

Chapter Ins 17

PATIENTS COMPENSATION FUND

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Ins 17.001 Definitions. (ss. 619.04 and 655.003, Stats.) As used in this chapter:

(1) "Board" means the board of governors established pursuant to s. 619.04 (3), Stats.;

(2) "Fund" means the patients compensation fund established pursuant to s. 655.27 (1), Stats., except as defined in s. Ins 17.24;

(3) "Hearing" includes both hearings and rehearings, and these rules shall cover both so far as applicable, except where otherwise specifically provided by statute or in chapter Ins 17.

(4) "Plan" means the Wisconsin health care liability insurance plan established by s. Ins 17.25 pursuant to s. 619.01 (1) (a), Stats.;

(5) "Commissioner" means the commissioner of insurance or deputy whenever detailed by the commissioner or discharging the duties and exercising the powers of the commissioner during an absence or a vacancy in the office of the commissioner, as provided by s. 601.11 (1) (b), Stats.

History: Cr. Register, July, 1979, No. 283, eff. 8-1-79.

Ins 17.01 Payment of compensation fund fees (ss. 655.21 and 655.27, Stats.) (1) **PURPOSE.** This rule implements the provisions of ch. 655, Stats., relating to the payment of fees to the patients compensation fund.

(2) **SCOPE.** This rule applies to each health care provider as defined in s. 655.001, Stats., except hospitals, nursing homes or other facilities subject to regulation by the department of health and social services.

(3) **DEFINITIONS.** For the purpose of this rule the definition of terms used shall be those definitions set forth in s. 655.001, Stats.

(4) **PAYMENT OF FEES TO FINANCE PATIENTS COMPENSATION PANELS.**
 (a) Once in each fiscal year each physician operating in this state shall

pay, in accordance with a billing schedule adopted by the commissioner, the annual fee established by s. 655.21 (1) (a), Stats.

(b) Such fee is due and payable upon receipt of the billing by the physician.

(c) Any physician who has not paid the fee within 30 days from the date the billing is received shall be deemed to be in noncompliance with s. 655.21 (1) (a), Stats.

(d) The commissioner shall notify the department of regulation and licensing of each physician who has not paid the fee and who is, therefore, in noncompliance with s. 655.21 (1) (a), Stats.

(e) The commissioner may upon a showing of sufficient cause extend the period for a payment for an additional period of time to be determined by the commissioner.

(5) PAYMENT OF OPERATING FEES TO PATIENTS COMPENSATION FUND.

(a) Once in each fiscal year each health care provider, except hospitals, nursing homes or other facilities subject to regulation by the department of health and social services, shall pay in accordance with a billing schedule adopted by the commissioner the annual fee determined in accordance with s. 655.27 (3) (c), Stats.

(b) Such fees are due and payable upon receipt of the billing by the health care provider.

(c) Any health care provider who has not paid the fee within thirty days from the date the billing is received shall be deemed to be in noncompliance with s. 655.23 (1), Stats., and subject to the penalty provisions of s. 655.23 (6) and (7), Stats.

(d) The commissioner shall notify the department of regulation and licensing of each health care provider who has not paid the fee and who is, therefore, in noncompliance with s. 655.23(1), Stats.

(e) The commissioner may upon a showing of sufficient cause extend the period for payment of fees for an additional period of time to be determined by the commissioner.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78. *Emergency. n. and r. 1978.*

eff. 7-2-76
Ins 17.02 Petition for declaratory rulings. (ss. 619.04 and 655.003, Stats.) (1) Petitions for declaratory rulings shall be governed by s. 227.06, Stats.

(2) Such petitions shall be filed with the commissioner who shall investigate, give notice, etc.

(3) All final determinations shall be made by the board.

History: Cr. Register, July, 1979, No. 283, eff. 8-1-79.

Ins 17.03 How proceedings initiated. (ss. 619.04 and 655.003, Stats.) Proceedings for a hearing upon a matter may be initiated: (1) On a complaint by any individual, corporation, partnership or association which is aggrieved, filed in triplicate (original and 2 copies) with the commissioner.

(b), Stats. In the event more than one actuary is utilized, the health care providers represented on the board of governors shall jointly select the second actuary. Such actuarial reports shall be submitted on a timely basis.

