State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 266-3585 • Fax: (608) 266-9935
E-Mail: ociinformation@wisconsin.gov
Web Address: oci.wi.gov

STATE OF WISCONSIN

SS

OFFICE OF THE COMMISSIONER OF INSURANCE

I, Sean Dilweg, Commissioner of Insurance and custodian of the official records, certify that the annexed rule affecting section Ins 3.75, Wis. Adm. Code, relating to continuation of group insurance policies, is duly approved and adopted by this Office on October 22, 2010.

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 October 22, 2010.

Sean Dilweg
Commissioner of Insurance

ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE

CREATING A RULE

To create Ins 3.75, Wis. Adm. Code,

Relating to continuation of group insurance policies.

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, ("ARRA"), P.L. 111-5, as modified by the Department of Defense Appropriations Act, 2010 ("2010 DOD Act"), P.L. 111-118, the Temporary Extension Act of 2010 ("TEA"), P.L. 111-144 and the Continuing Extension Act of 2010 ("CEA"), P.L. 111-157.

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:**

   The United States Department of the Treasury, Internal Revenue Service published an interpretation of the ARRA that provided a continuation election opportunity for covered employees including former employees when an employer discontinues a group health plan. The proposed rule will define continuation coverage election options for employees that meet the requirements of s. 632.897, Stat., or s. 9126 of 2009 Wisconsin Act 11 whose employer or former employer discontinues the group health insurance policy. The proposed rule will define election and eligibility criteria for continuation of coverage through a group policy.

   On December 19, 2009 2010 DOD Act was enacted including enactment of section 1010. This section extended the federal premium subsidy provided under ARRA to 15 months and extended eligibility by two months from December 31, 2009 to February 28, 2010. 2010 DOD Act 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.

   On March 2, 2010, TEA became effective extending premium assistance to assistance eligible individuals involuntarily terminated prior to March 31, 2010 or who initially qualified for continuation coverage because of a reduction of hours and later involuntarily terminated on or after September

1, 2008 the involuntary termination occurred on or after March 2, 2010. This was further extended by CEA that became effective on April 15, 2010. Presently the involuntary termination may entitle individuals o premium assistance through May 31, 2010 and for involuntary terminations occurring between March 2, 2010 and May 31, 2010 when that event follows a reduction in hours occurring from September1, 2008 up until May 31, 2010.

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.

(f) The TEA extended the federal premium reduction eligibility period to March 31, 2010. Further TEA extended assistance to those who initially qualified for continuation coverage because of a reduction of hours on or after September 1, 2008 and later involuntarily terminated when the involuntary termination occurred on or after March 2, 2010.

(g) The CEA extended the federal premium reduction eligibility period to May 31, 2010 and similarly extended eligibility when the involuntary termination subsequent to a reduction of hours occurred on or after March 2, 2010 and prior to June 1, 2010.

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 United States Department of the Treasury, Internal Revenue Service published in a frequently asked question and answer format the question of continuation rights for employees and their dependents when employers discontinue a group policy and determined that eligible employees would be able to elect continuation coverage that may be eligible for premium subsidy under the American Recovery and Reinvestment Act of 2009. There is no current state rule or policy on this specific issue.

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 would enact for Wisconsin insureds the ability to elect continuation of coverage when an employer discontinues group health insurance consistent with the Internal Revenue Service's interpretation of the American Recovery and Reinvestment Act of 2009 as amended.

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
    Office of the Commissioner of Insurance
    125 South Webster St – 2nd Floor
    Madison WI 53703-3474

    Email address:

Robert Luck
robert.luck@wisconsin.gov
Web site: **http://oci.wi.gov/ocirules.htm**

The proposed rule changes are:

SECTION 1. Ins 3.75 is created to read:

Ins 3.75 Continuation of Discontinued Employer Provided Health Group Policy Coverage For Employees and their Dependents.

