

PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE

CREATING A RULE

To create Ins 8.49, Wis. Adm. Code, relating to Small Employer Uniform Employee Application.

FINDING OF EMERGENCY

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

The rule and the uniform small employer application are required by statute to be available by August 1, 2003. Due to implementation of 45 CFR 164 of HIPAA privacy provisions for covered entities, including health plans, and the commissioner's efforts to obtain clarification regarding authorization for release of personally identifiable health information provisions from the Office of Civil Rights a Division of Centers Medicare & Medicaid Services charged with enforcement of the privacy portions of HIPAA, it is not possible to complete the permanent rule process in time to meet the statutory requirement.

The commissioner intends to file the permanent rule corresponding to this emergency rule, clearinghouse No. 03-055, with the secretary of state within the next 150 days. Because the uniform application form is required to be available by August 1, 2003, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule was held on July 11, 2003, in accordance with s. 227.17, Wis. Stat., and the commissioner has had benefit of reviewing public comments and the clearinghouse report prior to issuing this emergency rule.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss 601.41(3), 601.41 (8), 635.10, 635.18 (8), Stats.

Statutes interpreted: ss. 635.10, Stats.

In accordance with s. 601.41 (8) and s. 635.10, Stats., the Office is statutorily required to develop a rule and the uniform employee application form for group health insurance that is to be used by small employer insurers for small employer applicants. In compliance with s. 601.41(8), Stats., the office, with consultation of the life and disability advisory council, convened a taskforce with representatives of small employers, licensed intermediaries and small employer insurers to obtain information relating to a proposed uniform employee application form. The taskforce made recommendations to the Office for its consideration in the development of the small employer uniform employee application.

The intent of the legislation was two-fold: to reduce the number of forms employees were required to complete when a small employer applied for group health insurance and to permit small employers to seek multiple statements of premium from different small employer insurers with one form. Having a uniform employee application that could be used to obtain multiple statements of premium also has the benefit of decreasing the amount of time spent by the small employer in obtaining the application information since the form may be copied and submitted simultaneously to several insurers.

To address the concerns of the small employers, licensed intermediaries and small employer insurers, the Office, in addition to drafting the uniform employee application, also drafted the rule governing the use and management of the

application process. The proposed regulations establish the following: copies of the form shall be accepted as though it were an original; duration for use of the information contained within the application form; and small employer insurers are required to share copied forms, in accordance with the applicant's authorization, with other named insurers within 5 business days as requested in writing by the small employer. The intent is to facilitate a timely exchange of the applications so that the small employer is able to receive the statement of premium necessary to make an informed decision regarding the purchase of group health insurance.

Finally, although the uniform application will be available for use beginning August 1, 2003, in accordance with the statute, the Office will not initiate enforcement actions for the duration of the emergency rule, as long as small employer insurers take affirmative steps to implement the new form. It is expected that small employer insurers will comply with the statute and utilize the form as soon as practicable and transition from their individual application forms to the uniform application.

SECTION 1. Section Ins 8.49 is created to read:

Ins 8.49 Uniform employee application form. (1) (a) In accordance with s. 635.10, Stats., small employer insurers shall use the small employer uniform employee application form as the only acceptable form when small employers apply for coverage from small employer insurers. Small employer insurers shall implement procedures and policies necessary to use the small employer uniform employee application form.

(b) Small employer insurers shall treat and accept a copy of the uniform employee application as an original.

(c) The contents of the uniform small employer application shall not vary from the text or format including bold character, line spacing, and the use of boxes around text and shall use a type size of at least 10 points as delineated in form OCI 26-501.

Note: A copy of the [uniform employee application form OCI 26-501 \(c. 8/2003\)](#), required in par. (a), may be obtained at no cost from the Office of the Commissioner of Insurance, P.O. Box 7873, Madison WI 53707-7873, or at the Office's web address: oci.wi.gov.

(2) (a) The information contained within each uniform employee application shall be considered current information by the small employer insurer if the information is received by the small employer insurer within 45 days of completion of the earliest signed and completed uniform employee application form. For the period of time that the information contained within the each uniform employee application is considered current, small employer insurers may not require a small employer employee to complete a new application form or any document, addendum or certification representing that the information contained in the completed uniform employee applications is current.

