CR 88-159



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

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Robert D. Haase, Commissioner of Insurance and custodian of the official records of said Office, do hereby certify that the annexed order repealing, renumbering, recreating, and creating a rule relating to retroactive coverage by the Wisconsin Health Care Liability Insurance Plan and the Patients Compensation Fund was issued by this Office on February 22, 1989.

I further certify that said copy has been compared by me with the original on file in this Office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name in the City of Madison, State of Wisconsin, this 22nd day of February, 1989.

Robert D. Haase
Commissioner of Insurance

14092K-1



5-1-89

ORDER OF THE COMMISSIONER OF INSURANCE

REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING AND AMENDING A RULE

To repeal Ins 17.28 (7) (intro.) and (b) 4; to renumber Ins 17.28 (3) (a); to amend 17.28 (7) (a), (b) (intro.) and 1 to 3 and (c); to repeal and recreate Ins 17.28 (3) (b) and (4); and to create Ins 17.25 (10) (cm) and 17.28 (3) (a), (bm) and (e) to (i), (3e), (3m), (3s) and (7) (title) of the Wisconsin Administrative Code, relating to retroactive coverage by the Wisconsin health care liability insurance plan and the patients compensation fund and to exemptions, refunds, credits, pro rata assessments and interest on health care provider fees for the patients compensation fund.

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ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 601.41 (3), 619.04 (1) and 655.004, Stats.

Statutes interpreted: ss. 619.04 (5) and 655.27 (3) (b), Stats.

This order makes a number of changes in the current rule governing the fees for health care providers (providers) required to participate in the patients compensation fund (fund). It also creates additional provisions with respect to those fees and codifies certain policies of the board of governors (board) of the fund and the Wisconsin health care liability insurance plan (plan). The rule includes the following provisions:

1. Currently a provider may enter or leave the fund and have his or her fees assessed on a semimonthly basis. This rule allows a provider to leave the fund temporarily only if his or her license to practice medicine or nursing is suspended or revoked, or if he or she stops practicing for a period of at least 90 consecutive days. During a period of temporary absence from the fund, a provider is not required to pay the fund fee.

2. The rule establishes the conditions for determining whether a provider is exempt from the requirement to participate in the fund and to carry primary medical malpractice insurance. This portion of the rule is based on a long-standing policy approved by the board.

3. The rule establishes a procedure for entering the fund after the beginning of a fiscal year.

4. The rule codifies a current practice whereby the board, under specified circumstances, may authorize coverage by the plan, the fund or both, retroactive to the date specified by the board, for a provider who has not complied with the statutory requirements to carry primary medical malpractice insurance and pay the fund fee. If retroactive fund coverage is authorized, the provider is charged a late payment fee and interest from the date coverage begins.

5. The rule clarifies and elaborates on the existing rules governing refunds and credits, pro rata fees and increased or decreased fees during a fiscal year because of a change in a provider's class or type.

6. The rule expressly states that each provider is responsible for ensuring the availability of primary insurance coverage that meets the statutory requirements for all periods of practice or operation in this state, and that fund coverage is not available for any period during which primary

coverage is not in effect, regardless of whether the fund fee is paid.

7. The rule clarifies and makes several technical changes in the existing rules on billing and collection of fund fees.

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SECTION 1. Ins 17.25 (10) (cm) of the Wisconsin Administrative Code is created to read:

Ins 17.25 (10) (cm) The board may authorize retroactive coverage by the plan for a health care provider, as defined in s. 655.001 (8), Stats., if the provider furnishes the board with an affidavit describing the necessity for the retroactive coverage and stating that the provider has no notice of any pending claim alleging malpractice or knowledge of a threatened claim or of any occurrence that might give rise to such a claim.

SECTION 2. Ins 17.28 (3) (a) of the Wisconsin Administrative Code is renumbered Ins 17.28 (3) (d).

SECTION 3. Ins 17.28 (3) (a) of the Wisconsin Administrative Code is created to read:

Ins 17.28 (3) (a) "Annual fee" means the amount established under sub. (6) for each class or type of provider.

SECTION 4. Ins 17.28 (3) (b) of the Wisconsin Administrative Code is repealed and recreated to read:

Ins 17.28 (3) (b) "Begin operation" means for a provider other than a natural person to start providing health care services in this state.

SECTION 5. Ins 17.28 (3) (bm) and (e) to (j) of the Wisconsin Administrative Code are created to read:

Ins 17.28 (3) (bm) "Begin practice" means to start practicing in this state as a medical or osteopathic physician or nurse anesthetist or to become ineligible for an exemption from ch. 655, Stats.

(e) "Permanently cease operation" means for a provider other than a natural person to stop providing health care services with the intent not to resume providing such services in this state.

(f) "Permanently cease practice" means to stop practicing as a medical or osteopathic physician or nurse anesthetist with the intent not to resume practicing in this state.

(g) "Primary coverage" means health care liability insurance meeting the requirements of subch. III of ch. 655, Stats.

(h) "Provider" means a health care provider, as defined in s. 655.001 (8), Stats.

(i) "Temporarily cease practice" means to stop practicing in this state for any period of time because of the suspension or revocation of a provider's license, or to stop practicing for at least 90 consecutive days for any other reason.

