

Clearinghouse Rule 14-046

STATE OF WISCONSIN

OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

★★★ NOTICE OF RULEMAKING HEARING ★★★

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41(3), Stats., and the procedures set forth in under s. 227.18, and s. 227.24, Stats., OCI will hold a public hearing to consider the emergency rule issued on June 18, 2014 and the adoption of the attached proposed rulemaking order affecting section Ins 17.01 (3), 17.28 (3) (c) and (6), Wis. Adm. Code, relating to Injured Patients and Families Compensation Fund Annual fund and Mediation Panel Fees for the fiscal year beginning July 1, 2014 and affecting small business.

HEARING INFORMATION

Date: August 12, 2014
Time: 1:30 p.m., or as soon thereafter as the matter may be reached
Place: OCI, Room 227, 125 South Webster St 2nd Floor, Madison, WI

Written comments can be mailed to:

Julie E. Walsh
Legal Unit - OCI Rule Comment for Rule Ins 1728
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Written comments can be hand delivered to:

Julie E. Walsh
Legal Unit - OCI Rule Comment for Rule Ins 1728
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Comments can be emailed to:

Julie E. Walsh
julie.walsh@wisconsin.gov

Comments submitted through the Wisconsin Administrative Rule Web site at: <http://adminrules.wisconsin.gov> on the proposed rule will be considered.

The deadline for submitting comments is 4:00 p.m. on August 22, 2014.

SUMMARY OF PROPOSED RULE & FISCAL ESTIMATE

For a summary of the rule see the analysis contained in the attached proposed rulemaking order. There will be no state or local government fiscal effect. The full text of the proposed changes, a summary of the changes and the fiscal estimate are attached to this Notice of Hearing.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

This rule does not impose any additional requirements on small businesses.

Notice is hereby further given that pursuant to s. 227.114, Stats., the proposed rule may have an effect on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected:
Small businesses that employ physicians or other health care professionals participating in the fund.
- b. Description of reporting and bookkeeping procedures required:
None beyond those currently required.
- c. Description of professional skills required:
None beyond those currently required.

OCI SMALL BUSINESS REGULATORY COORDINATOR

The OCI small business coordinator is Louie Cornelius and may be reached at phone number (608) 264-8113 or by email at Louie.Cornelius@wisconsin.gov.

CONTACT PERSON

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, OCI, at: inger.williams@wisconsin.gov, (608) 264-8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

PROPOSED ORDER AMENDING, REPEALING AND RECREATING A RULE.

Office of the Commissioner of Insurance

Rule No. Agency 145 – Ch. INS 17.01 (3), and Ins 17.28 (6), Wis. Admin. Code.

The Commissioner of Insurance proposes an order to amend s. Ins 17.01 (3); and to repeal and recreate s. Ins 17.28 (6), Wis. Admin. Code, relating to the Injured Patients and Families Compensation Fund Annual Fund and Mediation Panel Fees, for the fiscal year beginning July 1, 2014 and affecting small business.

The statement of scope for this rule SS: 147-13, was approved by the Governor on November 18, 2013, published in Register No. 695, on November 30, 2013, and approved by the Commissioner on May 8, 2014.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

1. Statutes interpreted:

ss. 655.27 (3), and 655.61, Wis. Stats.

2. Statutory authority:

ss. 601.41 (3), 655.004, 655.27 (3) (b), and 655.61, 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, Stats. The commissioner of insurance with approval of the board of governors ("board") is required to annually set the fees for the fund and the medical mediation panel by administrative rule. The proposed fees comply with the limitation delineated in s. 655.27 (3) (br), Stats. Section 655.004, Stats., provides that the director of state courts and the commissioner may promulgate rules necessary to enable them to perform their responsibilities under this chapter. Pursuant to s. 655.27 (3) (b), Stats., the commissioner, after approval by the board, shall by rule set the fees to the fund and s. 655.61, Stats., requires the board, by rule, to set the fees charged to health care providers at a level sufficient to provide the necessary revenue to fund the medical mediation panels. Further, s. 601.41 (3), Stats., provides that the commissioner shall have rule-making authority pursuant to s. 227.11 (2), Stats.

4. Related statutes or rules:

None.

5. Plain language analysis:

This proposed rule establishes the fees that participating health care providers must pay to the fund for the fiscal year beginning July 1, 2014. These fees represent a 10% decrease from fees paid for the 2013-2014 fiscal year. The board approved these fees at its meeting on December 18, 2013, based on the recommendation of the board's actuarial and underwriting committee and reports of the fund's actuaries.

