

**ORDER OF THE OFFICE OF THE COMMISSIONER OF
INSURANCE AMENDING AND CREATING A RULE**

To amend s. Ins 18.10 (2) (d), 18.11 (2) (a) 3. and 18.12 (1) (b); and to create s. Ins 18.105, Wis. Adm. Code, relating to annual adjustment to the minimum necessary cost or payment to access independent review under a health benefit plan.

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

1. Statutes interpreted:

ss. 600.01, 628.34 (12), 632.835 (1) (a) - (b), and 632.835 (5) (c), Wis. Stats.

2. Statutory authority:

ss. 600.01 (2), 601.41 (3), 601.42, 628.34 (12), 632.835 (5) (c), Wis. Stats.

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

The statutes are clear in granting the Office authority to promulgate rules and in this case specifically state at s. 632.835 (5) (c), Wis. Stats., that the commissioner shall promulgate a rule implementing the statutory provision.

4. Related Statutes or rules:

Section 632.835, (5) (c), Wis. Stats., requires that the minimum necessary cost or payment of a procedure or service must be at least \$250.00 as adjusted annually to reflect changes in the consumer price index for all urban consumers, U.S. city average as determined by the U.S. department of labor. The intent of the rule is to implement the statute by indicating the time and manner the CPI index will be posted and the modification to the minimum cost or payment requirement for accessing independent review.

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

The rule implements s. 632.835 (5) (c), Stats., requirement that the commissioner promulgate a rule adjusting the minimum requirements as found in s. 632.835 (1) (a) 4. and (b) 4., Wis. Stats., at least annually. The rule proposes that the Commissioner post to the OCI website the CPI to be used on January 1 of the following year. The Commissioner shall post to the office website the information on or before December 1 of each year. In addition, the proposed rule clarifies an independent review organization must have a procedure that includes notice or correspondence with an insured's authorized representative not just the insured and corrects the office's web address.

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:

There is no federal legislation that pertains to this rule.

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

Iowa: No similar rules.

Illinois: No similar rules.

Minnesota: No similar rules.

Michigan: No similar rules.

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:

The Office did not conduct a factual data review using analytical methodologies as the rule proposes only to implement the notification of the CPI that will be used by consumers, insurers and independent review organizations for the minimum cost or payment requirement to access independent review. The method selected to notify insurers and consumers is cost effective as it utilizes an existing communication tool.

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:

Health insurers doing an insurance business in Wisconsin do not qualify as small businesses and the effect of this rule alters the trigger dollar amount before an insured individual may access the independent review organization as it relates to health care for that insured. No small businesses will be affected by this rule.

10. If these changes will have a significant fiscal effect on the private sector, the anticipated costs possibly incurred by private sector:

There will not be a significant fiscal effect on the private sector. The change in the CPI, assuming past trends in the CPI, would adjust the minimum cost or payment requirement approximately \$5.00 annually. Further, since the first year of independent review that included a retroactive review period, the number of requests for independent review have been steady with approximately 160 requests for independent review last year. The Commissioner does not anticipate the annual adjustment in the minimum cost or payment will alter the number of requests for independent review and therefore have no effect on the private sector.

11. Effect on Small Business:

There should be no effect on small business. The rule proposes to adjust the minimum cost or payment which an insured would need to meet prior to obtaining independent review, provided other statutory requirements are also met.

12. Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet WEB site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Services Section, Office of the Commissioner of Insurance,

at (608) 264-8110, Inger.Williams@OCI.State.WI.US or at 125 South Webster Street – 2nd Floor, PO Box 7873, Madison WI 53707-7873.

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

Mailing address:

Julie E. Walsh
Legal Unit - OCI Rule Comment for Rule 18.10 (2)(d)
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Street address:

Julie E. Walsh
Legal Unit - OCI Rule Comment for Rule 18.10 (2)(d)
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53702

The deadline for submitting comments is 4:00 p.m. on the 10th day after the date for the hearing stated in the Notice of Hearing.

The proposed rule changes are:

SECTION 1. Section Ins 18.10 (2) (d) is amended to read:

Ins 18.10 (2) (d) ~~Subject~~Pursuant to s. 632.835 (5) (c)-~~1~~, Stats., the cost or expected cost of the denied treatment or payment exceeds, or will exceed during the course of the treatment, ~~\$250, the amount published in accordance with s. Ins 18.105.~~

SECTION 2. Section Ins 18.105 is created to read:

Ins 18.105 Annual CPI adjustment for independent review eligibility. (1)
PUBLICATION AND EFFECTIVE DATE. The commissioner shall publish to the office of the commissioner of insurance website on or before December 1 of each year the consumer price index for urban consumers as determined by the U.S. Department of Labor and publish the adjusted dollar amount in accordance with s. 632.835 (5) (c), Stats. The adjusted dollar amount published each December shall be used by insurers offering health benefit plans when complying with s. Ins 18.10 (2) (d) and s. 632.835 (1) (a) 4., Stats., effective the following January 1.

