

# STATEMENT OF SCOPE

## Office of the Commissioner of Insurance

Rule No.: 145 Ch. INS 19

Relating to: Wisconsin Healthcare Stability Plan

Rule Type: Permanent

### **1. Finding/nature of emergency:**

None.

### **2. Detailed description of the objective of the proposed rule:**

The objective is to implement 2017 Wis. Act 138, which created a state-based reinsurance program for health carriers offering comprehensive individual health insurance products in a single risk pool and to replace the emergency rule with a permanent rule. WIHSP will provide reinsurance to qualified insurers for eligible claims between the attachment point and reinsurance cap to mitigate the impact such claims have on premium rates throughout the individual market. The proposed rule establishes requirements of the WIHSP including; timelines, coinsurance rates, data filing requirements, definitions of basic terms, eligible claim requirements and clarifying which plans offered by qualified insurers are eligible to participate in the reinsurance program. Additionally, the proposed rule establishes the payment parameters for the reinsurance program and clarifies the ability for WIHSP to recoup overpayments from third parties such as workers compensation or auto insurance. The proposed rule will also delineate the type and frequency of the data necessary to be collected from insurers in order to determine the pool of claims that may be eligible for reimbursement by the WIHSP. Finally, the proposed rule will establish frequency and scope of periodic audits of the insurers to ensure compliance with the requirements of the program rules.

### **3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

The 2017 Wis. Act 138 permitted OCI to submit a 1332 State Innovation Waiver (“1332 Waiver”) allowing for the operation of a state-based reinsurance plan. The 1332 Waiver was approved on July 29, 2018 effective January 1, 2019, and permits the Commissioner on behalf of the State to pursue innovative strategies to ensure consumers have access to affordable health insurance options. The 1332 Waiver will facilitate stabilization of the marketplace by utilizing minimal state funds and maximizing federal pass-through dollars. To maximize the federal funding, OCI will demonstrate that there will be savings to the federal government through the 1332 Waivers that will allow for the reduced premiums and therefore reduced federal expenditures for advance premium tax credits. The 1332 Waiver allows the federal government to pass back the premium subsidy savings to the State. Based upon preliminary calculations OCI estimates that federal premium tax credits accounted for 75 percent of premiums for ACA single risk pool plans in 2016 and 78 percent of premiums in 2017. It is this amount that the federal government could pass through to Wisconsin to be used to reinsure eligible claims. For the 2019

calendar year the anticipated coinsurance rate will be 50% of claim costs between \$50,000 and \$250,000.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Section 601.83 (1) (g), Stats., allows the Commissioner to promulgate any rules necessary to implement the healthcare stability plan provided the Commissioner seeks to maximize federal funding. Specifically, s. 601.83 (1) (g), Stats., states “[A]dditionally the Commissioner is required to establish the payment parameters to stabilize or reduce premium rates in the individual market, increase participation by health carriers in the individual market, improve access to providers and services for individual pursuant to ss. 601.83 (2) and (3), Stats.”

Additionally, s. 601.41 (3) (a), Stats., grants the Commissioner “rule-making authority under s. 227.11 (2).” Further, s. 601.42 (1g), Stats., gives the Commissioner the authority to require from those subject to regulation, among other things, “statements, reports, answers to questionnaires, and other information, and evidence thereof, in whatever reasonable form the commissioner designates, and at such reasonable intervals as the commissioner chooses, or from time to time.” Finally, s. 601.42 (2), Stats., states that [T]he commissioner may prescribe forms from the reports under subs. (1g) and (1r) and specify who shall execute or certify such reports.” The proposed rule will require insurers to provide OCI with the necessary enrollment data and aggregate claims data in a timely manner and in a specific form prescribed by the Commissioner in order for OCI to comply with the statutory requirements contained in 2017 Wis. Act 138.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

200 hours

**6. List with description of all entities that may be affected by the proposed rule:**

Consumers purchasing individual health insurance, health care providers serving Wisconsin’s citizens, and insurers offering comprehensive individual health insurance coverage through a single risk pool.

**7. Summary 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 proposal contained in 2017 Wis. Act 138 is similar to other states attempts to gain stability within their respective markets and is intended to replace the federal program that is no longer funded.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The anticipated economic impact of the rule, on an aggregate level, will provide more affordable premium cost to consumers; facilitate fair reimbursement to providers serving insureds, and cost savings to insurers offering products sold through a single risk pool. The overall impact of this program is anticipated to increase insurer choices for consumers and reduce the pace of cost increases for health insurance.

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Department Head or Authorized Signature

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Date Submitted