



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 12-026

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

1. Statutory Authority

Section 655.27 (3) (br), Stats., prescribes certain limits on fee increases for the Injured Patients and Families Compensation Fund. As a convenience to interested persons, the Office of the Commissioner of Insurance (OCI) may wish to describe its compliance with these limits in the analysis of the proposed rule.

2. Form, Style and Placement in Administrative Code

a. In the analysis of the proposed rule, OCI may wish to consolidate existing items 10 and 11. Generally, the analysis should contain the headings listed in s. 1.02 (2), Manual. Additionally, OCI should review the contents of the analysis as related to small business. Rule-making procedures relating to small business were affected by 2011 Wisconsin Act 46; in particular, the Act transferred certain judgments relating to the effect of a rule on small business to the Small Business Regulatory Review Board.

b. In its explanation of statutory authority, OCI refers to s. 655.04, Stats.; the correct reference appears to be s. 655.004, Stats.

c. In SECTION 2 of the proposed rule, some of the Class 3 figures amount to an increase of greater than 5% over the existing amount. OCI should reconcile the figures in the proposed rule with the summary of the rule’s contents.

d. For consistency across the Administrative Code, per s. 1.02 (4), Manual, SECTION 4 of the proposed rule should read as follows:

SECTION 4. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Throughout the proposed rule, OCI refers to both “fiscal year 2013” and “the fiscal year beginning July 1, 2012.” OCI may wish to use these terms consistently in order to improve the clarity of the rule. Similar, previously promulgated rules appear to have used the latter term.

b. In SECTION 1 of the proposed rule, in par. (b), the use of strike-through and underscore lines should be revised to strike the original amounts including the dollar sign and replace them with the corresponding, fully underscored amounts (e.g., “~~\$25.00~~ \$22.50”).

c. The meaning and purpose of SECTION 3 of the proposed rule are not clear. Is this language to be inserted into the Administrative Code? If so, specify where. Also, is it correct to say “may be enforced under s. Ins 17.01 (2) (d) and (e)” when those cited provisions use the word “shall” instead of “may” and primarily concern notice rather than enforcement?

d. Additionally with respect to SECTION 3 of the proposed rule, is the language intended *only* to apply to the annual fee to finance the mediation fee system, or is it intended *also* to apply to fees financing the Injured Patients and Families Compensation Fund? In either case, this should be clarified. The currently proposed language refers to enforcement under s. Ins 17.01 (2), Wis. Adm. Code. This may create confusion as to scope because s. Ins 17.01 purports to implement s. 655.61, Stats., concerning the mediation fee system. However, s. Ins 17.01 (2) (b) also refers to s. Ins 17.28 (4), which appears to concern the compensation fund rather than the mediation fund. Note, however, that the scope of s. Ins 17.28 also appears ambiguous. [Compare s. Ins 17.28 (2) with s. Ins 17.28 (4) (n) 1., Wis. Adm. Code.]