

Clearinghouse Rule 08-006

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 17.01 (3) and 17.28 (6), Wis. Adm. Code, relating to fund fees and mediation panel fees for fiscal year 2009 and affecting small business.

HEARING INFORMATION

Date: March 4, 2008

Time: 10:00 a.m., or as soon thereafter as the matter may be reached

Place: OCI, Room 223, 125 South Webster St 2nd Floor, Madison, WI

Written comments can be mailed to:

Theresa L. 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 L. Wedekind
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:

Theresa L. Wedekind
theresa.wedekind@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 the 14th 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.

**PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE
AND THE
BOARD OF GOVERNORS OF THE INJURED PATIENTS AND FAMILIES
COMPENSATION FUND
AMENDING 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 ss. Ins 17. 01 (3) and 17.28 (6) (intro.), (6) (k) 2., (6) (L) 2., (6) m)2., (6) (n) 3., (6) (q) 2., Wis. Adm. Code, relating to annual patients compensation fund and mediation panel fees for the fiscal year beginning July 1, 2008 and may have an affect 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 (12), 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 which participating health care providers must pay to the fund for the fiscal year beginning July 1, 2008. These fees represent a 0% change with fees paid for the 2007-08 fiscal year. The board approved these fees at its meeting on December 12, 2007, 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. This rule implements the funding level approved by the board by establishing mediation panel fees for the next fiscal year at \$18.00 for physicians and \$2.50 per occupied bed for hospitals, representing a increase of \$1.00 per physician and \$1.50 per occupied bed for hospitals from 2007-08 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 mediation panel fees will have an effect on some small businesses in Wisconsin. The mediation panel fee is assessed only on physicians and hospitals, not on corporations or other health care entities. The increase will affect only those small business that pay the mediation panel fees on behalf of their employed physicians. However, the increase in the mediation panel fee 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. The cost of mediation panel fees is a very small portion of the expenses incurred by health care providers. 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 mediation panel fee which will increase the operational expenses for the providers. However, this increase is very minimal 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:

Theresa L. Wedekind
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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Email address:

Theresa L. Wedekind
theresa.wedekind@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, ~~2007~~2008:

- (a) For physicians-- ~~\$25.00~~18.00
- (b) For hospitals, per occupied bed-- ~~\$1.00~~2.50

SECTION 2. Ins 17.28 (6) (intro.), (k) 2., (L) 2., (m) 2., (n) 3., (q) 2. is amended to read:

Ins 17.28 (6) FEE SCHEDULE. The following fee schedule is in effect from July 1, ~~2007~~ 2008 to June 30, ~~2008~~2009:

(6) (k) 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

(6) (L) 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

(6) (m) 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

(6) (n) 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

(6) (q) 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 3. EFFECTIVE DATE. This rule will take effect on July 1, 2008.

Dated at Madison, Wisconsin, this ___ day of _____ 2008.

Sean Dilweg
Commissioner of Insurance

Section 1.

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

for Section Ins 17.01 (3) and 17.28 (6) relating to fund fees and mediation panel fees for fiscal year 2009 and affecting small business beginning July 1, 2008

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 mediation panel fee which will increase the operational expenses for the providers. However, this increase is very minimal and will have no effect on the provider's competitive abilities.

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 INS 17.28

Subject annual injured patients and families compensation fund fees and mediation panel fees for fiscal year beginning July 1, 2009

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
A. State Costs by Category		
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		
GPR	\$ 0	\$ -0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
C. State Revenues <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	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>

Prepared by: Theresa Wedekind	Telephone No. 608-266-0953	Agency IPFCF/OCII
Authorized Signature:	Telephone No.	Date (mm/dd/ccyy) 1/9/2008

FISCAL ESTIMATE

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 17.28

Subject annual injured patients and families compensation fund fees and mediation panel fees for fiscal year beginning July 1, 2008		
Fiscal Effect State: <input checked="" type="checkbox"/> 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		
Local: <input checked="" type="checkbox"/> 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		
Fund Sources Affected <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		Affected Chapter 20 Appropriations
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 12, 2007 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.		
Long-Range Fiscal Implications <p style="text-align: center;">None</p>		
Prepared by: Theresa Wedekind	Telephone No. (608) 266-0953	Agency IPFCF/OCI
Authorized Signature:	Telephone No.	Date (mm/dd/ccyy) 1/9/2008

