

STATEMENT OF SCOPE

OFFICE OF THE COMMISSIONER OF INSURANCE

Rule No.: 145 Section Ins 17.50, Wis. Adm. Code.

Relating to: Self-insured plans covering health care providers subject to ch. 655, Wis. Stat., and affecting small business.

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

NA

2. Detailed description of the objective of the proposed rule:

To update existing financial requirements for self-insured plans for health care providers which have not been revised since the rule was initially created in 1989. The proposed rule will provide additional clarity as to the newly created “self-insurance plan” and will define “affiliated health care providers,” and any other undefined terms as requested in the Governor’s veto message. Additionally, the proposed rule will create filing, financial solvency, and regulatory oversight requirements for self-insurance plans providing coverage for all affiliated health care providers under a controlling legal entity and update requirements for providers to be self-insured in accordance with s. 655.23, Wis. Stat.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The Wisconsin injured patients and families compensation fund (“fund”), permits health care providers subject to s. 655.23 (3), Wis. Stat., to either “insure and keep insured the health care provider’s liability by a policy of health care liability insurance issued by an insurer authorized to do business in this state or qualify as a self-insurer.” Section Ins 17.50, Wis. Adm. Code, implements this section and establishes requirements to qualify as a self-insurer. Following passage of the new definition of self-insurance plan in 2013 Wis. Act 20, the existing rule must be expanded to include a self-insurance plan that self-insures health care providers subject to ch. 655, Wis. Stat., against medical malpractice claims, including affiliated health care providers. In the Governor’s veto message, the commissioner was directed to promulgate rules defining affiliated health care providers consistent with of the motion introducing the definition of self-insurance plan.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The fund was established by and is operated as provided in ch. 655, Wis. Stat. Section 655.004, Wis. Stat., permits the commissioner, director of state courts, and department of health services to promulgate rules as are necessary to enable them to perform their responsibilities under ch. 655, Wis. Stat. Pursuant to s. 655.23 (3) (a), Wis. Stat. the commissioner may establish conditions for qualification as a self-insurer. Finally, s. 601.41 (3), Wis. Stat., provides that the Commissioner shall have rule-making authority under s. 227.11 (2), Wis. Stat.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

200 hours of time including the time of state employees and members of the fund board of governors.

6. List with description of all entities that may be affected by the proposed rule:

All health care providers that are participants in the fund as set forth in s. 655.002 (1), Wis. Stat., are able to exercise the option be fully insured by an authorized and licensed insurer or self-insure. The rule will affect only those health care providers that choose to self-insure.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There is no existing or proposed federal regulation addressing any medical malpractice fund like the Wisconsin fund.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

There is no significant economic impact anticipated by implementing this rule as it is anticipated that this rule may give small businesses more opportunity to become self-fund providers in accordance with ch. 655, Wis. Stat.

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