

★★★ **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 and 227.24 (4), Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting s. Ins 17.01 (3) and 17.28, Wis. Adm. Code, relating to Injured Patients and Families Compensation Fund annual fund fees and mediation panel fees for fiscal year 2013 and affecting small business.

**HEARING INFORMATION**

**Date: June 19, 2012**

**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:

Julie E. Walsh  
Legal Unit - 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:

Julie E. Walsh  
Legal Unit - 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:

Julie E. Walsh  
julie.walsh@wisconsin.gov

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 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.

## **INITIAL REGULATORY FLEXIBILITY ANALYSIS**

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

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:  
Health care providers and possibly businesses to the extent any increase in fund fees is forwarded to employers.
- 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 Louie Cornelius and may be reached at phone number (608) 264-8113 or at email address [louie.cornelius@wisconsin.gov](mailto:louie.cornelius@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  
AMENDING, REPEALING AND RECREATING A RULE**

**To amend** Ins 17.01 (3);

**To repeal and recreate** Ins 17.28 (6); Wis. Adm. Code,

**Relating to** the injured patients and families compensation fund annual fund fees and mediation panel fees for fiscal year 2013 and affecting 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 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 OCI's authority to promulgate the proposed rule under these statutes:**

The injured patients and families compensation fund (fund), was established by and operated under ch. 655, Stats. The commissioner of insurance with approval of the board of governors (board) is required to annually set the fees for the fund and the medical mediation panel by administrative rule. Section 655.04, Stats., provides that the director of state courts and the commissioner may promulgate rules necessary to enable them to perform their responsibilities under this chapter. Pursuant to s. 655.27 (3) (b), Stats., the commissioner, after approval by the board, shall by rule set the fees to the fund and s. 655.61, Stats., requires the board, by rule, to set the fees charged to health care providers at a level sufficient to provide the necessary revenue to fund the medical mediation panels. Further, s. 601.41 (3), Stats., provides that the commissioner shall have rule-making authority pursuant to s. 227.11 (2), Stats.

**4. Related statutes or rules:**

None.

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

This proposed rule establishes the fees that participating health care providers must pay to the fund for the fiscal year beginning July 1, 2012. These fees represent a 5% increase from fees paid for the 2011-12 fiscal year. The board approved these fees at its meeting on December 14, 2011, 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 medical 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 \$22.50 for physicians and \$4.50 per occupied bed for hospitals, representing a decrease of \$2.50 per physician and a decrease of \$0.50 per occupied bed for hospitals from 2011-12 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 fund rates, administration or to fund medical mediation panel 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 adjacent states have a 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:**

This rule establishes annual fund fees and mediation panel fees pursuant to the requirements of the above-noted Wisconsin statutes. The recommendation to the board regarding the fund fee and the medical mediation panel assessment is developed by an actuarial firm under contract with the fund. The actuarial firm outlines its assumptions and trending data in a report to the board's actuarial and underwriting committee. After information is presented, the report and supporting documentation is discussed and results in a recommendation to the board. The chair of the actuarial and underwriting committee presents the information and the actuary's report to the board for consideration. This proposed rule reflects the rates approved by the board at the December 14, 2011 board meeting.

**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, particularly those that employ physicians and other health care professionals. The mediation panel fee is assessed only on physicians and hospitals, not on corporations or other health care entities. The fund fee increases will affect only those small businesses that pay the fund fees and mediation panel fees on behalf of their employed physicians. However, the fund fee increase will not have a significant effect nor should it negatively affect the small business' ability to compete with other providers. Specifically for providers in the highest risk classification the fees will increase by \$482 and for those in the lowest risk classification the increase is \$73 for the fiscal year.

**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. 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 fund fee which will increase the operational expenses for the providers. However, this increase is not considered to be significant 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](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:

Julie E. Walsh

Legal Unit - OCI Rule Comment for Rule Ins 1701

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Street address:

Julie E. Walsh

Legal Unit - OCI Rule Comment for Rule Ins 1701

Office of the Commissioner of Insurance

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

Madison WI 53703-3474

Email address:

Julie E. Walsh

[Julie.Walsh@wisconsin.gov](mailto:Julie.Walsh@wisconsin.gov)

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

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**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, ~~2011~~  
2012:

(a) For physicians-- ~~\$25.00~~ 22.50.

