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(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

**1995-96**

(session year)

**Assembly**

(Assembly, Senate or Joint)

**Committee on Insurance, Securities and  
Corporate Policy...**

### **COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### **INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                      (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

**Assembly**

**Record of Committee Proceedings**

Clearinghouse Rule 95-105

Relating to AN ORDER to amend Ins 17.01 (3) (a) and 17.28 (3e), (6e) (b) and (6m) (b); to repeal and recreate Ins 17.28 (6); and to create Ins 17.28 (3) (hs), relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1995, patients compensation fund coverage for specified health care practitioners and establishing the scope of patients compensation fund coverage for service corporations. Submitted by Office of the Commissioner of Insurance.

September 12, 1995

Referred to committee on Insurance, Securities & Corporate Policy.

October 12, 1995

No action taken.

*151*

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Darcy J. Demaske, Committee Clerk





State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Tommy G. Thompson  
Governor

Josephine W. Musser  
Commissioner

X

June 6, 1995

121 East Wilson Street  
P.O. Box 7873  
Madison, Wisconsin 53707-7873  
(608) 266-3585

HONORABLE GLENN GROTHMAN  
ASSEMBLY CO-CHAIRPERSON  
JOINT COMM FOR REVIEW OF ADM RULES  
100 N HAMILTON ST RM 402  
MADISON WI 53703

Re: Section Ins 17.01 and 17.28, Wis. Adm. Code, Relating to Annual Patient's  
Compensation Fund Fees, Mediation Fees and Service Corporations

Dear Representative Grothman:

This office will be promulgating an emergency rule. Attached is a draft of the rule for your review. This rule must be done as an emergency rule so that it is effective on July 1, 1992. The reasons are given in the Finding of Emergency in the rule. It will be published in the official State newspaper in about a week.

If you have any questions, please contact me at 266-9892.

Best regards,

Alice Shuman  
Attorney

Attachment: 1 copy draft rule

ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE  
AND THE BOARD OF GOVERNORS OF THE PATIENTS COMPENSATION FUND  
AMENDING, REPEALING AND RECREATING, AND CREATING AN EMERGENCY RULE

The office of the commissioner of insurance and the board of governors of the patients compensation fund propose an order to amend ss. 17.01 (3) (a) and 17.28 (3e), (6e) (b) and (6m) (b); to repeal and recreate s. Ins 17.28 (6); and to create s. Ins 17.28 (3) (hs), relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1995, patients compensation fund coverage for specified health care practitioners and establishing the scope of patients compensation fund coverage for service corporations.

---

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 601.41 (3), 655.004, 655.27 (3) (b) and 655.61, Stats.

Statutes interpreted: ss. 655.005 (2) and 655.27 (3), Stats.

The commissioner of insurance, with the approval of the board of governors (board) of the patients compensation fund (fund), is required to establish by administrative rule the annual fees which participating health care providers must pay to the fund. This rule establishes those fees for the

fiscal year beginning July 1, 1995. These fees represent an overall 11.2% decrease over the fees paid for the current fiscal year. Because of a change in physician class relativities, the actual decrease for physicians ranges from -7.2% to -20.2%. The board approved this decrease at its meeting on May 17, 1995, based on the recommendation of the fund's consulting actuary and the board's actuarial and underwriting committee following the enactment of legislation, 1995 Wisconsin Act 10, imposing a cap of \$350,000 on noneconomic damages.

The board is also required to promulgate by rule the annual fees for the operation of the patients compensation mediation system, based on the recommendation of the director of state courts. This rule implements the director's funding level recommendation by establishing mediation panel fees for the next fiscal year at \$38.00 for physicians and \$3.00 per occupied bed for hospitals.

This rule also implements 1993 Wisconsin act 473 which prohibits fund coverage for employes who are defined as health care practitioners. It makes clear that a health care provider must ensure that all employes, except those excluded from fund coverage by act 473, must have primary coverage in effect. The excluded practitioners are those whose license, registration or certification permits them to practice independently, that is, without the supervision and direction of a physician or nurse anesthetist, and who are licensed by any of the following boards: board of nursing, medical examining board, optometry examining board, pharmacy examining board, psychology examining board and the examining board of social workers, marriage and family therapists and professional counselors. The fund does not cover them in any circumstances where they are not providing health care services under the direction and supervision of a physician or nurse anesthetist. This exclusion applies to occurrences on and after July 1, 1995.

The rule creates a new definition for ambulatory surgery centers subject to the fund. The definition cross-referenced in the current rule was repealed. The rule cross-references the definition of "freestanding ambulatory surgery center" in the rules of the office of health care information which is part of the office of the commissioner of insurance.

The rule implements another provision of act 473 which permits various health care practitioners holding different licenses to form service corporations. The rule provides that a service corporation has fund coverage only if all of its shareholders are physicians or nurse anesthetists or both.

---

#### FINDING OF EMERGENCY

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The commissioner was unable to promulgate a permanent rule corresponding to this emergency rule in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1995. The amount of the fees established by this rule could not be determined until after the governor signed 1995 Wisconsin Act 10, which imposes a \$350,000 cap on noneconomic damages in medical malpractice actions and therefore affects the level of funding needed for the fund.

The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect October 1, 1995. Because this

rule first applies on July 1, 1993, it is necessary to promulgate the rule on an emergency basis.

---

SECTION 1. Ins 17.01 (3) (intro.) and (a) are amended to read:

Ins 17.01 (3) FEE SCHEDULE. (intro.) The following fee schedule shall be effective July 1, 1994 1995:

(a) For physicians--~~\$50.00~~ \$38.00

SECTION 2. Ins 17.28 (3e) is amended to read:

Ins 17.28 (3e) PRIMARY COVERAGE REQUIRED. Each provider shall ensure that primary coverage for the provider and the provider's employes is in effect on the date the provider begins practice or operation and for all periods during which the provider practices or operates in this state. A provider does not have fund coverage for any of the following:

(a) Any period during which primary coverage is not in effect.

(b) Any employe who is a health care practitioner under the circumstances described in s. 655.005 (2), Stats.

SECTION 3. Ins 17.28 (3) (hs) is created to read:

→ Ins 17.28 (3) (hs) "Service corporation" includes a corporation organized under ss. 180.1901 to 180.1921 only if all of its shareholders are physicians, nurse anesthetists or both.

SECTION 4. Ins 17.28 (6) is repealed and recreated to read:

Ins 17.28 (6) FEE SCHEDULE. The following fee schedule is in effect from July 1, 1995, to June 30, 1996:

(a) Except as provided in pars. (b) to (g), for a physician for whom this state is a principal place of practice:

|         |         |         |          |
|---------|---------|---------|----------|
| Class 1 | \$2,923 | Class 3 | \$12,569 |
| Class 2 | \$5,846 | Class 4 | \$17,538 |



(b) For a resident acting within the scope of a residency or fellowship program:

|         |         |         |         |
|---------|---------|---------|---------|
| Class 1 | \$1,462 | Class 3 | \$6,287 |
| Class 2 | \$2,924 | Class 4 | \$8,772 |

(c) For a resident practicing part-time outside the scope of a residency or fellowship program:

|             |         |
|-------------|---------|
| All classes | \$1,754 |
|-------------|---------|

(d) For a medical college of Wisconsin, inc., full-time faculty member:

|         |         |         |         |
|---------|---------|---------|---------|
| Class 1 | \$1,169 | Class 3 | \$5,027 |
| Class 2 | \$2,338 | Class 4 | \$7,014 |

(e) For a physician who practices fewer than 500 hours during the fiscal year, limited to office practice and nursing home and house calls, and who does not practice obstetrics or surgery or assist in surgical procedures:

\$731

(f) For a physician for whom this state is not a principal place of practice:

|         |         |         |         |
|---------|---------|---------|---------|
| Class 1 | \$1,462 | Class 3 | \$6,287 |
| Class 2 | \$2,924 | Class 4 | \$8,772 |

(g) For a nurse anesthetist for whom this state is a principal place of practice:

