



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 10, 2023

SUBJECT: Section Ins 51.01 & 51.80, Wis. Adm. Code, relating to capital requirements for  
insurers

Clearinghouse Rule No. 22-071

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](mailto: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 51.01 (21) and 51.80

The Commissioner of Insurance proposes an order to amend INS 51.01 (21), INS 51.80 (3) (a) 1., INS 51.80 (3) (a) 2., INS (3) (a) 3., and INS 51.80 (6); and to create INS 51.80 (3) (a) 3e., INS 51.80 (3) (a) 3m., INS 51.80 (3) (a) 3s., and INS 51.80 (6m), relating to capital requirements for insurers.

The statement of scope for this rule SS: 160-20 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 January 5, 2023, to submit to the legislature, and submitted to the legislature on January 10, 2023.

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

**1. Statutes interpreted:**

Sections 601.01, 623.11, Stats.

**2. Statutory authority:**

Sections 601.01, 601.41 (3), 601.42, 611.19 (1), 614.13, 614.19, 618.21, 623.02 and 623.11, Stats.

**3. 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 Wis. Stats. chs. 600 to 655, and as provided in Wis. Stat. § 601.41 (3) (a), has “rule-making authority” under Wis. Stat. § 227.11 (2). Wis. Stat. § 623.11 (2) requires the Commissioner to establish by rule the minimum ratios for the compulsory surplus in relation to any relevant variables, including amounts at risk, premiums written or earned, liabilities, and equity investments.

**4. Related statutes or rules:**

Wis. Adm. Code Ins ch. 51, Wisconsin Statutes Section 623.11.

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

The proposed rule will modify the compulsory surplus requirement for insurers offering Medicare stand-alone drug coverage, variable business, and medical malpractice insurance to be reflective of the risk and amount of compulsory surplus required to be maintained. Additionally, the proposed rule will add provisions regarding premiums for health insurers for purposes of Wis. Admin. Code § Ins 51.80 and will correct a citation cross reference in Wis. Admin. Code § Ins 51.01.

**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:**

NA

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

**Illinois:** 215 ILL. COMP. STAT. 5/35A-1 to 5/35A-70 (“risk-based capital law”)

**Iowa:** IOWA CODE §§ 521E.1 to 521E.12 (“risk-based capital requirements for insurers”)

**Michigan:** BULLETIN 2013-21-INS (regarding risk-based capital levels for insurers)

**Minnesota:** MINN. STAT. §§ 60A.60 to 60A.696 (“regulation of risk-based capital”)

**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 has issued orders to insurers who offer stand-alone Medicare, variable life and medical malpractice policies in which the agency provided more refined approaches to compulsory surplus requirements in line with the proposed changes in this rule. The intent of the rule is to adopt the factors that OCI has currently been modifying through specific company orders as industry-wide standards for simplicity and uniformity.

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

The proposed rule would modify surplus requirements for stand-alone Medicare, variable business, and medical malpractice insurance products. OCI is not aware of any insurers that issue these type of products that would be considered a small business.

**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](mailto:karyn.culver@wisconsin.gov)  
Address: 125 South Webster St – 2<sup>nd</sup> Floor, Madison WI 53703-3474  
Mail: PO Box 7873, Madison, WI 53707-7873

**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 December 2, 2022.

Written comments can be mailed or hand-delivered to:

Legal Unit – OCI Rule Comment for Rule Ins 51  
Office of the Commissioner of Insurance  
125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53703-3474

Email address: [Sharone.assal@wisconsin.gov](mailto:Sharone.assal@wisconsin.gov)

For additional information please contact: [Sharone.assal@wisconsin.gov](mailto:Sharone.assal@wisconsin.gov)

---

**The proposed rule changes are:**

**SECTION 1. Ins 51.01 (21) is amended to read:**

“Risk based capital plan” means a comprehensive financial plan containing the elements specified in s. Ins ~~50.15 (1)~~51.15 (1).

**SECTION 2. Ins 51.80 (3) (a) 1. is amended to read:**

1.15% of premiums for individual life and disability insurance, not including variable life insurance;

**SECTION 3. Ins 51.80 (3) (a) 2. is amended to read:**

2. 10% of premiums for group life and disability insurance, not including variable life insurance;

**SECTION 4. Ins 51.80 (3) (a) 3. is amended to read:**

3. The greater of 2% of reserves or 7 1/2% of premiums for annuities and deposit administration funds, not including variable business;

**SECTION 5. Ins 51.80 (3) (a) 3e. is created to read:**

3d. 2% of premiums for variable business;

**SECTION 6. Ins 51.80 (3) (a) 3m. is created to read:**

3g. 30% of premiums for medical professional liability insurance;

**SECTION 7. Ins 51.80 (3) (a) 3s. is created to read:**

3r. 7% of premiums for Medicare stand-alone drug coverage insurance;

