic insurers could be subject to financial examination and filing requirements for all jurisdictions in which they operate. This could include examination from all 56 U.S. jurisdictions for some insurers. Without accreditation, the cost of doing business for Wisconsin's domestic insurance industry would increase because their regulation by other states would increase.

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16. Compare With Approaches Being Used by Federal Government

There is no comparable federal regulation.

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

As the proposed changes are accreditation requirements it is expected that all neighboring states will implement similar provisions.

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18. Contact Name

Julie E. Walsh

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19. Contact Phone Number

608-264-8101

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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 5, 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 by the Department of Health Services, submitted September 12, 2019, relating to Division of Medicaid Services biennial review (Wis. Admin. Code chs. DHS 90, 103, 104, 105, 106, 107, 109, 152, 250, and 251); and
- A statement of scope by the Department of Children and Families, submitted October 14, 2019, relating to technical changes to update Wisconsin Works rules (Wis. Admin. Code ch. DCF 101); and
- A statement of scope by the Department of Public Instruction, submitted November 7, 2019, relating to expanding the assessment of pedagogical knowledge in educator preparation programs (Wis. Admin. Code ch. PI 34); and
- A statement of scope by the Department of Agriculture, Trade, and Consumer Protection, submitted October 24, 2019, relating to Licensing, Practice Scope, and Standard of Practice for Veterinarians and Veterinary Technicians (Wis. Admin. Code chs. VE 1-11); and
- A statement of scope by the Department of Natural Resources, submitted July 30, 2019, relating to the administration, procedures, and enforcement of the Wisconsin Wetland and Waterway regulatory program (Wis. Admin. Code chs. NR 300, 301, 305 and 310); and
- A statement of scope by the Department of Natural Resources, submitted August 20, 2019, relating to Wastewater Discharges from Dental Offices to Sanitary Sewers (Wis. Admin. Code ch. NR 211); and
- A statement of scope by the Department of Natural Resources, submitted September 9, 2019, relating to Well Construction and Pump Installation (Wis. Admin. Code ch. NR 812); and
- A statement of scope by the Department of Natural Resources, submitted November 13, 2019, relating to Establishing the 2020 migratory bird season framework and regulations (Wis. Admin. Code ch. NR 10); and
- A statement of scope by the Office of the Commissioner of Insurance, submitted November 13, 2019, relating to step therapy protocols for prescription drug coverage (Wis. Admin. Code ch. Ins 18); and

- A statement of scope by the Department of Agriculture, Trade and Consumer Protection, submitted October 3, 2019, relating to recreational and educational camps (Wis. Admin. Code ch. ATCP 78); and
- A statement of scope by the Parole Commission, submitted October 25, 2019, relating to parole procedure (Wis. Admin. Code ch. PAC 1).

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

- A proposed rule by the Office of the Commissioner of Insurance, submitted on October 15, 2019, relating to holding company supervision amendments and corporate governance disclosure requirements (Wis. Admin. Code chs. Ins 40 and 53); and
- A proposed rule by the Office of the Commissioner of Insurance, submitted on October 7, 2019, relating to the Wisconsin Insurance Plan (Wis. Admin. Code ch. Ins 4); and
- A proposed rule by the Department of Natural Resources, submitted on June 26, 2019, relating to Best Management Practices and Cost Share Rates (Wis. Admin. Code ch. NR 154); and
- A proposed rule by the Department of Natural Resources, submitted on September 26, 2019, relating to Air Permit Streamlining (Wis. Admin. Code chs. NR 406 and 407); and
- A proposed rule by the Department of Natural Resources, submitted on October 24, 2019, relating to Surface Water Grant Program (Wis. Admin. Code chs. NR 190, 191, 192, 195, and 198); and
- A proposed rule by the Department of Natural Resources, submitted on November 7, 2019, relating to Test methods for examining water and wastewater (Wis. Admin. Code ch. NR 538); and
- A proposed rule by the Department of Health Services, submitted on November 1, 2019, relating to Immunization of Students (Wis. Admin. Code ch. DHS 144); and
- A proposed rule by the Department of Natural Resources, submitted on November 12, 2019, relating to Federal hazardous waste regulation (Wis. Admin. Code ch. NR 600); and
- A proposed rule by the Department of Agriculture, Trade and Consumer Protection, submitted on November 13, 2019, relating to animal disease movement and animal markets, dealers and truckers, and affecting small businesses (Wis. Admin. Code chs. ATCP 10 and 12); and
- A proposed rule by the Department of Agriculture, Trade and Consumer Protection, submitted on September 5, 2019, relating to milk, food and water testing laboratories (Wis. Admin. Code ch. ATCP 77); and
- A proposed rule by the Department of Veterans Affairs, submitted on November 5, 2019, relating to the educational assistance program (Wis. Admin. Code ch. VA 18).