History: Cr. Register, June, 1980, No. 294, eff. 7-1-80.

Ins 17.28 Health care provider fees. (1) **PURPOSE.** The purpose of this section is to implement and interpret the provisions of s. 655.27 (3), Stats., relating to fees to be paid by health care providers for participation in the Patients Compensation Fund.

(2) **SCOPE.** This section applies to fees charged health care providers as defined in s. 655.001 (8), Stats. Nothing in this section shall apply to operating fees charged for operation of the Patients Compensation Panels under s. 655.21, Stats.

(3) **DEFINITIONS.** (a) "Fiscal year" means each period beginning each July 1 and ending each June 30.

(b) "Fees", "operating fees" or "annual fees" mean those fees charged for each fiscal year of participation, July 1 to June 30.

(c) "Class" of physicians or surgeons means those classes currently in use by the Wisconsin Health Care Liability Insurance Plan, as listed below:

1. **CLASS 1** health care providers are those engaged in the following medical specialties:

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| Aerospace Medicine | Neurology - including child - no surgery |
| Allergy | Nuclear Medicine |
| Cardiovascular Disease - no surgery | Nutrition |
| Dermatology - no surgery | Occupational Medicine |
| Diabetes - no surgery | Ophthalmology - no surgery |
| Endocrinology - no surgery | Otology - no surgery |
| Family Practice - no surgery | Otorhinolaryngology - no surgery |
| Forensic Medicine | Pathology - no surgery |
| Gastroenterology - no surgery | Pediatrics - no surgery |
| General Practice - no surgery | Pharmacology - clinical |
| General Preventative Medicine - no surgery | Physiatry |
| Geriatrics - no surgery | Physical Medicine and Rehabilitation |
| Gynecology - no surgery | Physicians - no surgery |
| Hematology - no surgery | Psychiatry - including child |
| Hypnosis | Psychoanalysis |
| Infectious Diseases - no surgery | Psychosomatic Medicine |
| Internal Medicine - no surgery | Public Health |
| Laryngology - no surgery | Pulmonary Diseases - no surgery |
| Legal Medicine | Radiology - diagnostic - no surgery |
| Neoplastic Diseases - no surgery | Rheumatology - no surgery |
| Nephrology - no surgery | Rhinology - no surgery |
| Neurology - no surgery | |
| Post Graduate Medical Education or Fellowship—This classification applies to all physicians engaged in the first year of post graduate medical education (interns). This classification also applies to physicians en- | |

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gaged in 2 through 6 years of an approved post graduate medical education specialty program (residents) listed above which is not ordinarily involved in the performance of or assisting in the performance of obstetrical procedures or surgical (other than incision of boils and superficial abscesses or suturing of skin and superficial fascia) procedures.

2. *CLASS 2* health care providers are those engaged in the following medical specialties:

Cardiovascular Disease - minor surgery
Dermatology - minor surgery
Diabetes - minor surgery
Endocrinology - minor surgery
Family Practice - minor surgery
Gastroenterology - minor surgery

General Practice - minor surgery
Geriatrics - minor surgery
Gynecology - minor surgery
Hematology - minor surgery
Infectious Diseases - minor surgery
Intensive Care Medicine - This classification applies to any general practitioner or specialist employed in an intensive care hospital unit.

Internal Medicine - minor surgery
Laryngology - minor surgery
Neoplastic Diseases - minor surgery
Nephrology - minor surgery
Neurology - including child-minor surgery
Ophthalmology - minor surgery
Otology - minor surgery
Otorhinolaryngology - minor surgery

Pathology - minor surgery
Pediatrics - minor surgery
Physicians - minor surgery
Radiology - diagnostic - minor surgery
Rhinology - minor surgery

Post Graduate Medical Education or Fellowship— This classification applies to physicians engaged in 2 through 6 years of an approved post graduate medical education specialty program listed above or any other specialty which ordinarily involves the performance of minor surgery and is not listed under Classes 3, 4, 5, 6, or 7.

