

## **ORDER AMENDING A RULE.**

### **Office of the Commissioner of Insurance – Agency 145**

The Office of the Commissioner of Insurance orders the following rule to amend s. Ins 17.28 (3) (c) and (4) (f), Wis. Admin. Code, relating to the Injured Patients and Families Compensation Fund refund procedures and ISO code modifications.

The statement of scope for this rule SS 031-18, was approved by the Governor on March 13, 2018, published in Register No. 747B, on March 26, 2018 and was approved by the Deputy Commissioner on May 8, 2018. The proposed rule was approved by the Governor on February 27, 2020, to submit to the legislature, and was submitted to the legislature on March 4, 2020. The rule passed through committees and JCRAR on May 22, 2020 with no action taken.

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

#### **Statutes interpreted:**

ss. 655.27 (3), and 655.61, Wis. Stats.

#### **Statutory authority:**

ss. 601.41 (3), 655.004, 655.27 (3) (b), and 655.61, Wis. Stats.

#### **Explanation of OCI's authority to promulgate the proposed rule:**

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") shall have rule-making authority under s. 601.41 (3), Stats., pursuant to s. 227.11 (2), Stats.

#### **Related statutes or rules:**

None.

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

This rule includes changes to the Insurance Services Office (ISO) code listing to address corrections to several classification specialties as well as new classification specialties. ISO codes are the numerical designation for a health care provider's specialty and are used to classify the provider for assessment purposes. Errors identified in the ISO codes or specialty narratives for several specialties have been corrected. The Doctor of Osteopathy (D.O.) designated ISO codes have been added for two specialties previously listed only under the Doctor of Medicine (M.D.) ISO codes.

Additionally, this rule modifies the refund procedures of the fund by no longer requiring the fund to refund, with interest, the \$3.00 administrative fee charged for quarterly billing.

**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 fund administrative refund procedures or ISO codes.

**Summary of any public comments and feedback on the statement of scope of the proposed rule that the agency received at any preliminary public hearing and comment period held under s. 227.136, Stat., and a description of how and to what extent the agency took those comments and that feedback into account in drafting the proposed rule.**

The office gave notice of a preliminary public hearing on a statement of scope for s. Ins 17.28, Wis. Adm. Code, relating Injured Patients and Families Compensation Fund refund procedures and ISO code modifications. A notice of preliminary hearing was published in Register No. 748A1, on April 2, 2018, with the public hearing on April 11, 2018 at 10:00 am. Notice as also published on the office's website. The public could provide oral or written testimony and a public comment period was open until 4:00 pm April 26, 2018. No persons attended the hearing and no written comments were received.

**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 administrative fees are utilized or refunded. There are no funds in adjacent states that classify ISO codes for the purpose of billing fund fees.

**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 reviews all ISO codes utilized by the fund and licensed carriers. Periodically due to changes made by ISO, the fund ISO codes listed require updating. The fund analyzed the amount of refunds provided under the regulation. The installment payment fee is \$3.00

however; a disproportionate amount of staff time is required to be expended to in order to accurately refund that fee.

**Analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses or in preparation of an economic impact analysis:**

The office reviewed the actual fees and the process to ascertain return of the convenience installment fee and the amount of staff time needed to accurately identify all installment fees then add the appropriate interest to the fees. Any impact to small businesses is de minimis as the installment fee was provided for the individual health care provider's convenience and is still available for spreading the annual assessment over four quarterly payments.

**Effect on Small Business:**

The proposed rule will not significantly impact small businesses as demonstrated in the economic impact analysis attached to the rule. Additionally, the proposed rule amending several ISO codes will result in more accurate assessments of providers, including small businesses, based upon classification of the type of health care services provided.

**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: <https://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx> or by contacting Karyn Culver at:

Phone: (608) 267-9586  
Email: [karyn.culver@wisconsin.gov](mailto:karyn.culver@wisconsin.gov)  
Address: 125 South Webster St – 2<sup>nd</sup> Floor, Madison WI 53703-3474  
Mail: PO Box 7873, Madison, WI 53707-7873

**Place where comments are to be submitted and deadline for submission:**

The deadline for submitting comments is 4:00 p.m. on October 14, 2019.

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**The proposed rule changes are:**

**SECTION 1. Ins 17.28 (3) (c), is amended to read:**

Ins 17.28 (3) (c) 1. Class 1:

Administrative Medicine	80120
Aerospace Medicine	80230
Allergy	80254
Allergy (D.O.)	84254
Cardiovascular Disease—no surgery or catheterization	80255
Cardiovascular Disease—no surgery or catheterization (D.O.)	84255
Dermatology—no surgery	80256
Dermatology—no surgery (D.O.)	84256
Diabetes—no surgery	80237
Endocrinology—no surgery	80238
Endocrinology—no surgery (D.O.)	84238
Family or General Practice—no surgery	80420
Family or General Practice—no surgery (D.O.)	84420
Forensic Medicine—Legal Medicine	80240
Forensic Medicine—Legal Medicine (D.O.)	84240
Gastroenterology—no surgery	80241
Gastroenterology—no surgery (D.O.)	84241
General Preventive Medicine—no surgery	80231
General Preventive Medicine—no surgery (D.O.)	84231
Geriatrics—no surgery	80243
Geriatrics—no surgery (D.O.)	84243
Gynecology—no surgery	80244
Gynecology—no surgery (D.O.)	84244
Hematology—no surgery	80245
Hematology—no surgery (D.O.)	84245
Hypnosis	80232

