

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.

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
Address: 125 South Webster St – 2nd 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.

Mailing address:

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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:

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| 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 |

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| 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 |

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| 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:

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| 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 |

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| 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 | 80298 | <u>80804</u> |
| Neonatology (D.O.) | 84298 | <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 | |

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| 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:

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|-----------------------------------------------------|--------------|
| 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 3rd day of June, 2020.

Mark V. Afable
Commissioner of Insurance