

Clearinghouse Rule 10-065

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 ss. 227.18 and 227.24(4), 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 fiscal year 2011 fund fees and mediation panel fees and affecting small business.

HEARING INFORMATION

Date: July 19, 2010

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
Legal Unit - OCI Rule Comment for Rule Ins 1701
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Written comments can be hand delivered to:

Theresa L. Wedekind
Legal Unit - OCI Rule Comment for Rule Ins 1701
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

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
AND THE
BOARD OF GOVERNORS OF THE INJURED PATIENTS AND FAMILIES
COMPENSATION FUND
AMENDING, AND REPEALING AND RECREATING A RULE

To amend s. Ins 17.01 (3) Wis. Adm. Code, and to repeal and recreate s. Ins 17.28 (6), Wis. Adm. Code, relating to annual injured patients and families compensation fund fees and medical mediation panel fees for the fiscal year beginning July 1, 2010, and may have an effect 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, 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 that participating health care providers must pay to the fund for the fiscal year beginning July 1, 2010. These fees represent an 8.6% increase from fees paid for the 2009-10 fiscal year. The board approved these fees at its meeting on May 18, 2010

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 \$28.00 for physicians and \$6.00 per occupied bed for

hospitals, representing an increase of \$3.00 per physician and \$1.00 per occupied bed for hospitals from 2009-10 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 fund fees and mediation panel fees will have an affect 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. These increases will affect only those small businesses that pay the fund fees and mediation panel fees on behalf of their employed physicians. However, these increases 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. 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 and mediation panel 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

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 1701

Office of the Commissioner of Insurance

PO Box 7873

Madison WI 53707-7873

Street address:

Theresa L. Wedekind

OCI Rule Comment for Rule Ins 1701

Office of the Commissioner of Insurance

125 South Webster St – 2nd Floor

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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, ~~2009~~ 2010:

(a) For physicians-- ~~\$25.00~~ \$28.00

(b) For hospitals, per occupied bed-- ~~\$5.00~~ \$6.00

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, 2010 to June 30, 2011:

(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 \$1,347 Class 3 \$5,387

Class 2 \$2,423 Class 4 \$8,888

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

Class 1 \$ 673 Class 3 \$2,693

Class 2 \$1,211 Class 4 \$4,444

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

All classes \$808

(d) For a medical college of Wisconsin, inc., full-time faculty member:

Class 1 \$542 Class 3 \$2,168

Class 2 \$969 Class 4 \$3,577

(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: \$ 337

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 \$ 808 | Class 3 \$3,232 |
| Class 2 \$1,455 | Class 4 \$5,333 |

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

| | |
|-----------------|----------------------|
| Class 1 \$ 673 | Class 3 \$2,693 |
| Class 2 \$1,211 | Class 4 \$4,444 |

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

\$ 330

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

\$ 165

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

1. Per occupied bed \$ 81

2. Per 100 outpatient visits during the last calendar year for which totals are available: \$ 4.06

(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 \$ 16

(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 \$ 47

b. If the total number of partners and employed physicians and nurse anesthetists is from 11 to 100 \$ 465

c. If the total number of partners and employed physicians and nurse anesthetists exceeds 100 \$1,157

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 Persons</u> | <u>Fund Fee</u> |
|-------------------------------------|-----------------|
| Nurse Practitioners | \$ 337 |
| Advanced Nurse Practitioners | 471 |
| Nurse Midwives | 2,963 |
| Advanced Nurse Midwives | 3,096 |
| Advanced Practice Nurse Prescribers | 471 |
| Chiropractors | 539 |
| Dentists | 269 |
| Oral Surgeons | 2,020 |
| Podiatrists-Surgical | 5,722 |
| Optometrists | 269 |
| Physician Assistants | 269 |

(L) For a corporation, including a service corporation, 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 \$ 47

b. If the total number of shareholders and employed physicians and nurse anesthetists is from 11 to 100 \$ 465

c. If the total number of shareholders and employed physicians or nurse anesthetists exceeds 100 \$1,157