\$749

(h) For a nurse anesthetist for whom this state is not a principal place of practice:

\$375

(i) For a hospital:

1. Per occupied bed \$185; plus

2. Per 100 outpatient visits during the last calendar year for which totals are available \$9.25

(j) For a nursing home, as described under s. 655.002 (1) (j), Stats., which is wholly owned and operated by a hospital and which has health care liability insurance separate from that of the hospital by which it is owned and operated:

|                  |      |
|------------------|------|
| Per occupied bed | \$35 |
|------------------|------|

(k) For a partnership comprised of physicians or nurse anesthetists, organized for the primary purpose of providing the medical services of physicians or nurse anesthetists, whichever of the following is applicable:

1. If the total number of partners and employed physicians and nurse anesthetists is from 2 to 10 \$105

2. If the total number of partners and employed physicians and nurse anesthetists is from 11 to 100 \$1,046

3. If the total number of partners and employed physicians and nurse anesthetists exceeds 100 \$2,615

(L) For a corporation, including a service corporation, with more than one shareholder organized under ch. 180, Stats., for the primary purpose of providing the medical services of physicians or nurse anesthetists, whichever of the following is applicable:

1. If the total number of shareholders and employed physicians and nurse anesthetists is from 2 to 10 \$105

2. If the total number of shareholders and employed physicians and nurse anesthetists is from 11 to 100 \$1,046

3. If the total number of shareholders and employed physicians or nurse anesthetists exceeds 100 \$2,615

(m) For a corporation organized under ch. 181, Stats., for the primary purpose of providing the medical services of physicians or nurse anesthetists, whichever of the following is applicable:

1. If the total number of employed physicians and nurse anesthetists is from 1 to 10 \$105

2. If the total number of employed physicians and nurse anesthetists is from 11 to 100 \$1,046

3. If the total number of employed physicians or nurse anesthetists exceeds 100 \$2,615

(n) For an operational cooperative sickness care plan:

1. Per 100 outpatient visits during the last calendar year for which totals are available \$0.23; plus

2. 2.5% of the total annual fees assessed against all of the employed physicians.

(o) For a freestanding ambulatory surgery center, as defined in s. Ins 120.03 (10).

Per 100 outpatient visits during the last calendar year for which totals are available \$45

(p) For an entity affiliated with a hospital, the greater of \$100 or whichever of the following applies:

1. 15% of the amount the entity pays as premium for its primary health care liability insurance, if it has occurrence coverage.

2. 20% of the amount the entity pays as premium for its primary health care liability insurance, if it has claims-made coverage.

SECTION 5. Ins 17.28 (6e) (b) and (6m) (b) are amended to read:

Ins 17.28 (6e) (b) Notwithstanding sub. (4) (h), the fund's initial bill for each fiscal year shall be the amount the medical college of Wisconsin affiliated hospitals, inc., estimates will be due for the next fiscal year for all its residents. At the end of the fiscal year, the fund shall adjust the fee to reflect the residents' actual exposure during the fiscal year, as determined by the medical college of Wisconsin affiliated hospitals, inc., and

shall bill the medical college of Wisconsin affiliated hospitals, inc., for the balance due, if any, plus accrued interest, as calculated under ~~par~~ sub. (4) (j) 2, from the beginning of the fiscal year. The fund shall refund the amount of an overpayment, if any.

(6m) (b) For purposes of sub. (6) (k) to (m), a partnership or corporation shall report the number of partners, shareholders and employed physicians and nurse anesthetists on July 1 of the previous fiscal year.

SECTION 6. INITIAL APPLICABILITY. (1) Except as provided in subdivision (2), this rule first applies on July 1, 1995.

(2) Section Ins 17.28 (3e), as affected by this rule, as it relates to excluding coverage under the patients compensation fund for certain employed health care practitioners, first applies to claims arising out of an act or omission of the employe occurring on July 1, 1995.

SECTION 7. EFFECTIVE DATE. This rule will take effect upon publication, as provided in s. 227.24 (1) (c), Stats.

Dated at Madison, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_.

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Josephine W. Musser  
Commissioner of Insurance





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## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536  
Telephone (608) 266-1304  
Fax (608) 266-3830

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DATE: June 7, 1995  
TO: REPRESENTATIVE SHERYL ALBERS  
FROM: Gordon Anderson, Senior Staff Attorney  
SUBJECT: Background on Your Proposed Budget Amendment Relating to the Patients Compensation Fund

### 1. Introduction

The Patients Compensation Fund ("Fund") provides liability coverage for malpractice claims against health care providers if the amount of a claim exceeds \$400,000 or the total claims paid on behalf of the provider exceed \$1,000,000 in a year. A "health care provider" is a person to whom the chapter applies under s. 655.002 (1), Stats. Among those who are health care providers are: (a) *physicians* and *nurse anesthetists*; (b) a *partnership* comprised of physicians or nurse anesthetists organized and operated in this state "for the primary purpose" of providing medical services of physicians or nurse anesthetists; and (c) a *corporation* organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists [s. 655.002 (1) (a), (d) and (e), Stats.].

1993 Senate Bill 618, which became 1993 Wisconsin Act 473, amended Wisconsin statutes relating to health care professional service corporations to permit any "health care practitioner," that is, an individual who is licensed, registered or certified by the Board of Nursing, Medical Examining Board, Optometry Examining Board, Pharmacy Examining Board, Psychology Examining Board or the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors, to form a service corporation with any other health care practitioner. The law was amended to change the requirement that each shareholder, director or officer of a service corporation must be licensed, certified or registered by a state agency in the *same field of endeavor* to permit persons who are "health care practitioners" to be shareholders, directors or officers of a service corporation.

Among the provisions included in Act 473 was the creation in ch. 655, Stats., relating to the Fund, of a definition of "health care practitioner" to include all those categories of persons previously mentioned who are employees of a health care provider and who have the authority to provide health care services *that are not under the direction and supervision of a physician or*

*nurse anesthetist*. SECTION 11 of Act 473 amended s. 655.005 (2), Stats., which previously had stated that the Fund would provide coverage for claims against the health care provider or the employe of the health care provider due to acts or omissions of the employe acting within the scope of his or her employment in providing health care services, to **exclude coverage** for a "health care practitioner" who is not providing health care services under the direction and supervision of a physician or nurse anesthetist.

Section 655.005 (2t), Stats., was created to state that the above provision does not affect the liability of a "health care provider" for the acts of its employes.

The effect of these two provisions was to continue to provide Fund coverage of a service corporation that included persons other than physicians or nurse anesthetists as shareholders in the corporation so long as the corporation met the requirements in s. 655.002 (1) (d) and (e), Stats., of being formed "primarily for" the purpose of providing the services of physicians and nurse anesthetists.

## 2. The Problem

A fiscal estimate prepared by the Office of the Commissioner of Insurance (OCI), for 1995 Assembly Bill 325, which expands the categories of persons who participate as shareholders in a service corporation, states in part:

Any "service corporation" that is not comprised of physicians or CRNAs or both would not meet the Patients Compensation Fund's (Fund) proposed definition of a service corporation. Any other type of health care provider to a service corporation or shareholder would effectively render that corporation ineligible for Fund coverage.

The statement in the fiscal estimate is directly contrary to the legislative intent of 1993 Wisconsin Act 473.

It was the clear intent of last session's legislation that the Fund **would** issue coverage to the service corporation but **exclude** from that coverage the acts of independent practitioners and any liability associated with such acts. The intent was **not** to deny all coverage by the Fund to the service corporation merely because it includes nonphysicians and nurse anesthetists as shareholders.

The proposed amendment would make it clear that the Fund will issue coverage but that coverage will exclude the independent acts of "health care practitioners" who are not physicians or nurse anesthetists.

GAA:kja;lah

Attachment

## **PROPOSED BUDGET AMENDMENT**

Amend ss. 655.005 (2) and 655.27 (1), Stats., to clarify that the Patients Compensation Fund will continue to issue coverage to partnerships and corporations under s. 655.002, Stats., that are organized for the primary purpose of providing the medical services of physicians or nurse anesthetists even if those corporations include one or more shareholders who are not physicians or nurse anesthetists, but the coverage will exclude liability for the acts or omissions of a health care practitioner who is not providing health care services under the direction and supervision of a physician or nurse anesthetist.







