

★★★ **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 17.01 (3) and 17.28 (6), Wis. Adm. Code, relating to Fiscal year 2008 Fund fees.

**HEARING INFORMATION**

**Date:** February 19, 2007  
**Time:** 10:30 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 1728  
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 1728  
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.

**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 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 patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2007 and may have an effect on small businesses.

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**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 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), 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 which participating health care providers must pay to the fund for the fiscal year beginning July 1, 2007. These fees represent a 5 % increase compared with fees paid for the 2006-07 fiscal year. The board approved these fees at its meeting on December 20, 2006, 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 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 which recommended to the board an amount slightly less than what was requested based in part upon the ending balance in the mediation system projected financials. This rule implements the funding level approved by the board by establishing mediation panel fees for the next fiscal year at \$17.00 for physicians and \$1.00 per occupied bed for hospitals, representing a decrease of \$8.00 per physician and \$1.00 per occupied bed for hospitals from 2006-07 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 will have an effect on some small businesses in Wisconsin. However, the vast majority of fund participants that meet the definition of a small business are single shareholder corporations owned by a physician. These entities do not pay an additional fee separate from the fund fee physicians pay for their individual fund coverage and, therefore, will not be affected by the proposed rule. The fund identified a few small businesses which meet the definition of small business and that may pay an additional fee separate from the physician fee. These small businesses include some small multi-shareholder corporations that pay an additional fee to the fund based upon the number of shareholder physicians and employed physicians. However, even for these few entities, although there is an effect it is not significant nor should it negatively effect the small business's ability to compete with other providers not subject to potential additional fee.

**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 increase in fees promulgated by this rule does 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. Fund fees prior to this increase are 26% less than they were 5 years ago and after this increase will still be 23% less than 5 years ago. 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 assessment which will increase the operational expenses for the providers. However, as stated in response to #10, above, while this proposed rule increases fund fees, the fees that will be assessed are still 26% lower than fees paid 5 years ago and the fee is proportional to all size businesses. As such, small businesses will not be disproportionately affected and the proposed rule 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 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](mailto: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 17288 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 17288 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>**

**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, ~~2006~~2007:

(a) For physicians-- ~~\$25.00~~17.00

(b) For hospitals, per occupied bed-- ~~\$2.00~~1.00

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

Ins 17.28 (6) FEE SCHEDULE. The following fee schedule is in effect from July 1, 2007 to June 30, 2008:

(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	\$ 1,128	Class 3	\$ 4,681
Class 2	\$ 2,030	Class 4	\$ 6,768

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

Class 1	\$ 564	Class 3	\$ 2,341
Class 2	\$ 1,015	Class 4	\$ 3,384

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

All classes	\$ 677
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(d) For a medical college of Wisconsin, inc., full-time faculty member:

Class 1	\$ 454	Class 3	\$ 1,872
Class 2	\$ 812	Class 4	\$ 2,706

(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: \$ 282

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 who's 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	\$ 677	Class 3	\$ 2,810
Class 2	\$ 1,219	Class 4	\$ 4,062

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

Class 1	\$ 564	Class 3	\$ 2,341
Class 2	\$ 1,015	Class 4	\$ 3,384

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

\$ 277

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

\$ 139

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

1. Per occupied bed \$ 68

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

\$ 3.40

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

Per occupied bed \$ 14

(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 \$ 39

b. If the total number of partners and employed physicians and nurse anesthetists is from 11 to 100 \$ 389

c. If the total number of partners and employed physicians and nurse anesthetists exceeds 100 \$ 969

2. The following fee for each of the following employees employed by the partnership as of July 1, 2007:

Employed Health Care Persons	July 1, 2007 Fund Fee
Nurse Practitioners	\$ 282
Advanced Nurse Practitioners	395
Nurse Midwives	2,482
Advanced Nurse Midwives	2,594
Advanced Practice Nurse Prescribers	395
Chiropractors	451
Dentists	226
Oral Surgeons	1,692
Podiatrists-Surgical	4,794
Optometrists	226
Physician Assistants	226

(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 \$ 39



b. If the total number of shareholders and employed physicians and nurse anesthetists is from 11 to 100 \$ 389

c. If the total number of shareholders and employed physicians or nurse anesthetists exceeds 100 \$ 969