The board is also required to promulgate by rule the annual fees for the operation of the injured patients and families compensation medical mediation system, based on the recommendation of the director of state courts. The recommendation of the director of state courts was reviewed by the board's actuarial and underwriting committee. This rule implements the funding level approved by the board on March

19, 2014 by establishing mediation panel fees for the next fiscal year at \$7.75 for physicians and \$1.50 per occupied bed for hospitals, representing an increase of \$7.75 per physician and an increase of \$1.50 per occupied bed for hospitals from 2013-14 fiscal year mediation panel fees.

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 fund rates, administration or to fund medical mediation panel activities.

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 rates are directed to be established yearly by rule as is true in Wisconsin.

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule:

None. This rule establishes annual fund fees pursuant to the requirements of the above-noted Wisconsin statutes. The recommendation to the board regarding the fund fee and the medical mediation panel assessment is developed and reviewed annually by the fund's actuaries and the board's actuarial and underwriting committee. The actuarial and underwriting committee after review and discussion with the fund's actuaries present the information and the actuaries report to the board for consideration. This proposed rule reflects the rates approved by the board at the December 18, 2013 and March 19, 2014 board meetings.

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:

This decrease in fund fees will have a positive effect on small businesses in Wisconsin, particularly those that employ physicians and other health care professionals. The mediation panel fee is assessed only on physicians and hospitals, not on corporations or other health care providers. The mediation panel fees are increasing from the zero level of fiscal year 2013-2014 but are still lower than rates in fiscal year 2011-2012. The fund fee decrease will affect only those small businesses that pay the fund fees and mediation panel fees on behalf of their employed physicians. The fund fee decrease will not have a significant effect nor should it negatively affect the ability of small businesses to compete with other providers.

10. Effect on small business:

This rule will have little or no effect on small businesses. The decrease contained in the proposed rule will require providers to pay reduced fund fees which will decrease the operational expenses for the providers. The increase in mediation panel fees promulgated by this rule should not result in a significant fiscal effect on the private sector.

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 Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110
Email: inger.williams@wisconsin.gov
Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474
Mail: PO Box 7873, Madison, WI 53707-7873

13. Place where comments are to be submitted and deadline for submission:

A hearing for this emergency rule and the proposed permanent rule will be issued shortly. Comments on the rules will be accepted for 14 days after the date for the hearing stated in the Notice of Hearing.

Mailing address:

Julie E. Walsh
Legal Unit - OCI Rule Comment for Rule Ins 1728
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Street address:

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125 South Webster St – 2nd Floor
Madison WI 53703-3474

Email address:

Julie E. Walsh
Julie.Walsh@wisconsin.gov

Web site: <http://oci.wi.gov/ocirules.htm>

The proposed rule changes are:

SECTION 1. Ins 17.01 (3) is amended to read:

Ins 17.01 (3) FEE SCHEDULE. The following fee schedule shall be effective July 1, ~~2013~~2014:

- (a) For physicians-- ~~\$0~~\$7.75.
- (b) For hospitals, per occupied bed-- ~~\$0~~\$1.50.

SECTION 2. Ins 17.28 (6) is repealed and recreated to read:

(6) FEE SCHEDULE. The following fee schedule is in effect from July 1, 2014 to June 30, 2015:

- (a) Except as provided in pars. (b) to (f) and sub. (6e), for a physician for

whom this state is a principal place of practice:

Class 1.... \$1,311 Class 3....\$ 5,244

Class 2.... \$2,360 Class 4....\$8,653

(b) For a resident acting within the scope of a residency or fellowship program:

Class 1..... \$ 656 Class 3....\$2,624

Class 2..... \$1,181 Class 4....\$4,330

(c) For a resident practicing part-time outside the scope of a residency or fellowship program:

All classes..... \$787

(d) For a Medical College of Wisconsin, Inc., full-time faculty member:

Class 1..... \$ 524 Class 3... . \$2,096

Class 2..... \$ 943 Class 4... . \$3,458

(e) For physicians who practice part-time:

1. For a physician who practices fewer than 500 hours during the fiscal year, limited to office practice and nursing home and house calls, and who does not practice obstetrics or surgery or assist in surgical procedures:..\$ 328

2. For a physician who practices 1040 hours or less during the fiscal year, including those who practice fewer than 500 hours during the fiscal year whose practice is not limited to office practice, nursing homes or house calls or who do practice obstetrics, surgery or assist in surgical procedures:

