

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 17.28 (3h), Wis. Adm. Code, relating to Supervision and Direction.

HEARING INFORMATION

Date: September 9, 2009

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

Place: OCI, Room 227, 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.

OCI SMALL BUSINESS REGULATORY COORDINATOR

This rule does not impose any additional requirements on small businesses.

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266-7843 or at email address eileen.mallow@wisconsin.gov

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, Public Information and Communications, OCI, at: inger.williams@wisconsin.gov, (608) 264-8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

**PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE
CREATING A RULE**

To create Ins 17.28 (3h), Wis. Adm. Code,

Relating to Supervision and Direction.

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

1. Statutes interpreted:

ss. 655.005 (2) (a).

2. Statutory authority:

ss. 601.41 (3), 655.004, Stats.

3. Explanation of OCI's authority to promulgate the proposed rule under these statutes:

The commissioner of insurance may promulgate such rules under ch. 227 as are necessary to enable the performance of responsibilities under chapter 655 Stats.

4. Related statutes or rules:

None

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

This rule clarifies what constitutes direction and supervision of a health care provider's employees defined under s. 655.001 (7t) Wis. Stat., as it relates to the health care provider having employee coverage under the fund.

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 administration.

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 patient compensation fund created by statute.

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:

The fund's board of governors established a special committee to review issues related to fund coverage. The committee determined that a rule was needed to clarify the meaning of direction and supervision of health care practitioners. The committee recommended to the board the proposed language and the recommendation was approved by the board.

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 rule will have no effect on small business.

10. See the attached Private Sector Fiscal Analysis.

This rule will have no fiscal impact.

11. A description of the Effect on Small Business:

This rule will have no effect on OCI regulated 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 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:

Theresa L. Wedekind

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Office of the Commissioner of Insurance

125 South Webster St – 2nd Floor

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theresa.wedekind@wisconsin.gov

Web site: **<http://oci.wi.gov/ocirules.htm>**

The proposed rule changes are:

SECTION 1. Ins 17.28 (3h) is created to read:

(3h) SUPERVISION AND DIRECTION.

(a) For the purposes of clarifying s. 655.005(2)(a), health care services that are “under the direction and supervision of a physician or nurse anesthetist” include, but are not limited to the health care services being provided pursuant to and within the scope of the health care practitioner’s professional license and :

1. The health care practitioner is subject to a quality assurance program, peer review process, or other similar program or process that is implemented for and designed to ensure the provision of competent and quality patient care and that program or process also includes participation by a physician or a nurse anesthetist; or
2. The health care services are provided by the health care practitioner within the scope of standing orders, protocols, procedures or clinical practice guidelines established or approved by a physician or nurse anesthetist.

SECTION 2. These changes will 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 _____, 2009.

Sean Dilweg
Commissioner of Insurance

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Section Ins 17.28 (3h) relating to Supervision and Direction

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

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 1728

Subject

Supervision and Direction

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 | | 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 | | \$ 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

| | | | |
|------------------------|-----------|-----------|--|
| | STATE | LOCAL | |
| NET CHANGE IN COSTS | \$ None 0 | \$ None 0 | |
| NET CHANGE IN REVENUES | \$ None 0 | \$ None 0 | |

| | | |
|--|--|----------------------------|
| Prepared by: Theresa L. Wedekind | Telephone No. (608) 266-0953 | Agency Insurance |
| Authorized Signature: | Telephone No. | Date (mm/dd/ccyy) |

FISCAL ESTIMATE

☒ ORIGINAL

☐ UPDATED

☐ CORRECTED

☐ SUPPLEMENTAL

LRB Number

Amendment No. if Applicable

Bill Number

Administrative Rule Number

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Subject

Supervision and Direction

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. ☐ Increase Costs

☐ Permissive ☐ Mandatory

2. ☐ Decrease Costs

☐ Permissive ☐ Mandatory

3. ☐ Increase Revenues

☐ Permissive ☐ Mandatory

4. ☐ Decrease Revenues

☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:

☐ Towns ☐ Villages ☐ Cities

☐ Counties ☐ Others _____

☐ School Districts ☐ WTCS Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ 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 that provides excess medical malpractice coverage to Wisconsin health care providers. Chapter 655 Wis. Stat. provides employee coverage to health care providers although specific health care practitioners must practice under the supervision and direction of a physician or CRNA. This rule clarifies supervision and direction and has no fiscal effect.

There is no effect on GPR.

Long-Range Fiscal Implications

None

Prepared by:

Theresa L. Wedekind

Telephone No.

(608) 266-0953

Agency

Insurance

Authorized Signature:

Telephone No.

Date (mm/dd/ccyy)