

**★★★ NOTICE OF RULEMAKING HEARING ★★★****Clearinghouse Rule 16-024****Notice of Hearing**

NOTICE IS HEREBY GIVEN that the Office of the Commissioner of Insurance will hold a public hearing on a permanent and emergency rule pursuant to s. 227.18, Stats., to amend s. Ins 17.50 relating to self-insured plans covering health care providers subject to ch. 655, Wis. Stat., and affecting small business at the time and place shown below.

**Hearing Information**

Date: March 16, 2016

Time: 1:00 pm

Location: OCI Room 227, 125 S. Webster Street 2<sup>nd</sup> Floor, Madison, WI.

**Accessibility** Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Julie Walsh at (608) 264-8101 with specific information on your request at least 10 days before the date of the scheduled hearing. There is also handicap access at the hearing location.

**Appearances at the Hearing and Submittal of Written Comments**

Written comments can be mailed to:

Julie E. Walsh  
Legal Unit - OCI Rule Comment for Rule Ins 1750  
Office of the Commissioner of Insurance  
PO Box 7873  
Madison WI 53707-7873

Written comments can be hand delivered to:

Julie E. Walsh  
Legal Unit - OCI Rule Comment for Rule Ins 1750  
Office of the Commissioner of Insurance  
125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53703-3474

Comments can be emailed to:

Julie E. Walsh at [julie.walsh@wisconsin.gov](mailto:julie.walsh@wisconsin.gov)

The deadline for submitting comments is 4:00 p.m. on March 22, 2016.

The rules may be reviewed and comments made at [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov) or at <http://www.oci.wi.gov/ocirules.htm> no later than 4:00 pm on March 22, 2016.

### **Initial Regulatory Flexibility Analysis**

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an effect on small businesses. The initial regulatory flexibility analysis is as follows:

a. Types of small businesses affected:

Small businesses that are either legal entities or are employed by one or more legal entities over which operating control is exercised and whose incomes are consolidated with the controlling legal entity in audited financial statements under generally accepted accounting principles.

b. Description of reporting and bookkeeping procedures required:

None beyond those currently required.

c. Description of professional skills required:

The use of an actuary to estimate proper funding of an affiliated health care provider.

**Agency Small Business Regulatory Coordinator** The OCI small business coordinator is Kate Ludlum [kate.ludlum@wisconsin.gov](mailto:kate.ludlum@wisconsin.gov) or 608-264-6232.

### **CONTACT PERSON**

A copy of the full text of the emergency rule and the proposed permanent rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Julie E. Walsh, 125 South Webster Street – 2<sup>nd</sup> Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

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### **PROPOSED ORDER AMENDING A RULE.**

#### **Office of the Commissioner of Insurance**

Agency 145 - Ch. INS 17.50, Wis. Admin. Code:

The Commissioner of Insurance proposes an order to amend s. Ins 17.50, Wis. Admin. Code, relating to self-insured plans covering health care providers subject to ch. 655, Wis. Stat., and affecting small business.

The statement of scope for this rule SS 057-15, was approved by the Governor on July 6, 2015, published in Register No. 715A3, on July 20, 2015, and approved by the Deputy Commissioner on August 11, 2015.

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### **ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)**

**1. Statutes interpreted:**

ss. 655.23, Wis. Stats.

**2. Statutory authority:**

ss. 601.41 (3), and 655.23, Wis. Stats.

**3. Explanation of OCI's authority to promulgate the proposed rule:**

The injured patients and families compensation fund ("fund") was established by and operated under Ch. 655, Wis. Stats. The commissioner of insurance was directed by the Governor in his veto message to 2013 Wis. Act 20 item 16, to "provide a definition of affiliated health care providers by administrative rule to better achieve the intent of the motion and eliminate the ambiguity regarding the affiliated health care providers who are affected by this provision." This proposed rule implements the portions of 2013 Wis. Act 20 sections 2267f and 2267g, and complies with the Governor's directive. Section 655.23 (3) (b), Wis. Stats., requires the commissioner to establish self-insurer qualifications and conditions for insuring for claims including claims arising from employees that are not fund participants. Further, s. 601.41 (3), Wis. Stats., provides that the commissioner shall have rule-making authority pursuant to s. 227.11 (2), Wis. Stats.