**SECTION 8. 51.80 (6) is amended to read:**

**(6) PREMIUMS.** For purposes of subs. (3) and (4), for all insurers except insurers that file on the national association of insurance commissioners health annual statement blank, premiums are gross premiums and other considerations received for insurance and annuities in the 12-month period ending on or not more than 60 days before the date as of which the calculation is made with the following deductions and exclusions:

**SECTION 9. 51.80 (6m) is created to read:**

**(6m)** HEATH INSURANCE PREMIUMS. For purposes of subs. (3) and (4), for insurers that file on the national association of insurance commissioners health annual statement blank, premiums are earned premiums and other considerations for insurance in the 12-month period ending on or not more than 60 days before the date as of which the calculation is made with the deductions and exclusions allowed in sub. (6) (a) and (b).

**SECTION 10. EFFECTIVE DATE.** The rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provide in s. 227.22 (2) (intro.), Stats.

1/10/2023 | 9:15 AM CST

Dated at Madison, Wisconsin \_\_\_\_\_

DocuSigned by:

*Rachel Cissne Carabell*

D59930169E594D7...

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. 51.01 (21) and 51.80

---

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

Ins. 51.01 (21) - 1/1/1997; Ins. 51.80 (3), (6) - 8/1/82

---

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 modify the compulsory surplus requirement for insurers offering Medicare stand-alone drug coverage, variable life insurance, and medical malpractice insurance to be reflective of the risk and amount of compulsory surplus required to be maintained. Additionally, the proposed rule will add provisions regarding premiums for health insurers for purposes of Wis. Admin. Code § INS 51.80 and correct a citation cross reference in Wis. Admin. Code § INS 51.01.

---

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.

---

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.

None

---

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

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

There are no anticipated costs to small businesses, affected insurers, or OCI.

---

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

January 5, 2023

By Electronic Mail Only

Dear Secretaries and Agency Heads:

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

- A statement of scope by the Department of Veterans Affairs, submitted December 13, 2022, relating to veterans assistance grants (Wis. Admin. Code ch. VA 2).

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

- A proposed rule by the Occupational Therapists Affiliated Credentialing Board, submitted November 9, 2022, relating to telehealth (Wis. Admin. Code chs. OT 4 and 6); and
- A proposed rule by the Office of Commissioner of Insurance, submitted December 8, 2022, relating to capitol requirements for insurers (Wis. Admin. Code ch. Ins. 51).

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

Sincerely,

Tony Evers  
Governor

cc: Ryan Nilsestuen, chief legal counsel ([ryan.nilsestuen1@wisconsin.gov](mailto:ryan.nilsestuen1@wisconsin.gov))  
Katie Domina, deputy policy director ([katherine.dominal@wisconsin.gov](mailto:katherine.dominal@wisconsin.gov))  
DOA State Budget Office ([SBOAdminRules@spmail.wi.gov](mailto:SBOAdminRules@spmail.wi.gov))  
DSPS ([DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov))  
DVA ([DVAAdminRules@dva.wisconsin.gov](mailto:DVAAdminRules@dva.wisconsin.gov))  
Nathan Houdek, OCI ([nathan.houdek@wisconsin.gov](mailto:nathan.houdek@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 **22-071**

AN ORDER to amend Ins 51.01 (21), and 51.80 (3) (a) 1. and 2., and (6); and to create Ins 51.80 (3) (a) 2m., 3g., and 3r., and (6m), relating to compulsory surplus requirements.

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

10-07-2022 RECEIVED BY LEGISLATIVE COUNCIL.

11-07-2022 REPORT SENT TO AGENCY.

SG:KAM

**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 22-071

#### 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.]**

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

a. The introductory clause of the proposed rule should be revised to conform to the style prescribed by s. 1.01 of the Manual. Also, note that the agency should consistently use a single relating clause in the proposed rule and the documents that accompany the rule.

b. In the proposed rule, revise the final two SECTION numbers to be sequentially numbered. The current numbering of SECTIONS is 5, 6, 7, 5, 6. [s. 1.03 (1), Manual.]

c. In s. Ins 51.80 (6m), revise the reference to “par. (6) (a) and (b)” to refer to “sub. (6) (a) and (b)”.

#### 4. Adequacy of References to Related Statutes, Rules and Forms

In the comparison of similar rules in adjacent states, consider discussing the substance of the similar rules in addition to listing citations.

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

In SECTION 7 and the following SECTION of the proposed rule, consider revising “National Association of Insurance Commissioner” to the “National Association of Insurance Commissioners”. Alternatively, consider revising the “National Association of Insurance Commissioner” to “NAIC, as defined in Ins. 51.01 (13)”. If choosing the latter revision, note that s. Ins 51.01 and ch. Ins 51, more generally, could also be reorganized such that the definitions would apply directly to the entire chapter.