State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Tommy G. Thompson  
Governor

Josephine W. Musser  
Commissioner

June 12, 1995

121 East Wilson Street  
P.O. Box 7873  
Madison, Wisconsin 53707-7873  
(608) 266-3585

Members of the Legislature

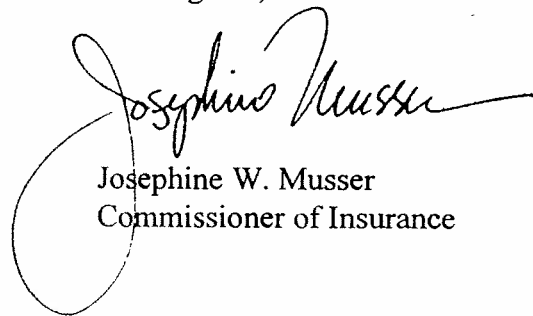
Re: Emergency Rule, Section Ins 17.01 and 17.28, Wis. Adm. Code, Relating to Annual Patient's Compensation Fund Fees, Mediation Fees and Service Corporations

Dear Senator or Representative to the Assembly:

I have promulgated the attached rule as an emergency rule. The rule will be published in the official State newspaper on June 14, 1995.

The attached copy of the rule includes the Finding of Emergency which required promulgation of the rule. If you have any questions, please contact Alice Shuman, at 266-9892.

Best regards,



Josephine W. Musser  
Commissioner of Insurance

JWM:AS

Attachment: 1 copy rule



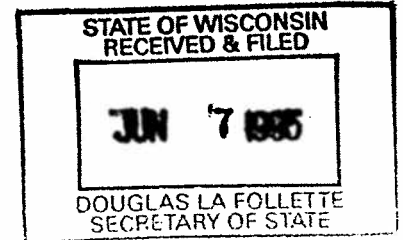
State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Tommy G. Thompson  
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121 East Wilson Street  
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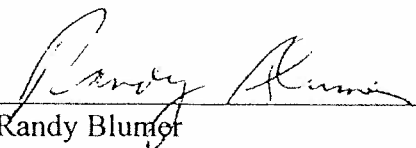
STATE OF WISCONSIN )  
 ) SS  
OFFICE OF THE COMMISSIONER OF INSURANCE )

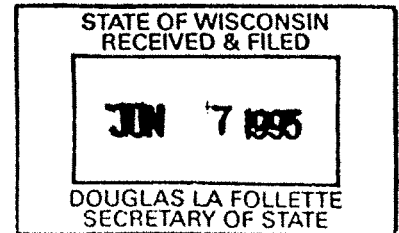


I, Randy Blumer, Deputy Commissioner of Insurance and custodian of the official records, certify that the annexed emergency rule affecting sections Ins 17.01 and 17.28, Wis. Adm. Code, relating to Annual Patient's Compensation Fund Fees, Mediation Fees and Service Corporations, was duly approved and adopted by this Office on June 7, 1995.

I further certify that I have compared this copy with the original on file in this Office and that it is a true copy of the original, and the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 121 East Wilson Street, Madison, Wisconsin, on June 7, 1995.

  
\_\_\_\_\_  
Randy Blumer  
Deputy Commissioner of Insurance



ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE  
AND THE BOARD OF GOVERNORS OF THE PATIENTS COMPENSATION FUND  
AMENDING, REPEALING AND RECREATING, AND CREATING AN EMERGENCY RULE

The office of the commissioner of insurance and the board of governors of the patients compensation fund propose an order to amend ss. 17.01 (3) (a) and 17.28 (3e), (6e) (b) and (6m) (b); to repeal and recreate s. Ins 17.28 (6); and to create s. Ins 17.28 (3) (hs), relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1995, patients compensation fund coverage for specified health care practitioners and establishing the scope of patients compensation fund coverage for service corporations.

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ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 601.41 (3), 655.004, 655.27 (3) (b) and 655.61, Stats.

Statutes interpreted: ss. 655.005 (2) and 655.27 (3), Stats.

The commissioner of insurance, with the approval of the board of governors (board) of the patients compensation fund (fund), is required to establish by administrative rule the annual fees which participating health care providers must pay to the fund. This rule establishes those fees for the

fiscal year beginning July 1, 1995. These fees represent an overall 11.2% decrease over the fees paid for the current fiscal year. Because of a change in physician class relativities, the actual decrease for physicians ranges from -7.2% to -20.2%. The board approved this decrease at its meeting on May 17, 1995, based on the recommendation of the fund's consulting actuary and the board's actuarial and underwriting committee following the enactment of legislation, 1995 Wisconsin Act 10, imposing a cap of \$350,000 on noneconomic damages.

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The rule implements another provision of act 473 which permits various health care practitioners holding different licenses to form service corporations. The rule provides that a service corporation has fund coverage only if all of its shareholders are physicians or nurse anesthetists or both.

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#### FINDING OF EMERGENCY

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The commissioner was unable to promulgate a permanent rule corresponding to this emergency rule in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1995. The amount of the fees established by this rule could not be determined until after the governor signed 1995 Wisconsin Act 10, which imposes a \$350,000 cap on noneconomic damages in medical malpractice actions and therefore affects the level of funding needed for the fund.

The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect October 1, 1995. Because this

rule first applies on July 1, 1993, it is necessary to promulgate the rule on an emergency basis.

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Ins 17.01 (3) FEE SCHEDULE. (intro.) The following fee schedule shall be effective July 1, 1994 1995:

(a) For physicians--~~\$50.00~~ \$38.00

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Ins 17.28 (3e) PRIMARY COVERAGE REQUIRED. Each provider shall ensure that primary coverage for the provider and the provider's employes is in effect on the date the provider begins practice or operation and for all periods during which the provider practices or operates in this state. A provider does not have fund coverage for any of the following:

(a) Any period during which primary coverage is not in effect.

(b) Any employe who is a health care practitioner under the circumstances described in s. 655.005 (2), Stats.

SECTION 3. Ins 17.28 (3) (hs) is created to read:

Ins 17.28 (3) (hs) "Service corporation" includes a corporation organized under ss. 180.1901 to 180.1921 only if all of its shareholders are physicians, nurse anesthetists or both.

SECTION 4. Ins 17.28 (6) is repealed and recreated to read:

Ins 17.28 (6) FEE SCHEDULE. The following fee schedule is in effect from July 1, 1995, to June 30, 1996:

(a) Except as provided in pars. (b) to (g), for a physician for whom this state is a principal place of practice:

|         |         |         |          |
|---------|---------|---------|----------|
| Class 1 | \$2,923 | Class 3 | \$12,569 |
| Class 2 | \$5,846 | Class 4 | \$17,538 |

(b) For a resident acting within the scope of a residency or fellowship program:

|         |         |         |         |
|---------|---------|---------|---------|
| Class 1 | \$1,462 | Class 3 | \$6,287 |
| Class 2 | \$2,924 | Class 4 | \$8,772 |

(c) For a resident practicing part-time outside the scope of a residency or fellowship program:

|             |         |
|-------------|---------|
| All classes | \$1,754 |
|-------------|---------|

(d) For a medical college of Wisconsin, inc., full-time faculty member:

|         |         |         |         |
|---------|---------|---------|---------|
| Class 1 | \$1,169 | Class 3 | \$5,027 |
| Class 2 | \$2,338 | Class 4 | \$7,014 |

(e) For a physician who practices fewer than 500 hours during the fiscal year, limited to office practice and nursing home and house calls, and who does not practice obstetrics or surgery or assist in surgical procedures:

\$731

(f) For a physician for whom this state is not a principal place of practice:

|         |         |         |         |
|---------|---------|---------|---------|
| Class 1 | \$1,462 | Class 3 | \$6,287 |
| Class 2 | \$2,924 | Class 4 | \$8,772 |

