



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

June 12, 2014

Ted Nickel
Commissioner of Insurance
125 South Webster Street
Madison, Wisconsin 53703-3474

RE: Emergency Rule Modifying Ch. INS 17.01 (3), and 17.28 (6)

Dear Commissioner Nickel,

I hereby approve the proposed emergency rule modifying Chapters **Ch. INS 17.01 (3), and 17.28 (6)** of the Wisconsin Administrative Code submitted on May 30, 2014 pursuant to Wisconsin Statutes § 227.24(1)(e)1g. You may proceed with publication in accordance with Wisconsin Statutes § 227.24(1)(c).

Sincerely,

A handwritten signature in black ink, appearing to be "Scott Walker".

Scott Walker
Governor



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, Governor
Theodore K. Nickel, Commissioner

Wisconsin.gov

Legal Unit
125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 267-9586 • Fax: (608) 264-6228
Web Address: oci.wi.gov

TO: Bruce Hoesly
Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53701-2037

FROM: Richard Wicka, Deputy Chief Legal Counsel
Office of the Commissioner of Insurance

DATE: June 13, 2014

SUBJECT: Emergency Rule affecting Section Ins 17.01(3) and 17.28 (6), Wis. Adm. Code, relating to the Injured Patients and Families Compensation Fund Annual Fund and Mediation Panel Fees, for the fiscal year beginning July 1, 2014 and affecting small business

Two copies of this emergency rule are attached. One is for filing and publication in the Wisconsin Administrative Register and the other to be stamped and returned to OCI. The rule should be published in the official State newspaper on June 18, 2014.

If you have any questions, please contact Julie E. Walsh at (608) 264-8101 or e-mail at julie.walsh@wisconsin.gov.

Attachment: 2 copies rule





of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, Governor
Theodore K. Nickel, Commissioner

Wisconsin.gov

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STATE OF WISCONSIN

OFFICE OF THE COMMISSIONER OF INSURANCE

SS



I, Theodore K. Nickel, Commissioner of Insurance and custodian of the official records, certify that the annexed emergency rule affecting Section Ins 17.01(3) and 17.28 (6), Wis. Adm. Code, relating to the Injured Patients and Families Compensation Fund Annual Fund and Mediation Panel Fees, for the fiscal year beginning July 1, 2014 and affecting small business, is duly approved and adopted by this Office on June 13, 2014.

I further certify that I have compared this copy with the original on file in this Office and that it is a true copy of the original, and the whole of the original.

IN TESTIMONY WHEREOF, I have
hereunto set my hand at 125 South
Webster Street, Madison, Wisconsin,
on June 13, 2014.

Theodore K. Nickel
Commissioner of Insurance

EMERGENCY ORDER AMENDING, REPEALING AND RECREATING A RULE.

Office of the Commissioner of Insurance

Rule No. Agency 145 – Ch. INS 17.01 (3), and Ins 17.28 (6), Wis. Admin. Code.

The Commissioner of Insurance proposes an order to amend s. Ins 17.01 (3); and to repeal and recreate s. Ins 17.28 (6), Wis. Admin. Code, relating to the Injured Patients and Families Compensation Fund Annual Fund and Mediation Panel Fees, for the fiscal year beginning July 1, 2014 and affecting small business.

The statement of scope for this rule SS: 147-13, was approved by the Governor on November 18, 2013, published in Register No. 695, on November 30, 2013, and approved by the Commissioner on May 8, 2014. This emergency rule was approved by the Governor on June 12, 2014.

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 prior to July 1, 2014 in order for the new fiscal year assessments to be issued in accordance with s. 655.27 (3), Wis. Stats. The permanent rule-making process cannot be completed prior to the effective date of the new fee schedule. The fiscal year fund fees were established by the Board of Governors at the meeting held on December 18, 2013 and the mediation panel fees established by the Board of Governors at the meeting held on March 19, 2014.