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 Persons</u> | <u>Fund Fee</u> |
|-------------------------------------|-----------------|
| Nurse Practitioners | \$ 337 |
| Advanced Nurse Practitioners | 471 |
| Nurse Midwives | 2,963 |
| Advanced Nurse Midwives | 3,096 |
| Advanced Practice Nurse Prescribers | 471 |
| Chiropractors | 539 |
| Dentists | 269 |
| Oral Surgeons | 2,020 |
| Podiatrists-Surgical | 5,722 |
| Optometrists | 269 |
| Physician Assistants | 269 |

(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 \$ 47

b. If the total number of employed physicians and nurse anesthetists is from 11 to 100 \$ 465

c. If the total number of employed physicians or nurse anesthetists exceeds 100 \$1,157

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 Persons</u> | <u>Fund Fee</u> |
|-------------------------------------|-----------------|
| Nurse Practitioners | \$ 337 |
| Advanced Nurse Practitioners | 471 |
| Nurse Midwives | 2,963 |
| Advanced Nurse Midwives | 3,096 |
| Advanced Practice Nurse Prescribers | 471 |
| Chiropractors | 539 |
| Dentists | 269 |
| Oral Surgeons | 2,020 |
| Podiatrists-Surgical | 5,722 |
| Optometrists | 269 |
| Physician Assistants | 269 |

(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 \$0.10

2. 2.99% 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 Persons</u> | <u>Fund Fee</u> |
|-------------------------------------|-----------------|
| Nurse Practitioners | \$ 337 |
| Advanced Nurse Practitioners | 471 |
| Nurse Midwives | 2,963 |

| | |
|-------------------------------------|-------|
| Advanced Nurse Midwives | 3,096 |
| Advanced Practice Nurse Prescribers | 471 |
| Chiropractors | 539 |
| Dentists | 269 |
| Oral Surgeons | 2,020 |
| Podiatrists-Surgical | 5,722 |
| Optometrists | 269 |
| Physician Assistants | 269 |

(o) For a freestanding ambulatory surgery center, as defined in s. HFS 120.03 (13), per 100 outpatient visits during the last calendar year for which totals are available: \$ 21.00

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

1. 8% of the amount the entity pays as premium for its primary health care liability insurance, if it has occurrence coverage.
2. 11% 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 \$ 47
- b. If the total number of employed physicians and nurse anesthetists is from 11 to 100 \$ 465
- c. If the total number of employed physicians or nurse anesthetists exceeds 100 \$1,157

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

| <u>Employed Health Care Persons</u> | <u>Fund Fee</u> |
|-------------------------------------|-----------------|
| Nurse Practitioners | \$ 337 |
| Advanced Nurse Practitioners | 471 |
| Nurse Midwives | 2,963 |
| Advanced Nurse Midwives | 3,096 |
| Advanced Practice Nurse Prescribers | 471 |
| Chiropractors | 539 |
| Dentists | 269 |
| Oral Surgeons | 2,020 |
| Podiatrists-Surgical | 5,722 |
| Optometrists | 269 |
| Physician Assistants | 269 |

SECTION 1. These changes 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 _____, 2010.

Sean Dilweg
Commissioner of Insurance

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Section Ins 17.01(3), and 17.28(6) relating to fiscal year 2011 fund
fees and mediation panel fees and affecting small business

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 1701 |

Subject
fiscal year 2011 fund fees and mediation panel fees and affecting small business

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 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 INS 1701 |

Subject
fiscal year 2011 fund fees and mediation panel fees and affecting small business

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 **Affected Chapter 20 Appropriations**
 GPR FED PRO PRS SEG SEG-S

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 the Fund's needs for payment of medical malpractice claims. The proposed fees were approved by the Fund's Board of Governors at its May 18, 2010, meeting and represent an increase of 8.6% over fiscal year 2010 fund fees.

The Fund is a unique fund; there are no other funds like it in the country. The 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

None

| | | |
|--|--|-------------------------|
| Prepared by: Theresa L. Wedekind | Telephone No. (608) 266-0953 | Agency Insurance |
|--|--|-------------------------|

| | | |
|------------------------------|----------------------|--------------------------|
| Authorized Signature: | Telephone No. | Date (mm/dd/ccyy) |
|------------------------------|----------------------|--------------------------|