



# State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, Governor  
Theodore K. Nickel, Commissioner

Wisconsin.gov

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REPORT ON Section Ins 16.01, Ch. 40, Wis. Adm. Code,  
relating to holding company reporting requirements for  
insurers and affecting small business

**Clearinghouse Rule No. CR14-071**  
Submitted Under s. 227.19 (3), Stats.

(The proposed rule-making order is attached.)

**(a) A detailed statement of basis for the proposed rule and how the rule advances relevant statutory goals or purposes:**

The objective of the proposed rule is to modify the reporting requirements for licensed insurers that are a part of an insurance holding company system. Wisconsin's current rule generally follows the National Association of Insurance Commissioners ("NAIC") Insurance Holding Company System Regulatory Model Act (Model Act) and Insurance Holding Company System Model Regulation (Model Regulation). The NAIC recently made changes to its Model Act and Model Regulation to modernize the regulation by better addressing transactions involving complex insurance holding company organizations and insurers licensed in multiple jurisdictions. Wisconsin must adopt certain of those changes in substantively the same form as the NAIC Model Act and Model Regulation if the Wisconsin Office of the Commissioner of Insurance (OCI) is to remain a state insurance regulatory agency that is accredited by the NAIC. It is a goal of the OCI and a benefit to domestic insurers for OCI to maintain its accreditation because as an NAIC accredited state, domestic insurers are only subject to certain filing requirements with OCI and financial examination by OCI. Without accreditation, domestic insurers could be subject to financial examination and filing requirements for all jurisdictions in which they operate. This could include examination from all 51 U.S. jurisdictions for some insurers. Without accreditation, the cost of doing business for Wisconsin's domestic insurance industry would increase because their regulation by other states would increase. In order to maintain accreditation, OCI must adopt certain standard regulations developed by the NAIC. In addition, the changes are similar to those adopted or that will be adopted in other states and work to promote uniformity for insurance holding company systems operating across multiple states.

The proposed changes to the rule include the development of a preacquisition notice to be filed in acquisitions involving insurers. The rule also requires the annual filing of a confidential enterprise risk report by insurers who are part of a holding company group. The enterprise risk report identifies the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The proposed rule also includes small modifications and

clarifications to current reporting requirements. Finally, the rule implements assessments to insurers who are subject to a supervisory college.

**(b) Summary of the public comments and the agency's responses to those comments:**

**Comment: Wisconsin Insurance Alliance**

**Section Ins 40.05, Wis. Adm. Code should be revised to remove reference to the enterprise risk report filed under s. Ins 40.03(9), Wis. Adm. Code as the enterprise risk report has its own confidentiality provision. The preacquisition notice required by s. Ins 40.025, Wis. Adm. Code should be included in the confidentiality provision of s. Ins 40.025, Wis. Adm. Code.**

Response: OCI agreed with these comments and revised the language to remedy these issues.

**Comment: American Health Insurance Plans ("AHIP")**

**AHIP Supported OCI's close adherence to the National Association of Insurance Commissioner's ("NAIC") Holding Company Model Act and Regulation. AHIP did not make any comments specific to the proposed language.**

Response:

OCI agrees with AHIP's comment regarding adhering closely to the Model Act and Regulation.

**Comment: Sentry Insurance**

**In s. Ins 40.02(c), Wis. Adm. Code the word "otherwise" should be changed to "voluntary" as the subsection is ambiguous and confusing. Section Ins 40.02(d), Wis. Adm. Code does not provide confidentiality protection for information provided under s. Ins 40.025, Wis. Adm. Code.**

Response:

Clarifying changes were made to s. Ins 40.02(c), Wis. Adm. Code and the rule was amended to provide confidential treatment for information provided under s. Ins 40.025, Wis. Adm. Code.

**Comment: William Toman, Quarles & Brady**

**Mr. Toman proposed a number of clarifying changes to the language used and to the structure of the proposed rules changes. This included defining terms and breaking subsections into their own sections. Mr. Toman also commented on a number of cross references he believed were confusing and unclear.**

Response:

OCI revised certain cross-references to clarify the proposed rule based on comments received by Mr. Toman and others. OCI also changed a reference from “insurers” to the “ultimate controlling person” based on Mr. Toman’s comment pointing out the reference was misstated. OCI declined to make changes to the proposed rule based on Mr. Toman’s comments where the changes would have made OCI’s proposed rule differ from the NAIC Model Act and Regulation. OCI has tried to draft the proposed rule to be consistent with the NAIC Model Act and Regulation to promote uniformity across the states.

**(c) An explanation of any modifications made in proposed rule as a result of public comments or testimony received at a public hearing:**

Amendments were made to clarify that the information required by s. Ins. 40.025, Wis. Adm. Code would be reviewed with the information provided under s. Ins 40.02, Wis. Adm. Code and that s. Ins 40.025, Wis. Adm. Code did not have a separate approval requirement. Section Ins 40.02 (2)(n), Wis. Adm. Code was made its own subsection for clarification. The wording of s. Ins 40.025 (3) (intro), Wis. Adm. Code was amended to clarify its meaning. Certain cross-references that were confusing were amended to more pinpoint cites. Section Ins 40.03(9)(c), Wis. Adm. Code was amended to apply to the ultimate controlling person and not to the insurer to be consistent with the rest of s. Ins 40.03(9), Wis. Adm. Code. Section Ins 40.05, Wis. Adm. Code was amended so that this confidentiality provision does not apply to enterprise risk reports since they are subject to a separate confidentiality provision. This section was also amended to include information provided under s. Ins 40.025, Wis. Adm. Code as confidential. Non-substantive amendments suggested by the Legislative Council were also made.

**(d) Persons who appeared or registered regarding the proposed rule:**

**Appearances for:**

None

**Appearances against:**

None

**Appearances for information:**

None

**Registrations for:**

Connie O’Connell, Wisconsin Council of Life Insurers

**Registrations against:**

None

**Registrations neither for nor against:**

Teresa Lueth, Humana  
Pranav Shah, WEA P&C  
Noreen Parrett, Parrett & O'Connell, LLP

**Letters received:**

Kip Kobussen, Sentry Insurance  
William Toman, Quarles & Brady  
Noreen Parrett, Parrett & O'Connell, LLP  
Geraldyn Trujillo, American Health Insurance Plans

**(e) An explanation of any changes made to the plain language analysis of the rule under s. 227.14 (2), Stats., or to any fiscal estimate prepared under s. 227.14 (4), Stats.**

No substantive changes were made to the plain language analysis or the fiscal estimate.

**(f) The response to the Legislative Council staff recommendations indicating acceptance of the recommendations and a specific reason for rejecting any recommendation:**

All comments were complied with and corrected except the following:

The legislative counsel commented that the reference to “sub. (6)” should be removed from s. Ins 40.04(1)(a) because the commissioner’s disapproval of a transaction is not an element of compliance. OCI has long required non-disapproval of a transaction before it may be entered into and, therefore, the commissioner’s non-disapproval under sub. 6 is an element of compliance. OCI also did not make a few suggested wording changes where the recommendation would cause the proposed rule to differ from the NAIC Model Act and Regulation.

**(g) The response to the report prepared by the small business regulatory review board:**

The small business regulatory review board did not prepare a report.

**(h) Final Regulatory Flexibility Analysis**

A Final Regulatory Flexibility Analysis is Not Required because the rule will not have a significant economic impact on a substantial number of small businesses.

**(i) Fiscal Effect**

See fiscal estimate attached to proposed rule.

Attachment: Legislative Council Staff Recommendations