

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

The office of the commissioner of insurance and the board of governors of the injured patients and families compensation fund propose an order to amend s. Ins 17.01 (3), and to repeal and recreate s. Ins 17.28 (6), relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 2005.

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

- 1. Statutes interpreted:** s. 655.27 (3), Stats.
- 2. Statutory authority:** ss. 601.41 (3), 655.004, 655.27 (3) (b), and 655.61, Stats.
- 3. Explanation of the 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.

4. Related Statutes or rules:

None.

5. The plain language analysis and summary of the proposed rule:

This rule establishes the fees which participating health care providers must pay to the fund for the fiscal year beginning July 1, 2005. These fees represent a 30 % decrease compared with fees paid for the 2004-05 fiscal year. The board approved these fees at its meeting on February 23, 2005, 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 mediation system, based on the recommendation of the director of state courts. This rule implements the funding level recommendation of the board's actuarial and underwriting committee by

establishing mediation panel fees for the next fiscal year at \$34.00 for physicians and \$2.00 per occupied bed for hospitals, representing a decrease from 2004-05 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—no new regulatory approach is involved.

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:

None. Fund fees are being decreased in this rule.

10. If these changes may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by private sector in complying with the rule:

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

11. A description of the Effect on Small Business:

This rule will have little or no effect on small businesses.

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 sites at: **<http://oci.wi.gov/ocirules.htm>**

or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110
Email: Inger.Williams@OCI.State.WI.US
Address: 125 South Webster St – 2nd Floor Madison WI 53702
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 day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

Alice M. Shuman-Johnson
Legal Unit - OCI Rule Comment for Rule Ins 17285 PCF fee rule
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Street address:

Alice M. Shuman-Johnson
Legal Unit - OCI Rule Comment for Rule Ins 17285 PCF fee rule
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53702

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. (intro.) The following fee schedule shall be effective July 1, ~~2004~~ 2005:

(a) For physicians-- ~~\$46.00~~ 34.00

(b) For hospitals, per occupied bed-- ~~\$3.00~~ 2.00

SECTION 2. Ins 17.28 (6) is repealed and recreated to read:

Ins 17.28 (6) FEE SCHEDULE. The following fee schedule is in effect from July 1, 2005, to June 30, 2006:

(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	\$ 859	Class 3	\$3,565
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Class 2	\$1,546	Class 4	\$5,154
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(b) For a resident acting within the scope of a residency or fellowship program:

Class 1	\$ 430	Class 3	\$1,785
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Class 2	\$ 774	Class 4	\$2,580
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(c) For a resident practicing part-time outside the scope of a residency or fellowship program:

All classes	\$515
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(d) For a medical college of Wisconsin, inc., full-time faculty member:

Class 1	\$ 344	Class 3	\$1,428
Class 2	\$ 619	Class 4	\$2,064

(e) 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: \$ 215

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

Class 1	\$ 430	Class 3	\$1,785
Class 2	\$ 774	Class 4	\$2,580

(g) For a nurse anesthetist for whom this state is a principal place of practice: \$ 211

(h) For a nurse anesthetist for whom this state is not a principal place of practice: \$ 106

(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: \$ 2.60

(j) For a nursing home, as described under s. 655.002 (1) (j), Stats., which is wholly owned and operated by a hospital and which has health care liability insurance separate from that of the hospital by which it is owned and operated:

Per occupied bed	\$ 10
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(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 \$ 29

b. If the total number of partners and employed physicians and nurse anesthetists is from 11 to 100 \$ 296

c. If the total number of partners and employed physicians and nurse anesthetists exceeds 100 \$ 739

2. The following fee for each of the following employees employed by the partnership as of July 1, 2005:

Employed Health Care Persons	July 1, 2005 Fund Fee
Nurse Practitioners	\$ 215
Advanced Nurse Practitioners	301
Nurse Midwives	1,890
Advanced Nurse Midwives	1,976
Advanced Practice Nurse Prescribers	301
Chiropractors	344
Dentists	172
Oral Surgeons	1,289
Podiatrists-Surgical	3,651
Optometrists	172
Physician Assistants	172