(g) For a nurse anesthetist for whom this state is a principal place of practice:

\$749

(h) For a nurse anesthetist for whom this state is not a principal place of practice:

\$375

(i) For a hospital:

1. Per occupied bed \$185; plus
2. Per 100 outpatient visits during the last calendar year for which totals are available \$9.25



(j) For a nursing home, as described under s. 655.002 (1) (j), Stats., which is wholly owned and operated by a hospital and which has health care liability insurance separate from that of the hospital by which it is owned and operated:

Per occupied bed \$35

(k) For a partnership comprised of physicians or nurse anesthetists, organized for the primary purpose of providing the medical services of physicians or nurse anesthetists, whichever of the following is applicable:

1. If the total number of partners and employed physicians and nurse anesthetists is from 2 to 10 \$105

2. If the total number of partners and employed physicians and nurse anesthetists is from 11 to 100 \$1,046

3. If the total number of partners and employed physicians and nurse anesthetists exceeds 100 \$2,615

(L) For a corporation, including a service corporation, with more than one shareholder organized under ch. 180, Stats., for the primary purpose of providing the medical services of physicians or nurse anesthetists, whichever of the following is applicable:

1. If the total number of shareholders and employed physicians and nurse anesthetists is from 2 to 10 \$105

2. If the total number of shareholders and employed physicians and nurse anesthetists is from 11 to 100 \$1,046

3. If the total number of shareholders and employed physicians or nurse anesthetists exceeds 100 \$2,615

(m) For a corporation organized under ch. 181, Stats., for the primary purpose of providing the medical services of physicians or nurse anesthetists, whichever of the following is applicable:

1. If the total number of employed physicians and nurse anesthetists is from 1 to 10 \$105

2. If the total number of employed physicians and nurse anesthetists is from 11 to 100 \$1,046

3. If the total number of employed physicians or nurse anesthetists exceeds 100 \$2,615

(n) For an operational cooperative sickness care plan:

1. Per 100 outpatient visits during the last calendar year for which totals are available \$0.23; plus

2. 2.5% of the total annual fees assessed against all of the employed physicians.

(o) For a freestanding ambulatory surgery center, as defined in s. Ins 120.03 (10).

Per 100 outpatient visits during the last calendar year for which totals are available \$45

(p) For an entity affiliated with a hospital, the greater of \$100 or whichever of the following applies:

1. 15% of the amount the entity pays as premium for its primary health care liability insurance, if it has occurrence coverage.

2. 20% of the amount the entity pays as premium for its primary health care liability insurance, if it has claims-made coverage.

SECTION 5. Ins 17.28 (6e) (b) and (6m) (b) are amended to read:

Ins 17.28 (6e) (b) Notwithstanding sub. (4) (h), the fund's initial bill for each fiscal year shall be the amount the medical college of Wisconsin affiliated hospitals, inc., estimates will be due for the next fiscal year for all its residents. At the end of the fiscal year, the fund shall adjust the fee to reflect the residents' actual exposure during the fiscal year, as determined by the medical college of Wisconsin affiliated hospitals, inc., and

shall bill the medical college of Wisconsin affiliated hospitals, inc., for the balance due, if any, plus accrued interest, as calculated under ~~par-~~ sub. (4) (j) 2, from the beginning of the fiscal year. The fund shall refund the amount of an overpayment, if any.

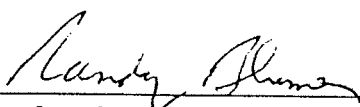
(6m) (b) For purposes of sub. (6) (k) to (m), a partnership or corporation shall report the number of partners, shareholders and employed physicians and nurse anesthetists on July 1 of the previous fiscal year.

SECTION 6. INITIAL APPLICABILITY. (1) Except as provided in subdivision (2), this rule first applies on July 1, 1995.

(2) Section Ins 17.28 (3e), as affected by this rule, as it relates to excluding coverage under the patients compensation fund for certain employed health care practitioners, first applies to claims arising out of an act or omission of the employe occurring on July 1, 1995.

SECTION 7. EFFECTIVE DATE. This rule will take effect upon publication, as provided in s. 227.24 (1) (c), Stats.

Dated at Madison, Wisconsin, this 27<sup>th</sup> day of June, 1995.

  
\_\_\_\_\_  
Randy Blumer  
Deputy Commissioner of Insurance

FISCAL ESTIMATE  
DOA-2048 N(R10/94)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
Ins 17.01, 17.28

Amendment No. if Applicable

Subject

Ins 17.28 (6) Patients Compensation Fund Fees 1995-96

Fiscal Effect

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

Decrease Costs

Local:  No local government costs

1.  Increase Costs  
     Permissive       Mandatory  
2.  Decrease Costs  
     Permissive       Mandatory

3.  Increase Revenues  
     Permissive       Mandatory  
4.  Decrease Revenues  
     Permissive       Mandatory

5. Types of Local Governmental Units Affected:  
 Towns       Villages       Cities  
 Counties       Others \_\_\_\_\_  
 School Districts       WTCS Districts

Fund Sources Affected

- GPR    FED    PRO    PRS    SEG    SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The Patients Compensation Fund (Fund) is a segregated fund. Annual fees are established to become effective each July 1 based on actuarial estimates of the Fund's needs for payment of medical malpractice claims. The fees reflect changes that were recently enacted by the legislature and are responsible for the decrease in Fund fees.

There is no effect on GPR.

The decrease in segregated revenues is approximately \$5,700,000 and represents a 11.2% decrease. Revenues through June 30, 1995, are estimated to be \$51.1 million. Estimated revenues for 1995-96 are projected to be \$45.4 million, based on the proposed rule.

The Fund is required to assess, collect, and remit mediation panel fee to the state court system. Fees assessed for the mediation panel declined from \$50 per physician to \$38 per physician based upon the court system's reduced funding projection. The project target base is \$300,000.

Long-Range Fiscal Implications

None

Agency/Prepared by: (Name & Phone No.)

Office of the Commissioner of Ins  
Dan Bubolz      266-0953

Authorized Signature/Telephone No.

*[Handwritten Signature]*

Date

*[Handwritten Date]*

**FISCAL ESTIMATE WORKSHEET**

Detailed Estimate of Annual Fiscal Effect  
DOA-2047 (R10/94)

ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

LRB or Bill No /Adm. Rule No.  
Ins 17.01,

Amendment No.

17.28,

Subject  
Ins 17.28 (6) Patients Compensation Fund Fees 1995-96

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

| <b>II. Annualized Costs:</b>   |  | Annualized Fiscal impact on State funds from: |                 |
|--|--|---|-----------------|
|  |  | Increased Costs                               | Decreased Costs |
| <b>A. State Costs by Category</b>  |  |   |                 |
| State Operations - Salaries and Fringes  |  | \$  | \$ -            |
| (FTE Position Changes)   |  | ( FTE)  | (- FTE)         |
| State Operations - Other Costs   |  |   | -               |
| Local Assistance   |  |   | -               |
| Aids to Individuals or Organizations   |  |   | -               |
| <b>TOTAL State Costs by Category</b>   |  | \$  | \$ -            |
| <b>B. State Costs by Source of Funds</b>   |  | Increased Costs                               | Decreased Costs |
| GPR  |  | \$  | \$ -            |
| FED  |  |   | -               |
| PRO/PRS  |  |   | -               |
| SEG/SEG-S  |  |   | -               |
| <b>III. State Revenues -</b> Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.) |  | Increased Rev.                                | Decreased Rev.  |
| GPR Taxes  |  | \$  | \$ -            |
| GPR Earned   |  |   | -               |
| FED  |  |   | -               |
| PRO/PRS  |  |   | -               |
| SEG/SEG-S Fund Fees  |  |   | - 5,700,000     |
| <b>TOTAL State Revenues</b>  |  | \$  | \$ - 5,700,000  |

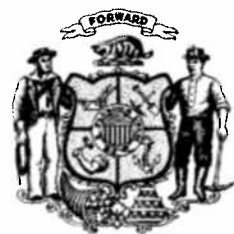
**NET ANNUALIZED FISCAL IMPACT**  
STATE LOCAL

