

Publication Date: June 15, 2010
Effective Dates: June 15, 2010 through November 11, 2010

**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.

FINDING OF EMERGENCY

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

These changes must be in place with an effective date of July 1, 2010 for the new fiscal year assessments. The fiscal year fees were established by the Board of Governors at meeting on May 18, 2010.

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 a 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
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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
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(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 emergency rule changes will take effect on July 1, 2010, as provided in s. 227.24(1)(c), 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

Modify or cut any of the following

Statute Involved: **s. 227.14(4) FISCAL ESTIMATES.**

- (a) An agency shall prepare a fiscal estimate for each proposed rule before it is submitted to the legislative council staff under s. 227.15.
- (b) **The fiscal estimate shall include [1] the major assumptions used in its preparation and [2] a reliable estimate of the fiscal impact of the proposed rule, including:**
 - 1. The anticipated effect on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues.
 - 2. A projection of the anticipated state fiscal effect during the current biennium and a projection of the net annualized fiscal impact on state funds.
 - 3. **For rules that the agency determines may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by the private sector in complying with the rule.**
- (c) **If a proposed rule interpreting or implementing a statute has no independent fiscal effect, the fiscal estimate prepared under this subsection shall be based on the fiscal effect of the statute.**
- (d) If a proposed rule is revised so that its fiscal effect is significantly changed prior to its issuance, an agency shall prepare a revised fiscal estimate before promulgating the rule. The agency shall give notice of a revised fiscal estimate in the same manner that notice of the original estimate is given.

This rule change will have no significant effect on the private sector regulated by OCI.

Division of Executive Budget and Finance
DOA-2047 (R10/2000)

Wisconsin Department of Administration

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):

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	Increased Costs	Decreased Costs
GPR	\$ 0	\$ -0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
C. State Revenues	Increased Rev.	Decreased Rev.
Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
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

Fund Sources Affected

GPR FED PRO PRS SEG

SEG-S

Affected Chapter 20 Appropriations

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

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