

CR 95-105

State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

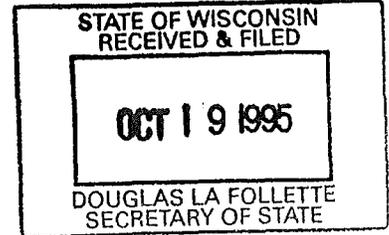
Tommy G. Thompson
Governor

Josephine W. Musser
Commissioner

121 East Wilson Street
P.O. Box 7873
Madison, Wisconsin 53707-7873
(608) 266-3585

STATE OF WISCONSIN
OFFICE OF THE COMMISSIONER OF INSURANCE

SS

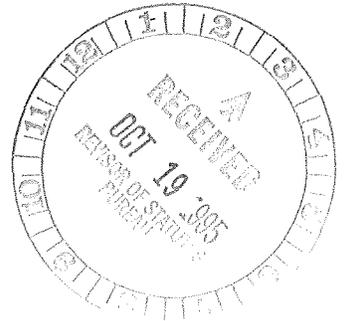


I, Randy Blumer, Deputy Commissioner of Insurance and custodian of the official records, certify that the annexed rule affecting sections Ins 17.01 and 17.28, Wis. Adm. Code, relating to Patients Compensation Fund Fees, Mediation Fees, and Service Corporation, was duly approved and adopted by this Office on October 19, 1995.

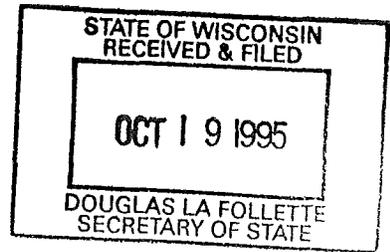
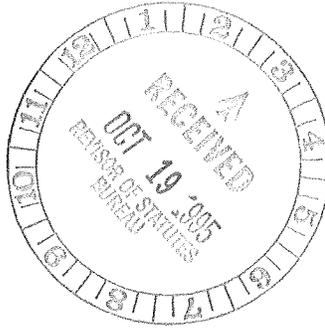
I further certify that I have compared this copy with the original on file in this Office and that it is a true copy of the original, and the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 121 East Wilson Street, Madison, Wisconsin, on October 19, 1995.


Randy Blumer
Deputy Commissioner of Insurance



1-1-96



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 A 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 (6d), 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), 655.27 (3) and 655.002 (1) (e), 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 a presumption that a corporation is organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists, and therefore, has fund coverage only if 50% or more of its shareholders are physicians or nurse anesthetists.

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 other than employes excluded from fund coverage under par. (b), 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 (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
-------------	--	--	---------

(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 4. Ins 17.28 (6d) is created to read:

Ins 17.28 (6d) PRIMARY PURPOSE PRESUMPTION. For purposes of s. 655.002 (1) (e) and this section, it is presumed:

(a) A corporation organized and operated in this state of which 50% or more of its shareholders are physicians or nurse anesthetists is organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists.

(b) Conclusively that a corporation organized and operated in this state of which less than 50% of its shareholders are physicians or nurse anesthetists is not organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists.

NOTE: A person who disputes the application of this presumption to the person may be entitled to a hearing on the issue in accordance with s. 227.42, Wis. Stats.

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 on the first day of the first month after publication, as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this 19th day of October 1995.



Randy Blumer
Deputy Commissioner of Insurance