NET CHANGE IN COSTS                    \$ \_\_\_\_\_                    \$ \_\_\_\_\_  
NET CHANGE IN REVENUES                \$ (5,700,000)                    \$ \_\_\_\_\_

|   |  |      |
|---|--|------|
| Agency Prepared by (Name & Phone No.)<br>Office of the Commissioner of Insurance<br>Danford Bubolz 266-0953 | Authorized Signature Telephone No<br><br>/ | Date |
|---|--|------|



# WISCONSIN STATE LEGISLATURE





State Representative  
**Glenn Grothman**  
Wisconsin State Assembly

P.O. Box 8952, State Capitol, Madison, Wisconsin 53708-8952  
(608) 264-8486 • Toll-Free Messages: 1 (800) 362-9472

111 S. 6th Avenue, West Bend, Wisconsin 53095  
(414) 338-8061

June 14, 1995

Commissioner Josephine Musser, Chairperson  
Board of Governors  
Wisconsin Patient Compensation Fund  
121 E. Wilson Street  
Madison, WI 53702

Dear Commissioner Musser:

I was recently informed that the Board of Governors is promulgating an emergency rule, Ins 17.01 and 17.28 Code, which will make changes to the operation of the patient compensation fund.


A point of concern which was brought to my attention deals with the definition of a "service corporation" under the emergency rule. I believe that the limited degree to which this emergency rule extends coverage to service corporations is contrary to the legislative intent of 1993 Wisconsin Act 473.

I concur with the conclusions of Representative Sheryl Albers with respect to the inclusion of all service corporations, as defined in 180.1903 (1), Stats, under the coverage umbrella of the patient compensation fund. Such a move, as permitted by Act 473 and other acts of the 1993 biennium, will protect the service corporation, without covering the individual acts of those employees who are not physicians or nurse anesthetists. I have attached a memorandum from Gordon Anderson of the Legislative Reference Bureau which further explains my position.

I am currently considering the potential for a review and possible suspension of this emergency rule by the Joint Committee for Review of Administrative Rules. I request that the Board of Governors take such action as is necessary to amend this emergency rule prior to its effective date.

I look forward to your response in this matter. You may reach me at my office, 608-264-8486. Thank you for your time.

Sincerely,

  
Glenn Grothman  
State Representative  
59th Assembly District

GG:swk  
Attachment

Municipalities:  
City of West Bend  
Village of Kewaskum  
Village of Fredonia  
Village of Random Lake

Village of Adell  
Village of Cedar Grove  
Village of Oostburg  
Village of Belgium



Town of Wayne  
Town of Kewaskum  
Town of Barton  
Town of Farmington

Town of Fredonia  
Town of Belgium  
Town of Holland  
Town of Sherman







**WISCONSIN LEGISLATURE**

STATE CAPITOL  
Madison, Wisconsin 53702

*Need to suspend the E.M.R. rule -*

June 20, 1995

Senator Timothy Weeden, Cochairperson  
Joint Committee for Review of Administrative Rules  
Room 37 South, State Capitol  
Madison, WI 53702

Representative Glenn Grothman, Cochairperson  
Joint Committee for Review of Administrative Rules  
Room 402, 100 North Hamilton Street  
Madison, WI 53702

Dear Senator Weeden and Representative Grothman:

This letter is to request that you suspend SECTION 3 of the emergency rule recently promulgated by the Office of the Commissioner of Insurance and the Board of Governors of the Patients Compensation Fund relating to the Patients Compensation Fund and fees for the fiscal year beginning July 1, 1995. SECTION 3 of the emergency rule creates a definition of "service corporation" which includes a corporation organized under ss. 180.1901 to 180.1921, Stats., "only if all of its shareholders are physicians, nurse anesthetists or both."

We request that you suspend SECTION 3 because there is no statutory authority for this definition and the provision is contrary to legislative intent.

As a brief background, s. 655.001 (8), Stats., states that a "health care provider" is "a person to whom this chapter applies under s. 655.002 (1)..." Section 655.002 (1), Stats., relating to mandatory participation in the Patients Compensation Fund, states that "Except as provided in s. 655.003, this chapter applies to all of the following:" (emphasis added). Included in the enumerated categories is "a corporation organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists" [s. 655.002 (1) (e), Stats.; emphasis added].

Further, s. 655.005 (2), Stats., states that the Patients Compensation Fund "shall provide coverage for claims against the health care provider or the employe of the health care provider due to acts or omissions of the employe acting within the scope of his or her employment and providing health services" (emphasis added). 1993 Wisconsin Act 473 added a provision which

states that "This subsection does not apply to an employe of a health care provider if the employe is a physician or a nurse anesthetist or is a health care practitioner who is not providing health care services under the direction and supervision of a physician or nurse anesthetist." A "health care practitioner" is a health care professional as defined in s. 180.1901 (1m), Stats., who is an employe of a health care provider and has the authority to provide health services not under the direction and supervision of a physician or nurse anesthetist.

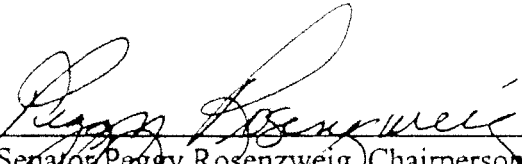
The provisions cited above clearly provide for Patients Compensation Fund coverage of service corporations that are organized and operated in the state for the primary purpose of providing the medical services of physicians and nurse anesthetists. However, the administrative rule promulgated by the Board of Governors would clearly exclude from coverage such a corporation if it has only one person who is a shareholder in that corporation who is not a physician or nurse anesthetist, even if the primary purpose of the corporation is unchanged.

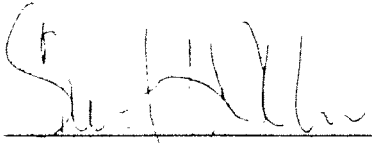
There is no authority for the provision since it contradicts the statutory requirement that the Patients Compensation Fund cover any service corporation that is organized and operated in the state for the primary purpose of providing the medical services of physicians and nurse anesthetists. It is also contrary to the intent of 1993 Wisconsin Act 473 which is that the Fund cover the service corporation but exclude from that coverage liability for the acts of health care practitioners who are not under the direction and supervision of a physician or nurse anesthetist.

Although the Board of Governors has clear authority to define what "direction and supervision" is required as a condition of Fund coverage, because protecting the Fund from liability for independent acts of other health care practitioners is clearly in accordance with last session's legislation, it does not have the ability to exclude a corporation from obtaining any Fund coverage merely because it has shareholders who are not physicians or nurse anesthetists.

Therefore, we request that you suspend SECTION 3 of the rule.

Sincerely,

  
\_\_\_\_\_  
Senator Peggy Rosenzweig, Chairperson  
Senate Committee on Insurance

  
\_\_\_\_\_  
Representative Sheryl Albers, Chairperson  
Assembly Committee on Insurance,  
Securities and Corporate Policy

Mark Adams

- claim risk exposure is greater
- would prefer more than 50% as the standard (of shareholders) primary purpose

Wally Kaplan - NA - River Falls Supports suspension

Kevin Torch Podiatrics Multi-disciplinary corp hold down costs

Steve Englebrecht. W Bend - Optom. / Ophthalmology Partnership

Board votes ~~is~~ then to ~~the~~ <sup>in</sup> ~~the~~ <sup>Od</sup>

Permanent rule have to have hearing

(1) Withdraw section of rule under dispute Agency must promulgate new EM rule

(2) OOE cannot has to back to Board of Gov - -



STATEMENT BY REPRESENTATIVE SHERYL ALBERS  
TO THE JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

AUGUST 17, 1995

On June 20, 1995, Senator Peggy Rosenzweig and I requested this Committee to suspend SECTION 3 of the emergency rule promulgated by the Office of the Commissioner of Insurance and the Board of Governors for the Patients Compensation Fund. Copies of our letter should be in your possession.

