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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 95-105

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

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

Further, SECTION 3 of the rule creates a definition of “service corporation” which states that it includes “a corporation organized under ss. 180.1901 to 180.1921 only if all of its shareholders are physicians, nurse anesthetists or both.”

There is no statutory authority for SECTION 3.

Section 655.001 (8), Stats., states that a “health care provider” is “a person to whom this chapter (ch. 655, Stats.) applies under s. 655.002 (1)....” Further, s. 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:”. 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.].

Section 655.005 (2), Stats., states that the Patients Compensation Fund “...shall provide coverage for claims against a 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.” It further provides that: “This subsection does not apply to an employe

of a health care provider if the employee is a physician or 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 employee of a health care provider and has the authority to provide health services not under the direction or supervision of a physician or nurse anesthetist. This includes persons who are licensed, registered or certified by the Board of Nursing, the Medical Examining Board, the Optometry Examining Board, the Pharmacy Examining Board, the Psychology Examining Board or the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors.

The effect of the definition is that if a service corporation chooses to allow one person to become a shareholder who is not a physician or nurse anesthetist, the service corporation loses its Patients Compensation Fund coverage. However, the above statutes make it clear that the Patients Compensation Fund must cover a service corporation that is organized and operated in the state for the primary purpose of providing the medical services of physicians or nurse anesthetists. A service corporation does not lose that “primary purpose” merely because it has a person who is not a physician or nurse anesthetist as a shareholder.

The requirement in the rule that the service corporation not only be organized and operated in the state for the primary purpose of providing the medical services of physicians or nurse anesthetists, but that it not have any shareholders who are not physicians or nurse anesthetists, is a requirement not authorized by law and contradicts the specific requirements of coverage for such service corporations.

2. Form, Style and Placement in Administrative Code

In s. Ins 17.28 (6) (o), the period following the cross-reference should be replaced by a colon, in order to be consistent with the punctuation used in the remainder of the subsection.