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 written in a cursive, flowing style.

Tony Evers  
Governor

Cc: Ryan Nilsestuen, chief legal counsel ([ryan.nilsestuen1@wisconsin.gov](mailto:ryan.nilsestuen1@wisconsin.gov))  
Jenni Dye, policy director ([jenni.dye@wisconsin.gov](mailto:jenni.dye@wisconsin.gov))  
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Nathan Houdek, OCI ([nathan.houdek@wisconsin.gov](mailto:nathan.houdek@wisconsin.gov))  
DVA ([DVAAdminRules@dva.wisconsin.gov](mailto:DVAAdminRules@dva.wisconsin.gov))  
Parole Commission ([ParoleCommission@wisconsin.gov](mailto:ParoleCommission@wisconsin.gov))



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Scott Grosz**  
*Clearinghouse Director*

**Jessica Karls-Ruplinger**  
*Legislative Council Acting Director*

**Margit S. Kelley**  
*Clearinghouse Assistant 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 19-013

AN ORDER to amend Ins 40.05; and to create Ins 40.01 (5m) and (7m), 40.07 to 40.09, and ch. Ins 53, relating to holding company supervision amendments and corporate governance disclosure requirements for NAIC accreditation and affecting small business.

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

02-20-2019 RECEIVED BY LEGISLATIVE COUNCIL.

03-19-2019 REPORT SENT TO AGENCY.

SG:DM

**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





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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Scott Grosz  
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Margit Kelley  
Clearinghouse Assistant Director

### CLEARINGHOUSE RULE 19-013

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### 2. Form, Style and Placement in Administrative Code

Throughout the proposed rule, the agency should review cross-references for use of the style specified in s. 1.07 (2), Manual. For example, “Ins” should precede references to other sections of administrative code in SECTIONS 2 and 3, and “, Stats.” should follow the reference to “s. 622.03 (2)” in proposed s. Ins 53.02 (2).

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

a. It appears that the text of the rule relies heavily on the text of NAIC model rules. Generally, however, the text of the rule could benefit from editing to improve clarity, state requirements more directly, and remove surplus language. To what extent can the agency deviate from the wording of NAIC model rules and still retain accreditation?

b. To the extent permitted by NAIC accreditation requirements, the agency should consider editing the rule throughout to state requirements more directly and remove surplus language. Examples of areas in which these edits could be made include the following:

- In proposed s. Ins 40.07 (1), “is authorized to act” could be replaced with “may”.
- Also in proposed s. Ins. 40.07 (1), the phrase, “acknowledge that another regulatory official is a more appropriate group-wide supervisor”, would benefit from being rewritten to clearly denote the action the commissioner may take: e.g., “designate (or authorize) a regulatory official as the group wide supervisor”.