SECTION 3 of the emergency rule creates a definition of service corporation which includes a corporation organized under ss. 180.1901 to 180.1921, Stats., "only if all of its shareholders are physicians, nurse anesthetists or both." The request that Senator Rosenzweig and I made is based on the fact that we believe there is no statutory authority for that provision and it is contrary to legislative intent. As explained in our letter, the Patients Compensation Fund statutes requires coverage of a "corporation organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists." The emergency rule would deny coverage to such a corporation even if only one of its shareholders was a health care provider other than a physician or nurse anesthetist.

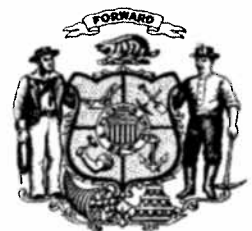
We do not question the ability of the Patients Compensation Fund to deny coverage for the acts of practitioners that are performed without supervision by nurse anesthetists or physicians. In fact, the statutes require that exclusion. However, to deny the corporation all coverage from the Patients Compensation Fund because only one of its shareholders is not a physician or nurse anesthetist contradicts the statutory requirement that such a corporation be covered as long as it has been organized and operated for the "primary purpose" of providing the services of physicians and nurse anesthetists. A service corporation does not lose its character as being organized for that purpose merely because it has one health provider, such as a registered nurse, as a shareholder.

Further, this rule, if allowed to remain in effect, will negate the compromise legislation enacted last session which allowed service corporations to be formed between various categories of health providers. 1993 Wisconsin Act 473 allowed some of the many categories of health care providers to form service corporations with each other. In this session we have under consideration two bills, Assembly Bills 193 and 325, that would enable speech-language pathologists, audiologists, chiropractors, physical therapists and dieticians to form service corporations with other health providers. If a service corporation is denied Patients Compensation Fund coverage if it has any shareholders other than physicians or nurse anesthetists, many service corporations would not chose to allow these other categories of health care providers to become shareholders.

Therefore, we request that you suspend SECTION 3 of the emergency rule.



# WISCONSIN STATE LEGISLATURE





State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Tommy G. Thompson  
Governor

Josephine W. Musser  
Commissioner

121 East Wilson Street  
P.O. Box 7873  
Madison, Wisconsin 53707-7873  
(608) 266-3585

**Testimony submitted to the  
Joint Committee on Review of Administrative Rules  
regarding ss. Ins 17.01 and 17.28 (3), Wis. Admin. Code  
(Clearinghouse Rule 95-105)  
by Peter Farrow, Insurance Administrator,  
Office of Commissioner of Insurance  
August 17, 1995**

Good morning Co-chairs Grothman and Weeden and members of the Committee. My name is Peter Farrow. I am the insurance administrator for the Commissioner of Insurance. With me today is Dan Bubolz, chief of the Patients Compensation Fund (PCF). We are testifying for information purposes only regarding the proposed suspension of Section 3 of Clearinghouse Rule 95-105 which relates to s. Ins 17.28 (3) (hs), Wis. Admin. Code.

Our intention is to provide a brief background of the issue of service corporation coverage by the PCF and to answer whatever questions you have.

1993 Wisconsin Act 473 amended the definition of service corporations. Section 3 of the emergency rule creates an interpretation of the portion of Act 473 regarding PCF coverage for applicable service corporations given the direction of s. 655.002 (1) (e), Wis. Stat. that "corporations organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists are to have Fund coverage."

The PCF is governed by a PCF Board (Board) of 13 members. These members include the Commissioner of Insurance, 3 insurer representatives appointed by the Commissioner of Insurance, 4 public members appointed by the Governor, two



members appointed by the State Medical Society, and a representative each appointed by the State Bar Association, Wisconsin Academy of Trial Lawyers, and Wisconsin Hospital Association.

While writing this rule, members of the Board spent considerable time reviewing the language in Act 473. Given the statutory language, the Board did not feel that it could adequately identify the exposure of risk to the PCF with any other definition of covered service corporation than the one in this rule.

The Board recognized that this position did not coincide with what some members of the Legislature assumed would be done. The concerns of both Legislative Council staff and members of the Legislature were shared with the PCF Legal Committee and the Board on at least three separate occasions. Both the Legal Committee and the Board unanimously approved the rule for promulgation.

Following the promulgation of the emergency rule, PCF staff and board members began preparing a corresponding permanent rule for promulgation. It was at this time that Legislative Council staff issued its Clearinghouse Report on the rule. In those comments, the Board was informed that Legislative Council staff did not feel the Board had the statutory authority for Section 3.

OCI also held a public hearing on the draft permanent rule.

In response to this opinion and testimony received at the public hearing, the PCF Legal Committee met on August 3, 1995 and voted 3-2 to amend the proposed rule. The Legal Committee feels that the proposed rule as amended addresses the concerns of the Legislators that have contacted our office as well as the concerns of Legislative Council staff.

The definition of "covered service corporation" is located in Section 4 of the attached draft rule. This definition expands coverage to service corporations, "organized and operated in this state of which 50 percent or more of its shareholders are physicians or nurse anesthetists and is organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists."

This proposed change will be considered by the Board in a special phone conference, which is to be held before the Board's regularly scheduled meeting on September 27, 1995.

I would also note that during the resolution of this difference of interpretation of statute, no application for service corporation coverage by the PCF has been denied due to the emergency rule definition.

Thank you for your attention. Dan and I would be happy to answer any questions you may have.

# DRAFT

PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE  
AND THE BOARD OF GOVERNORS OF THE PATIENTS COMPENSATION FUND  
AMENDING, REPEALING AND RECREATING, AND CREATING A RULE

The office of the commissioner of insurance and the board of governors of the patients compensation fund propose an order to amend ss. 17.01 (3) (a) and 17.28 (3e), (6e) (b) and (6m) (b); to repeal and recreate s. Ins 17.28 (6); and to create s. Ins 17.28 (6d), relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1995, patients compensation fund coverage for specified health care practitioners and establishing the scope of patients compensation fund coverage for service corporations.

---

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 601.41 (3), 655.004, 655.27 (3) (b) and 655.61, Stats.

Statutes interpreted: ss. 655.005 (2), 655.27 (3) and 655.002 (1) (e), Stats.

The commissioner of insurance, with the approval of the board of governors (board) of the patients compensation fund (fund), is required to

establish by administrative rule the annual fees which participating health care providers must pay to the fund. This rule establishes those fees for the fiscal year beginning July 1, 1995. These fees represent an overall 11.2% decrease over the fees paid for the current fiscal year. Because of a change in physician class relativities, the actual decrease for physicians ranges from -7.2% to -20.2%. The board approved this decrease at its meeting on May 17, 1995, based on the recommendation of the fund's consulting actuary and the board's actuarial and underwriting committee following the enactment of legislation, 1995 Wisconsin Act 10, imposing a cap of \$350,000 on noneconomic damages.

The board is also required to promulgate by rule the annual fees for the operation of the patients compensation mediation system, based on the recommendation of the director of state courts. This rule implements the director's funding level recommendation by establishing mediation panel fees for the next fiscal year at \$38.00 for physicians and \$3.00 per occupied bed for hospitals.

This proposed rule also implements 1993 Wisconsin act 473 which prohibits fund coverage for employes who are defined as health care practitioners. It makes clear that a health care provider must ensure that all employes, except those excluded from fund coverage by act 473, must have primary coverage in effect. The excluded practitioners are those whose license, registration or certification permits them to practice independently, that is, without the supervision and direction of a physician or nurse anesthetist, and who are licensed by any of the following boards: board of nursing, medical examining board, optometry examining board, pharmacy examining board, psychology examining board and the examining board of social workers, marriage and family therapists and professional counselors. The fund does not cover them in any circumstances where they are not providing health

care services under the direction and supervision of a physician or nurse anesthetist. This exclusion applies to occurrences on and after July 1, 1995.

The proposed rule creates a new definition for ambulatory surgery centers subject to the fund. The definition cross-referenced in the current rule was repealed. The rule cross-references the definition of "freestanding ambulatory surgery center" in the rules of the office of health care information which is part of the office of the commissioner of insurance.