(2) DETERMINATION OF ADJUSTED RATES. Insurers offering health benefit plans shall apply the adjusted dollar amount published annually by the commissioner that is required to be met in accordance with s. 632.835 (1) (a) 4. and (b) 4., Stats., as follows:

(a) For adverse determinations when treatment was received by the insured, the insurer shall use the date treatment was received to determine the proper adjusted dollar amount that is required to be met in accordance with s. 632.835 (1) (a) 4., Stats.

(b) For adverse determinations when a course of treatment was received by the insured or terminated by the insurer, the insurer shall use later of the following dates to determine the proper adjusted dollar amount that is required to be met in accordance with s. 632.835 (1) (a) 4., Stats.:

- 1.** The last date treatment was received by the insured; or,
- 2.** The date the insurer mailed written notification to the insured, or the insured's authorized representative, that the course of treatment was terminated or denied.

(c) For experimental treatment determinations the insurer shall use the date the insurer mailed written notification to the insured, or the insured's authorized representative, that for the proposed treatment the insurer has either denied the treatment or denied payment for the treatment, to determine the proper adjusted dollar amount that is required to be met in accordance with s. 632.835 (1) (b) 4., Stats., and s. Ins 18.10 (2) (d).

Note: Office website address: <http://oci.wi.gov>.

SECTION 3. Section Ins 18.11 (2) (a) 3. is amended to read:

Ins 18.11 (2) (a) 3. The notice shall state that the insured, or the insured's authorized representative, shall select the independent review organization from the list of certified independent review organizations, accompanying the notice, as compiled by the commissioner and available from the insurer.

Note: The commissioner maintains a current listing, revised at least quarterly, of certified independent review organizations and posts the current list on the office website: http://badger.state.wi.us/agencies/oci/oci_home.htmoci.wi.gov.

SECTION 4. Section Ins 18.12 (1) (b) is amended to read:

Ins 18.12 (1) (b) 1. Whether a conflict of interest exists. If a conflict exists, the independent review organization shall provide a written notification to the insurer, the commissioner and the insured, or the insured's authorized representative, within 3 business days stating that a conflict exists and that a different independent review organization will need to be selected by the insured, or the insured's authorized representative.

2. The type of case for which review is sought. The independent review organization shall determine if the case relates to an adverse determination, experimental treatment determination or an administrative issue. If the independent review organization determines that the review is not related to an adverse determination or experimental treatment determination, the independent review organization shall provide written notification to the commissioner, the insured, or the insured's authorized representative, and the insurer of its determination within 2 business days.

4. Whether the ~~cost of treatment or course of treatment is at least \$250~~amount published in accordance with s. Ins 18.105, has been met based upon the type of determination the insurer made. The independent review organization shall calculate the amount that is required to be met, in accordance with s. 632.835 (1) (a) 4. and (b) 4., Stats., and s. Ins. 18.10 (2) (d), as adjusted in accordance with s. 632.835 (5) (c), Stats., and s. Ins 18.105, using the actual cost charged the insured without deduction for cost sharing or contractual agreements with providers.~~In determining the cost of treatment or cost of the course of treatment the independent review organization shall calculate the amount as the actual cost charged the insured if the treatment is denied, without deduction for cost sharing or contractual agreements with providers.~~

SECTION 5. 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 _____ day of _____, 2004.

Jorge Gomez
Commissioner

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Rule Ins 18.105 relating to Annual Adjustment to the Minimum Necessary Cost or
Payment to access Independent Review under a Health Benefit Plan

Statute Involved: **s. 227.14(4) FISCAL ESTIMATES.**

- (a) An agency shall prepare a fiscal estimate for each proposed rule before it is submitted to the legislative council staff under s. 227.15.
- (c) **If a proposed rule interpreting or implementing a statute has no independent fiscal effect, the fiscal estimate prepared under this subsection shall be based on the fiscal effect of the statute.**

This rule change will have no significant effect on the private sector regulated by OCI.

FISCAL ESTIMATE WORKSHEET — 2001 Session

Detailed Estimate of Annual Fiscal Effect

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 18.10(2)

Subject

Annual Adjustment to the Minimum Necessary Cost or Payment to access Independent Review

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>		
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

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

Prepared by: Julie E. Walsh	Telephone No. (608) 264-8101	Agency Insurance
Authorized Signature:	Telephone No.	Date (mm/dd/ccyy)

