

Clearinghouse Rule 07-001

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, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting Section Ins 17.25 (12m) and 17.28 (6s), Wis. Adm. Code, relating to Peer Review Surcharge Rates.

**HEARING INFORMATION**

**Date:** February 19, 2007  
**Time:** 9:30 a.m., or as soon thereafter as the matter may be reached  
**Place:** OCI, Room 227, 125 South Webster St 2<sup>nd</sup> Floor, Madison, WI

Written comments can be mailed to:

Theresa Wedekind  
OCI Rule Comment for Rule Ins 1725  
Office of the Commissioner of Insurance  
PO Box 7873  
Madison WI 53707-7873

Written comments can be hand delivered to:

Theresa Wedekind  
OCI Rule Comment for Rule Ins 1725  
Office of the Commissioner of Insurance  
125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53702

Comments can be emailed to:

Theresa Wedekind  
Theresa.Wedekind@oci.state.wi.us

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

The deadline for submitting comments is 4:00 p.m. on the 8<sup>th</sup> day after the date for the hearing stated in this Notice of Hearing.

**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**

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:  
Insurance agents, LSHO, Town Mutuals, Small Insurers, etc.
- 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 Eileen Mallow and may be reached at phone number (608) 266- 7843 or at email address [Eileen.Mallow@oci.state.wi.us](mailto:Eileen.Mallow@oci.state.wi.us)

## **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, Services Section, OCI, at: [Inger.Williams@OCI.State.WI.US](mailto:Inger.Williams@OCI.State.WI.US), (608) 264-8110, 125 South Webster Street – 2<sup>nd</sup> Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

**PROPOSED 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**

The office of the commissioner of insurance and the board of governors of the injured patients and families compensation fund propose an order to repeal and recreate s. Ins 17.25 (12m) and Ins 17.28 (6s), Wis Adm Code, relating to fund peer review surcharge rates for the injured patients and families compensation fund and for the wisconsin health care liability insurance plan and may have an effect on small business.

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

- 1. Statutes interpreted:** ss. 655.27 (3), and 619.04 (5m), Wis Stats.
- 2. Statutory authority:** ss. 601.41 (3), 619.04 (5m) and 655.27 (3) (bg), Wis Stats.
- 3. Explanation of the 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) and the Wisconsin health care liability insurance plan (plan), is required to establish by administrative rule the surcharge rates which may be applied to a health care provider's annual fund fee, and provider annual premium if participating in the plan, based upon recommendations from the fund's peer review council.

**4. Related Statutes or rules:**

None.

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

This rule establishes the surcharge rates which a health care provider may be required to pay to the fund or the plan. These surcharge rates are based upon the number of claims paid on behalf of a health care provider in addition to the dollar amount of those claims. Paid claim reports are reviewed by the fund's peer review council and if deemed appropriate the council makes a recommendation to the board of governors to assess a surcharge to the health care provider for their coverage under the fund. The board approved these surcharge rates at its meeting

on December 14, 2005, based on the recommendation of the board's actuarial and underwriting committee and reports of the fund's actuaries.

**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 peer review 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 peer review council 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 peer review surcharge rates 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:**

The effect to small business would be minimal. The surcharge is applied only to individual health care providers. The only effect to small business would be if a surcharged was imposed upon a health care provider who was employed by a small business which paid medical malpractice insurance premium on the provider's behalf.

**10. If these changes may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by private sector in complying with the rule:**

The effect to small business would be minimal as stated in number 9 above.

**11. A description of the Effect on Small Business:**

This rule will have very little effect on small businesses.

**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 sites at: <http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110

Email: Inger.Williams@OCI.State.WI.US

Address: 125 South Webster St – 2<sup>nd</sup> Floor Madison WI 53702

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 4:30p.m. on February 27, 2006.