The proposed rule implements another provision of act 473 which permits various health care practitioners holding different licenses to form service corporations. The proposed rule provides a presumption that a corporation is organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists, and therefore, has fund coverage only if 50% or more of its shareholders are physicians or nurse anesthetists.

---

SECTION 1. Ins 17.01 (3) (intro.) and (a) are amended to read:

Ins 17.01 (3) FEE SCHEDULE. (intro.) The following fee schedule shall be effective July 1, 1994 1995:

(a) For physicians--~~\$50.00~~ \$38.00

SECTION 2. Ins 17.28 (3e) is amended to read:

Ins 17.28 (3e) PRIMARY COVERAGE REQUIRED. Each provider shall ensure that primary coverage for the provider and the provider's employes other than employes excluded from fund coverage under par. (b), is in effect on the date the provider begins practice or operation and for all periods during which the provider practices or operates in this state. A provider does not have fund coverage for any of the following:

(a) Any period during which primary coverage is not in effect.

(b) Any employe who is a health care practitioner under the circumstances described in s. 655.005 (2), Stats.

SECTION 3. Ins 17.28 (6) is repealed and recreated to read:

Ins 17.28 (6) FEE SCHEDULE. The following fee schedule is in effect from July 1, 1995, to June 30, 1996:

(a) Except as provided in pars. (b) to (g), for a physician for whom this state is a principal place of practice:

|         |         |         |          |
|---------|---------|---------|----------|
| Class 1 | \$2,923 | Class 3 | \$12,569 |
| Class 2 | \$5,846 | Class 4 | \$17,538 |

(b) For a resident acting within the scope of a residency or fellowship program:

|         |         |         |         |
|---------|---------|---------|---------|
| Class 1 | \$1,462 | Class 3 | \$6,287 |
| Class 2 | \$2,924 | Class 4 | \$8,772 |

(c) For a resident practicing part-time outside the scope of a residency or fellowship program:

|             |         |
|-------------|---------|
| All classes | \$1,754 |
|-------------|---------|

(d) For a medical college of Wisconsin, inc., full-time faculty member:

|         |         |         |         |
|---------|---------|---------|---------|
| Class 1 | \$1,169 | Class 3 | \$5,027 |
| Class 2 | \$2,338 | Class 4 | \$7,014 |

(e) For a physician who practices fewer than 500 hours during the fiscal year, limited to office practice and nursing home and house calls, and who does not practice obstetrics or surgery or assist in surgical procedures:

\$731

(f) For a physician for whom this state is not a principal place of practice:

|         |         |         |         |
|---------|---------|---------|---------|
| Class 1 | \$1,462 | Class 3 | \$6,287 |
| Class 2 | \$2,924 | Class 4 | \$8,772 |

(g) For a nurse anesthetist for whom this state is a principal place of practice: \$749

(h) For a nurse anesthetist for whom this state is not a principal place of practice: \$375

(i) For a hospital:

1. Per occupied bed \$185; plus

2. Per 100 outpatient visits during the last calendar year for which totals are available \$9.25

(j) For a nursing home, as described under s. 655.002 (1) (j), Stats., which is wholly owned and operated by a hospital and which has health care liability insurance separate from that of the hospital by which it is owned and operated:

Per occupied bed \$35

(k) For a partnership comprised of physicians or nurse anesthetists, organized for the primary purpose of providing the medical services of physicians or nurse anesthetists, whichever of the following is applicable:

1. If the total number of partners and employed physicians and nurse anesthetists is from 2 to 10 \$105

2. If the total number of partners and employed physicians and nurse anesthetists is from 11 to 100 \$1,046

3. If the total number of partners and employed physicians and nurse anesthetists exceeds 100 \$2,615

(L) For a corporation, including a service corporation, with more than one shareholder organized under ch. 180, Stats., for the primary purpose of providing the medical services of physicians or nurse anesthetists, whichever of the following is applicable:

1. If the total number of shareholders and employed physicians and nurse anesthetists is from 2 to 10 \$105

2. If the total number of shareholders and employed physicians and nurse anesthetists is from 11 to 100 \$1,046

3. If the total number of shareholders and employed physicians or nurse anesthetists exceeds 100 \$2,615

(m) For a corporation organized under ch. 181, Stats., for the primary purpose of providing the medical services of physicians or nurse anesthetists, whichever of the following is applicable:

1. If the total number of employed physicians and nurse anesthetists is from 1 to 10 \$105

2. If the total number of employed physicians and nurse anesthetists is from 11 to 100 \$1,046

3. If the total number of employed physicians or nurse anesthetists exceeds 100 \$2,615

(n) For an operational cooperative sickness care plan:

1. Per 100 outpatient visits during the last calendar year for which totals are available \$0.23; plus

2. 2.5% of the total annual fees assessed against all of the employed physicians.

(o) For a freestanding ambulatory surgery center, as defined in s. Ins 120.03 (10):

Per 100 outpatient visits during the last calendar year for which totals are available \$45

(p) For an entity affiliated with a hospital, the greater of \$100 or whichever of the following applies:

1. 15% of the amount the entity pays as premium for its primary health care liability insurance, if it has occurrence coverage.

2. 20% of the amount the entity pays as premium for its primary health care liability insurance, if it has claims-made coverage.



SECTION 4. Ins 17.28 (6d) is created to read:

Ins 17.28 (6d) PRIMARY PURPOSE PRESUMPTION. For purposes of s. 655.002 (1) (e) and this section, it is presumed:

(a) A corporation organized and operated in this state of which 50% or more of its shareholders are physicians or nurse anesthetists is organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists.

(b) Conclusively that a corporation organized and operated in this state of which less than 50% of its shareholders are physicians or nurse anesthetists is not organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists.

NOTE: A person who disputes the application of this presumption to the person may be entitled to a hearing on the issue in accordance with s. 227.42, Wis. Stats.

SECTION 5. Ins 17.28 (6e) (b) and (6m) (b) are amended to read:

Ins 17.28 (6e) (b) Notwithstanding sub. (4) (h), the fund's initial bill for each fiscal year shall be the amount the medical college of Wisconsin affiliated hospitals, inc., estimates will be due for the next fiscal year for all its residents. At the end of the fiscal year, the fund shall adjust the fee to reflect the residents' actual exposure during the fiscal year, as determined by the medical college of Wisconsin affiliated hospitals, inc., and shall bill the medical college of Wisconsin affiliated hospitals, inc., for the balance due, if any, plus accrued interest, as calculated under ~~par-~~ sub. (4) (j) 2, from the beginning of the fiscal year. The fund shall refund the amount of an overpayment, if any.

(6m) (b) For purposes of sub. (6) (k) to (m), a partnership or corporation shall report the number of partners, shareholders and employed physicians and nurse anesthetists on July 1 of the previous fiscal year.

SECTION 6. INITIAL APPLICABILITY. (1) Except as provided in subdivision (2), this rule first applies on July 1, 1995.

(2) Section Ins 17.28 (3e), as affected by this rule, as it relates to excluding coverage under the patients compensation fund for certain employed health care practitioners, first applies to claims arising out of an act or omission of the employe occurring on July 1, 1995.

SECTION 7. EFFECTIVE DATE. This rule will take effect on the first day of the first month after publication, as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Josephine W. Musser  
Commissioner of Insurance





# State of Wisconsin • Joint Committee for Review of Administrative Rules

Senate Co-Chairperson  
**Senator TIM WEEDEN**  
37 South. State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882  
608-266-2253

Assembly Co-Chairperson  
**Representative GLEN S. GROTHMAN**  
100 N. Hamilton, Room 402  
P.O. Box 8952  
Madison, WI 53708-8952  
608-264-8486

## JOINT COMMITTEE HEARINGS

The Joint Committee for the Review of Administrative Rules will hold a public hearing in room 421 South of the Capitol, on the following at the time specified below:

August 17, 1995 at 10:00 A.M.

