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☛ Details: Medical service corporations

(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**



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

DATE: March 23, 1994

TO: REPRESENTATIVE AL BALDUS, CHAIRPERSON; AND MEMBERS OF THE ASSEMBLY COMMITTEE ON INSURANCE, SECURITIES AND CORPORATE POLICY

FROM: Gordon A. Anderson, Senior Staff Attorney

SUBJECT: Assembly Substitute Amendment 1 to 1993 Senate Bill 618, Relating to Medical Service Corporations

This memorandum describes the provisions of 1993 Senate Bill 618, relating to medical service corporations, as passed by the Senate in the form of Senate Substitute Amendment 1 and Senate Amendment 1 to Substitute Amendment 1, and the changes made by Assembly Substitute Amendment 1 to 1993 Senate Bill 618.

SENATE BILL 618

Senate Bill 618 amends current law relating to the formation of service corporations. Under current law, each shareholder, director and officer of a service corporation must be at all times licensed, certified or registered by the "same agency in the same field of endeavor."

Under the Senate Bill, each shareholder, director or officer of a service corporation must be registered in the same field of endeavor or be a health care professional. A health care professional is an individual who is 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 under chs. 441, 448, 449, 450, 455 and 457, Stats., respectively.

The Bill also amends provisions of current law relating to permitting partnerships or service corporations of physicians, podiatrists or physical therapists to render a single bill for their services in the name of a partnership or service corporation if each individual physician, podiatrist or

physical therapist that renders services is identified. Under the Senate Bill, a service corporation would be required to list each individual physician, podiatrist or physical therapist that renders billed services and each individual who is licensed, registered or certified under chs. 449, 450, 455 or 457.

Under current ch. 655, Stats., service corporations of physicians or nurse anesthetists are eligible for coverage under the Patients Compensation Fund, as are individual physicians and nurse anesthetists. The service corporation may employ persons, including those with other occupational licenses to perform services on behalf of the corporation. Under ch. 655, Stats., the activities of those employes are covered by the Fund.

Senate Bill 618 requires the Board of Governors for the Patients Compensation Fund, in setting fees for the Fund, to consider risk factors and past and prospective loss and expense experience attributable to employes of a service corporation other than employes licensed as physicians or nurse anesthetists. The requirement will apply to fees set for fiscal years beginning on July 1, 1995. The Board is not required to increase fees for service corporations, it is merely required to consider these risk factors in setting fees.

Senate Bill 618 also includes two provisions incorporated, through Senate Amendment 1 to Senate Substitute Amendment 1, to provide that:

1. "Liability may not accrue to a service corporation or shareholders as a result of a decision to organize as a service corporation."

2. Each health care professional, other than a physician who is a shareholder of a service corporation, is required to carry malpractice insurance that provides coverage of not less than \$400,000 for each occurrence and \$1 million for all occurrences in any one policy year.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 makes the following changes in the Bill:

1. It amends the provision relating to liability of a service corporation for its decision to organize as a service corporation to include a provision which states that liability will not accrue "solely as a result of a decision to include or exclude a category of health care professionals as eligible to become shareholders of the service corporation." This is intended to protect the right of a service corporation to continue to limit its shareholders to persons with certain categories of health occupational licenses.

2. It amends the provision relating to malpractice insurance to also exclude nurse anesthetists from being required to carry malpractice insurance if the nurse is a shareholder in a service corporation. Nurse anesthetists are required to carry malpractice insurance under ch. 655, Stats. Substitute Amendment 1 also requires only those shareholders who are health care professionals who have the authority to provide health care services that "are not under the direction and supervision of a physician or nurse anesthetist" to carry malpractice insurance. The amount

of such coverage must not be less than the amounts established for physicians and nurse anesthetists under ch. 655, Stats.

3. It provides that the Patients Compensation Fund does not cover activities of an employe of a health care provider if that employe 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 defined as a health care professional who is the employe of a health care provider and who has the authority to provide health care services that are not under the direction and supervision of a physician or nurse anesthetist.

Assembly Substitute Amendment 1 also provides that nothing in this provision affects the liability of the health care provider for the acts of its employes. Thus, even if the Patients Compensation Fund does not cover the acts of those employes, the service corporations will continue to be liable for their acts.

4. It provides that the Commissioner may establish conditions that permit self-insurers to self-insure claims against employes who are health care practitioners and who are not covered by the Fund. This would allow self-insurers for professional liability to continue their current arrangements to provide self-insurance, rather than having to set up separate trusts for those persons who are covered by the Patients Compensation Fund and those who are not.