(1) PURPOSE. The purpose of this section is to allow assistance eligible individuals to elect continued coverage provided under s. 632.897, Stats., in circumstances where the group policy is discontinued on or after June 30, 2009 and not replaced. The rule applies only to individuals who are eligible for a premium subsidy under the federal American Recovery and Reinvestment Act of 2009 P.L. 111-5, as amended. The federal act makes the premium subsidy available to those individuals who are eligible due to an involuntary employment termination prior to June 1, 2010.

(2) DEFINITIONS. In addition to the definitions in s. 9126 of 2009 Wis. Act 11, in this section, unless the context requires otherwise:

(a) "Assistance eligible individual" has the meaning provided in Section 3001 (a) (3) of the federal act.

(b) "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 (P.L.111-118), the temporary extension act of 2010 (P.L. 111-144) and the continuing extension act of 2010 (P.L. 111-157).

(c) "Terminated insured" means an insured under s. 632.897 (1) (f) and (2) (b) 2, Stats., whose employment has been involuntarily terminated on or after September 1, 2008 and prior to June 1, 2010, who has been continuously covered under a group policy for at least 3 months and who satisfies one of the following:

1. Would be entitled to elect continued coverage under s. 632.897, Stats., but for the fact that the group policy was discontinued on or after June 30, 2009 and not replaced by another group policy offered by the employer during the terminated insured's 30 day election period under s. 632.897 (3) (a), Stats.

2. Is receiving, on behalf of themselves and, if applicable, a spouse or dependents, continued coverage under s. 632.897, Stats., due to an involuntary termination of employment that occurred on or after September 1, 2008 but prior to June 1, 2010 and, on or after June 30, 2009, the group policy is discontinued and not replaced by a group policy offered by the employer.

(3) ADDITIONAL CONTINUATION COVERAGE ELECTION OPPORTUNITY FOR ASSISTANCE ELIGIBLE INDIVIDUALS WHEN AN EMPLOYER DISCONTINUES AND DOES NOT REPLACE GROUP POLICY COVERAGE.

(a) Except as provided in pars. (c) and (d) an insurer shall permit a terminated insured to elect continuation of coverage under the terms of an employer's group policy if the group policy is discontinued on or after June 30, 2009.

(b) An insurer shall permit a terminated insured to elect continuation of coverage on behalf of themselves and the terminated insured's spouse and dependents if the spouse or dependents were covered under the group policy at the time the group policy was discontinued.

(c) An insurer may limit continuation of coverage under this section to individuals who are under the federal act who are assistance eligible individuals.

(d) This section does not require continuation of coverage if the individual satisfies all of the following:

1. Establishes residence outside this state.

2. Fails to make timely payment of a required premium amount after notice as required under s. 631.36 (2) (b), Stats.

3. Becomes eligible for similar coverage under another employer's group policy or for benefits under title XVIII of the Social Security Act.

4. Ceases to be eligible for premium assistance under s. 3001 (a) (2) of the federal act.

5. The individual's eligibility for continued coverage would have otherwise ceased under s. 632.897, Stats., if the group policy had not been discontinued.

(e) Coverage under this section, if elected under par. (a), shall continue uninterrupted from the date of the employer's discontinuance of the group policy . An insurer is not required to continue coverage for a period covered by a conversion policy issued under s. 632.897, Stats., for the period prior to the date of election of continuation coverage.

(f) An insurer shall provide a right to an individual conversion policy on termination of continuation of coverage under this section if the terminated insured tenders the first premium within 30 days after the continued coverage terminates. The insurer shall either include notice of this right and a description of how to make payment of premium in the notice required under sub. (4) (b) or shall provide notice prior to termination of the continuation coverage. The conversion policy shall conform to the requirements of s. 632.897 (4), Stats. An insurer is not required to issue a conversion policy under this paragraph if issuance of an individual conversion policy is not required under the standards established in s. 632.897 (4) (d), Stats.

(4) NOTICE. (a) An employer shall provide written notice in the form required by par. (b) to each terminated insured prior to the date of discontinuance of the group policy. An employer or insurer is not required to give notice to a terminated insured who is not, or who is not entitled to elect coverage for, an assistance eligible individual.