SECTION 6. Ins 17.28 (3e), (3m) and (3s) of the Wisconsin Administrative Code are created to read:

Ins 17.28 (3e) **PRIMARY COVERAGE REQUIRED.** Each provider subject to ch. 655, Stats., shall ensure that primary coverage 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 period during which primary coverage is not in effect.

(3m) **EXEMPTIONS; NOTICE TO FUND.** (a) A medical or osteopathic physician licensed under ch. 448, Stats., or a nurse anesthetist licensed under ch. 441, Stats., may claim an exemption from ch. 655, Stats., if at least one of the following conditions applies:

1. The provider will not practice more than 240 hours in the fiscal year.

2. The provider is a federal, state, county or municipal employe.

3. During the fiscal year:

a. More than 50% of the provider's practice will be performed outside this state;

b. More than 50% of the income from the provider's practice will be derived from outside this state; or

c. More than 50% of the provider's patients will be seen outside this state.

(b) If a provider does not claim an exemption under par. (a) 1 by the date of the first payment due under sub. (7) (b) 1 or 2, the provider waives the right to claim the exemption for that fiscal year.

(3s) **LATE ENTRY TO FUND.** (a) A provider that begins or resumes practice or operation during a fiscal year, has claimed an exemption or has failed to comply with sub. (3e) may obtain fund coverage during a fiscal year by giving the fund advance written notice of the date on which fund coverage should begin.

(b) The board may authorize retroactive fund coverage for a provider who shows that circumstances previously unknown to him or her require retroactive participation in the fund if the provider furnishes the board with an affidavit describing the necessity for the retroactive coverage and stating that the provider has no notice of any pending claim alleging malpractice or knowledge of a threatened claim or of any occurrence that might give rise to such a claim. The authorization shall be in writing, specifying the effective date of fund coverage.

SECTION 7. 17.28 (4) of the Wisconsin Administrative Code is repealed and recreated to read:

Ins 17.28 (4) **BEGINNING AND CEASING PRACTICE AND OPERATION; LATE ENTRY; CLASS CHANGES; REFUNDS; PRORATED FEES.** (a) Definition. In this

subsection, "semimonthly period" means the 1st through the 14th day of a month or the 15th day through the end of a month.

(b) Entry during fiscal year; prorated annual fee. If a provider's fund coverage begins after July 1, the fund shall charge the provider one twenty-fourth of the annual fee for each semimonthly period or part of a semimonthly period from the date fund coverage begins to the next June 30.

(c) Ceasing practice or operation; refunds. 1. If a provider is in compliance with sub. (7) (b) and one of the following conditions exists, the fund shall issue a refund equal to one twenty-fourth of the provider's annual fee for each full semimonthly period from the date practice or operation ceased to the due date of the next payment:

a. The provider has temporarily or permanently ceased practice or has permanently ceased operation and has given the fund advance written notice of the cessation.

b. The provider has died and the fund has received written notice within 45 days of the death.

c. The provider's license to practice medicine and surgery or nursing has been revoked or suspended and the provider has given the fund written notice within 45 days of the revocation or suspension.

d. The provider has temporarily ceased practice because of a physical or mental impairment and has given the fund written notice within 135 days of the cessation.

2. If a provider that dies or temporarily or permanently ceases practice or operation is in compliance with sub. (7) (b), but none of the conditions described in subd. 1 exists, the fund shall issue a refund equal to one twenty-fourth of the provider's fee for each full semimonthly period from the date the fund receives notice of the death or cessation of practice or

operation, plus a retroactive refund equal to no more than 3 twenty-fourths of the provider's annual fee.

3. If a provider that dies or temporarily or permanently ceases practice or operation is not in compliance with sub. (7) (b), the fund shall reduce the provider's arrearage for the remainder of the fiscal year by any amount that would be due as a refund under subd. 1 or 2 if the provider were in compliance with sub. (7) (b).

(d) Change of class or type; increased annual fee. If a provider changes class or type, including a change from part-time to full-time practice, resulting in an increased annual fee, the fund shall adjust the provider's annual fee to equal the sum of the following:

1. One twenty-fourth of the annual fee for the provider's former class or type for each full semimonthly period from the due date of the provider's first payment during the current fiscal year to the date of the change.

2. One twenty-fourth of the annual fee for the provider's new class or type for each full or partial semimonthly period from the date of the change to the next June 30.

(e) Change of class or type; decreased annual fee. 1. If a provider changes class or type, including a change from full-time to part-time practice, resulting in a decreased annual fee, the fund shall adjust the provider's annual fee to equal the sum of the following:

a. One twenty-fourth of the annual fee for the provider's former class or type for each full or partial semimonthly period from the due date of the provider's first payment during the current fiscal year to the date of the change.

b. One twenty-fourth of the annual fee for the provider's new class or type for each full semimonthly period from the date of the change to the next June 30.

2. The fund may issue a refund or may credit the provider's account for amounts due under subd. 1. If the provider or the provider's insurer does not give the fund advance notice of the change, the refund or credit may not exceed 3 twenty-fourths of the annual fee for the provider's former class.