Mailing address:

Theresa Wedekind  
OCI Rule Comment for Rule Ins 17287 PCF fee rule  
Office of the Commissioner of Insurance  
PO Box 7873  
Madison WI 53707-7873

Street address:

Theresa Wedekind  
OCI Rule Comment for Rule Ins 17287 PCF fee rule  
Office of the Commissioner of Insurance  
125 South Webster St – 2<sup>nd</sup> Floor  
Madison WI 53702

WEB Site: <http://oci.wi.gov/ocirules.htm>

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**The proposed rule changes are:**

**SECTION 1. Ins 17.25 (12m) is repealed and recreated to read:**

Ins 17.25 (12m) PREMIUM SURCHARGE TABLES. (a) This subsection implements s. 619.04 (5m) (a) Stats., requiring the establishment of an automatic increase in provider’s plan premium based on loss and expense experience.

(b) In this subsection:

1. “Aggregate indemnity” has the meaning giving under s. Ins 17.285 (2) (a).
2. “Closed claim” has the meaning given under s. Ins 17.285 (2) (b).
3. “Provider” has the meaning given under s. Ins 17.285 (2) (d)
4. “Review period” has the meaning given under s. Ins 17.285 (2) (e)

(c) The following tables shall be used in making the determinations required under s. Ins 17.285 as to the percentage increase in a provider’s plan premium:

1. For a class 1 and class 8 physician, podiatrist, nurse anesthetist, nurse midwife, nurse practitioner or cardiovascular perfusionist:

Aggregate Indemnity	<u>Number of Closed Claims During Review Period</u>
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During Review Period	Number of Closed Claims During Review Period			
	1	2	3	4 or more
Up to \$118,000	0%	0%	0%	0%
\$118,001 to \$585,000	0%	10%	25%	50%
\$585,001 to \$1,571,000	0%	25%	50%	100%
Greater Than \$1,571,000	0%	50%	100%	200%

2. For a class 2 physician:

Aggregate Indemnity During Review Period	Number of Closed Claims During Review Period			
	1	2	3	4 or more
Up to \$193,000	0%	0%	0%	0%
\$193,001 to \$779,000	0%	10%	25%	50%
\$779,001 to \$1,836,000	0%	25%	50%	100%
Greater Than \$1,836,000	0%	50%	100%	200%

3. For a class 3 physician:

Aggregate Indemnity During Review Period	Number of Closed Claims During Review Period			
	1	2	3	4 or more
Up to \$211,000	0%	0%	0%	0%
\$211,001 to \$852,000	0%	10%	25%	50%
\$852,001 to \$2,215,000	0%	25%	50%	100%
Greater Than \$2,215,000	0%	50%	100%	200%

4. For a class 4 physician:

Aggregate Indemnity During Review Period	Number of Closed Claims During Review Period			
	1	2	3	4 or more
Up to \$302,000	0%	0%	0%	0%
\$302,001 to \$1,012,000	0%	10%	25%	50%
\$1,012,001 to \$2,886,000	0%	25%	50%	100%
Greater Than \$2,886,000	0%	50%	100%	200%

5. For a class 5A physician:

Aggregate Indemnity During Review Period	Number of Closed Claims During Review Period			
	1	2	3	4 or more
Up to \$244,000	0%	0%	0%	0%

\$244,001 to \$892,000	0%	10%	25%	50%
\$892,001 to \$2,328,000	0%	25%	50%	100%
Greater Than \$2,328,000	0%	50%	100%	200%

6. For a class 5 physician:

Aggregate Indemnity During Review Period	Number of Closed Claims During Review Period				
	1	2	3	4	5
Up to \$676,000	0%	0%	0%	0%	0%
\$676,001 to \$1,033,000	0%	0%	10%	25%	50%
\$1,033,001 to \$1,769,000	0%	0%	25%	50%	75%
\$1,769,001 to \$3,923,000	0%	0%	50%	75%	100%
Greater than \$3,923,000	0%	0%	75%	100%	200%

