State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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Injured Patients and Families Compensation Fund
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Requirements of Chapter 655, Wis. Stat., Health Care Liability and Injured Patients and Families Compensation

Chapter 655, Wis. Stat., sets forth the obligations and benefits which apply to health care providers defined in the law. Defined health care providers must carry primary professional liability insurance and participate in the Injured Patients and Families Compensation Fund (Fund).

This legislation may have a substantial impact on operating budgets, license privileges, and professional standing of the health care providers. It is important that the benefits and obligations be understood.

DEFINED HEALTH CARE PROVIDERS INCLUDE:

- A physician or osteopath licensed under ch. 448, Wis. Stat.
- A registered nurse licensed under ch. 441, Wis. Stat., who is certified by the American Association of Nurse Anesthetists
- A corporation/partnership or other organization comprised of physicians or nurse anesthetists organized and operated in Wisconsin for the primary purpose of providing medical services of physicians or nurse anesthetists

EXEMPTIONS OR EXCLUSIONS

A provider who claims an exemption is not protected by the Fund and may be personally liable for damages awarded for malpractice.

- A physician or nurse anesthetist who does not practice in this state for more than a total of 240 hours for all employers in a fiscal year may claim an exemption.
- A physician or nurse anesthetist who is employed by the federal government, the state, a county, or a municipality and who does not have an outside practice is excluded from the Fund. This includes a physician or nurse anesthetist who is a federal contractor covered by the Federal Tort Claims Act.
- Licensed physicians or nurse anesthetists whose principal place of practice is NOT in Wisconsin may claim an exemption, except for certain physicians and nurse anesthetists who live in Wisconsin but practice at a hospital in Menominee, Michigan. However, locum tenens physicians should not file for an exemption for any work performed under a contract that requires Fund participation.

An exemption form is available at oci.wi.gov/ipfcf/exemption.pdf. If you are excluded from Fund participation, please complete the form and return it to the Fund. For those who <u>may</u> claim an exemption, the form should be completed and returned to the Fund <u>only</u> if an exemption is desired.

BENEFITS

The personal liability of a health care provider who complies with the requirements of ch. 655, Wis. Stat., for acts of malpractice is limited to the mandatory insurance limits required by law. The Fund pays all damages in excess of those amounts. In addition, all claims are required to be processed through mediation prior to civil litigation.

MANDATORY INSURANCE REQUIREMENTS

- Every health care provider subject to the law must have medical malpractice insurance protection of at least $1,000,000 per occurrence/$3,000,000 per policy year and have a certificate of insurance on file with the Office of the Commissioner of Insurance,

- Every health care provider subject to the law must pay an assessment fee to the Fund. This fee covers the cost of administering the Fund and payment of claims against the Fund (i.e., all claims settled in excess of the primary insurance limits), and

- A provider's insurance premium or Fund fee may be increased by the addition of a surcharge if the provider experiences an unusually large number or amount of claims paid.

PENALTIES

The statutory penalties for noncompliance with the mandatory requirements can be severe. They may result in:

1. Money penalty of up to $1,000 for each week of noncompliance, and

2. Loss or suspension of license to practice in Wisconsin.

COMPLIANCE PROCEDURE

If you are required or choose to participate in the Fund, you must obtain a primary professional liability insurance policy from a Wisconsin-licensed insurer with limits equal to the statutory requirement.

Once you have obtained an insurance policy, the following events will occur:

1. The insurance company will file, on your behalf, a certificate of insurance with the Fund.

2. The Fund will compute your pro rata Fund fee from the effective date of insurance to the next June 30 and send you a bill.

3. Upon payment of the fee, your Fund participation will be in effect for those dates. In the future, you will be billed for annual fees on or about July 1 each year.

FUND FEES AND INSTALLMENT PAYMENTS

The Fund's annual assessment is billed at the beginning of each fiscal year. The Fund's fiscal year is July 1 through June 30. The fee is payable in either a lump sum or on a quarterly installment basis. If a provider elects to pay on an installment basis, he or she must pay at least the minimum quarterly amount due. In addition, an administrative billing fee and interest on the deferred balance is assessed for any provider paying on an installment basis.

INSURANCE POLICIES

The Office of the Commissioner of Insurance cannot advise you as to what company or policy may be best for you. In order to comply with the requirements of ch. 655, Wis. Stat., the insurer must be licensed to write medical malpractice insurance in Wisconsin. In addition, the provider must keep his or her professional liability insured at all times including the purchase of extended reporting endorsement coverage (tail coverage) for claims-made policies being terminated, cancelled, or nonrenewed. We suggest you contact local insurance agents who can arrange suitable coverage through the private insurance market or you may contact the Wisconsin Health Care Liability Insurance Plan (WHCLIP). WHCLIP is a risk-sharing plan created under ch. 619, Wis. Stat. It is an insurance plan which provides professional liability insurance to eligible health care providers who cannot or choose not to obtain insurance coverage from the private insurance market. WHCLIP may be contacted directly at (715) 841-1690 or WHCLIP@wausaumms.com.

INFORMATION

If you need further information, please contact:

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