(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 \$ 29

b. If the total number of shareholders and employed physicians and nurse anesthetists is from 11 to 100 \$ 296

c. If the total number of shareholders and employed physicians or nurse anesthetists exceeds 100 \$ 739

2. The following for each of the following employees employed by the corporation as of July 1, 2005:

Employed Health Care Persons	July 1, 2005 Fund Fee
Nurse Practitioners	\$ 215
Advanced Nurse Practitioners	301
Nurse Midwives	1,890
Advanced Nurse Midwives	1,976
Advanced Practice Nurse Prescribers	301
Chiropractors	344
Dentists	172
Oral Surgeons	1,289
Podiatrists-Surgical	3,651
Optometrists	172
Physician Assistants	172

(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 \$ 29

b. If the total number of employed physicians and nurse anesthetists is from 11 to 100 \$ 296

c. If the total number of employed physicians or nurse anesthetists exceeds 100 \$ 739

2. The following for each of the following employees employed by the corporation as of July 1, 2005:

Employed Health Care Persons	July 1, 2005 Fund Fee
Nurse Practitioners	\$ 215
Advanced Nurse Practitioners	301
Nurse Midwives	1,890
Advanced Nurse Midwives	1,976
Advanced Practice Nurse Prescribers	301
Chiropractors	344
Dentists	172
Oral Surgeons	1,289
Podiatrists-Surgical	3,651
Optometrists	172
Physician Assistants	172

(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 \$0.06

2. 2.5% of the total annual fees assessed against all of the employed physicians.

3. The following for each of the following employees employed by the operational cooperative sickness plan as of July 1, 2005:

Employed Health Care Persons	July 1, 2005 Fund Fee
Nurse Practitioners	\$ 215
Advanced Nurse Practitioners	301
Nurse Midwives	1,890
Advanced Nurse Midwives	1,976
Advanced Practice Nurse Prescribers	301
Chiropractors	344
Dentists	172
Oral Surgeons	1,289
Podiatrists-Surgical	3,651
Optometrists	172
Physician Assistants	172

(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:

\$13.00

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

1. 7% of the amount the entity pays as premium for its primary health care liability insurance, if it has occurrence coverage.

2. 10% of the amount the entity pays as premium for its primary health care liability insurance, if it has claims-made coverage.

SECTION 3 EFFECTIVE DATE. This rule will take effect on July 1, 2005.

Dated at Madison, Wisconsin, this ___ day of _____ 2005.

Jorge Gomez
Commissioner of Insurance

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Rule Ins 17285 PCF fee rule relating to annual injured patients and families
compensation fund fees for fiscal year beginning July 1, 2005

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 17.28 PCF fee rule

Subject

annual injured patients and families compensation fund fees for fiscal year beginning July 1, 2005

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 Wedekind	Telephone No. 608-266-0953	Agency IPFCF/OCII
Authorized Signature:	Telephone No.	Date (mm/dd/ccyy) 4-1-05

FISCAL ESTIMATE

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 17.28 PCF fee rule

Subject
 annual injured patients and families compensation fund fees for fiscal year beginning July 1, 2005

Fiscal Effect
State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Decrease Costs	

Local: No local government costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Chapter 20 Appropriations
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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 on actuarial estimates of the Fund's needs for payment of medical malpractice claims. The proposed fees were approved by the Fund's Board of Governors at its February 23, 2005 meeting.

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

Estimated revenue from fees for fiscal year 2005-2006 is approximately \$19 million which represents a 30% decrease in fees as compared to 2004-2005 Fund fees.

Long-Range Fiscal Implications

None

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Authorized Signature:	Telephone No.	Date (mm/dd/ccyy) 4-1-05