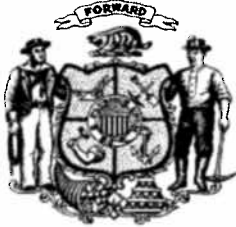
5. It amends the provision relating to risk factors and past and prospective loss expense experience in setting fees for the Fund. This provision will apply to setting fees to be assessed for partnerships, corporations and cooperative sickness care associations that operate nonprofit sickness care plans, not to the fees assessed for individual physicians and nurse anesthetists.

If you have any questions or I can be of further assistance, please let me know.

GAA:ksm;jt



WISCONSIN STATE LEGISLATURE





May 25, 1995

Commissioner Josephine Musser, Chairperson
Board of Governors
Wisconsin Patients Compensation Fund
121 East Wilson Street
Madison, WI 53702

Dear Commissioner Musser:

I am writing to express serious concerns regarding proposed rules that are being developed by the Board of Governors for the Patients Compensation Fund. The fiscal estimate, prepared by Tom Ryan of the Office of the Commissioner of Insurance (OCI), for 1995 Assembly Bill 325, which is expanding the categories of persons who may participate as shareholders in a service corporation, states:

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

That statement is directly contrary to the legislative intent of 1993 Wisconsin Act 473, as well as the intent of 1995 Assembly Bills 193 and 325.

As a reminder, during the 1993 Session, 1993 Senate Bill 618 passed the Senate and was referred to the Assembly Committee on Insurance, Securities and Corporate Policy. That Committee developed a substitute amendment which responded to concerns expressed by you and your staff regarding Patients Compensation Fund coverage of service corporations. In that legislation we specifically provided, in SECTION 11, that although the Fund would provide coverage for claims against a health care provider or employe of a health care provider due to acts or omissions of the employe acting within the scope of his or her employment and providing health care service, it would not apply to an employe of a health care provider if that person was a health care practitioner who is not providing health care services under the direction and supervision of a physician nurse anesthetists.

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

Home: 56896 Seeley Creek Rd. • Loganville, WI 53943 • (608) 727-5084

Commissioner Josephine Musser
May 25, 1995
Page 2

Thus, the Fund would provide coverage of the health care provider (i.e., the service corporation) but would not cover the independent acts of persons other than physicians or nurse anesthetists.

To interpret 1993 Wisconsin Act 473 in a way to deny coverage to a service corporation merely because it has chosen to allow nurses, optometrists, pharmacists, psychologists, social workers, marriage and family therapists and professional counselors to become shareholders in the corporation is contrary to legislative intent. Further, it would render the legislation meaningless. No service corporation is likely to allow these other categories of health care professionals to become shareholders, if by so doing they lose all coverage under Patients Compensation Fund for the service corporation.

Also, this action would make meaningless 1993 Assembly Bill 193, offered by Representative Baldus, that would permit speech-language pathologists and audiologists to be shareholders and 1993 Assembly Bill 325, which I authored, that would permit chiropractors, physical therapists and dieticians to be shareholders in service corporations.

A service corporation does not lose its character as being formed for the primary purpose of providing the services of physicians or nurse anesthetists merely because it permits other categories of health care providers to become shareholders.

Again, I reiterate that the intent of last session's legislation is that the Fund provide coverage to service corporations, but that coverage exclude liability for independent acts of practitioners who are health care professionals who are not providing services under the direction and supervision of a physician or nurse anesthetist.

Based on the above, I have the following request:

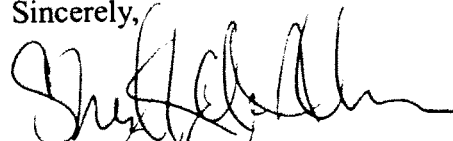
1. That the Board's proposed rules be revised to correctly reflect the legislative intent of 1993 Wisconsin Act 473.
2. That the Board not promulgate emergency rules that do not reflect the intent of Act 473.

If any administrative rules are offered which attempt to exclude coverage by the Fund of any service corporation that has persons other than physicians or nurse anesthetists as shareholders, I will recommend to my Committee that they object to the rule and will ask the Joint Committee for Review of Administrative Rules (JCRAR) to sustain that objection. If such an emergency rule is promulgated, I will request that JCRAR prevent implementation of that rule.

Commissioner Josephine Musser
May 25, 1995
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I look forward to the Board's response. If you have any questions, please contact my office.

Sincerely,



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

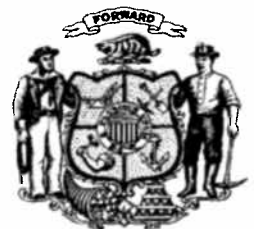
SA:kr

cc: Speaker David Prosser
Representative Al Baldus
Michael Kirby

Governor Thompson
Senator Peggy Rosenzweig



WISCONSIN STATE LEGISLATURE





State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Tommy G. Thompson
Governor

Josephine W. Musser
Commissioner



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

Get Letter from Gordon
from me to Glen -

6/14

has reviewed

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
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(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
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(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.

