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CORRESPONDENCE MEMORANDUM

DATE: January 10, 2013
TO: Group Insurance Board
FROM: David H. Nispel, General Counsel
Steve Hurley, Office of Policy, Privacy and Compliance
SUBJECT: Status of Proposed Administrative Rules

This memo is for informational purposes only. No Board action is required.

This memorandum lists administrative rules staff are working on and the status of those rules. Once a rule is in final draft form, it is brought to the Group Insurance Board (GIB) for approval.

A new section has been added to this memorandum that will provide updates on the administrative rule process. In 2011 and 2012, legislation was enacted and executive orders were issued that significantly changed the process. This new section, which will appear as the final section of each edition of the memorandum, will feature one or more of the changes to the rule making process. This particular memorandum will provide an overview of those changes and highlight the changes involving an agency's authority to promulgate rules and implement standards.

Currently, there are two rules of interest to the GIB:

- I. **Status: Proposed rule submitted to the Wisconsin Legislative Council Rules Clearinghouse on December 17, 2012. A public hearing is scheduled for January 31, 2013.**
 - CR 12-054, Technical Rule relating to making technical updates on existing ETF rules and making other minor substantive changes, including allowing employers more flexibility in the deadlines for submitting monthly reports to ETF and changing an existing rule regarding local public employers health insurance to comply with 2011 Wisconsin Act 133.

Board	Mtg Date	Item #
GIB	2.5.13	7A

Reviewed and approved by Lisa Ellinger, Administrator, Division of Insurance Services.

Signature

1/14/13
Date

Status: The Scope Statement for this rule (SS 079-12) was approved by the Governor on October 2, 2012, and published in the Administrative Register on October 31, 2012. Proposed rule submitted to the Wisconsin Legislative Council Rules Clearinghouse on January 10, 2013. A public hearing is scheduled for February 13, 2013.

- SS 079-12, Internal Revenue Code (IRC) compliance rule relating to clarifying how ETF administers provisions of the IRC, including §§ 415 (b), 415 (c) and 401 (a) (17) as provided in § 40.03 (2) (t), Wis. Stats.

II. Updates on Administrative Rule Process

Generally

Major changes to the administrative rule making process were made by 2011 Wisconsin Act 21 and 2011 Wisconsin Act 32. Those changes relate to agency rule making authority, approval by the Governor of scope statements and final draft rules, treatment of emergency rules, preparation of economic impact analyses, referral of rules to the Joint Committee for Review of Administrative Rules (JCRAR), and detailed rule promulgation instructions to agencies.

Executive Order #50 (Guidelines for Promulgation of Administrative Rules) sets forth additional requirements and provides rule promulgation instructions to agencies. The Order also establishes an Office of Regulatory Compliance in the Governor's office.

Agency's Authority to Promulgate Rules and Implement Standards

2011 Wisconsin Act 21 provides that all of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

- A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rulemaking authority on the agency or augment the agency's rulemaking authority beyond the rulemaking authority that is explicitly conferred on the agency by the legislature.
- A statutory provision describing the agency's general powers or duties does not confer rulemaking authority on the agency or augment the agency's rulemaking authority beyond the rulemaking authority that is explicitly conferred on the agency by the legislature.
- A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

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In addition, the Act provides that no agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by rule.

We will be available at the February 5, 2013, Board meeting to answer questions.