3. *CLASS 3* health care providers are those engaged in the following medical specialties:

Broncho-Esophagology
Surgery - colon and rectal
Surgery - endocrinology
Surgery - gastroenterology
Surgery - general practice or family practice (not primarily engaged in major surgery)

Surgery - geriatrics
Surgery - neoplastic
Surgery - nephrology
Surgery - ophthalmology
Cardiology (including catheterization, but not including cardiac surgery)
Surgery - urological

Post Graduate Medical Education or Fellowship— This classification applies to physicians engaged in 2 through 6 years of an approved post graduate medical education specialty program indicated above or any other specialty which involves the performance of major surgery and is not listed under Classes 4, 5, 6, or 7.

4. *CLASS 4* health care providers are those engaged in the following medical specialties:

Emergency Medicine - no major surgery— This classification applies to any general practitioner or specialist primarily engaged in emergency practice at a clinic, hospital or rescue facility who does not perform major surgery.

Post Graduate Medical Education or Fellowship— This classification applies to physicians engaged in 2 through 6 years of an approved post graduate medical education specialty program indicated above.

5. *CLASS 5* health care providers are those engaged in the following medical specialties:

Anesthesiology— This classification applies to all general practitioners or specialists who perform general anesthesia or acupuncture anesthesia.

Emergency Medicine - including major surgery	Surgery - otorhinolaryngology (no plastic surgery)
Surgery - abdominal	Surgery - plastic -
Surgery - cardiac	otorhinolaryngology
Surgery - general (specialists in general surgery)	Surgery - rhinology
Surgery - laryngology	Surgery - gynecology
Surgery - otology (no plastic surgery)	Surgery - hand
	Surgery - head and neck
	Surgery - plastic

Post Graduate Medical Education or Fellowship— This classification applies to physicians engaged in 2 through 6 years of an approved post graduate medical education specialty program indicated above.

6. *CLASS 6* health care providers are those engaged in the following medical specialties:

Surgery - cardiovascular disease
 Surgery - orthopedic
 Surgery - thoracic
 Surgery - traumatic
 Surgery - vascular
 Weight Control - bariatrics

Post Graduate Medical Education or Fellowship— This classification applies to physicians engaged in 2 through 6 years of an approved post graduate medical education specialty program indicated above.

7. *CLASS 7* health care providers are those engaged in the following medical specialties:

Surgery - Obstetrics - Gynecology
 Surgery - Obstetrics

Post Graduate Medical Education or Fellowship— This classification applies to physicians engaged in 2 through 6 years of an approved post graduate medical education specialty program indicated above.

8. *CLASS 8* health care providers are those engaged in the following medical specialties:

Osteopathic Physicians and Surgeons— This classification applies only to osteopathic manipulation, use of modalities except X-ray and radio-

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active materials, treatment of cuts and wounds, procedures common to practice of pathology by the named insured, administration of anesthesia topically or by local infiltration, and subcutaneous, intradermal, or intramuscular injections. It does not apply to diagnosis by the named insured using X-ray or radioactive materials. Other osteopathic physicians and surgeons shall be classified in accordance with the foregoing classifications.

9. **CLASS 9** are those engaged in the following medical specialty:

Surgery - neurology - including child

Post Graduate Medical Education or Fellowship— This classification applies to physicians engaged in 2 through 6 years of an approved post graduate medical education specialty program indicated above.

(4) **PRO RATA FEES.** A health care provider may enter or exit the Fund at a date other than July 1 or June 30.

(a) If a health care provider enters the Fund subsequent to July 1, the provider shall be charged a fee of one-twelfth the annual fee for that class of provider for each month or part of month between the date of entry and the next June 30.

(b) Notwithstanding the provisions of par. (a) no fee shall be charged for entry to the Fund after each June 1.

(c) If a health care provider exits the Fund prior to June 30, the provider shall be entitled to a refund of one-twelfth the annual fee for that class for each full month between the date of exit and the next June 30.

(d) The effective date of the proof of financial responsibility required under s. 655.23 (2), Stats., as it applies to each individual health care provider, shall determine the date of entry to the Fund. The cancellation or withdrawal of such proof shall establish the date of exit.

(5) **EFFECTIVE DATE AND EXPIRATION DATE OF FEE SCHEDULES.** The effective date of the fee schedule contained in this section shall be the current July 1 and shall expire the next subsequent June 30.

