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TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule LSA Document #02-299

DIGEST

Amends 760 IAC 1-21 regarding the manner of determination and the calculation of surcharge for health care providers other than hospitals and physicians and for hospitals that establish financial responsibility by means other than an insurance policy. Effective 30 days after filing with secretary of state.

760 IAC 1-21-2

760 IAC 1-21-5

760 IAC 1-21-8

SECTION 1. 760 IAC 1-21-2, AS READOPTED AT 25 IR 531, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-2 Definitions

Authority: IC 34-18-5-4

Affected: IC 16-21-2; IC 25-22.5; IC 34-18-2-14; IC 34-18-17

Sec. 2. As used in this rule:

(1) "Health care provider" means all health care providers as defined in IC 34-18-2-14, except physicians and hospitals.

(2) "Hospital" means a public or private institution licensed under IC 16-21-2.

(3) "Commissioner" means the commissioner of insurance of Indiana.

(4) "IRMIA" means the Indiana Residual Malpractice Insurance Authority created by IC 34-18-17.

~~(4)~~ **(5) "Physician"** means an individual with an unlimited license to practice medicine under IC 25-22.5.

(Department of Insurance; Reg 22, Sec II; filed Jan 27, 1977, 2:35 p.m.; Rules and Regs. 1978, p. 514; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2874; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 2. 760 IAC 1-21-5, AS READOPTED AT 25 IR 531, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-5 Financial responsibility of hospital

Authority: IC 34-18-5-4

Affected: IC 16-21-1; IC 34-18-4-1; IC 34-18-5-3

Sec. 5. A hospital may establish financial responsibility for itself, its officers, agents, and employees by submitting, to the commissioner, all of the following:

(1) An agreement in writing, in a form and manner prescribed by the commissioner, to pay any final judgment or agreed settlement arising from claims of malpractice subject to the limits on liability set forth in IC 34-18-4-1(1)(A)(i) and IC 34-18-4-1(1)(A)(ii).

(2) An agreement in writing that the hospital will establish and maintain a claims management and risk management program, which program shall include, at a minimum, the following:

(A) Procedures satisfactory to the commissioner for the prompt investigation of each malpractice claim reported to the hospital to determine whether malpractice liability exists and to determine its cause.

(B) Procedures for the efficient processing, adjustment, and reasonable settlement of claims.

(C) Procedures for the defense by legal counsel of claims that cannot be adjusted or settled.

(D) Procedures to examine the cause of losses and to take action to reduce their frequency and severity, including a safety program and employee and professional training program.

The hospital may undertake such a claims management and risk management program through its own qualified personnel, or it

may undertake part or all of the program through the services of qualified independent contractors.

(3) A verified financial statement that demonstrates the financial resources of the hospital are sufficient to satisfy all malpractice claims incurred by it up to the limits on liability set forth in IC 34-18-4-1(3). Notwithstanding, if the hospital is an agency of any governmental unit and desires to use the taxing power of that governmental unit to establish its financial security, it may establish financial responsibility by filing with the commissioner a copy of an ordinance or resolution of the taxing governing body of the governmental unit, authorizing the hospital to do so, and acknowledging the responsibility of the governmental unit for any judgment or settlement arising from claims of malpractice.

(4) An agreement in writing that if the hospital discontinues operation or decides to purchase insurance to establish financial responsibility under IC 34-18 et seq., the hospital will continue to be liable in the amounts set forth in subdivision (1) until liability ceases to exist.

(5) For each year in which the hospital establishes proof of financial responsibility under this section and not through the use of an insurance policy, the hospital shall obtain the quotation for the surcharge amount to be paid to the patient's compensation fund from IRMIA. In support of this calculation, the hospital shall submit to IRMIA the following:

(A) The hospital's most recent application for licensure to operate a hospital pursuant to IC 16-21-2 on file with the Indiana state department of health.

(B) Any other information reasonably requested by IRMIA to accurately determine the surcharge amount.

(6) A hospital that chooses to establish financial responsibility under this section may cover claims against the officers, agents, and employees of the hospital and facilities identified in the hospital's application for licensure to operate a hospital pursuant to IC 16-21-2 as facilities operated under the hospital license.

(Department of Insurance; Reg 22, Sec V; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 515; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2875; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)

SECTION 3. 760 IAC 1-21-8, AS READOPTED AT 25 IR 531, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-8 Payment into patient's compensation fund; annual surcharge

Authority: IC 34-18-5-4

Affected: IC 34-18-5-2; IC 34-18-5-3

Sec. 8. (a) The annual surcharge for a health care provider shall be ~~one hundred fifty-five percent (100%)~~ **(55%)** of the cost to the health care provider for maintenance of financial responsibility.

(b) A health care provider establishing financial responsibility by means other than insurance under section 3 of this rule shall pay into the patient's compensation fund an amount equal to ~~one hundred fifty-five percent (100%)~~ **(55%)** of the premium that would be charged to the health care provider by the residual malpractice insurance authority. The payment must be made each year under IC 34-18-5-3 within thirty (30) days after qualification. *(Department of Insurance; Reg 22, Sec VIII; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 516; filed Mar 18, 1986, 10:41 a.m.: 9 IR 2057, eff Apr 18, 1986; filed May 28, 1987, 4:00 p.m.: 10 IR 2298; filed Aug 13, 1991, 4:00 p.m.: 15 IR 7; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2875; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on February 28, 2003 at 10:00 a.m., at the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on proposed amendments regarding the manner of determination and the calculation of surcharge for health care providers other than hospitals and physicians and for hospitals that establish financial responsibility by means other than an insurance policy. Copies are available at the Web site for the Department of Insurance at www.state.in.us/idoi. Copies of these rules are now on file at the Department of Insurance, 311 West Washington Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Sally McCarty
Commissioner
Department of Insurance