7. For a class 6 physician:

Aggregate Indemnity During Review Period	Number of Closed Claims During Review Period				
	1	2	3	4	5
Up to \$731,000	0%	0%	0%	0%	0%
\$731,001 to \$1,163,000	0%	0%	10%	25%	50%
\$1,163,001 to \$1,982,000	0%	0%	25%	50%	75%
\$1,982,001 to \$4,215,000	0%	0%	50%	75%	100%
Greater than \$4,215,000	0%	0%	75%	100%	200%

8. For a class 7 physician:

Aggregate Indemnity During Review Period	Number of Closed Claims During Review Period				
	1	2	3	4	5
Up to \$804,000	0%	0%	0%	0%	0%
\$804,001 to \$1,292,000	0%	0%	10%	25%	50%
\$1,292,001 to \$2,194,000	0%	0%	25%	50%	75%
\$2,194,001 to \$4,482,000	0%	0%	50%	75%	100%
Greater than \$4,482,000	0%	0%	75%	100%	200%

9. For a class 9 physician:

Aggregate Indemnity During Review Period	Number of Closed Claims During Review Period				
	1	2	3	4	5
Up to \$1,861,000	0%	0%	0%	0%	0%
\$1,861,001 to \$2,616,000	0%	0%	10%	25%	50%
\$2,616,001 to \$4,467,000	0%	0%	25%	50%	75%
\$4,467,001 to \$10,294,000	0%	0%	50%	75%	100%
Greater than \$10,294,000	0%	0%	75%	100%	200%

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

Ins 17.28 (6s) SURCHARGE. (a) This subsection implements s. 655.27 (3) (bg) 1., Stats., requiring the establishment of an automatic increase in provider’s fund fee based on loss and expense experience.

(b) In this subsection:

1. “Aggregate indemnity” has the meaning giving under s. Ins 17.285 (2) (a).
2. “Closed claim” has the meaning given under s. Ins 17.285 (2) (b).
3. “Provider” has the meaning given under s. Ins 17.285 (2) (d)
4. “Review period” has the meaning given under s. Ins 17.285 (2) (e)

(c) The following tables shall be used in making the determinations required under s. Ins 17.285 as to the percentage increase in a provider’s fund fee:

1. For a class 1 physician or a nurse anesthetist:

Aggregate Indemnity During Review Period	Number of Closed Claims During Review Period			
	1	2	3	4 or more
Up to \$118,000	0%	0%	0%	0%
\$118,001 to \$585,000	0%	10%	25%	50%
\$585,001 to \$1,571,000	0%	25%	50%	100%
Greater Than \$1,571,000	0%	75%	100%	200%

2. For a class 2 physician:

Aggregate Indemnity During Review Period	Number of Closed Claims During Review Period			
	1	2	3	4 or more
Up to \$226,000	0%	0%	0%	0%
\$226,001 to \$859,000	0%	10%	25%	50%
\$859,001 to \$2,212,000	0%	25%	50%	100%
Greater Than \$2,212,000	0%	50%	100%	200%

3. For a class 3 physician:



Aggregate Indemnity During Review Period	Number of Closed Claims During Review Period				
	1	2	3	4	5
Up to \$676,000	0%	0%	0%	0%	0%
\$676,001 to \$1,066,000	0%	0%	10%	25%	50%
\$1,066,001 to \$1,822,000	0%	0%	25%	50%	75%
\$1,822,001 to \$3,996,000	0%	0%	50%	75%	100%
Greater than \$3,996,000	0%	0%	75%	100%	200%

4. For a class 4 physician:

Aggregate Indemnity During Review Period	Number of Closed Claims During Review Period				
	1	2	3	4	5
Up to \$931,000	0%	0%	0%	0%	0%
\$931,001 to \$1,451,000	0%	0%	10%	25%	50%
\$1,451,001 to \$2,467,000	0%	0%	25%	50%	75%
\$2,467,001 to \$5,179,000	0%	0%	50%	75%	100%
Greater than \$5,179,000	0%	0%	75%	100%	200%

**SECTION 5** EFFECTIVE DATE. This rule will take effect on July 1, 2007.

Dated at Madison, Wisconsin, this \_\_\_ day of \_\_\_\_\_ 2007.