- In proposed s. Ins 40.07 (3), the words “make a determination” could be removed.
- In proposed s. Ins 40.07 (4), “The commissioner is authorized to...” could be replaced with “the commissioner may”.
- In proposed s. Ins 53.04 (1), “with inclusion of” could be replaced with “and include”.
- In proposed s. Ins 53.04 (2), the word “consideration” appears to be unnecessary.
- In proposed s. Ins 53.04 (2) (a), the words “various” and “ultimately” appear to be unnecessary.

c. The agency should edit the rule to remove unnecessary uses of the phrase “for example”. [See proposed ss. Ins 53.03 (3) and 53.04 (2) (c) 4. and (d) 2. and 3.]

d. The agency should edit the rule to ensure commas necessary to set off clauses are included. [See proposed s. Ins 40.08 (3) (insert commas after “with” and “from”); proposed s. Ins. 53.01 (insert commas after “filing” and “of”).] In addition, there appears to be a missing comma following the word “governed” in proposed s. Ins 53.04.

e. The agency should replace “and/or” with “or” in proposed s. Ins 53.04 (2) (d) 3. [s. 2.08 (2) (c), Bill Drafting Manual 2019-20, Legislative Reference Bureau.]

f. In SECTION 4 of the proposed rule, if the agency wishes to refer to the Corporate Governance Annual Disclosure as a “CGAD”, it should create a definition for CGAD and define CGAD as a “Corporate Governance Annual Disclosure”. In general, however, it is advisable to avoid the use of an acronym unless it improves readability. [s. 1.01 (8), Manual.] The Legislative Reference Bureau’s Bill Drafting Manual also advises against using “an acronym or abbreviation in the text of a proposal unless it is so widely used that readers are more likely to recognize the acronym or abbreviation than the full term”. [s. 2.06 (4) (a), Bill Drafting Manual 2019-20, Legislative Reference Bureau.]

g. The term “suitability standards”, in SECTION 4 of the proposed rule, is not defined. Is this term understood widely in the industry?



# State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Tony Evers, Governor  
Mark V. Afable, Commissioner

Wisconsin.gov

October 14, 2019

**Legal Unit**  
125 South Webster Street • P.O. Box 7873  
Madison, Wisconsin 53707-7873  
Phone: (608) 267-9586 • Fax: (608) 264-6228  
oci.wi.gov

Report on Sections Ins 40 and Ch. 53, Wis. Adm. Code, relating to holding company supervision amendments and corporate governance disclosure requirements for NAIC accreditation and affecting small business.

**Clearinghouse Rule No. 19-013**  
Submitted Under s. 227.19 (3), Stats.

(The proposed rule-making order is attached.)

**(a) A detailed statement of basis for the proposed rule and how the rule advances relevant statutory goals or purposes:**

The objectives of the proposed rules are to improve the regulation of internationally active insurance groups that include at least one Wisconsin insurer, and to specify filing procedures and the contents of the corporate governance annual report which insurers are required to file under s. 610.80, Stats.

Both of the changes are to bring Wisconsin into alignment with NAIC Model Regulations. Wisconsin must adopt them in substantively the same form as the NAIC Model Regulations if the Wisconsin Office of the Commissioner of Insurance (OCI) is to remain a state insurance regulatory agency that is accredited by the NAIC. It is a goal of the OCI and a benefit to domestic insurers for OCI to maintain its accreditation because as an NAIC accredited state, domestic insurers are only subject to certain filing requirements with OCI and financial examination by OCI. Without accreditation, domestic insurers could be subject to financial examination and filing requirements for all jurisdictions in which they operate. This could include examination from all 56 U.S. jurisdictions for some insurers. Without accreditation, the cost of doing business for Wisconsin's domestic insurance industry would increase because their regulation by other states would increase. In order to maintain accreditation, OCI must adopt certain standard regulations developed by the NAIC. In addition, the proposed changes are similar to those adopted or that will be adopted in other states and work to promote uniformity for insurance holding company systems operating across multiple states.

