

**STATEMENT OF SCOPE
OF A PROPOSED RULE**

Agency #145 Office of the Commissioner of Insurance

Rule No: Section Ins 17.35 (4), Wis. Adm. Code;

Relating to: deductible and cost sharing provision limitations in medical malpractice insurance policies and affecting small business.

Rule Type: _____ **Emergency**
 _____ X **Permanent**
 _____ **Both Emergency and Permanent**

1. Finding/nature of emergency:

This will be promulgated as a permanent rule so it is not necessary to make a finding of emergency.

2. Detailed description of the objective of the rule:

The office of the commissioner of insurance's objective is to establish requirements consistent with the injured patients and families compensation fund board of governors (board) decision to limit the percentage that insurers issuing medical malpractice coverage may impose on the liability portion of the policy if the insurer uses deductibles or other cost sharing measures. The board determined at its September 18, 2013 quarterly meeting to limit all cost sharing provisions to a percentage not exceed 25%.

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

Currently s. Ins 17.35 (4) permits insurers offering medical malpractice insurance to include deductibles or coinsurance clauses while retaining the responsibility for payment of the total amount of indemnity up to the limits of s. 655.23 (4), Wis. Stats., and permitted the insurer to recoup the amount of the deductible or coinsurance from the insured after the insurer's payment obligation was satisfied. At the time s. Ins 17.35 (4) was created insurers used deductibles or coinsurance less frequently and in lower levels than is currently arising. The board and its legal committee spent several years reviewing, analyzing and debating whether this section should be modified and if so how. The board determined that a limit should be added to more closely reflect the majority of the marketplace and maintain a level market. The board determined that a limitation not to exceed 25% deductible including cost sharing provisions such as coinsurance was appropriate.

4. Detailed 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. The commissioner of insurance, with approval by the board, may promulgate such rules under ch. 227, Wis. Stat., as are necessary to enable them to perform their responsibilities under

this chapter. Sections 655.23, 655.24 and 655.245, Wis. Stats., describe generally the limitations of liability, the requirements and limitations for policy forms issued for health care liability insurance and that such policies be submitted for review and approval by the commissioner in accordance with s. 631.20, Wis. Stats. Finally, s. 601.41 (3), Wis. Stat., provides that the commissioner shall have rule-making authority under s. 227.11 (2), Wis. Stat.

5. Estimates of the amount of time that state employees will spend to develop 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 board.

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

All health care providers that are participants in the fund, as set forth in s. 655.23 (3) (a), Wis. Stats., are required to demonstrate proof of financial responsibility by either qualifying as a self-insurer or maintaining a policy of health care liability insurance issued by an insurer authorized to do business in the state. The proposed rule limiting the amount of deductible or other cost sharing provisions contained in the health care liability insurance policy may affect the overall cost of the fully-insured health care liability coverage.

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

The Office is unaware of existing or proposed federal regulation intended to address 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):

The proposed rule is not likely to have a significant economic impact on small businesses although there is potential that the proposed rule may increase the cost of health care liability insurance coverage.

Significant economic impact on small businesses?

yes
 no

Local/statewide economic impact (choose one)

minimal or none (< or = \$50,000)
 moderate (\$50,000--\$20,000,000)
 significant (>\$20,000,000)

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Office of the Commissioner of Insurance