

Publication Date: February 9, 2011
Effective Dates: February 9, 2011 through July 8, 2011

**PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE REPEALING,
REPEALING AND RECREATING A RULE**

To repeal Ins 6.07 (4) (a) 8., (4) (d), and (9);

To repeal and recreate Ins 6.07 (4) (a) 1.; 2., and 5., Wis. Adm. Code,

Relating to relating to readability and electronic access to insurance policies and affecting small business.

FINDING OF EMERGENCY

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows: the cost of implementing the Flesch scores and electronic access to policies significantly exceeded anticipated costs for the insurance industry; a review of state resources indicates insufficient staff to timely review the volume of health insurance policy filings resulting from the Flesch score requirement; and it is anticipated the federal department of Health and Human Services (“HHS”) will use National Association of Insurance Commissioners recommendations for the development of standards for a uniform summary of benefits and coverage explanation for all potential policyholders and enrollees. Repealing these provisions now before costly system overhauls will save both the industry and the state significant resources. Further, although it was anticipated that the National Association of Insurance Commissioners was planning to implement a national readability standard, such movement has stalled negating the amendment to prior Flesch readability scores.

The changes contained in this emergency rule will restore prior standards and ease financial constraints for the insurance industry.

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

1. Statutes interpreted:

ss. 600.01, 628.34 (12), Stats.

2. Statutory authority:

ss. 600.01 (2), 601.41 (3), 601.42, 628.34 (12), 631.20, 631.21, 631.22, 631.61, Stats.

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

Section 631.22 (2), Stats., requires insurers to provide policies that are coherent, written in commonly understood language, legible, appropriately divided and captioned by its various sections and presented in a meaningful sequence. This proposed rule returns the administrative standards back to requirements previously used.

4. Related statutes or rules:

This proposed rule revises the current rules, s. Ins 6.07, Wis. Adm. Code, governing filing readability and access to electronic versions of policy forms.

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

The proposed rule returns the readability score, Flesch or equivalent, back to 40 across product lines unless other provisions regulate the readability of the policy, i.e. Medicare supplement policy requirements. The proposed rule also repeals requirements related to use of active voice in policy forms, requirement to contain all exclusions and limitations within one section and replaces those provisions with language in place in 2010. Finally the proposed rule repeals the requirement that insurers make available an insured’s complete insurance policy and production timeframes. Statutory requirements already exist that require insurers to

provide the insured or policyholder a copy of their policy. Although s. Ins 6.07 (9) provided more detail and delineated process for obtaining copies of policies OCI believes the existing laws are sufficient without further rule.

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 are no existing or proposed federal regulations that address the topic of this proposed rule.

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

Illinois: Illinois requires products to be readable but does not set a score. Illinois is pending legislative changes to participate in the interstate insurance product regulation compact and for those product lines subject to the compact the Flesch required is 50. Illinois does not have a website notice provision for insureds to access a complete copy of their policy.

Iowa: Iowa requires products to be readable but does not set a score. Iowa participates in the interstate insurance product regulation compact and for those product lines subject to the compact the Flesch required is 50. Iowa does not have a website notice provision for insureds to access a complete copy of their policy.

Michigan: Michigan requires forms to achieve a Flesch score of not less than 45 under Mich. Admin. Code s. 500.2236 r. 2003 (1956). Michigan participates in the interstate insurance product regulation compact and for those product lines subject to the compact the Flesch required is 50. Michigan does not have a website notice provision for insureds to access a complete copy of their policy.

Minnesota: Minnesota requires under Minn. Stat. Ch. 72C, a Flesch score of more than 40 for life and health forms. Minnesota participates in the interstate insurance product regulation compact and for those product lines subject to the compact the Flesch required is 50. Minnesota does not have a website notice provision for insureds to access a complete copy of their policy.

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:

OCI proposes this rule will ease financial constraints not anticipated with prior rule-making. The OCI has received numerous inquiries regarding implementation and concerns related to cost of implementation. By returning to prior requirements the OCI is able to balance consumer protection and appropriate level of industry oversight without being overly burdensome.

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:

The effect of the proposed rule on small business is positive as it reverts back to prior requirements thereby negating the need to modify existing policies or means of accessing prior copies of an insured's policy.

10. See the attached Private Sector Fiscal Analysis.

These changes will not have a significant fiscal effect on the private sector as the proposed rule reverts back to prior requirements thereby imposing no costs on insurers or intermediaries that could be passed on to the private sector.

11. A description of the Effect on Small Business:

This rule will have little to no fiscal effect on regulated small businesses as the proposed rule imposes no new requirements and returns all Flesch scores and access requirements back to 2010 standards.

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: <http://oci.wi.gov/ocirules.htm> or by contacting

Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110

Email: inger.williams@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:

The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

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The proposed rule changes are:

SECTION 1. Ins 6.07 (4) (a) (intro.), 1. and 2. are repealed and recreated to read:

Ins 6.07 (4) (a) In addition to any other requirements of law, no consumer insurance policy, unless excepted under sub. (5), shall be delivered or issued for delivery in this state on or after the dates such forms must be approved under this section, unless:

1. The text achieves a minimum score of 50 for those policies labeled as Medicare supplement policies as defined by s. Ins 3.39 and a minimum score of 40 for all other policies included under this rule, on the Flesch reading ease test as described in par. (b), or an equivalent score on any other comparable test as provided in par. (c) or this subsection unless a lower score is authorized under sub. (7);
2. It is printed, except for specification pages, schedules and tables, in not less than 10 point type, one point leaded;

SECTION 2. Ins 6.07 (4) (a) 5. is repealed and recreated to read:

Ins 6.07 (4) (a) 5. It contains a single section listing exclusions, or the exclusions are given at least equal prominence;

SECTION 3. Ins 6.07 (4) (a) 8. is repealed.

SECTION 4. Ins 6.07 (4) (d) is repealed.

SECTION 5. Ins 6.07 (9) is repealed.

SECTION 6. These changes first apply to policies issued or renewed on or after the effective date of this rule.

SECTION 7. This rule may be enforced under ss. 601.41, 601.64, 601.65, 628.10, 631.20 (4m), Stats., or ch. 645, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

SECTION 8. These emergency rule changes will take effect on February 9, 2011, as provided in s. 227.24(1)(c), Stats.

Dated at Madison, Wisconsin, this ____ day of _____, 2011.

Theodore K. Nickel
Commissioner of Insurance

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for s. Ins 6.07 relating to readability and electronic access to insurance policies and affecting small business

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

FISCAL ESTIMATE WORKSHEET
Detailed Estimate of Annual Fiscal Effect

ORIGINAL UPDATED

 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 607

Subject
readability and electronic access to insurance policies and affecting small business

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

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 Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
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

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

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

FISCAL ESTIMATE

ORIGINAL UPDATED

CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 607

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readability and electronic access to insurance policies and affecting small business

Fiscal Effect
State: No State Fiscal Effect
Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> No
<input type="checkbox"/> Create New Appropriation		<input type="checkbox"/> Decrease Costs

Local: No local government costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts

Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Chapter 20 Appropriations
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Assumptions Used in Arriving at Fiscal Estimate

Long-Range Fiscal Implications

None

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Authorized Signature:	Telephone No.	Date (mm/dd/ccyy)