**4. Related statutes or rules:**

No additional statutes or rules than identified.

**5. The plain language analysis:**

The proposed rule defines "affiliated health care providers" to be two or more health care providers that are either legal entities or are employed by one or more legal entities over which operating control is exercised and whose incomes are consolidated with the controlling legal entity in audited financial statements under generally accepted accounting principles (GAAP). The term "provider" is amended to include, unless otherwise specified, both individual or affiliated health care providers. The rule modifies the initial filing and funding requirements for providers to reflect the submission of GAAP statements on a consolidated basis and the preclusion of affiliated health care provider's ability to use letters of credit for initial funding. The rule also creates a new provision specifically addressing the minimum funding level for affiliated health care providers as the greater of \$2,000,000 or the amount of the actuarial estimate.

**6. Summary of and comparison with any existing or proposed federal statutes and regulations:**

To the fund board's and OCI's knowledge there is no existing or proposed federal regulation that is intended to address self-insuring for medical malpractice claims.

**7. Comparison with rules in adjacent states:**

To the fund board's and OCI's knowledge there are no similar rules in the adjacent states to compare this rule to as none of adjacent states have a fund created by statute where providers are required to participate in a fund and permitted to self-insure for claims.

**8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule:**

None. This rule implements the statutory changes and updates the regulation to reflect changes in the business of health care. The impact is to facilitate the ability for larger entities that are under common control to self-insure thus potentially increasing the number of health care providers that elect to self-insure without constraining current providers that are self-insured.

**9. Analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small business or in preparation of an economic impact analysis:**

The proposed rule may have a potential positive impact on small businesses as the statutory and rule changes permit smaller entities to self-insure if that is desired by the entity that may be more cost effective for the entity. The proposed rule retains current levels for individual or single entity health care providers so they are not harmed or limited by this rule.

**10. Effect on small business:**

This rule will have little or no effect other than a positive impact on small businesses. With the proposed changes affiliated health care providers will more easily be able to self-insure without affecting the individual health care providers as provisions for non-affiliated providers are unchanged.

**11. A copy of any comments and opinion prepared by the Board of Veterans Affairs under s. 45.03 (2m), Stats., for rules proposed by the Department of Veterans Affairs.**

None.

**12. Agency contact person:**

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm>

Or by contacting Julie E. Walsh, Senior Attorney, at:

Phone: (608) 264-8101

Email: [Julie.Walsh@wisconsin.gov](mailto:Julie.Walsh@wisconsin.gov)

Address: 125 South Webster St – 2<sup>nd</sup> Floor, Madison WI 53703-3474

Mail: PO Box 7873, Madison, WI 53707-7873

**13. Place where comments are to be submitted and deadline for submission:**

The deadline for submitting comments is 4:00 p.m. on March 22, 2016.

Mailing address:

Julie E. Walsh

Legal Unit - OCI Rule Comment for Rule Ins 1750

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Street address:

Julie E. Walsh

Legal Unit - OCI Rule Comment for Rule Ins 1750

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Email address:

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[julie.walsh@wisconsin.gov](mailto:julie.walsh@wisconsin.gov)

Web site: <http://oci.wi.gov/ocirules.htm>

**The proposed rule changes are:**

**Section 1. Ins 17.50 (2) (am) is created to read:**

Ins 17.50 (2) (am) “Affiliated health care providers” means two or more health care providers delivering services as contained in s. 655.002 (1), Stats., that are either legal entities or are employed by one or more legal entities over which operating control is exercised by a common controlling legal entity, which itself need not be a health care provider nor by being a common controlling entity will it be deemed to be a health care provider, and whose incomes are consolidated with the controlling legal entity in audited financial statements prepared under generally accepted accounting principles.

**Section 2. Ins 17.50 (2) (e) and (g) are amended to read:**

Ins 17.50 (2) (e) “Provider,” when used without modification, means a health care provider as defined in s. 655.001 (8), Stats., or affiliated health care providers as defined in sub. par. (am), that is responsible for the establishment and operation of a self-insured plan.

(g) “Self-insured plan” means a method, other than through the purchase of insurance, by which a health care provider or affiliated health care providers may furnish professional liability coverage which meets the requirements of ch. 655, Stats.

