

CR 87-121

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STATE OF WISCONSIN)
OFFICE OF THE COMMISSIONER OF INSURANCE)

FEB 09 1988

DOUGLAS LA FOLLETTE
SECRETARY OF STATE

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, renumber, amending, and creating a rule relating to disclosure of confidential claims information by the Wisconsin Health Care Liability Insurance Plan and the Patients Compensation Fund was issued by this office on February 9, 1988.

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 9th day of February, 1988.



Robert D. Haase
Commissioner of Insurance

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DOUGLAS LA FOLLETTE
SECRETARY OF STATE

ORDER OF THE COMMISSIONER OF INSURANCE

REPEALING, RENUMBERING, AMENDING AND CREATING A RULE

To repeal Ins 17.25 (4) (g) and (9) (b); to renumber Ins 17.25 (9) (a); to amend Ins 17.25 (9) (title); and to create Ins 17.275, relating to disclosure of confidential claims information by the Wisconsin health care liability insurance plan and the patients compensation fund.

ANALYSIS BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 601.41 (3) and 655.003, Stats.

Statutes interpreted: ss. 19.35 (1) (a), 19.85 (1) (f), 146.82 and 655.27 (4) (b), Stats.

Current law specifies that all books, records and audits of the patients compensation fund (fund) are open for inspection by the public, except for confidential claims information, which is not defined by statute. There is no similar statute governing the records of the Wisconsin health care liability insurance plan (plan) or the monthly claims paid reports submitted by all medical malpractice insurers in Wisconsin. The Wisconsin public records law permits the withholding of a record based on the exceptions stated in the open meetings law which govern when a public meeting may be closed. One such exception permits a closed meeting for "the investigation of charges against specific persons . . . which, if discussed in public, would be likely

to have a substantial adverse effect upon the reputation of any person referred to . . . or involved in" the investigation. A claim file of the plan is a record of the investigation of a medical malpractice claim against a health care provider and would be very likely to have a major adverse effect on the provider if disclosed. In addition, it contains health care provider records prohibited from disclosure by statute. The general practice in the insurance industry is to keep both open and closed claims files strictly confidential and this practice has been followed by both the plan and the fund.

The claims paid reports are derived directly from the claims files of the plan, the fund and private medical malpractice insurers and they too are treated as confidential.

The office of the commissioner of insurance (OCI) has promulgated a rule for the plan that corresponds to the statute on fund records, defining confidential claims information as any information relating to the plan in the possession of the commissioner, the board of governors of the fund and the plan or an agent of the commissioner or the board which reveals, directly or indirectly, the identity of a health care provider. The rule provides that the information is not available for public inspection, but does not specify any conditions for disclosure.

This rule defines confidential claims information for the plan, the fund, and the claims paid reporting system as any document or information relating to a claim against a health care provider in the possession of the commissioner, the board or their agents and provides that this information may be disclosed only under the following circumstances: 1) to the medical examining board under the claims paid reporting system; 2) for use by the

peer review council, its consultants and the board of governors of the plan and the fund in reviewing claims paid on behalf of health care providers in order to determine whether to impose a surcharge on plan premiums and fund assessments for high-risk health care providers; 3) under the general rules governing discovery in civil actions; and 4) as needed to conduct a management or financial audit.

SECTION 1. Ins 17.25 (4) (g) and (9) (b) are repealed.

SECTION 2. Ins 17.25 (9) (title) is amended to read:

Ins 17.25 (9) (title) ANNUAL REPORTS.

SECTION 3. Ins 17.25 (9) (a) is renumbered Ins 17.25 (9).

SECTION 4. Ins 17.275 is created to read:

Ins 17.275 CLAIMS INFORMATION; CONFIDENTIALITY. (1) PURPOSE. This section interprets ss. 19.35 (1) (a), 19.85 (1) (f), 146.82, 655.26, and 655.27 (4) (b), Stats.

(2) DEFINITION. In this section, "confidential claims information" means any document or information relating to a claim against a health care provider in the possession of the commissioner, the board or an agent thereof, including claims records of the fund and the plan and claims paid reports submitted under s. 655.26, Stats.

(3) DISCLOSURE. Confidential claims information may be disclosed only as follows:

(a) To the medical examining board as provided under s. 655.26, Stats.

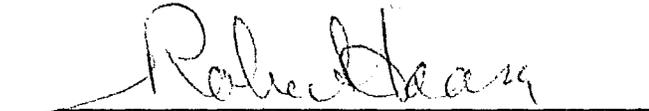
(b) As needed by the peer review council, consultants and the board under s. 655.275, Stats., and rules promulgated under that section.

(c) As provided under s. 804.01, Stats.

(d) To an individual, organization or agency required by law or designated by the commissioner or board to conduct a management or financial audit.

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 17th day of January, 1988.



Robert D. Haase
Commissioner of Insurance



The State of Wisconsin
Office of the Commissioner of Insurance

Robert D. Haase
Commissioner
(608) 266-3585

DATE: February 9, 1988
TO: Gary Poulson
FROM: Fred Nepple, General Counsel
Office of the Commissioner of Insurance
SUBJECT: Ins 17.25 and Ins 17.275, Clearinghouse No. 87-121

Enclosed are two copies of an Order of the Commissioner of Insurance repealing, renumbering, amending, and creating a rule relating to disclosure of the confidential claims information by the Wisconsin Health Care Liability Insurance Plan and the Patients Compensation Fund.

FN:LH:sf
Enclosure
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