(b) For hospitals, per occupied bed-- ~~\$5.00~~ 4.50.

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

(6) FEE SCHEDULE. The following fee schedule is in effect from July 1, 2012 to June 30, 2013:

(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.... \$1,534	Class 3....\$ 6,165
Class 2.... \$2,760	Class 4....\$10,125

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

Class 1..... \$ 767	Class 3....\$3,083
Class 2..... \$1,380	Class 4....\$5,063

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

All classes.....	\$921
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(d) For a Medical College of Wisconsin, Inc., full-time faculty member:

Class 1..... \$ 617	Class 3... . \$2,470
Class 2.....\$1,104	Class 4... . \$4,075

(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:..\$ 383

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 whose 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.....\$ 920	Class 3....\$3,699
Class 2.....\$1,656	Class 4....\$6,075

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

Class 1.....\$ 767	Class 3....\$3,083
Class 2.....\$1,380	Class 4....\$5,063

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

\$ 376

(h) For a nurse anesthetist for whom this state is not a principal place of practice:.....\$ 188

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

1. Per occupied bed.....\$ 92
2. Per 100 outpatient visits during the last calendar year for which totals are available:.....\$ 4.63

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

Per occupied bed.....\$ 19

(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.....\$ 54
- b. If the total number of partners and employed physicians and nurse anesthetists is from 11 to 100.....\$ 529
- c. If the total number of partners and employed physicians and nurse anesthetists exceeds 100.....\$1,318
2. The following fee for each full-time equivalent allied health care professional employed by the partnership as of the most recent completed survey submitted:

<u>Employed Health Care Professionals</u>	<u>Fund Fee</u>
Nurse Practitioners.....	\$ 383
Advanced Nurse Practitioners.....	537
Nurse Midwives.....	3,375
Advanced Nurse Midwives.....	3,527
Advanced Practice Nurse Prescribers.....	537
Chiropractors.....	613
Dentists.....	307
Oral Surgeons.....	2,302
Podiatrists-Surgical.....	6,519
Optometrists.....	307
Physician Assistants.....	307

(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.....\$ 54
- b. If the total number of shareholders and employed physicians and nurse anesthetists is from 11 to 100.....\$ 529
- c. If the total number of shareholders and employed physicians or nurse anesthetists exceeds 100.....\$1,318

2. The following fee for each full-time equivalent allied health care professional employed by the corporation as of the most recent completed survey submitted:

<u>Employed Health Care Professionals</u>	<u>Fund Fee</u>
Nurse Practitioners.....	\$ 383
Advanced Nurse Practitioners.....	537
Nurse Midwives.....	3,375

Advanced Nurse Midwives.....	3,527
Advanced Practice Nurse Prescribers.....	537
Chiropractors.....	613
Dentists.....	307
Oral Surgeons.....	2,302
Podiatrists-Surgical.....	6,519
Optometrists.....	307
Physician Assistants.....	307

(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.....\$ 54
  - b. If the total number of employed physicians and nurse anesthetists is from 11 to 100.....\$ 529
  - c. If the total number of employed physicians or nurse anesthetists exceeds 100.....\$1,318

2. The following fee for each full-time equivalent allied health care professional employed by the corporation as of the most recent completed survey submitted:

<u>Employed Health Care Professionals</u>	<u>Fund Fee</u>
Nurse Practitioners .....	\$ 383
Advanced Nurse Practitioners.....	537
Nurse Midwives.....	3,375
Advanced Nurse Midwives.....	3,527
Advanced Practice Nurse Prescribers.....	537
Chiropractors.....	613
Dentists.....	307

Oral Surgeons.....	2,302
Podiatrists-Surgical.....	6,519
Optometrists.....	307
Physician Assistants .....	307