2. The following for each of the following employees employed by the corporation as of July 1, 2007:

Employed Health Care Persons	July 1, 2007 Fund Fee
Nurse Practitioners	\$ 282
Advanced Nurse Practitioners	395
Nurse Midwives	2,482
Advanced Nurse Midwives	2,594
Advanced Practice Nurse Prescribers	395
Chiropractors	451
Dentists	226
Oral Surgeons	1,692
Podiatrists-Surgical	4,794
Optometrists	226
Physician Assistants	226

(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 \$ 39

b. If the total number of employed physicians and nurse anesthetists is from 11 to 100 \$ 389

c. If the total number of employed physicians or nurse anesthetists

exceeds 100 \$ 969

2. The following for each of the following employees employed by the corporation as of July 1, 2007:

Employed Health Care Persons	July 1, 2007 Fund Fee
Nurse Practitioners	\$ 282
Advanced Nurse Practitioners	395
Nurse Midwives	2,482
Advanced Nurse Midwives	2,594
Advanced Practice Nurse Prescribers	395
Chiropractors	451
Dentists	226
Oral Surgeons	1,692
Podiatrists-Surgical	4,794
Optometrists	226
Physician Assistants	226

(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 \$ 0.08

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

3. The following for each of the following employees employed by the operational cooperative sickness plan as of July 1, 2007:

Employed Health Care Persons	July 1, 2007 Fund Fee
Nurse Practitioners	\$ 282

Advanced Nurse Practitioners	395
Nurse Midwives	2,482
Advanced Nurse Midwives	2,594
Advanced Practice Nurse Prescribers	395
Chiropractors	451
Dentists	226
Oral Surgeons	1,692
Podiatrists-Surgical	4,794
Optometrists	226
Physician Assistants	226

(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:

\$ 17.00

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

1. 7% of the amount the entity pays as premium for its primary health care liability insurance, if it has occurrence coverage.

2. 10% 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

\$ 39

b. If the total number of employed physicians and nurse anesthetists is from 11 to 100 \$ 389

c. If the total number of employed physicians or nurse anesthetists exceeds 100 \$ 969

2. The following for each of the following employees employed by the organization or enterprise not specified as a partnership or corporation as of July 1, 2007:

Employed Health Care Persons	July 1, 2007 Fund Fee
Nurse Practitioners	\$ 282
Advanced Nurse Practitioners	395
Nurse Midwives	2,482
Advanced Nurse Midwives	2,594
Advanced Practice Nurse Prescribers	395
Chiropractors	451
Dentists	226
Oral Surgeons	1,692
Podiatrists-Surgical	4,794
Optometrists	226
Physician Assistants	226

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

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

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Sean Dilweg  
Commissioner of Insurance



**Section 1.**

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

for Rule Ins 17.28 PCF fee rule relating to annual injured patients and families compensation fund fees for fiscal year beginning July 1, 2007

The increase in fees promulgated by this rule does 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. Fund fees prior to this increase are 26% less than they were 5 years ago and after this increase will still be 23% less than 5 years ago. 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.

**Wisconsin Department of Administration**

Division of Executive Budget and Finance

DOA-2047 (R10/2000)

**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 17.28</b>

**Subject**

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

**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:	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
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>B. State Costs by Source of Funds</b>		Increased Costs	Decreased Costs
GPR		\$ 0	\$ -0
FED		0	-0
PRO/PRS		0	-0
SEG/SEG-S		0	-0
<b>C. State Revenues</b>	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes		\$ 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>

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





### FISCAL ESTIMATE

- ORIGINAL                       UPDATED  
 CORRECTED                       SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number <b>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.  
 Increase Existing Appropriation                       Increase Existing Revenues  
 Decrease Existing Appropriation                       Decrease Existing Revenues  
 Create New Appropriation  
 Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No  
 Decrease Costs

**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. The proposed fees were approved by the Fund's Board of Governors at its December 20, 2006 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.

There is no effect on GPR.

Estimated revenue from fees for fiscal year 2007-2008 is approximately \$25.2 million which represents a 5% increase in fees as compared to 2006-2007 Fund fees.

**Long-Range Fiscal Implications**

**None**

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