Infectious Diseases—no surgery	80246
Infectious Diseases—no surgery (D.O.)	84246
Internal Medicine—no surgery	80257
Internal Medicine—no surgery (D.O.)	84257
Laryngology—no surgery	80258
Manipulator (D.O.)	84801
Neoplastic Disease—no surgery	80259
Nephrology—no surgery	80260
Nephrology – no surgery (D.O.)	84260
Neurology—no surgery	80261
Neurology—no surgery (D.O.)	84261
Nuclear Medicine	80262
Nuclear Medicine (D.O.)	84262
Nutrition	80248
Occupation Medicine	80233
Occupation Medicine (D.O.)	84233
Oncology – no surgery	80302
Oncology – no surgery (D.O.)	84302
Ophthalmology—no surgery	80263
Ophthalmology—no surgery (D.O.)	84263
Osteopathy—manipulation only	84801
Otology – no surgery	80264
Otorhinolaryngology—no surgery	80265
Otorhinolaryngology—no surgery (D.O.)	84265
Pain Management – no surgery	80208
Pain Management – no surgery (D.O.)	84208
Pathology—no surgery	80266
Pathology—no surgery (D.O.)	84266
Pediatrics—no surgery	80267
Pediatrics—no surgery (D.O.)	84267
Pharmacology—Clinical	80234
Physiatry—Physical Medicine (D.O.)	84235
Physiatry—Physical Medicine & Rehabilitation	80235
Physicians—no surgery	80268
Physicians—no surgery (D.O.)	84268
Psychiatry	80249
Psychiatry—(D.O.)	84249
Psychoanalysis	80250
Psychosomatic Medicine	80251
Psychosomatic Medicine (D.O.)	84251
Public Health	80236
Pulmonary Disease—no surgery	80269
Pulmonary Disease—no surgery (D.O.)	84269
Radiology—diagnostic	80253
Radiology—diagnostic (D.O.)	84253
<u>Radiology—includes Mammography w/ Telemed</u>	<u>80472</u>
Radiopaque dye	80449
Radiopaque dye (D.O.)	84449
Rheumatology—no surgery	80252
Rheumatology—no surgery (D.O.)	84252
Rhinology – no surgery	80247

Shock Therapy	80431
Shock Therapy (D.O.)	84431
Shock Therapy—insured	80162
Urgent Care—Walk-in or After Hours	80424
Urgent Care—Walk-in or After Hours (D.O.)	84424
Urology—no surgery	80121

2. Class 2:

Acupuncture	80437
Acupuncture (D.O.)	84437
Anesthesiology	80151
Anesthesiology (D.O.)	84151
Angiography-Arteriography—catheterization	80422
Angiography-Arteriography—catheterization (D.O.)	84422
Broncho-Esophagology	80101
Cardiovascular Disease—minor surgery	80281
Cardiovascular Disease—minor surgery (D.O.)	84281
Colonoscopy-ERCP-Pneu or mech esoph dil (D.O.)	84443
Colonoscopy-ERCP-pneu. or mech.	80443
Dermatology—minor surgery	80282
Dermatology – minor surgery (D.O.)	84282
Diabetes – minor surgery	80271
Diabetes—minor surgery (D.O.)	84271
Emergency Medicine—No Major Surgery	80102
Emergency Medicine—No Major Surgery (DO)	84102
Employed Physician or Surgeon	80177
Employed Physician or Surgeon (D.O.)	84177
Endocrinology—minor surgery	80272
Endocrinology—minor surgery (D.O.)	84272
Family Practice—and general practice minor surgery—No OB	80423
Family Practice—and general practice minor surgery—No OB (D.O.)	84423
Family or General Practice—including OB	80421
Family or General Practice – including OB (D.O.)	84421
Gastroenterology—minor surgery	80274
Gastroenterology—minor surgery (D.O.)	84274
Geriatrics—minor surgery	80276
Geriatrics—minor surgery (D.O.)	84276
Gynecology—minor surgery	80277
Gynecology—minor surgery (D.O.)	84277
Hematology—minor surgery	80278
Hematology—minor surgery (D.O.)	84278
Hospitalist	80296
Hospitalist (D.O.)	84296