\_\_\_\_\_  
Sean Dilweg  
Commissioner of Insurance

**Section 1.**

**Office of the Commissioner of Insurance  
Private Sector Fiscal Analysis**

for Rule Ins 17.25 (12m) and 17.28 (6s) peer review surcharge rates relating to annual injured patients and families compensation fund fees and wisconsin health care liability insurance plan premium rates

The changes in the surcharge rates promulgated by this rule do not result in a significant fiscal effect on the private sector. The cost of fund coverage is a very small portion of the expenses incurred by health care providers. The plan insures a relatively small number of health care provider, approximately 300, and therefore the potential for any significant impact is very minimal.

These surcharge rates have not been revised since the implementation of the peer review surcharge in 1980. Although a health care provider may pass any increase resulting from a surcharge on to its patients, there will not be a significant fiscal effect on the private sector as a result of this proposed rule.

# FISCAL ESTIMATE WORKSHEET

## Detailed Estimate of Annual Fiscal Effect

 ORIGINAL

 UPDATED

 CORRECTED

 SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number <b>INS 17.25 and INS 17.28</b>

**Subject**

annual injured patients and families compensation fund fees for fiscal year beginning July 1, 2006

**One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

**None**

Annualized Costs:	Annualized Fiscal impact on State funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations - Salaries and Fringes	\$ 0	\$ -0
(FTE Position Changes)	(0 FTE)	(-0 FTE)
State Operations - Other Costs	0	-0
Local Assistance	0	-0
Aids to Individuals or Organizations	0	-0
TOTAL State Costs by Category	\$ 0	\$ -0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$ 0	\$ -0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
C. State Revenues	Increased Rev.	Decreased Rev.
GPR Taxes <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	\$ 0	\$ -0
GPR Earned	0	-0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
TOTAL State Revenues	\$ 0 None	\$ -0 None

### NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ <u>None 0</u>	\$ <u>None 0</u>
NET CHANGE IN REVENUES	\$ <u>None 0</u>	\$ <u>None 0</u>

Prepared by: Theresa Wedekind	Telephone No. 608-266-0953	Agency IPFCF/OCII
Authorized Signature:	Telephone No.	Date (mm/dd/ccyy) 1/4/2007



## FISCAL ESTIMATE

ORIGINAL                       UPDATED  
 CORRECTED                       SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number <b>INS 17.25 and Ins 17.28</b>

**Subject**  
annual injured patients and families compensation fund fees for fiscal year beginning July 1, 2007

**Fiscal Effect**  
**State:**  No State Fiscal Effect  
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Decrease Costs
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**Local:**  No local government costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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<b>Fund Sources Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>Affected Chapter 20 Appropriations</b>
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**Assumptions Used in Arriving at Fiscal Estimate**

The Injured Patients and Families Compensation Fund (IPFCF or Fund) is a segregated fund. Annual Fund fees are established to become effective each July 1 based on actuarial estimates of the Fund's needs for payment of medical malpractice claims. Health care providers may have a surcharge levied on their fund fees based upon claims experience, pursuant to a recommendation by the Fund's Peer Review Council. The proposed revisions to the surcharge tables were approved by the Fund's Board of Governors at its December 14, 2005 meeting.

The Fund is a unique fund; there are no other funds like it in the country. The WI Fund provides unlimited liability coverage and participation is mandatory. These two features make this Fund unique compared to funds in other states. The only persons who will be affected by this rule change are the Fund participants themselves as the IPFCF is fully funded through assessments paid by Fund participants.

The Wisconsin Health Care Liability Insurance Plan was created by statute and is a licensed insurance company. The insurance operations are funded by premiums paid by insured health care providers.

There is no effect on GPR.

**Long-Range Fiscal Implications**

**None**

<b>Prepared by:</b> Theresa Wedekind	<b>Telephone No.</b> (608) 266-0953	<b>Agency</b> IPFCF
<b>Authorized Signature:</b>	<b>Telephone No.</b>	<b>Date (mm/dd/ccyy)</b> 1-4-07

