

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.

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:

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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:

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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.

**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 OC