Public Hearing to Be Held on the Following:

ILHR 69.18 (4)(b)  
and Emergency Rule  
ILHR 69.18 (4)(b).

RELATING TO the provision of unisex toilet rooms in certain public places. Suspension of this section of the Administrative Code and this emergency rule.

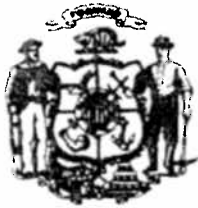
Emergency Rule INS  
17.01 and 17.28,  
SECTION THREE ONLY

RELATING TO Annual Patient's Compensation Fund Fees, Mediation Fees, and Service Corporations. Suspension of SECTION THREE of this rule.

The committee may take executive action on any of the items listed above.

Glenn S. Grothman  
Committee Co-Chairperson

Tim Weeden  
Committee Co-Chairperson



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## Backgrounder - Emergency Rule Ins 17.28 (3)(hs)

To: Honorable Colleagues, JCRAR  
From: Sen. Weeden and Representative Grothman, Co-Chairs  
Date: August 1, 1995  
Re: The OCI and The Patient's Compensation Fund

This emergency rule, section Ins 17.28 (3)(hs), also known as Section III, was promulgated by the Office of the Commissioner of Insurance on June 14, 1995. It relates to the Annual Patient's Compensation Fund Fees, Mediation Fees, and Service Corporations.

This emergency rule was issued in response to the passage of 1993 Wisconsin Act 473. Attached, please find a memorandum from Attorney Gordon Anderson, of the Legislative Council, originally addressed to Representative Sheryl Albers, which does a fine job of explaining the details of this emergency rule.

### The Argument

Upon the promulgation of the rule, Representative Sheryl Albers undertook a review which concluded that the rule did not meet the legislative intent of 1993 Act 473.

It is the position of Representative Albers, and of Attorney Gordon Anderson, that Act 473 requires the Patient's Compensation Fund to extend coverage to all qualified service corporations, even if they contain members who were previously excluded by law.

The Board of Governors for the Patient's Compensation Fund, under the auspices of the OCI, has read the statutes differently. The Board has concluded that it is not required to extend coverage to service corporations whose members are not solely physicians and nurse anesthetists. The emergency rule, as promulgated, follows along this line of reasoning; it does not extend the coverage to service corporations with expanded membership.

After an unfruitful series of letters between the Board of Governors and Rep. Albers, the co-chairs of the JCRAR received a request from Sen. Rosenzweig and Rep. Albers, calling for the suspension of the section of the emergency rule referenced in this memorandum.

### Arguments for Suspension

Supporters of rule suspension have stated that the OCI's fears of compensation fund insolvency are incorrect. It is expected that supporters will produce evidence of this belief at the public

hearing. The primary argument made by suspension advocates is that the emergency rule, as written, does not meet the legislative intent of its authorizing statute, created by Act 473. Failure to meet legislative intent is, of course, one of the valid reasons for suspension defined by s. 227.19 (4)(d)3, stats.

### Arguments Against Suspension

Suspension opponents contend that the provisions of Act 473 prohibit the OCI/Board of Governors from extending coverage to the newly-expanded service corporations. They further believe that such a move would overburden the monies available in the Patient's Compensation Fund, resulting in an insolvency problem for the Fund over the long term.

### Options Available To The Committee

- The JCRAR, acting in executive session, may suspend the disputed portion of the emergency rule. If this were to occur, the disputed portion would be rendered immediately ineffective. Within 30 days of such action, the committee will re-convene to consider companion Assembly and Senate Bills making permanent the suspension action.

- The JCRAR may, in executive session, act not to suspend this section of the emergency rule. In that case, it would continue to have the force of law.

- The JCRAR may act, in executive session, to request the Office of the Commissioner of Insurance to withdraw the disputed portion of the emergency rule. If the Office so agrees, the rule will be withdrawn, and no further committee action will need to be taken at this time. If this request is denied by the Office, the committee will reserve the right to address this issue again in future meetings.



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Tommy G. Thompson  
Governor

Josephine W. Musser  
Commissioner

JUN 13 1995  
June 12, 1995

121 East Wilson Street  
P.O. Box 7873  
Madison, Wisconsin 53707-7873  
(608) 266-3585

Members of the Legislature

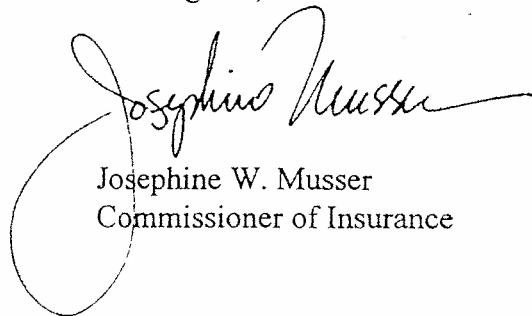
Re: Emergency Rule, Section Ins 17.01 and 17.28, Wis. Adm. Code, Relating to Annual Patient's Compensation Fund Fees, Mediation Fees and Service Corporations

Dear Senator or Representative to the Assembly:

I have promulgated the attached rule as an emergency rule. The rule will be published in the official State newspaper on June 14, 1995.

The attached copy of the rule includes the Finding of Emergency which required promulgation of the rule. If you have any questions, please contact Alice Shuman, at 266-9892.

Best regards,



Josephine W. Musser  
Commissioner of Insurance

JWM:AS

Attachment: 1 copy rule

*Correspondence  
Dial*



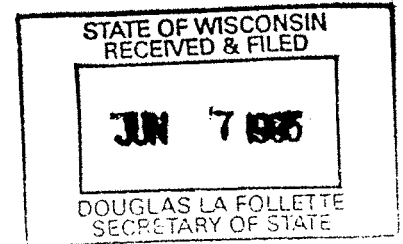
State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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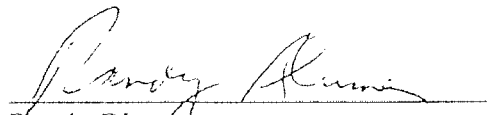
STATE OF WISCONSIN )  
 ) SS  
OFFICE OF THE COMMISSIONER OF INSURANCE )



I, Randy Blumer, Deputy Commissioner of Insurance and custodian of the official records, certify that the annexed emergency rule affecting sections Ins 17.01 and 17.28, Wis. Adm. Code, relating to Annual Patient's Compensation Fund Fees, Mediation Fees and Service Corporations, was duly approved and adopted by this Office on June 7, 1995.

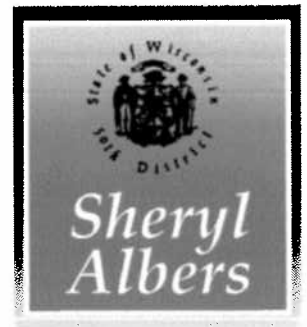
I further certify that I have compared this copy with the original on file in this Office and that it is a true copy of the original, and the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 121 East Wilson Street, Madison, Wisconsin, on June 7, 1995.

  
Randy Blumer  
Deputy Commissioner of Insurance







September 13, 1995

TO: MEMBERS OF THE ASSEMBLY INSURANCE, SECURITIES AND CORPORATE  
POLICY COMMITTEE

FROM: REPRESENTATIVE SHERYL K. ALBERS

On September 12, 1995, the following clearinghouse rule was referred to the Assembly Insurance, Securities and Corporate Policy Committee:

Clearinghouse Rule 95-105

Relating to AN ORDER to amend Ins 17.01 (3) (a) and 17.28 (3e), (6e) (b) and (6m) (b); to repeal and recreate Ins 17.28 (6); and to create Ins 17.28 (3) (hs), relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1995, patients compensation fund coverage for specified health care practitioners and establishing the scope of patients compensation fund coverage for service corporations. Submitted by Office of the Commissioner of Insurance.

Our review period extends through October 12, 1995. A copy of the rule is attached.

Office: P.O. Box 8952 • State Capitol • Madison, WI 53708-8952 • (608) 266-8531  
Message Hotline: (800) 362-9472

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