Class 1.....\$ 787 Class 3....\$3,148

Class 2.....\$1,417 Class 4....\$5,194

(f) For a physician for whom this state is not a principal place of practice:

Class 1.....\$ 656 Class 3....\$2,624

Class 2.....\$1,181 Class 4....\$4,330

(g) For a nurse anesthetist for whom this state is a principal place of practice:

\$ 323

(h) For a nurse anesthetist for whom this state is not a principal place of practice:.....\$ 162

(i) For a hospital, all of the following fees:

1. Per occupied bed.....\$ 79

2. Per 100 outpatient visits during the last calendar year for which totals are available:.....\$ 3.95

(j) For a nursing home, as described under s. 655.002 (1) (j), Stats., that is wholly owned and operated by a hospital and that has health care liability insurance separate from that of the hospital by which it is owned and operated:

Per occupied bed.....\$ 15

(k) For a partnership comprised of physicians or nurse anesthetists, organized for the primary purpose of providing the medical services of physicians or nurse anesthetists, all of the following fees:

1. a. If the total number of partners and employed physicians and nurse anesthetists is from 2 to 10.....\$ 46

b. If the total number of partners and employed physicians and nurse anesthetists is from 11 to 100.....\$ 453

c. If the total number of partners and employed physicians and nurse anesthetists exceeds 100.....\$1,127

2. The following fee for each full-time equivalent allied health care professional employed by the partnership as of the most recent completed survey submitted:

<u>Employed Health Care Professionals</u>	<u>Fund Fee</u>
Nurse Practitioners.....	\$ 328
Advanced Nurse Practitioners.....	459
Nurse Midwives.....	2,884
Advanced Nurse Midwives.....	3,015
Advanced Practice Nurse Prescribers.....	459
Chiropractors.....	524

Dentists.....	262
Oral Surgeons.....	1,967
Podiatrists-Surgical.....	5,572
Optometrists.....	262
Physician Assistants.....	262

(L) For a corporation, including a service corporation, with more than one shareholder organized under ch. 180, Stats., for the primary purpose of providing the medical services of physicians or nurse anesthetists, all of the following fees:

1. a. If the total number of shareholders and employed physicians and nurse anesthetists is from 2 to 10.....\$ 46
- b. If the total number of shareholders and employed physicians and nurse anesthetists is from 11 to 100.....\$ 453
- c. If the total number of shareholders and employed physicians or nurse anesthetists exceeds 100.....\$1,127

2. The following fee for each full-time equivalent allied health care professional employed by the corporation as of the most recent completed survey submitted:

<u>Employed Health Care Professionals</u>	<u>Fund Fee</u>
Nurse Practitioners.....	\$ 328
Advanced Nurse Practitioners.....	459
Nurse Midwives.....	2,884
Advanced Nurse Midwives.....	3,015
Advanced Practice Nurse Prescribers.....	459
Chiropractors.....	524
Dentists.....	262
Oral Surgeons.....	1,967
Podiatrists-Surgical.....	5,572
Optometrists.....	262

Physician Assistants.....262

(m) For a corporation organized under ch. 181, Stats., for the primary purpose of providing the medical services of physicians or nurse anesthetists, all of the following fees:

1. a. If the total number of employed physicians and nurse anesthetists is from 1 to 10.....\$ 46

b. If the total number of employed physicians and nurse anesthetists is from 11 to 100.....\$ 453

c. If the total number of employed physicians or nurse anesthetists exceeds 100.....\$1,127

2. The following fee for each full-time equivalent allied health care professional employed by the corporation as of the most recent completed survey submitted:

<u>Employed Health Care Professionals</u>	<u>Fund Fee</u>
Nurse Practitioners	\$ 328
Advanced Nurse Practitioners.....	459
Nurse Midwives.....	2,884
Advanced Nurse Midwives.....	3,015
Advanced Practice Nurse Prescribers.....	459
Chiropractors.....	524
Dentists.....	262
Oral Surgeons.....	1,967
Podiatrists-Surgical.....	5,572
Optometrists.....	262
Physician Assistants	262

(n) For an operational cooperative sickness care plan as described under s. 655.002 (1) (f), Stats., all of the following fees:

1. Per 100 outpatient visits during the last calendar year for which totals are available.....\$0.10

2. 2.5% of the total annual fees assessed against all of the employed physicians.