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, 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 655.004, 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, 2014. These fees represent a 10% decrease from fees paid for the 2013-2014 fiscal year. The board approved these fees at its meeting on December 18, 2013, 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 19, 2014 by establishing mediation panel fees for the next fiscal year at \$7.75 for physicians and \$1.50 per occupied bed for hospitals, representing an increase of \$7.75 per physician and an increase of \$1.50 per occupied bed for hospitals from 2013-14 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 18, 2013 and March 19, 2014 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 providers. The mediation panel fees are increasing from the zero level of fiscal year 2013-2014 but are still lower than rates in fiscal year 2011-2012. The fund fee decrease 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 will not have a significant effect nor should it negatively affect the ability of small businesses to compete with other providers.

10. Effect on small business:

This rule will have little or no effect on small businesses. The decrease contained in the proposed rule will require providers to pay reduced fund fees which will decrease the operational expenses for the providers. The increase in mediation panel fees promulgated by this 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
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:

A hearing for this emergency rule and the proposed permanent rule will be issued shortly. Comments on the rules will be accepted for 14 days after the date for the hearing stated in the Notice of Hearing.

Mailing address:

Julie E. Walsh
Legal Unit - OCI Rule Comment for Rule Ins 1728
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 1728
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Email address:

Julie E. Walsh
Julie.Walsh@wisconsin.gov

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~~2014~~:

- (a) For physicians-- ~~\$0~~\$7.75.
- (b) For hospitals, per occupied bed-- ~~\$0~~\$1.50.

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, 2014 to June 30, 2015:

- (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.... \$1,311 | Class 3....\$ 5,244 |
| Class 2.... \$2,360 | Class 4....\$8,653 |

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

| | |
|----------------------|--------------------|
| Class 1..... \$ 656 | Class 3....\$2,624 |
| Class 2..... \$1,181 | Class 4....\$4,330 |

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

| | |
|------------------|-------|
| All classes..... | \$787 |
|------------------|-------|

- (d) For a Medical College of Wisconsin, Inc., full-time faculty member:

| | |
|---------------------|----------------------|
| Class 1..... \$ 524 | Class 3... . \$2,096 |
| Class 2..... \$ 943 | Class 4... . \$3,458 |

- (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:..\$ 328

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.....\$ 787 | Class 3....\$3,148 |
| Class 2.....\$1,417 | Class 4....\$5,194 |

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

| | |
|---------------------|--------------------|
| Class 1.....\$ 656 | Class 3....\$2,624 |
| Class 2.....\$1,181 | Class 4....\$4,330 |

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

\$ 323

(h) For a nurse anesthetist for whom this state is not a principal place of practice:.....\$ 162

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

1. Per occupied bed.....\$ 79

2. Per 100 outpatient visits during the last calendar year for which totals are available:.....\$ 3.95

(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.....\$ 15

(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.....\$ 46
- b. If the total number of partners and employed physicians and nurse anesthetists is from 11 to 100.....\$ 453
- c. If the total number of partners and employed physicians and nurse anesthetists exceeds 100.....\$1,127
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..... | \$ 328 |
| Advanced Nurse Practitioners..... | 459 |
| Nurse Midwives..... | 2,884 |
| Advanced Nurse Midwives..... | 3,015 |
| Advanced Practice Nurse Prescribers..... | 459 |
| Chiropractors..... | 524 |
| Dentists..... | 262 |
| Oral Surgeons..... | 1,967 |
| Podiatrists-Surgical..... | 5,572 |
| Optometrists..... | 262 |
| Physician Assistants..... | 262 |

(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.....\$ 46
- b. If the total number of shareholders and employed physicians and nurse anesthetists is from 11 to 100.....\$ 453

c. If the total number of shareholders and employed physicians or nurse anesthetists exceeds 100.....\$1,127

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..... | \$ 328 |
| Advanced Nurse Practitioners..... | 459 |
| Nurse Midwives..... | 2,884 |
| Advanced Nurse Midwives..... | 3,015 |
| Advanced Practice Nurse Prescribers..... | 459 |
| Chiropractors..... | 524 |
| Dentists..... | 262 |
| Oral Surgeons..... | 1,967 |
| Podiatrists-Surgical..... | 5,572 |
| Optometrists..... | 262 |
| Physician Assistants..... | 262 |

