

★★★ **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 2<sup>nd</sup> 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 – 2<sup>nd</sup> 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 14<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.

## **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](mailto: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](mailto:inger.williams@wisconsin.gov), (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  
CREATING A RULE**

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

**Relating to** Supervision and Direction.

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**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](mailto:inger.williams@wisconsin.gov)

Address: 125 South Webster St – 2<sup>nd</sup> 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 14<sup>th</sup> 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

OCI Rule Comment for Rule Ins 1728

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125 South Webster St – 2<sup>nd</sup> Floor

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Email address:

Theresa L. Wedekind

[theresa.wedekind@wisconsin.gov](mailto: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.

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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 <b>INS 1728</b>

**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:	
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 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 <b>INS 1728</b>

**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.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<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
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation		

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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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
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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 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)