Wisconsin's current Ch. Ins 40, Wis. Adm. Code, generally follows the NAIC Insurance Holding Company System Regulatory Model Act (Model Act) and Insurance Holding Company System Model Regulation (Model Regulation). The NAIC recently made changes to its Model Act to improve the coordination of regulatory efforts when internationally active insurance groups are involved. The proposed rule changes in Ch. Ins 40, Wis. Adm. Code, would authorize the commissioner to act as, or designate the regulatory official of another jurisdiction to act as, the group-wide supervisor of any internationally active insurance group that includes at least one Wisconsin insurer. A similar cooperative regulatory approach is already used on an interstate level. The rule change would expand this type of approach to include foreign jurisdictions that meet certain regulatory criteria. In addition, it would enable Wisconsin to maintain its NAIC accreditation.

Secondly, the NAIC recently created the NAIC Corporate Governance Annual Disclosure Model Act, the goal of which is to require an annual filing that would enable the commissioner to gain a better understanding of an insurer's corporate governance framework. In 2017, Wisconsin enacted s. 610.80, Stats, which generally follows the Model Act. The NAIC also created the Corporate Governance Annual Disclosure Model Regulation, which sets forth procedures for filing and the required contents of the corporate governance annual disclosure. The proposed rules creating Ch. Ins 53, Wis. Adm. Code, follow the provisions of the Model Regulation, and are necessary in order for s. 610.80, Stats, to take effect. The rules are also required for Wisconsin to maintain its NAIC accreditation.

**(b) Summary of the public comments and the agency's responses to those comments:**

**Comment:** Wisconsin Council of Life Insurers requested a definition of the term "insurance group be added to the rule.

Response: The Office added a definition consistent with the comment received.

**(c) An explanation of any modifications made in proposed rule as a result of public comments or testimony received at a public hearing:**

The Office received one comment requesting the addition of a definition for a term used in the proposed rule. The Office added a definition consistent with the request.

**(d) Persons who appeared or registered regarding the proposed rule:**

**Appearances for:**

None

**Appearances against:**

None

**Appearances for information:**

**Registrations for:**

Andy Franken, Wisconsin Insurance Alliance  
Russ Denk, Strohm Ballweg  
Kevin Lawrence, Wisconsin Council of Life Insurers  
Connie O'Connell, Wisconsin Council of Life Insurers

**Registrations against:**

None

**Registrations neither for nor against:**

Brian Warner, Common Ground Healthcare Cooperative  
Melissa Duffy, Common Ground Healthcare Cooperative  
Patrick Laws, Wisconsin Association of Mutual Insurance Companies  
Tim Lindquist, Wisconsin Association of Health Plans  
Will Kramer, Wisconsin Physicians Services Insurance Co.

**Letters received:**

Connie O'Connell, Wisconsin Council of Life Insurers

**(e) An explanation of any changes made to the plain language analysis of the rule under s. 227.14 (2), Stats., or to any fiscal estimate prepared under s. 227.14 (4), Stats.**

None

**(f) The response to the Legislative Council staff recommendations indicating acceptance of the recommendations and a specific reason for rejecting any recommendation:**

All comments contained in Section 2, the form, style and placement section, were complied with and corrected. In section 5, the clarity, grammar, punctuation and use of plain language section, the Office complied with and corrected comments contained in pars. d, e, and f. However, as noted in section 5 par. a, the proposed rule is an accreditation standard and the Office has limited ability to modify the language as contained in the model, therefore the Office did not comply with the recommendations contained in pars. b, c and g.

**(g) The response to the report prepared by the small business regulatory review board:**

The small business regulatory review board did not prepare a report.

**(h) Final Regulatory Flexibility Analysis**

A Final Regulatory Flexibility Analysis is Not Required because the rule will not have a significant economic impact on a substantial number of small businesses.

**(i) Fiscal Effect**

See fiscal estimate attached to proposed rule.

Attachment: Legislative Council Staff Recommendations