

**ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE
AND THE
BOARD OF GOVERNORS OF THE INJURED PATIENTS AND FAMILIES
COMPENSATION FUND
AMENDING, AND REPEALING AND RECREATING A RULE**

To amend s. Ins 17.01 (3) Wis. Adm. Code, and to repeal and recreate s. Ins 17.28 (6), Wis. Adm. Code, relating to annual injured patients and families compensation fund fees and medical mediation panel fees for the fiscal year beginning July 1, 2010, and may have an effect on small business.

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 under these statutes:

The commissioner of insurance, with the approval of the board of governors (board) of the injured patients and families compensation fund (fund), is required to establish by administrative rule the annual fees which participating health care providers must pay to the fund and the annual fee due for the operation of the medical mediation panel.

4. Related statutes or rules:

None

5. The plain language analysis and summary of the proposed rule:

This rule establishes the fees that participating health care providers must pay to the fund for the fiscal year beginning July 1, 2010. These fees represent an 8.6% increase from fees paid for the 2009-10 fiscal year. The board approved these fees at its meeting on May 18, 2010

The board is also required to promulgate by rule the annual fees for the operation of the injured patients and families compensation 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 by establishing mediation panel fees for the next fiscal year at \$28.00 for physicians and \$6.00 per occupied bed for

hospitals, representing an increase of \$3.00 per physician and \$1.00 per occupied bed for hospitals from 2009-10 fiscal year mediation panel fees.

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

To the fund board's and OCI's knowledge there is no existing or proposed federal regulation that is intended to address patient compensation fund rates, administration or activities.

7. Comparison of similar rules in adjacent states as found by OCI:

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 these states have a patients compensation 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 and how any related findings support the regulatory approach chosen for the proposed rule:

None. This rule establishes annual fund fees pursuant to the requirements of the above-noted Wisconsin statutes.

9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:

This increase in fund fees and mediation panel fees will have an affect on some 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 entities. These increases will affect only those small businesses that pay the fund fees and mediation panel fees on behalf of their employed physicians. However, these increases will not have a significant effect nor should it negatively affect the small business's ability to compete with other providers.

10. See the attached Private Sector Fiscal Analysis.

The increase in fees promulgated by this rule does not result in a significant fiscal effect on the private sector. Although a health care provider may pass this increase on to its patients, there will not be a significant fiscal effect on the private sector as a result of this proposed rule.

11. A description of the Effect on Small Business:

This rule will have little or no effect on small businesses. The increase contained in the proposed rule will require providers to pay an increased fund fee and mediation panel fee which will increase the operational expenses for the providers. However, this increase is not considered to be significant and will have no effect on the provider's competitive abilities.

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:

The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

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OCI Rule Comment for Rule Ins 1701

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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, ~~2009~~ 2010:

(a) For physicians-- ~~\$25.00~~ \$28.00

(b) For hospitals, per occupied bed-- ~~\$5.00~~ \$6.00

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, 2010 to June 30, 2011:

(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 \$1,347 Class 3 \$5,387

Class 2 \$2,423 Class 4 \$8,888

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

Class 1 \$ 673 Class 3 \$2,693

Class 2 \$1,211 Class 4 \$4,444

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

All classes \$808

(d) For a medical college of Wisconsin, inc., full-time faculty member:

Class 1 \$542 Class 3 \$2,168

Class 2 \$969 Class 4 \$3,577

(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: \$ 337

2. For a physician who practices 1,040 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 \$ 808	Class 3 ... \$3,232
Class 2 \$1,455	Class 4 ... \$5,333

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

Class 1 \$ 673	Class 3 ... \$2,693
Class 2 \$1,211	Class 4 ... \$4,444

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

\$ 330

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

\$ 165

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

1. Per occupied bed \$ 81

2. Per 100 outpatient visits during the last calendar year for which totals are available: \$ 4.06

(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 \$ 16

(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 \$ 47

b. If the total number of partners and employed physicians and nurse anesthetists is from 11 to 100 \$ 465

c. If the total number of partners and employed physicians and nurse anesthetists exceeds 100 \$1,157

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 Persons</u>	<u>Fund Fee</u>
Nurse Practitioners	\$ 337
Advanced Nurse Practitioners	471
Nurse Midwives	2,963
Advanced Nurse Midwives	3,096
Advanced Practice Nurse Prescribers	471
Chiropractors	539
Dentists	269
Oral Surgeons	2,020
Podiatrists-Surgical	5,722
Optometrists	269
Physician Assistants	269

(L) For a corporation, including a service corporation, 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 \$ 47

b. If the total number of shareholders and employed physicians and nurse anesthetists is from 11 to 100 \$ 465

c. If the total number of shareholders and employed physicians or nurse anesthetists exceeds 100 \$1,157

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 Persons</u>	<u>Fund Fee</u>
Nurse Practitioners	\$ 337
Advanced Nurse Practitioners	471
Nurse Midwives	2,963
Advanced Nurse Midwives	3,096
Advanced Practice Nurse Prescribers	471
Chiropractors	539
Dentists	269
Oral Surgeons	2,020
Podiatrists-Surgical	5,722
Optometrists	269
Physician Assistants	269

(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 \$ 47

b. If the total number of employed physicians and nurse anesthetists is from 11 to 100 \$ 465

c. If the total number of employed physicians or nurse anesthetists exceeds 100 \$1,157

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 Persons</u>	<u>Fund Fee</u>
Nurse Practitioners	\$ 337
Advanced Nurse Practitioners	471
Nurse Midwives	2,963
Advanced Nurse Midwives	3,096
Advanced Practice Nurse Prescribers	471
Chiropractors	539
Dentists	269
Oral Surgeons	2,020
Podiatrists-Surgical	5,722
Optometrists	269
Physician Assistants	269

(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. 2.99% 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 Persons</u>	<u>Fund Fee</u>
Nurse Practitioners	\$ 337
Advanced Nurse Practitioners	471
Nurse Midwives	2,963

Advanced Nurse Midwives	3,096
Advanced Practice Nurse Prescribers	471
Chiropractors	539
Dentists	269
Oral Surgeons	2,020
Podiatrists-Surgical	5,722
Optometrists	269
Physician Assistants	269

(o) For a freestanding ambulatory surgery center, as defined in s. HFS 120.03 (13), per 100 outpatient visits during the last calendar year for which totals are available: \$ 21.00

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

1. 8% of the amount the entity pays as premium for its primary health care liability insurance, if it has occurrence coverage.
2. 11% 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 \$ 47
- b. If the total number of employed physicians and nurse anesthetists is from 11 to 100 \$ 465
- c. If the total number of employed physicians or nurse anesthetists exceeds 100 \$1,157

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

<u>Employed Health Care Persons</u>	<u>Fund Fee</u>
Nurse Practitioners	\$ 337
Advanced Nurse Practitioners	471
Nurse Midwives	2,963
Advanced Nurse Midwives	3,096
Advanced Practice Nurse Prescribers	471
Chiropractors	539
Dentists	269
Oral Surgeons	2,020
Podiatrists-Surgical	5,722
Optometrists	269
Physician Assistants	269

SECTION 3. These changes 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 _____, 2010.

Sean Dilweg
Commissioner of Insurance

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Section Ins 17.01(3), and 17.28(6) relating to fiscal year 2011 fund
fees and mediation panel fees and affecting small business

This rule change will have no significant effect on the private sector regulated by OCI.

