

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Repeal Modification

2. Administrative Rule Chapter, Title and Number

Ins 17.35 (4), Wis. Admin. Code, Primary coverage; requirements; permissible exclusions; deductibles.

3. Date Rule promulgated and/or revised; Date of most recent Evaluation

September 1, 1998 last revised.

4. Plain Language Analysis of the Rule, its Impact on the Policy Problem that Justified its Creation and Changes in Technology, Economic Conditions or Other Factors Since Promulgation that alter the need for or effectiveness of the Rule.

The current regulation permits insurers offering medical malpractice insurance to include deductibles or coinsurance clauses while retaining the responsibility for payment of the total amount of indemnity up to the limits specified in s. 655.23 (4), Stats., and recoup the amount of the deductible or coinsurance from the insureds. At the time this rule was first created typical deductibles or coinsurance ranged between 10-20% if used. The Board of Governors for the Injured Patients and Families Compensation Fund (Fund) determined following several years of analysis and debate to limit the amount of deductibles to the prevailing use in the marketplace not to exceed 25% including all cost sharing provisions. The proposed rule clarifies what is considered the policy that is to be filed with the commissioner and limits the total provider exposure under a liability policy not to exceed 25%. The proposed rule retains the ability for the insurer or foreign insurer to recoup the deductible or other cost sharing mechanism after the insurer or foreign insurer has satisfied its financial obligation.

5. Describe the Rule's Enforcement Provisions and Mechanisms

Medical malpractice policy forms are required to be filed and approved prior to use in the State. The rule does not alter existing enforcement capabilities of the Commissioner to ensure compliance with regulations that are cross referenced in s. Ins 17.35 (1) to s. 631.20, Stats. Section 631.20 (2) through (6), Stats., details the form disapproval processes and enforcement provisions.

6. Repealing or Modifying the Rule Will Impact the Following
(Check All That Apply)

State's Economy
 Local Government Units

Specific Businesses/Sectors
 Public Utility Rate Payers
 Small Businesses

7. Summary of the Impacts, including Compliance Costs, identifying any Unnecessary Burdens the Rule places on the ability of Small Business to conduct their Affairs.

The impact of this amendment should be negligible to small businesses. Small businesses that are directly impacted, small health care providers to the best of the Fund's knowledge currently have compliant policies of insurance so there would be no additional costs. Small businesses receiving health care services should similarly not be impacted by this rule as the majority of providers currently have compliant plans. To the extent that premiums for coverage increases for the providers not currently insured with a compliant policy, there may be a shift in costs to the public but the Office cannot measure the extent to which a provider or health care system group may cost shift.

8. List of Small Businesses, Organizations and Members of the Public that commented on the Rule and its Enforcement and a Summary of their Comments.

The Office sought comments from all of the following:

Wisconsin Hospital Association
Medical Society of Wisconsin
Health and Life Advisory Council Members
Members of the Board of Governors for the Fund
Wisconsin Restaurant Association
Wisconsin Chiropractic Association
Wisconsin Counties Association
Thrivent Insurance

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The Alliance
Humana Insurance
United Healthcare
Independent Insurance Agents of Wisconsin
Sentry Insurance
Anthem Blue Cross
Medical College of Wisconsin
Capitol Consultants
National Federal of Independent Business Association
Ministry Healthcare
Interested members of the public

The Office received two comments that were nearly identical from the Wisconsin Hospital Association and Medical Society of Wisconsin commented that each is unaware of publically available information that the economic impact would be less than \$50,000.

9. Did the Agency consider any of the following Rule Modifications to reduce the Impact of the Rule on Small Businesses in lieu of repeal?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe: The office relied upon information it received during examination of insurers and determined that small businesses directly regulated by the rule would not be impacted as the level of the deductible reflects the current marketplace for approximately 2/3s of the market including small businesses.

10. Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

11. Chapter 20, Stats. Appropriations Affected

None

12. Fiscal Effect of Repealing or Modifying the Rule

- No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

13. Summary of Costs and Benefits of Repealing or Modifying the Rule

The cost to modifying the rule is an increase in primary insurance coverage if the health care provider has an arrangement that includes cost sharing arrangements greater than 25%. The benefit of the amendment include limited exposure of liability for providers to 25% of the total liability limits. The cost is mitigated to some extent by the ability for the larger health care provider groups to self-insure if desired with the modifications to s. Ins 17.50, Wis. Admin. Code. The proposed rule contains a delayed initial applicability date to allow providers to make informed decisions regarding coverage options.

14. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No

15. Long Range Implications of Repealing or Modifying the Rule

The proposed modifications will increase premiums for a small percentage of current Fund participants, however the Office both in statute and regulation are providing viable more cost neutral options for providers that are available to providers prior to the initial applicability of this rule.

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16. Compare With Approaches Being Used by Federal Government

There is no comparable approach at the federal level as there is no similar Fund at the federal level.

17. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

No neighboring states have comparable Funds.

18. Contact Name

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