



# State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Tony Evers, Governor  
Mark V. Afable, Commissioner

Wisconsin.gov

May 3, 2021

**Legal Unit**  
125 South Webster Street • P.O. Box 7873  
Madison, Wisconsin 53707-7873  
Phone: (608) 267-9586 • Fax: (608) 264-6228  
oci.wi.gov

## Report From Agency

Report on Chapter Ins 19, Wis. Adm. Code, relating to Wisconsin Healthcare Stability Plan.

**Clearinghouse Rule No. 19-088**  
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 proposed rule implements 2017 Wis. Act 138 by establishing the process by which the payment parameters will be set in future years. The OCI will receive claims information and other utilization data from insurers doing health insurance business in the state that will be analyzed with the assistance of OCI's consultants to develop preliminary and final payment parameters. The OCI will issue public notice and invite public input prior to establishing and publishing the final parameters for each benefit year.

Consistent with the authorizing statute, the proposed rule clarifies OCI's requirements for insurers offering individual comprehensive health insurance on the federally facilitated marketplace and offered generally in the state. The benefits covered by compliant plans must provide ACA compliant benefits including coverage of preexisting conditions, essential health benefits, and Wisconsin health insurance requirements, without discrimination or imposition of annual or lifetime limitations. Additionally, to be eligible for reinsurance payments, the claims paid by the eligible carriers on behalf of an insured individual must exceed the attachment point that is established for each benefit year. In determining the eligible amount of claims, the insurer must comply with the cost sharing provisions of the plan and apply provider contracted rates.

The proposed rule delineates the claim submission process by setting forth the claim reporting requirements, timing and content of quarterly and annual reports, and final reconciliation of claims data. The proposed rule also identifies the review and audit process of submitted claims and establishes timelines for submission of data and other information required by the commissioner. The information gathered by the commissioner will be used in aggregate to complete required reporting to the federal government and notices to eligible carriers. Claims paid by the carriers between January 1, 2020, and April 30, 2021, may be submitted to the commissioner for reinsurance payment in accordance with the payment parameters and payment calculation set forth in s. 601.83 (4), Stats. Reinsurance payments to eligible carriers for compliant claims will be issued by August 15 of the year following the applicable benefit year.

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

**Comment:** Rule draft requires claims reported be reduced by any reimbursement received through subrogation, recoupment of overpayments, application of negotiated rate reductions and recoupment from third parties. The concern is these are not part of the EDGE server data and will add complexity to the year-end data reporting with a tight timeframe.

Response: The OCI recognizes that this data is not in the EDGE server data, however, ensuring proper payments without overpaying insurers is vital to the integrity of the WIHSP program. No changes to the rule were made.

**Comment:** The final report due by May 15 of every year is 15 days after final EDGE server submission to CMS, would prefer to not report until May 31.

Response: The OCI appreciates the tight timeframe, however, the Office must verify all data submitted and provide an estimated distribution by June 30 for payment by August 15. The Office has maintained the reporting date, however, but also added the ability to change the date at the commissioner's discretion.

**Comment:** Request for additional information from OCI on the verification audit.

Response: The Office completed the first year of review and payments. The entire process was reviewed and minor modifications, primarily adding timing discretion, were made. At this time, the process established by the proposed rule was overall successful and the Office had not identified that further changes are necessary.

**Comment:** Information requested on the distribution of the reinsurance payments, timing and estimates.

Response: The proposed rule and statute provide that the Office will provide updates throughout the plan year on the aggregate of estimated payments and sharing estimated payments by the end of June. Changes made to the rule increased timing discretion to increase flexibility in the review and audit process.

**Comment:** Request that the Office provide quarterly updates on submitted claims and request advance on whether based upon submissions the Office anticipates having sufficient funds in the WIHSP to cover all eligible claims.

Response: The proposed rule reflects that the Office will provide updates throughout the plan year on aggregate of potential claims payments and sharing estimated payments by the end of June. No changes to the rule were made.

**Comment:** Suggestion that the Office provide additional guidance to insurers prior to setting rates that could reflect whether the Office believes there will be sufficient funds to cover anticipated claims and claims from the prior plan year.

Response: The Office will consider whether additional guidance is necessary. No changes to the rule were made.

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

The Office made revisions based upon comments received at both the first and second public hearings and during the comment periods. Additionally, the rule reflects the commissioner's experience from the first full cycle of the reinsurance program and added

revisions based upon the office's experience. Changes to the WIHSP rule include technical corrections to dates, amended definitions and data reporting forms.

**(d) Persons who appeared or registered for the first public hearing regarding the proposed rule:**

**Appearances for:**

None

**Appearances against:**

None

**Appearances for information:**

Kelsey Avery, Wisconsin Association of Health Plans

**Registrations for:**

Melissa Duffy, Common Ground Healthcare Cooperative

**Registrations against:**

None

**Registrations neither for nor against:**

Chris Rochester, The MacIver Institute  
Kara Koonce, Wisconsin Physicians Service Insurance Corp.  
Stephanie Maslowski, Dean Health Plan  
Nick Tanner, ABC for Health

**Letters received:**

Kelsey Avery, WAHP

Persons who appeared or registered for the second public hearing regarding the proposed rule:

**Persons who appeared or registered for the first public hearing regarding the proposed rule:**

**Appearances for:**

None

**Appearances against:**

None

**Appearances for information:**

None

**Registrations for:**

None

**Registrations against:**

None

**Registrations neither for nor against:**

Kelsey Avery Wisconsin Association of Health Plans  
Melissa Duffy, Common Ground Healthcare Cooperative  
Joanne Alig, Wisconsin Hospital Association

Natalie White  
Mark Osia, WellPoint Anthem  
Trevor Harrison, Health Traditions  
Jonathon Moody, Quartz Health Plan  
Seth Quiggle, Health Traditions

**Letters received:**

Kelsey Avery, WAHP

**(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.**

The plain language was reviewed to ensure consistency with the modification made to the rule in light of the Legislative Council recommendation and public comment received.

**(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 with the exception of the suggestion to change the reference in s. 19.02 (4) to CMS, however the reference to office is correct.

**(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