(b) A small employer insurer may accept and utilize information provided by a small employer employee subsequent to the date the employee signed the completed application if the employee is providing the insurer with additional or modified information.

(c) A small employer insurer may require small employer employees to complete and submit new uniform employee applications if either of the following occurs:

1. The authorization signed by the employees does not include the name of the small employer insurer that the small employer is requesting provide it with an underwritten premium amount and coverage.

2. The completed uniform employee applications are received by the small employer insurer 45 or more days after the earliest date of the completed signed uniform employee application.

(3) (a) Small employer insurers that receive a written request from a small employer to forward a copy of the completed uniform employee applications to a different small employer insurer listed within the authorization section of the application shall forward the copy of the uniform employee applications within 5 business days from receipt of the request. The small employer insurer shall notify the employer, as soon as practicable, if the small employer insurer is unable to comply with the request because the small employer has requested that information be sent to a small employer insurer not identified within the authorization.

(b) An intermediary shall forward, within 5 business days from receipt of the applications, copies of the uniform employee applications to all small employer insurers identified within the uniform employee application authorization to receive the applications, or to an authorized representative of each small employer insurer. The intermediary may withhold distribution to a small employer insurer, or the insurer's authorized representative, at the request of the small employer.

(c) Completed uniform employee applications shall be maintained by small employer insurers and licensed intermediaries, as applicable, in accordance with subch. V of ch. Ins 25.

(4) (a) Small employer insurers shall either state the premium to the small employer within 10 business days from receipt of all pertinent information required for its underwriting of the small employer's application for group health insurance, including completed uniform employee applications, or deny the application in accordance with s. 635.18 (6).

(b) Small employer insurers shall make a reasonable effort to promptly obtain information it determines is necessary to make an underwriting decision including the information described in par. (a).

SECTION 2 . These changes first apply to applications submitted to small employer insurers after August 1, 2003.

SECTION 3. These emergency rule changes will take effect on August 1, 2003, as provided in s. 227.24(1)(c), Stats., and as prescribed by s. 635.10, Stats.

Dated at Madison, Wisconsin, this _____ day of _____, 2003.

Jorge Gomez
Commissioner of Insurance

FISCAL ESTIMATE WORKSHEET — 2001 Session

Detailed Estimate of Annual Fiscal Effect

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 8.49

Subject
Small Employer Group Health Insurance Rule and Application

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
None

Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$ 0	\$ -0
(FTE Position Changes)	(0 FTE)	(-0 FTE)
State Operations - Other Costs	0	-0
Local Assistance	0	-0
Aids to Individuals or Organizations	0	-0
TOTAL State Costs by Category	\$ 0	\$ -0
B. State Costs by Source of Funds		
GPR	\$ 0	\$ -0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
C. State Revenues <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	Increased Rev.	Decreased Rev.
GPR Taxes	\$ 0	\$ -0
GPR Earned	0	-0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
TOTAL State Revenues	\$ 0 None	\$ -0 None

NET ANNUALIZED FISCAL IMPACT

NET CHANGE IN COSTS	\$ <u>STATE</u> None 0	\$ <u>LOCAL</u> None 0
NET CHANGE IN REVENUES	\$ <u>STATE</u> None 0	\$ <u>LOCAL</u> None 0

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Authorized Signature:	Telephone No.	Date (mm/dd/ccyy)

FISCAL ESTIMATE — 2001 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 8.49

Subject
 Small Employer Group Health Insurance Rule and Application

Fiscal Effect
 State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation		

Local: No local government costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Chapter 20 Appropriations
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Assumptions Used in Arriving at Fiscal Estimate

The proposed rule provides the guidelines for utilizing the small employer uniform application. The Office is required to review the form on a bi-annual basis. There is no financial effect to the State or small employers. Rather, the utilization of the uniform small employee application is intended to save small employers money by utilizing one form for obtaining accurate premiums from multiple small employer insurers.

Long-Range Fiscal Implications

None

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