(f) If a provider entitled to a refund or credit under this subsection has paid interest under sub. (7) (c) 1, the fund shall issue a refund or credit of the interest using the same method used to calculate a refund or credit of an annual fee.

SECTION 8. Ins 17.28 (7) (title) of the Wisconsin Administrative Code is created to read:

17.28 (7) (title) **BILLING; PAYMENT SCHEDULES.**

SECTION 9. Ins 17.28 (7) (intro.) of the Wisconsin Administrative Code is repealed.

SECTION 10. Ins 17.28 (7) (a) and (b) (intro.) and 1 to 3 of the Wisconsin Administrative Code are amended to read:

Ins 17.28 (7) (a) ~~The~~ For each fiscal year, the fund shall issue an initial ~~billing~~ bill to each provider showing the ~~assessment~~ amount due, including any applicable surcharge imposed under s. Ins 17.285, and the payment schedules available and shall bill the provider according to the payment schedule selected. Each bill shall indicate the payment due dates. Once the provider has selected a payment schedule, that schedule shall apply for the remainder of that fiscal year.

(b) (intro.) ~~All providers~~ A provider shall pay the ~~billed assessment~~ amount due on or before ~~the~~ each due date ~~indicated on the~~

~~assessment--billing.--Due-dates-vary-according-to-the-type-of-assessment-and-date-of-assessment.~~

1. (title) 'Renewal fees.' (intro.) The payment due dates for renewal ~~assessments~~ fees are:

a. Annual payment - ~~July 1,~~ 30 days after the fund mails the initial bill.

b. Semiannual payments - ~~July 1,~~ 30 days after the fund mails the initial bill; January 1~~,~~.

c. Quarterly payments - ~~July 1,~~ 30 days after the fund mails the initial bill; October 1~~,~~; January 1~~,~~; April 1.

2. (title) 'Fees for providers that begin practice or operation after the beginning of a fiscal year.' (intro.) For a provider ~~who is initially participating in the fund, and for a provider who can no longer claim an exempt status, the number of payment options shall be dependent on the date the fund processes the assessment billing.~~ that begins practice or operation or enters the fund under sub. (3s) (b) after July 1 of any fiscal year, the due dates are as follows:

a. The first payment~~, regardless of a lump sum, semiannual, or quarterly payment schedule, shall be~~ is due 30 days from the date the fund ~~processes the assessment billing~~ mails the initial bill.

b. For semiannual payment schedules, the ~~second~~ 2nd payment ~~shall be~~ is due on ~~or before~~ January 1. Any provider whose first payment due date is January 1 or later ~~shall~~ may not ~~be able to~~ choose the semiannual payment schedule.

c. For quarterly payment schedules, ~~payments shall be due on or before October 1, January 1, and April 1, respectively. --In order for the provider to choose 4 quarterly payments,~~ if the first payment is due ~~date~~

~~shall fall~~ before October 1, the subsequent payments are due on October 1, January 1 and April 1. If the first payment is due ~~date falls between~~ from October 1 ~~and~~ to December 31, the ~~provider shall have 3 quarterly payments, with the second and third~~ subsequent payments are due on ~~or before~~ January 1 and ~~March 31~~ April 1. If the first payment is due from January 1 to March 31, the ~~provider shall have 2 quarterly payments, with the second payment~~ subsequent payment is due on ~~or before~~ April 1. Any provider whose first payment is due ~~date is April 1 or later shall~~ after March 31 may not ~~be able to~~ choose the quarterly payment schedule.

3. (title) 'Increased annual fees.' If a provider changes class or type, which results in an increased ~~assessment~~ annual fee, the first payment resulting from that increase ~~shall be~~ is due 30 days from the date the fund ~~processes the increased assessment billing. The provider shall follow the same payment schedule selected with the original assessment billing when making payments for the increased assessment billing~~ mails the bill for the adjusted annual fee.

SECTION 11. Ins 17.28 (7) (b) 4 of the Wisconsin Administrative Code is repealed.

SECTION 12. Ins 17.28 (7) (c) of the Wisconsin Administrative Code is amended to read:

Ins 17.28 (7) (c) 1. The fund shall charge interest and an administrative service charge of $3 to each provider who chooses the semiannual or quarterly payment schedule.

2. The fund shall charge interest and a late payment fee of $10 to each provider whose payment is not received on or before a due date or whose fund coverage is retroactive under sub. (3s) (b).

3. The daily rate of interest ~~charged by the fund~~ under subds. 1 and 2 shall be the average annualized rate earned by the fund for the first 3 quarters of the preceding fiscal year as determined by the state investment board. ~~The administrative service charge shall be used to offset costs of administering the payment plan. Interest~~, divided by 360. Late payment fees and administrative service charges are not refundable.

INITIAL APPLICABILITY. The treatment of s. Ins 17.28 (3) (e), (f), and (i), (3m), (4) and (7) first applies to patients compensation fund fees for fiscal year 1989-90.

EFFECTIVE DATE. This rule takes effect on the first day of the first month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this 22nd day of February, 1989.

Robert D. Haase
Commissioner of Insurance

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02/22/89