(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.....\$0.12
2. 3.4% of the total annual fees assessed against all of the employed physicians.
3. The following fee for each full-time equivalent allied health care professional employed by the operational cooperative sickness plan as of the most recent completed survey submitted:

<u>Employed Health Care Professionals</u>	<u>Fund Fee</u>
Nurse Practitioners.....	\$ 383
Advanced Nurse Practitioners.....	537
Nurse Midwives.....	3,375
Advanced Nurse Midwives.....	3,527
Advanced Practice Nurse Prescribers.....	537
Chiropractors.....	613
Dentists.....	307
Oral Surgeons.....	2,302
Podiatrists-Surgical.....	6,519
Optometrists.....	307
Physician Assistants.....	307

(o) For a freestanding ambulatory surgery center, as defined in s. DHS 120.03 (13), per 100 outpatient visits during the last calendar year for which totals are available:.....\$23.93

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

1. 7.9% of the amount the entity pays as premium for its primary health care liability insurance, if it has occurrence coverage.

2. 11.55% 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..... \$ 54

b. If the total number of employed physicians and nurse anesthetists is from 11 to 100.....\$ 529

c. If the total number of employed physicians or nurse anesthetists exceeds 100.....\$1,318

2. The following for each full-time equivalent allied health care professional employed by the organization or enterprise not specified as a partnership, corporation, or an operational cooperative health care plan as of the most recent completed survey submitted:

<u>Employed Health Care Professionals</u>	<u>Fund Fee</u>
Nurse Practitioners.....	\$ 383
Advanced Nurse Practitioners.....	537
Nurse Midwives.....	3,375
Advanced Nurse Midwives.....	3,527
Advanced Practice Nurse Prescribers.....	537
Chiropractors.....	613
Dentists.....	307

Oral Surgeons.....2,302  
Podiatrists-Surgical.....6,519  
Optometrists.....307  
Physician Assistants.....307

**SECTION 3.** This section may be enforced under s. Ins 17.01 (2) (d) and (e) .

**SECTION 4.** These changes will take effect on the first day of the month after publication, as provided in s. 227.22 (2) (intro.), Wis. Stats.

Dated at Madison, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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Theodore K. Nickel  
Commissioner of Insurance

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

Section Ins 17.28 relating to Injured Patients and Families  
Compensation Fund Annual Fund Fees and Mediation Panel Fees for  
fiscal year 2013 and affecting small business

This proposed rule change will have no significant effect on the private sector.

## ADMINISTRATIVE RULES – FISCAL ESTIMATE

**1. Fiscal Estimate Version**

Original  Updated  Corrected

**2. Administrative Rule Chapter Title and Number**

**INS 1728**

**3. Subject**

Injured Patients and Families Compensation Fund Annual Fund Fees and Mediation Panel Fees for fiscal year 2013 and affecting small business

**4. State Fiscal Effect:**

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No May be possible to absorb within the agency's budget.
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Decrease Costs

**5. Fund Sources Affected:**

GPR  FED  PRO  PRS  SEG  SEG-S

**6. Affected Ch. 20, Stats. Appropriations:**

None

**7. Local Government Fiscal Effect:**

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Decrease Costs

**8. Local Government Units Affected:**

Towns  Villages  Cities  Counties  School Districts  WTCS Districts  Others: None

**9. Private Sector Fiscal Effect (small businesses only):**

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input checked="" type="checkbox"/> Increase Costs
		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No May have significant economic impact on a substantial number of small businesses
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Decrease Costs
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No May have significant economic impact on a substantial number of small businesses	

**10. Types of Small Businesses Affected:**

Small businesses that employ physicians or other health care professionals

**11. Fiscal Analysis Summary**

No significant impact. Slight increase in fund fees and decrease in medical mediation fees

**12. Long-Range Fiscal Implications**

None

13. Name - Prepared by Julie E. Walsh	Telephone Number (608) 264-8101	Date May10, 2012
14. Name – Analyst Reviewer	Telephone Number	Date
Signature—Secretary or Designee	Telephone Number	Date