



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

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STATE OF WISCONSIN

OFFICE OF THE COMMISSIONER OF INSURANCE

SS

I, Kimberly A. Shaul, Deputy Commissioner and custodian of the official records, certify that the annexed emergency rule affecting Section Ins 3.75, Wis. Adm. Code, relating to continuation of group health insurance policies and affecting small business, is duly approved and adopted by this Office on December 30, 2009.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street, Madison, Wisconsin, on December 30, 2009.

/s/ Kimberly A. Shaul
Kimberly A. Shaul
Deputy Commissioner

**EMERGENCY ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE
CREATING A RULE**

To amend Ins 3.75 (2) (c) , and create Ins 3.75 (8), Wis. Adm. Code,

Relating to continuation of group health insurance policies.

FINDING OF EMERGENCY

Under 2009 Act 11, s. 9126, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 11 reads as follows:

2009 Wisconsin Act 11, SECTION 9126. Nonstatutory provisions; Insurance.

(4) CONTINUATION COVERAGE RULES (a) Notwithstanding section 632.897 of the statutes and subsections (1), (2), and (3), the commissioner of insurance may promulgate rules establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a state eligible individual to whom subsection (2) or (3) applies or an assistance eligible individual, as defined under section 3001 (a) (3) of the federal act, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, and election of alternative coverage.

(b) The commissioner may promulgate the rules under paragraph (a) as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) of the statutes, emergency rules promulgated under this paragraph may remain in effect for one year and may be extended under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, **the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.** [Emphasis Added]

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

1. Statutes interpreted:

ss. 600.01, 628.34 (12), Stats.

2. Statutory authority:

ss. 601.41 (3), 601.42, 632.897, Stats., s. 9126 of 2009 Wisconsin Act 11 and the American Recovery and Reinvestment Act of 2009, P.L. 111-5

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

2009 Act 11 specifically permits the commissioner to enact this rule.

4. Related statutes or rules:

ss. 632.746 & 632.897, Stats.

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

In December 2009 Congress enacted section 1010 of the federal department of defense appropriations act, 2010 (“DOD Act”). This section extended the federal premium subsidy provided under the American Recovery and Reinvestment Act of 2009, provided for retroactive extension of coverage for a transition period, and required that notice of the extended subsidy and retroactive coverage and premium payment be given to assistance eligible individuals. This rule makes it clear that these rights must also be extended to assistance eligible individuals who are or were eligible for coverage under state law, either under s. 632.897, Stats., or s. INS 3.75, Wisconsin Administrative Code. These rights include the following:

- (a) The DOD Act extended the federal premium reduction eligibility period for two months until February 28, 2010 and increased the maximum period for receiving the subsidy for an additional six months (from nine to 15 months).
- (b) Individuals who had reached the end of the federal reduced premium period before the DOD Act extended it to 15 months will have an extension of their grace period to pay the reduced premium. To continue their coverage they must pay the 35 percent of premium costs by February 17, 2010, or, if later, 30 days after they receive notice of the extension.
- (c) Individuals who ended the federal reduced premium subsidy and paid the full premium may obtain a credit for future months of coverage or a reimbursement of the overpayment.
- (d) Individuals who are assistance eligible individuals on or after October 31, 2009 or who experience a qualifying event on or after that date are entitled to notice, or additional notice, of the extended federal premium subsidy.
- (e) Individuals who are entitled to an extended premium grace period as described in paragraph (b), or a credit or refund for premium paid as described in paragraph (c), are entitled to notice of those rights.

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:

The proposed rule parallels the standards enacted by the DOD Act and makes it clear they are applicable to assistance eligible individuals who are or were entitled to coverage under s. 632.897, Stats., or s. INS 3.75, Wis. Adm. Code.

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

Illinois: None

Iowa: None

Michigan: None

Minnesota: None

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:

This proposed rule is based on, and parallels the DOD Act.

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 rule imposes no substantial requirements on small employers but would allow discontinued employees of small employer who have group insurance the ability to elect continuation of health insurance coverage.

10. See the attached Private Sector Fiscal Analysis.

11. A description of the Effect on Small Business:

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

12. Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at:

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

or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110

Email: inger.williams@wisconsin.gov

Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474

Mail: PO Box 7873, Madison, WI 53707-7873

13. Place where comments are to be submitted and deadline for submission:

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

Mailing address:

Robert Luck

Legal Unit - OCI Rule Comment for Rule Ins 375

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Street address:

Robert Luck

Legal Unit - OCI Rule Comment for Rule Ins 375

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

The proposed rule changes are:

SECTION 1. Ins 3.75 (2) (c) is amended to read:

Ins 3.75 (2) (c) "Federal act" means the American Recovery and Reinvestment Act of 2009, P.L. 111-5, as amended by section 1010 of the federal department of defense appropriations act, 2010 (H.R. 3326), .

SECTION 2. INS 3.75 (8) is created to read:

Ins 3.75 (8) EXTENDED PREMIUM PAYMENT RIGHT, COVERAGE, AND NOTICE PURSUANT TO SECTION 1010 OF THE FEDERAL DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2010. An insurer shall provide the rights provided by, and shall comply with the provisions of, section 1010 (c) of the federal department of defense appropriation act, 2010 (H.R. 3326), for assistance eligible individuals for who are or were eligible for coverage under this section or s. 632.897, Stats., including:

- (a) The rules relating to 2009 extension, including the right to elect to pay premiums retroactively and maintain coverage under this section or s. 632.897, Stats.
- (b) The rules relating to notification as provided under section 1010 (c) of the federal department of defense appropriation act, 2010 (H.R. 3326).

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

SECTION 4. These emergency rule changes will take effect on the day after publication, as provided in s. 227.24(1)(c), Stats.

Dated at Madison, Wisconsin, this 30th day of December, 2009.

Kimberly A. Shaul
Deputy Commissioner of Insurance

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Section Ins 3.75 (2) (c) and (8) relating to continuation of group
insurance policies and affecting small business

This rule change will have no significant negative effect on the private sector regulated by OCI but will allow numerous people to continue group health insurance that would not be able to without this change.

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

ORIGINAL UPDATED

CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 3.75

Subject
continuation of group insurance policies and affecting small business

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

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

Prepared by: Robert Luck	Telephone No. (608) 266-0082	Agency Insurance
Authorized Signature:	Telephone No. (608) 267-3782	Date (mm/dd/ccyy) 12/30/2009

FISCAL ESTIMATE

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 3.75

Subject
continuation of group insurance policies and affecting small business

Fiscal Effect
 State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.
 Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation
 Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

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 _____
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	<input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts

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

Long-Range Fiscal Implications

None

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Authorized Signature:	Telephone No. (608) 267-3782	Date (mm/dd/ccyy) 12/30/2009