(b) The notice required under this subsection shall include a description of the discontinuance of the group policy, the right to continuation under sub. (3) (a) and (b), an explanation of the procedure for electing continued coverage, the payment amounts required for continuation coverage, and the manner, place, and time in which the payments shall be paid. The notice shall also include a description of the premium subsidy, the notice required under section 3001 (a) (7) of the federal act and a description of when the continuation coverage will discontinue, including a description of discontinuance under subd. (3) (d) 4.

(c) If an employer that is required to provide the notice as required under par. (a) and (b) fails to provide the notice within the time required, the insurer shall provide the notice specified in par. (b) within 10 days after the date the insurer acquires knowledge the employer has not provided the notice or the date the insurer exercising due diligence should know that the employer has not provided the notice.

(d) Insurance intermediaries shall provide reasonable assistance to insurers by notifying employers of the requirement to provide notice under this subsection and by making reasonable efforts to assist insurers in determining whether the employer complies and, if not, by making reasonable efforts to assist the insurer in giving notice.

(e) A terminated insured may elect continuation of coverage by electing continuation coverage and paying the premium due under sub. (5) (a) to either the employer or the insurer, as directed by the notice required under par. (b), within 30 days after notice is given as required under par. (a) or (c).

(5) PREMIUM. (a) The insurer may charge for coverage continued under this section an amount no more than 100% of the cost the employer incurred for providing the group policy coverage, including group rate adjustments on the date the group policy would have renewed that are based on applying rating factors to group changes that occurred prior to the discontinuance of the group policy. The employer or insurer

shall collect only 35% of that amount from the terminated insured. The insurer may collect any premium subsidy available under the federal act.

(b) An insurer may require payment of premium for all required continuation coverage periods, including for periods prior to the date of election.

(c) An employer, if requested by the insurer, shall collect and remit to the insurer premium due under this section. An insurer may require the employer to collect and remit premium due from a terminated insured, spouse or dependent under this section. An insurer may not condition continuation of coverage on the employer collection and remittance of premium. An insurer shall treat payment by a terminated insured, spouse or dependent to the employer as receipt and payment to the insurer unless the insurer directs that payment be made to the insurer. An insurer may direct a terminated insured, spouse or dependent to pay the premium to either the employer or to the insurer, including by direction in the notice under sub. (4) (b).

(d) An employer must notify an insurer when the employer discontinues a group policy and does not replace the group policy. An insurer may require the employer to give it notice when it discontinues a group policy and does not replace the group policy. An insurer may not condition continuation of coverage under this section on employer notice of such discontinuance.

(6) PORTABILITY; HIRSP. For an individual who elects continuation of coverage under this section, the period, if any, from the date of the termination of the individual's group policy coverage to the commencement of continuation of coverage under this section shall be disregarded for the purpose of determining the 63-day period under s. 632.746 (3) (b), Stats., and determining eligibility as an eligible individual under ch. 149, Stats.

(7) CONTRACT TERMS PRESERVED. An insurer may restrict coverage provided under this subs. to the terms of the group policy to the extent the terms do not conflict with this section. Nothing in this section prohibits an insurer from

applying deductibles and other cost sharing according to the terms of the group policy, including according to policy periods based on renewal dates that would have occurred had the policy not been discontinued. An insurer may apply policy modifications that were included in notice given to the employer under s. 631.36, Stats., or requested by the employer, that took effect or would have taken effect prior to or on the date of the discontinuance of the policy. An insurer may include provisions for administration of this section in its group policy and certificates.

(8) EXTENDED PREMIUM PAYMENT RIGHT, COVERAGE, AND NOTICE PURSUANT TO SECTION 1010 OF THE FEDERAL DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2010. An insurer must provide the rights provided by, and must comply with the provisions of, section 1010 (c) of the federal department of defense appropriation act, 2010 (P.L.111-118), for assistance eligible individuals 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 (P.L.111-118), as amended.

SECTION 2. 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 3. These changes will take effect on the first day of the month after publication, as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this 22 day of October, 2010.

Sean Dilweg
Commissioner of Insurance

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Section Ins 3.75 relating to continuation of group insurance policies

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.