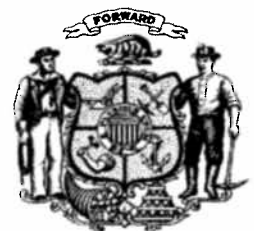
SECTION 7. EFFECTIVE DATE. This rule will take effect upon publication, as provided in s. 227.24 (1) (c), Stats.

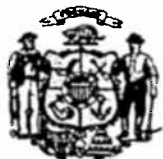
Dated at Madison, Wisconsin, this _____ day of _____.

Josephine W. Musser
Commissioner of Insurance



WISCONSIN STATE LEGISLATURE





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

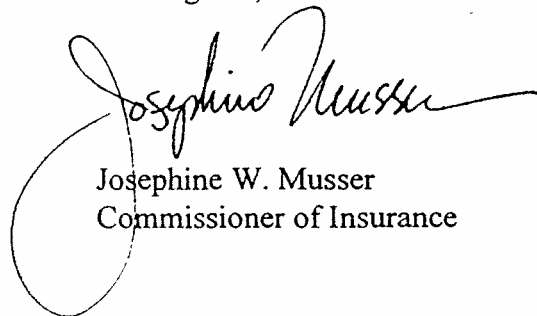
Re: Emergency Rule, Section Ins 17.01 and 17.28, Wis. Adm. Code, Relating to Annual Patient's Compensation Fund Fees, Mediation Fees and Service Corporations

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.

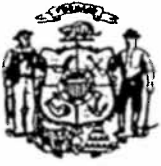
Best regards,



Josephine W. Musser
Commissioner of Insurance

JWM:AS

Attachment: 1 copy rule



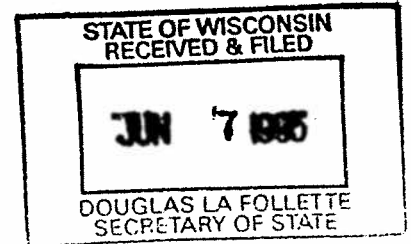
State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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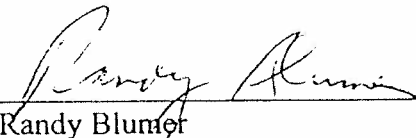
STATE OF WISCONSIN)
) SS
OFFICE OF THE COMMISSIONER OF INSURANCE)



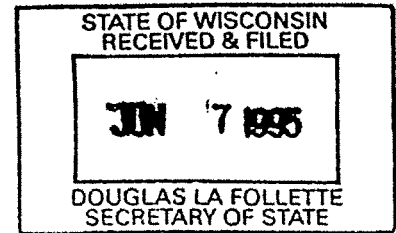
I, Randy Blumer, Deputy Commissioner of Insurance and custodian of the official records, certify that the annexed emergency rule affecting sections Ins 17.01 and 17.28, Wis. Adm. Code, relating to Annual Patient's Compensation Fund Fees, Mediation Fees and Service Corporations, was duly approved and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

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 employees who are defined as health care practitioners. It makes clear that a health care provider must ensure that all employees, 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
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(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.

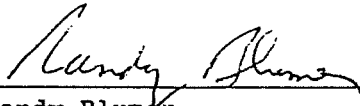
(6m) (b) For purposes of sub. (6) (k) to (m), a partnership or corporation shall report the number of partners, shareholders and employed physicians and nurse anesthetists on July 1 of the previous fiscal year.

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 27th 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

6/1/95

FISCAL ESTIMATE WORKSHEET

1995 Session

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.

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

17.28,

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

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

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ _____	\$ _____
NET CHANGE IN REVENUES	\$ (5,700,000)	\$ _____

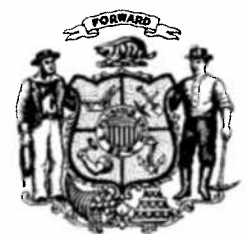
Agency/Prepared by (Name & Phone No.)
Office of the Commissioner of Insurance
Danford Bubolz 266-0953

Authorized Signature/Telephone No
[Signature]

Date
[Date]



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATURE

STATE CAPITOL
Madison, Wisconsin 53702

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 employee 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.

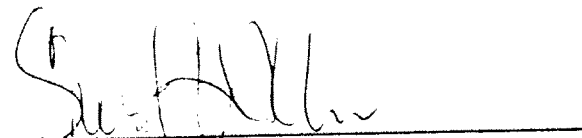
Although the Board of Governors has clear authority to define what "direction and supervision" is required as a condition of Fund coverage, because protecting the Fund from liability for independent acts of other health care practitioners is clearly in accordance with last session's legislation, it does 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