State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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DATE: March 26, 2020

TO: All Insurers and Interested Parties

FROM: Mark V. Afable, Commissioner of Insurance

SUBJECT: Small Employer Coverage

The Office of the Commission of Insurance (OCI) is providing guidance to insurers regarding small employer coverage requirements, and Wisconsin's continuation law during the COVID-19 public health emergency.

Flexibility regarding Wisconsin Small Employer Law

OCI has received questions regarding insurers' and employers' ability to continue group insurance to employees whose hours are being reduced below 30 hours per week or those being placed on furlough. Some employers have indicated their wish to maintain their employees' active employee status for insurance purposes and to contribute to monthly premiums for employees no longer working 30 hours or placed on furlough.

In Wisconsin, a small employer is defined as one who employs at least two but not more than 50 employees. State law defines an eligible employee as one who works on a permanent basis and has a normal workweek of 30 or more hours. This includes a sole proprietor, a business owner (including the owner of a farm business), a partner of a partnership, and a member of a limited liability company if these individuals are included as an employee under a health benefit plan of a small employer.

The 30-hour workweek provision under Wisconsin's small employer law is a minimum standard. Insurers and employer policyholders can agree to offer coverage to employees working fewer than 30 hours if the offer is made to all employees of the employer and is not made in a discriminatory manner.

OCI encourages insurers to make available the option of maintaining coverage under the group insurance plan for employees working fewer than 30 hours to those employers who wish to do so. Although Wisconsin employees who lose their small group coverage will be eligible for a special enrollment period to a federal health insurance exchange policy, this may involve changing providers or incurring new deductibles and cost-sharing requirements.

Flexibility regarding Wisconsin Continuation

OCI has received questions regarding the ability of insurers and employers to offer continuation of dental and/or vision coverage to employees whose hours are reduced or who are placed on furlough.

Wisconsin's continuation law (s. 632.897, Wis. Stat.,) applies to most group health insurance policies providing hospital or medical coverage. Unlike federal COBRA that applies to most employers with 20 or more employees, Wisconsin's continuation law applies to group policies

issued to employers of any size. Additionally, employees who live outside of the State of Wisconsin during employment with an employer located within the State of Wisconsin would be eligible for continuation coverage. However, the continuation of dental, vision, and prescription drug benefits is not required to be provided if offered as a separate policy.

OCI encourages insurers to work with employers to provide the option of continuing dental, vision, and prescription drug benefits when offered as separate policies.

Any questions concerning this bulletin may be directed to Olivia Hwang, Director of Public Affairs, at Olivia.Hwang@wisconsin.gov.