(6) **FEE SCHEDULE.** The following fee schedule shall be effective from July 1, 1985 to June 30, 1986:

(a) For physicians and surgeons:

Class 1	\$1,809.00	Class 6	\$11,168.00
Class 2	3,620.00	Class 7	13,030.00
Class 3	4,653.00	Class 8	904.00
Class 4	5,584.00	Class 9	19,545.00
Class 5	9,308.00		

(b) For resident physicians and surgeons involved in post graduate medical education or a fellowship:

Class 1	\$1,085.00	Class 5	\$5,584.00
Class 2	2,172.00	Class 6	6,701.00
Class 3	2,793.00	Class 7	7,819.00
Class 4	3,352.00	Class 9	11,727.00

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(c) For resident physicians and surgeons who practice outside residency or fellowship:

All classes \$1,397.00

(d) For Medical College of Wisconsin full time faculty:

Class 1	\$ 741.00	Class 5	\$3,815.00
Class 2	1,484.00	Class 6	4,579.00
Class 3	1,908.00	Class 7	5,343.00
Class 4	2,290.00	Class 9	8,014.00

(e) For Medical College of Wisconsin resident physicians and surgeons:

1. Class 1	\$ 904.00	Class 5	\$4,653.00
Class 2	1,809.00	Class 6	5,584.00
Class 3	2,328.00	Class 7	6,515.00
Class 4	2,793.00	Class 9	9,774.00

2. The assessment paid by medical college of Wisconsin shall be determined by multiplying the resident class fee by the number of resident physician exposures in that class as determined by audit by the primary insurance carrier.

3. Initial assessments, payable on issuance of the policy, shall be computed on the basis of the number of exposures per class during the prior participation period. Final assessments, payable at the end of the policy period, shall be the initial assessment adjusted for actual physician exposures during the participation period as determined by audit by the primary insurance carrier.

(f) For government employes—state, federal, municipal:

Class 1	\$1,357.00	Class 6	\$8,377.00
Class 2	2,713.00	Class 7	9,774.00
Class 3	3,490.00	Class 8	678.00
Class 4	4,188.00	Class 9	14,659.00
Class 5	6,981.00		

(g) For retired or part time physicians and surgeons with an office practice only and no hospital admissions who practice less than 500 hours per year:

Class 1	Physicians	\$1,085.00
Class 8	Osteopathic physicians	543.00

(h) For nurse anesthetists \$ 542.00

(i) For podiatrists, nonsurgical \$ 459.00
For podiatrists, surgical \$2,578.00

For retired or part time podiatrists, nonsurgical office practice only, less than 500 hours practice per annum \$ 276.00

For residents in post graduate podiatric medical education \$1,547.00

(j) For hospitals—per occupied bed \$154.00

(k) For nursing homes—per occupied bed \$ 29.00

(7) **COLLECTION OF FEES.** In the event that the effective date for the rule establishing the fees for fiscal year 1985-1986 does not take effect prior to June 2, 1985, (a) for all health care providers permanently practicing or operating in the state on July 1, 1985, the commissioner shall

1. On July 1, 1985, or as soon as feasible thereafter, bill health care providers for the fees assessed for fiscal year 1984-1985 for the provider's particular class;

2. On January 1, 1986, or as soon as feasible thereafter, bill all health care providers except podiatrists the difference between the fee assessment for the provider's particular class for fiscal year 1985-1986 and the fee assessment for the provider's class for fiscal year 1984-1985;

3. With the January 1, 1986, billing notice, advise all health care providers except podiatrists of their right to pay the remaining fee assessment in one payment or to pay the remaining fee assessment in two equal payments, the first payment to be made in January, 1986, and the second in April, 1986;

4. On April 1, 1986, or as soon as feasible thereafter, bill all health care providers, except podiatrists, who chose the option to pay the remaining fee assessment in 2 equal payments one-half the difference between the fee assessment for the provider's particular class for fiscal year 1985-1986 and the fee assessment for the provider's class for fiscal year 1984-1985.

5. Include with the January 1, 1986, and the April 1, 1986, billing statements a fee assessment for the interest the fund could reasonably have expected to earn had the fee assessment for 1985-1986 been paid in total at the beginning of the fiscal year. The rate of interest shall be the average annualized rate earned by the fund for the preceding fiscal year as determined by the state investment board.