3. The following fee for each full-time equivalent allied health care professional employed by the operational cooperative sickness plan as of the most recent completed survey submitted:

<u>Employed Health Care Professionals</u>	<u>Fund Fee</u>
Nurse Practitioners.....	\$ 328
Advanced Nurse Practitioners.....	459
Nurse Midwives.....	2,884
Advanced Nurse Midwives.....	3,015
Advanced Practice Nurse Prescribers.....	459
Chiropractors.....	524
Dentists.....	262
Oral Surgeons.....	1,967
Podiatrists-Surgical.....	5,572
Optometrists.....	262
Physician Assistants.....	262

(o) For a freestanding ambulatory surgery center, as defined in s. DHS 120.03 (13), per 100 outpatient visits during the last calendar year for which totals are available:.....\$20.46

(p) For an entity affiliated with a hospital, the greater of \$100 or whichever of the following applies:

1. 7.0% of the amount the entity pays as premium for its primary health care liability insurance, if it has occurrence coverage.

2. 10.0% of the amount the entity pays as premium for its primary health care liability insurance, if it has claims-made coverage.

(q) For an organization or enterprise not specified as a partnership or corporation that is organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists, all of the following fees:

1. a. If the total number of employed physicians and nurse anesthetists is from 1 to 10.....\$ 46
- b. If the total number of employed physicians and nurse anesthetists is from 11 to 100.....\$ 453
- c. If the total number of employed physicians or nurse anesthetists exceeds 100.....\$1,127

2. The following for each full-time equivalent allied health care professional employed by the organization or enterprise not specified as a partnership, corporation, or an operational cooperative health care plan as of the most recent completed survey submitted:

<u>Employed Health Care Professionals</u>	<u>Fund Fee</u>
Nurse Practitioners.....	\$ 328
Advanced Nurse Practitioners.....	459
Nurse Midwives.....	2,884
Advanced Nurse Midwives.....	3,015
Advanced Practice Nurse Prescribers.....	459
Chiropractors.....	524
Dentists.....	262
Oral Surgeons.....	1,967
Podiatrists-Surgical.....	5,572
Optometrists.....	262
Physician Assistants.....	262

SECTION 4. EFFECTIVE DATE. These changes will take effect on the first day of the month after publication, as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this ____ day of ____, 2014.

Theodore K. Nickel
Commissioner

**Office of the Commissioner of Insurance
Fiscal Estimate**

for Sections Ins 17.01 and 17.28 (6), relating to Injured Patients and Families
Compensation Fund Annual Fund Fees and Mediation Panel Fees for the
fiscal year beginning July 1, 2014 and affecting small business

This rule change will have no significant effect on the private sector as this proposed rule reduces fees to participants in the fund and slightly increases mediation panel fees to \$7.75 for physicians and \$1.50 per occupied bed for hospitals. The fund is a segregated account and does not impact state funds. The rule decreases fees and therefore does not have an effect on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues.

ADMINISTRATIVE RULES – FISCAL ESTIMATE

1. **Fiscal Estimate Version**

Original Updated Corrected

2. Administrative Rule Chapter Title and Number

INS 1728

3. Subject

Injured Patients and Families Compensation Fund Annual fund and Mediation Panel Fees for the fiscal year beginning July 1, 2014 and affecting small business

4. **State Fiscal Effect:**

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No May be possible to absorb within agency's budget.
		<input checked="" type="checkbox"/> Decrease Costs

5. Fund Sources Affected:

GPR FED PRO PRS SEG SEG-S

6. Affected Ch. 20, Stats. Appropriations:

None

7. **Local Government Fiscal Effect:**

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Decrease Costs

8. Local Government Units Affected:

Towns Villages Cities Counties School Districts WTCS Districts Others: None

9. **Private Sector Fiscal Effect (small businesses only):**

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No May have significant economic impact on a substantial number of small businesses
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No May have significant economic impact on a substantial number of small businesses	<input checked="" type="checkbox"/> Decrease Costs

10. Types of Small Businesses Affected:

Small businesses that employ physicians or other health care professionals participating in the Fund.

11. Fiscal Analysis Summary

No significant impact. For Fund fees a 10% decrease and although the rule proposes an increase from zero for mediation panel fees, the proposed fees are less than the 2011-2012 fees.

12. Long-Range Fiscal Implications

None

13. Name - Prepared by Julie E. Walsh	Telephone Number (608) 264-8101	Date May 9, 2014
14. Name – Analyst Reviewer	Telephone Number	Date
Signature—Secretary or Designee	Telephone Number (608) 267-3782	Date