

**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 9.08.

The Commissioner of Insurance submits an order to repeal Ins 9.08 (4), to amend Ins 9.08 (1) (intro.) and (4) (note), and to create Ins 9.08 (1m), relating to financial and other reporting requirement modifications for health maintenance organizations.

The statement of scope for this rule, SS 158-20, 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 December 22, 2022, to submit to the Legislature, and submitted to the Legislature on January 4, 2023. The rule passed through Senate and Assembly committees and the Joint Committee for Review of Administrative Rules on March 24, 2023 (Senate) and March 30, 2023 (Assembly) with no action taken.

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

1. **Statutes interpreted:**

Sections 601.42 (1g), 609.94, 609.96, and 609.97, Stats.

2. **Statutory authority:**

Sections 601.41 (3), 601.42 (1g), 609.94 (2), 609.96 (1) (b) and (2), 609.97 (2), and 623.04, Stats.

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

Section 609.96 (2), Stats., provides that an HMO “shall have an initial expendable surplus ... or such other percentage as the commissioner specifies by rule promulgated or order issued.” Section 609.97 (2), Stats., states that “[t]he commissioner may require a greater amount or permit a lesser amount than is specified ... by rule promulgated, or order issued.” Each of these sections provide the commissioner with the authority to promulgate rules requiring the filing of annual statements and reports on forms identified by the commissioner. Sections 601.42 (1g) (a), Stats., authorizes the commissioner to require insurers to submit statements, reports, and like materials. Section 623.04, Stats., authorizes the commissioner to “promulgate rules specifying the liabilities required to be reported by insurers in the financial statements submitted under s. 601.42 (1g) (a).”

4. **Related statutes or rules:**

Sections Ins 50.05 and 50.20, Wis. Admin. Code.

5. **Comments received during the preliminary comment period or public hearing on the statement of scope**

None

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

The proposed rule will eliminate some filing requirements for Medicare and Medicaid only HMOs including filing certified public accountant special procedures opinions and audit opinions of covered expenses. It will also update the language to reflect that limited service health

organizations (LSHO) file the national association of insurance commissioners health blank form not a separate LSHO blank for their annual statements to the office.

7. **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:**

N/A

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

Illinois: 215 ILL.Comp.Stat. 125 (HMO Act)

Iowa: Iowa Code ch. 514B (governing HMOs)

Michigan: Mich.Comp.Laws ss. 500.3501-3580 (governing HMOs)

Minnesota: Minn. Stat. ch. 62D (governing HMOs)

9. **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 considered the balance between effective regulation and the increased costs those regulations impose. OCI determined that outside opinions on expenses were not necessary for Medicare and Medicaid only HMOs given the more limited risk these entities bear.

10. **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:**

This rule will have little or no effect on small businesses. Insurers affected by the proposed rule changes may experience a slight decrease in administrative costs as the proposals provide reporting and filing relief and clarifications and updates that do not add financial burden to insurers, consumers or licensees.

11. **A description of the Effect on Small Business:**

This rule will have little or no 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: <https://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx> or by contacting Karyn Culver at:

Phone: (608) 267-9586

Email: karyn.culver@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:**

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 November 14, 2022.

Written comments can be mailed or hand-delivered to:

Legal Unit - OCI Rule Comment for Rule Ins 9

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

Email address: sharone.assa1@wisconsin.gov

For additional information please contact: sharone.assa1@wisconsin.gov

Text of Rule:

SECTION 1. Ins 9.08 (1) (intro.) is amended to read:

(1) ANNUAL STATEMENT. All insurers authorized to write health maintenance organization business and insurers licensed to write only limited service health organization business shall file with the commissioner by March 1 of each year an annual statement for the preceding year. A health maintenance organization insurer and limited service health organization insurer shall use the current health ~~maintenance organization~~ annual statement blank prepared by the national association of insurance commissioners.

SECTION 2. Ins 9.08 (1m) is created to read:

Ins 9.08 (1m) MEDICARE AND MEDICAID HEALTH MAINTENANCE ORGANIZATIONS. A health maintenance organization insurer that writes 100% of its business to Medicare or Medicaid recipients, or a combination of the two, is not required to include a special procedures opinion from a certified public accountant as required by sub. (1) (a) or an audit opinion concerning the statement of covered expenses as required by sub. (1) (c).

SECTION 3. Ins 9.08 (4) is repealed.

SECTION 4. Ins 9.08 (4) (note) is amended to read:

Note: The ~~list of the forms~~ form described in ~~subs. sub. (1) and (4)~~ may be obtained from the Office of the Commissioner of Insurance, P. O. Box 7873, Madison, WI 53707-7873.

SECTION 5. EFFECTIVE DATE. The rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin _____.

Nathan Houdek
Commissioner of Insurance