(b) No refunds due to changes in classification shall be given to health care providers until after January 1, 1986. Refunds due to death, retirement, or change of residence shall be determined on a pro rata basis of the fee assessments for fiscal year 1985-1986.

(c) Health care providers, except podiatrists, who begin practicing or operating at any time after July 1, 1985, and before December 31, 1985, shall be assessed and shall pay in one sum the pro rata fee subject to sub. (4) for fiscal year 1985-1986 from the date the provider begins practicing or operating through December 31, 1985. On January 1, 1986, or as soon as possible thereafter, the commissioner shall bill all health care providers except podiatrists who entered the fund after July 1, 1985, one-half of the fee assessment for fiscal year 1985-1986. With the January 1, 1986, billing notice, all health care providers shall be advised of their right to pay the remaining fee assessment in one payment or to pay the remaining fee assessment in 2 equal payments, the first payment to be made in January, 1986, and the second in April, 1986. Interest shall be assessed in accordance with par. (a) 5.

(d) Health care providers who begin practicing or operating at any time after January 1, 1986, and before June 30, 1986, shall be assessed and shall pay in one sum the pro-rata fee subject to sub. (4) for fiscal year 1985-1986 from the date the provider begins practicing or operating through June 30, 1986.

(e) Podiatrists who begin operating or practicing at any time after July 1, 1985 and before June 30, 1986 shall be assessed and shall pay in one sum the pro rata fee subject to sub. (4) for fiscal year 1984-1985 for the podiatrist's classification.

History: Cr. Register, June, 1980, No. 294, eff. 7-1-80; am. (6), Register, June, 1981, No. 306, eff. 7-1-81; r. and recr. (6), Register, June, 1982, No. 318, eff. 7-1-82; am. (6) (h) and (i), Register, August, 1982, No. 320, eff. 9-1-82, am. (6), Register, June, 1983, No. 330, eff. 7-1-83; am. (6) (i), Register, September, 1983, No. 333, eff. 10-1-83; am. (6) (intro.), (a) to (h), (j) and (r), Register, June, 1984, No. 342, eff. 7-1-84; am. (6) (i), Register, August, 1984, No. 344, eff. 9-1-84; am. (3) (c) and (6) (intro.), (a) to (e) 1., (f) to (h), (j) and (k), r. (intro.), cr. (3) (c) 1. to 9. and (7), Register, July, 1985, No. 355, eff. 8-1-85; am. (7) (a) 2. and (c), r. (7) (a) 5., renum. (7) (a) 3. and 4. to be 4. and 5. and am., cr. (7) (a) 3., Register, December, 1985, No. 360, eff. 1-1-86.

Ins 17.29 Servicing agent. (1) **PURPOSE.** The purpose of this section is to implement and interpret the provisions of s. 655.27 (2), Stats., relating to contracting for patients compensation fund services.

(2) **SCOPE.** This section applies to administration and staff services for the fund.

(3) **SELECTION.** The selection of a servicing agent shall conform with s. 16.765, Stats. The commissioner, with the approval of the board, shall select a servicing agent through the competitive negotiation process to provide services for the fund based on criteria established by the board.

(4) **TERM SERVED AND SELECTION FOR SUCCEEDING PERIODS.** The term served by the servicing agent shall be as established by the commissioner with the approval of the board but the contract shall include a provision for its cancellation if performance or delivery is not made in accordance with its terms and conditions.

(5) **FUNCTIONS.** (a) The servicing agent shall perform functions agreed to in the contract between the servicing agent and the office of the commissioner of insurance as approved by the board. The contract shall provide for an annual report to the commissioner and board of all expenses incurred and subcontracting arrangements.

(b) Additional functions to be performed by the servicing agent may include but are not limited to:

1. Hiring legal counsel.
2. Establishment and revision of case reserves.
3. Contracting for annuity payments as part of structured settlements.
4. Investigation and evaluation of claims.
5. Negotiation to settlement of all claims made against the fund except those responsibilities retained by the claim committee of the board.
6. Filing of reports to the board.
7. Review of panel decisions and court verdicts and recommendations of appeals as needed.

History: Cr. Register, February, 1984, No. 338, eff. 3-1-84.