

**Clearinghouse Rule 15-046**

**STATE OF WISCONSIN**

**OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)**

**★★★ NOTICE OF RULEMAKING HEARING ★★★**

**Notice of Hearing**

NOTICE IS HEREBY GIVEN that the Office of the Commissioner of Insurance will hold a public hearing on a permanent and emergency rule pursuant to s. 227.18 and 227.24, Stats., to amend s. Ins 17.01 (3) and repeal and recreate s. Ins 17.28 (6) relating to the Injured Patients and Families Compensation Fund annual fund and mediation panel fees for the fiscal year beginning July 1, 2015 at the time and place shown below. The emergency rule was published June 11, 2015.

**Hearing Information**

Date: July 28, 2015

Time: 10:30 am

Location: OCI Room 227, 125 S. Webster Street 2<sup>nd</sup> Floor, Madison, WI.

**Accessibility** Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Amber Scott at (608) 267-9586 with specific information on your request at least 10 days before the date of the scheduled hearing. There is also handicap access at the hearing location.

**Appearances at the Hearing and Submittal of Written Comments**

Written comments can be mailed to:

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

Written comments can be hand delivered to:

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

Comments can be emailed to:

Julie E. Walsh at [julie.walsh@wisconsin.gov](mailto:julie.walsh@wisconsin.gov)

The deadline for submitting comments is 4:00 p.m. on August 10, 2015.

The rules may be reviewed and comments made at [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov) or at <http://www.oci.wi.gov/ocirules.htm> no later than 4:00 pm on August 10, 2015.

### **Initial Regulatory Flexibility Analysis**

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:  
Small businesses that employ physicians or other health care professionals participating in the fund.
- b. Description of reporting and bookkeeping procedures required:  
None beyond those currently required.
- c. Description of professional skills required:  
None beyond those currently required.

**Agency Small Business Regulatory Coordinator** The OCI small business coordinator is Kate Ludlum [kate.ludlum@wisconsin.gov](mailto:kate.ludlum@wisconsin.gov) or 608-264-6232.

### **CONTACT PERSON**

A copy of the full text of the emergency rule and the proposed permanent 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.

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**PROPOSED ORDER AMENDING, REPEALING AND CREATING A RULE.**

**Office of the Commissioner of Insurance**

**Agency 145 Rule No. 029-15:** To amend s. Ins 17.01 (3), and to repeal and recreate s. Ins 17.28 (6), Wis. Admin. Code.

**Relating to:** Injured Patients and Families Compensation Fund Annual Fund and Mediation Panel Fees for the fiscal year beginning July 1, 2015, and affecting small business.

The statement of scope for this rule SS 029-15, was approved by the Governor on January 15, 2015, published in Register No. 711A4, on March 23, 2015, and approved by the Commissioner on April 6, 2015.

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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:**

The injured patients and families compensation fund ("fund"), was established by and operated under Ch. 655, Wis. 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. The proposed fees comply with the limitation delineated in s. 655.27 (3) (br), Stats. 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. Plain language analysis:**

This proposed rule establishes the fees that participating health care providers must pay to the fund for the fiscal year beginning July 1, 2015. These fees represent a 34% decrease from fees paid for the 2014-2015 fiscal year. The board approved these fees at its meeting on December 17, 2014, 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 on March 18, 2015 by establishing mediation panel fees for the next fiscal year at \$13.50 for physicians and \$2.75 per occupied bed for hospitals, representing an increase of \$5.75 per physician and an increase of \$1.25 per occupied bed for hospitals from 2014-2015 fiscal year mediation panel fees.

**6. Summary of and comparison with any existing or proposed federal statutes and regulations:**

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 with rules in adjacent states:**

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:**

None. This rule establishes annual fund 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 and reviewed annually by the fund's actuaries and the board's actuarial and underwriting committee. The actuarial and underwriting committee after review and discussion with the fund's actuaries present the information and the actuaries report to the board for consideration. This proposed rule reflects the rates approved by the board at the December 17, 2014, and March 18, 2015, board meetings.

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

This decrease in fund fees will have a positive effect on 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 that will incur the slight increase for fiscal year 2016. The proposed rule will affect only those small businesses that pay the fund fees and mediation panel fees on behalf of their employed physicians. The fund fee decrease and mediation panel fee increase will not have a significant effect nor should it negatively affect the small business's ability to compete with other providers.

**10. Effect on small business:**

This rule will have little or no effect on small businesses. The decrease of fund fees and slight increase in mediation panel contained in the proposed rule will require providers to pay reduced fund fees which will decrease the operational expenses for the providers which will greatly outweigh the slight increase in mediation panel fees.

The increase in mediation panel fees contained in this proposed rule should not result in a significant fiscal effect on the private sector.

**11. A copy of any comments and opinion prepared by the Board of Veterans Affairs under s. 45.03 (2m), Stats., for rules proposed by the Department of Veterans Affairs.**

None.

**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 August 10, 2015.

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, ~~2013~~ 2015:

(a) For physicians-- ~~\$0~~\$13.50.

(b) For hospitals, per occupied bed-- ~~\$0~~\$2.75.

**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, 2015 to June 30, 2016:

(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.... \$865	Class 3....\$ 3,461
Class 2.... \$1,558	Class 4....\$ 5,711

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

Class 1..... \$ 433	Class 3....\$ 1,732
Class 2..... \$ 779	Class 4....\$ 2,858

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

All classes.....	\$ 519
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(d) For a Medical College of Wisconsin, Inc., full-time faculty member:

Class 1..... \$ 346	Class 3... .\$ 1,383
Class 2.....\$ 622	Class 4... .\$ 2,282

(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:..\$ 216.