Infectious Diseases—minor surgery	80279	
Intensive Care Medicine	80283	
Intensive Care Medicine (D.O.)	84283	
Internal Medicine—minor surgery	80284	
Internal Medicine—minor surgery (D.O.)	84284	
Laparoscopy	80440	
Laparoscopy (D.O.)	84440	
Laryngology—minor surgery	80285	
Myelography – Discogram-Pneumoencephalo	80428	
Myelography-Discogram-Pneumoencephalo (D.O.)	84428	
Needle Biopsy	80446	
Needle Biopsy (D.O.)	84446	
Nephrology—minor surgery	80287	
Neonatology	<del>80298</del>	<u>80804</u>
Neonatology (D.O.)	<del>84298</del>	<u>84804</u>
Neoplastic Disease—minor surgery	80286	
Neurology—minor surgery	80288	
Neurology—minor surgery (D.O.)	84288	
Oncology – minor surgery	80301	
Oncology – minor surgery (D.O.)	84301	
Ophthalmology—minor surgery	80289	
Ophthalmology—minor surgery (D.O.)	84289	
Otology – minor surgery	80290	
Otorhinolaryngology—minor surgery	80291	
Otorhinolaryngology—minor surgery (D.O.)	84291	
Pain Management – Basic procedures	80182	
Pain Management – Basic procedures (D.O.)	84182	
Pathology—minor surgery	80292	
Pathology—minor surgery (D.O.)	84292	
Pediatrics—minor surgery	80293	
Pediatrics—minor surgery (D.O.)	84293	
Phlebography-Lymphangeography	80434	
Phlebography-Lymphangeography (D.O.)	84434	
Physicians—minor surgery	80294	
Physicians – minor surgery (D.O.)	84294	
Radiation Therapy—lasers	80425	
Radiation Therapy—lasers (D.O.)	84425	
Radiation Therapy – other than lasers	80165	
Radiology—diagnostic-interventional procedures	80280	
Radiology—diagnostic-interventional procedures (D.O.)	84280	
Rhinology – minor surgery	80270	
Surgery—Colon & Rectal	80115	
Surgery —Endocrinology	80103	
Surgery—Gastroenterology	80104	
Surgery – Gastroenterology (D.O.)	84104	
Surgery—General Practice or Family Practice	80117	
Surgery—General Practice or Family Practice (D.O.)	84117	

Surgery—Geriatrics	80105
Surgery—Neoplastic	80107
Surgery—Nephrology	80108
Surgery—Ophthalmology	80114
Surgery—Ophthalmology (D.O.)	84114
Surgery—Urological	80145
Surgery—Urological (D.O.)	84145

### 3. Class 3:

Emergency Medicine—includes major surgery	80157
Emergency Medicine—includes major surgery (D.O.)	84157
Otology—surgery	80158
<u>Pain Management – Neurology, Adv Proc</u>	<u>80298</u>
<u>Pain Management – Neurology, Adv Proc (D.O.)</u>	<u>84298</u>
Radiation Therapy – employed physician	80163
Radiation Therapy – employed physician (D.O.)	84163
Shock Therapy – employed physician	80161
Shock Therapy – employed physician (D.O.)	84161
Surgery—Abdominal	80166
Surgery – Bariatrics	80476
Surgery – Bariatrics (D.O.)	84476
Surgery—Cardiac	80141
<u>Surgery—Cardiac (D.O.)</u>	<u>84141</u>
Surgery—Cardiovascular Disease	80150
Surgery—Cardiovascular Disease (D.O.)	84150
Surgery—General	80143
Surgery—General (D.O.)	84143
Surgery—Gynecology	80167
Surgery—Gynecology (D.O.)	84167
Surgery—Hand	80169
Surgery—Head & Neck	80170
Surgery – Laryngology	80106
Surgery—Orthopedic	80154
Surgery—Orthopedic (D.O.)	84154
Surgery—Otorhinolaryngology-no plastic surgery	80159
Surgery—Plastic	80156
Surgery—Plastic (D.O.)	84156
Surgery—Plastic-Otorhinolaryngology	80155
Surgery—Plastic-Otorhinolaryngology (D.O.)	84155
Surgery—Rhinology	80160
Surgery—Thoracic	80144
Surgery—Thoracic (D.O.)	84144
Surgery—Traumatic	80171
Surgery—Traumatic (D.O.)	84171
Surgery—Vascular	80146
Surgery – Vascular (D.O.)	84146
Weight Control—Bariatrics	80180



**SECTION 2. Ins 17.28 (4) (f) is amended to read:**

Ins 17.28 (4) (f) *Refund of other charges*. If a provider is entitled to a refund or credit under this subsection, the fund shall also issue a refund or credit of the unearned portion of any amounts paid as ~~administrative service charges, interest or surcharges,~~ using the same method used to calculate a refund or credit of an annual fee. A mediation fund fee is refundable only if the provider did not participate in the injured patients and families compensation fund for any part of the fiscal year.

**SECTION 3. EFFECTIVE DATE.** This rule is effective on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register in accordance with s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this 3<sup>rd</sup> day of June, 2020.

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Mark V. Afable  
Commissioner of Insurance