**Section 3. Ins 17.50 (4) (intro.), (L) and (m) are amended to read:**

Ins 17.50 (4) INITIAL FILING. A provider that intends to establish a self-insured plan shall file with the office a proposal which shall include all the following as applicable:

(L) The provider’s most recent audited annual financial statement prepared under generally accepted accounting principles on a consolidated basis that includes all affiliated providers covered under the self-insured plan.

(m) A proposed draft of a letter of credit, if the provider intends to use one as part of the initial funding except for affiliated health care providers who are prohibited from using a letter of credit for initial funding.

**Section 4. Ins 17.50 (6) (title), (c) (intro.) and 1., (d) are amended to read:**

17.50 (6) FUNDING REQUIREMENTS FOR PROVIDERS.

17.50 (6) (c) For self-insured plans except a self-insured plan for affiliated health care providers, the provider shall provide all of the following:

1. If the actuarial estimate under sub. (4) (d) is less than \$2,000,000, the provider shall, before the self-insured plan begins operation, deposit in the trust cash equal to the first year's estimated liabilities plus a letter of credit equal to the difference between the cash funding and \$2,000,000 except as provided under sub. (4) (m).

**Section 5. Ins 17.50 (6m) is created to read:**

17.50 (6m) FUNDING REQUIREMENTS FOR AFFILIATED HEALTH CARE PROVIDERS. (a) The minimum initial funding required for a self-insured plan is the greater of \$2,000,000 or the actuarial estimate under sub. (4) (d).

**Section 6.** These changes will take effect on the first day of the month after publication, as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 2016.

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Daniel J. Schwartzer  
Deputy Commissioner

## Office of the Commissioner of Insurance Private Sector Fiscal Analysis

for Section Ins 17.50 relating to self-insured plans covering health care providers subject to ch. 655, Wis. Stat.,

Modify or cut any of the following

Statute Involved: **s. 227.14(4) FISCAL ESTIMATES.**

- (a) An agency shall prepare a fiscal estimate for each proposed rule before it is submitted to the legislative council staff under s. 227.15.
- (b) The **fiscal estimate shall include [1] the major assumptions used in its preparation and [2] a reliable estimate of the fiscal impact of the proposed rule, including:**
  - 1. The anticipated effect on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues.
  - 2. A projection of the anticipated state fiscal effect during the current biennium and a projection of the net annualized fiscal impact on state funds.
  - 3. **For rules that the agency determines may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by the private sector in complying with the rule.**
- (c) **If a proposed rule interpreting or implementing a statute has no independent fiscal effect, the fiscal estimate prepared under this subsection shall be based on the fiscal effect of the statute.**
- (d) If a proposed rule is revised so that its fiscal effect is significantly changed prior to its issuance, an agency shall prepare a revised fiscal estimate before promulgating the rule. The agency shall give notice of a revised fiscal estimate in the same manner that notice of the original estimate is given.

This rule change will have no significant effect on the private sector regulated by OCI.

**ADMINISTRATIVE RULES – FISCAL ESTIMATE**

1. **Fiscal Estimate Version**

Original  Updated  Corrected

2. Administrative Rule Chapter Title and Number

**INS 1750**

3. Subject

self-insured plans covering health care providers subject to ch. 655, Wis. Stat.,

4. **State Fiscal Effect:**

<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No May be possible to absorb within agency's budget.
		<input type="checkbox"/> Decrease Costs

5. Fund Sources Affected:

GPR  FED  PRO  PRS  SEG  SEG-S

6. Affected Ch. 20, Stats. Appropriations:

7. **Local Government Fiscal Effect:**

<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Decrease Costs

8. Local Government Units Affected:

Towns  Villages  Cities  Counties  School Districts  WTCS Districts  Others:

9. **Private Sector Fiscal Effect (small businesses only):**

<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No May have significant economic impact on a substantial number of small businesses
	<input type="checkbox"/> Yes <input type="checkbox"/> No May have significant economic impact on a substantial number of small businesses	<input type="checkbox"/> Decrease Costs

10. Types of Small Businesses Affected:

11. Fiscal Analysis Summary

12. Long-Range Fiscal Implications

13. Name - Prepared by Julie E. Walsh	Telephone Number (608) 264-8101	Date
14. Name – Analyst Reviewer	Telephone Number	Date
Signature—Secretary or Designee	Telephone Number	Date