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.....\$ 519	Class 3....\$ 2,078
Class 2.....\$ 935	Class 4....\$ 3,428

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

Class 1.....\$ 433	Class 3....\$ 1,732
Class 2.....\$ 779	Class 4....\$ 2,858

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

\$ 213

(h) For a nurse anesthetist for whom this state is not a principal place of practice:.....\$ 107

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

1. Per occupied bed.....\$ 52
2. Per 100 outpatient visits during the last calendar year for which totals are available:.....\$ 2.61

(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.....\$ 10

(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.....\$ 30

b. If the total number of partners and employed physicians and nurse anesthetists is from 11 to 100.....\$ 299

c. If the total number of partners and employed physicians and nurse anesthetists exceeds 100.....\$ 744

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.....	\$ 216
Advanced Nurse Practitioners.....	303
Nurse Midwives.....	1,903
Advanced Nurse Midwives.....	1,990
Advanced Practice Nurse Prescribers.....	303
Chiropractors.....	346
Dentists.....	173
Oral Surgeons.....	1,298
Podiatrists-Surgical.....	3,678
Optometrists.....	173
Physician Assistants.....	173

(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.....\$ 30

b. If the total number of shareholders and employed physicians and nurse anesthetists is from 11 to 100.....\$ 299



c. If the total number of shareholders and employed physicians or nurse anesthetists exceeds 100.....\$ 744

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.....	\$ 216
Advanced Nurse Practitioners.....	303
Nurse Midwives.....	1,903
Advanced Nurse Midwives.....	1,990
Advanced Practice Nurse Prescribers.....	303
Chiropractors.....	346
Dentists.....	173
Oral Surgeons.....	1,298
Podiatrists-Surgical.....	3,678
Optometrists.....	173
Physician Assistants.....	173

(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.....\$ 30

b. If the total number of employed physicians and nurse anesthetists is from 11 to 100.....\$ 299

c. If the total number of employed physicians or nurse anesthetists exceeds 100.....\$ 744

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 .....	\$ 216
Advanced Nurse Practitioners.....	303
Nurse Midwives.....	1,903
Advanced Nurse Midwives.....	1,990
Advanced Practice Nurse Prescribers.....	303
Chiropractors.....	346
Dentists.....	173
Oral Surgeons.....	1,298
Podiatrists-Surgical.....	3,678
Optometrists.....	173
Physician Assistants .....	173

(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.....\$0.07

2. 2.5% 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.....	\$ 216
Advanced Nurse Practitioners.....	303
Nurse Midwives.....	1,903

Advanced Nurse Midwives.....	1,990
Advanced Practice Nurse Prescribers.....	303
Chiropractors.....	346
Dentists.....	173
Oral Surgeons.....	1,298
Podiatrists-Surgical.....	3,678
Optometrists.....	173
Physician Assistants.....	173

(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:.....\$13.50

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

1. 7.0% of the amount the entity pays as premium for its primary health care liability insurance, if it has occurrence coverage.
2. 10.0% 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.....\$ 30
- b. If the total number of employed physicians and nurse anesthetists is from 11 to 100.....\$ 299
- c. If the total number of employed physicians or nurse anesthetists exceeds

100.....\$ 744

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.....	\$ 216
Advanced Nurse Practitioners.....	303
Nurse Midwives.....	1,903
Advanced Nurse Midwives.....	1,990
Advanced Practice Nurse Prescribers.....	303
Chiropractors.....	346
Dentists.....	173
Oral Surgeons.....	1,298
Podiatrists-Surgical .....	3,678
Optometrists.....	173
Physician Assistants.....	173

**SECTION 3. EFFECTIVE DATE.** 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 2nd day of June, 2015.

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Daniel J. Schwartzer  
Deputy Commissioner

**Office of the Commissioner of Insurance  
Fiscal Estimate**

for Section Ins 17.01, 17.28 (6) relating to Injured Patients and Families  
Compensation Fund Annual fund and Mediation Panel Fees for the fiscal  
year beginning July 1, 2015 and affecting small business

This rule change will have no significant effect on the private sector as this proposed rule reduces fees to participants in the fund by 34% from last fiscal year and slightly increases mediation panel fees to \$13.50 for physicians and \$2.70 per hospital bed. The fund is a segregated account and does not impact state funds. The rule decreases fund fees and slightly increases mediation panel fee and therefore will not have an effect on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues.

**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 and Mediation Panel Fees for the fiscal year beginning July 1, 2015 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"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues NONE	<input type="checkbox"/> Yes <input type="checkbox"/> No May be possible to absorb within agency's budget.
		<input type="checkbox"/> Decrease Costs NONE

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 NONE

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

10. Types of Small Businesses Affected:

Small businesses that employ physicians or other health care professionals participating in the Fund.

11. Fiscal Analysis Summary

No significant impact. Decease of 34% for fund fees and slight increase for medical mediation fees.

12. Long-Range Fiscal Implications

None

13. Name - Prepared by Julie E. Walsh	Telephone Number (608) 264-8101	Date May 8, 2015
14. Name – Analyst Reviewer	Telephone Number	Date
Signature—Secretary or Designee	Telephone Number (608) 267-3782	Date