(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.....\$ 46

b. If the total number of employed physicians and nurse anesthetists is from 11 to 100.....\$ 453

c. If the total number of employed physicians or nurse anesthetists exceeds 100.....\$1,127

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 | \$ 328 |
| Advanced Nurse Practitioners..... | 459 |
| Nurse Midwives..... | 2,884 |
| Advanced Nurse Midwives..... | 3,015 |
| Advanced Practice Nurse Prescribers..... | 459 |
| Chiropractors..... | 524 |
| Dentists..... | 262 |
| Oral Surgeons..... | 1,967 |
| Podiatrists-Surgical..... | 5,572 |
| Optometrists..... | 262 |
| Physician Assistants | 262 |

(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. 2.5% 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..... | \$ 328 |
| Advanced Nurse Practitioners..... | 459 |
| Nurse Midwives..... | 2,884 |
| Advanced Nurse Midwives..... | 3,015 |
| Advanced Practice Nurse Prescribers..... | 459 |
| Chiropractors..... | 524 |
| Dentists..... | 262 |
| Oral Surgeons..... | 1,967 |

| | |
|---------------------------|-------|
| Podiatrists-Surgical..... | 5,572 |
| Optometrists..... | 262 |
| Physician Assistants..... | 262 |

(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:.....\$20.46

(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.....\$ 46

b. If the total number of employed physicians and nurse anesthetists is from 11 to 100.....\$ 453

c. If the total number of employed physicians or nurse anesthetists exceeds 100.....\$1,127

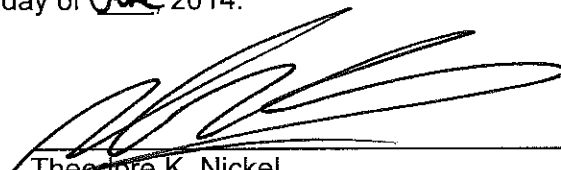
2. The following for each full-time equivalent allied health care professional employed by the organization or enterprise not specified as a partnership, corporation, or an operational cooperative health care plan as of the most recent completed survey submitted:

| <u>Employed Health Care Professionals</u> | <u>Fund Fee</u> |
|---|-----------------|
| Nurse Practitioners..... | \$ 328 |
| Advanced Nurse Practitioners..... | 459 |
| Nurse Midwives..... | 2,884 |

| | |
|--|-------|
| Advanced Nurse Midwives..... | 3,015 |
| Advanced Practice Nurse Prescribers..... | 459 |
| Chiropractors..... | 524 |
| Dentists..... | 262 |
| Oral Surgeons..... | 1,967 |
| Podiatrists-Surgical..... | 5,572 |
| Optometrists..... | 262 |
| Physician Assistants..... | 262 |

SECTION 4. EFFECTIVE DATE. These emergency rule changes will take effect on the date of publication as provided in s. 227.24(1)(c), Stats.

Dated at Madison, Wisconsin, this 12th day of June, 2014.


 Theodore K. Nickel
 Commissioner

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

for Sections Ins 17.01 and 17.28 (6), relating to Injured Patients and Families
Compensation Fund Annual Fund Fees and Mediation Panel Fees for the
fiscal year beginning July 1, 2014 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 and slightly increases mediation panel fees to \$7.75 for physicians and \$1.50 per occupied bed for hospitals. The fund is a segregated account and does not impact state funds. The rule decreases fees and therefore does 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 | <input type="checkbox"/> Yes <input type="checkbox"/> No May be possible to absorb within agency's budget. |
| | | <input checked="" type="checkbox"/> Decrease Costs |

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 |

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 type="checkbox"/> Decrease Revenues | <input type="checkbox"/> Yes <input 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 checked="" type="checkbox"/> Decrease Costs |

10. **Types of Small Businesses Affected:**

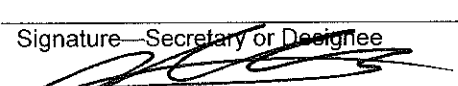
Small businesses that employ physicians or other health care professionals participating in the Fund.

11. **Fiscal Analysis Summary**

No significant impact. For Fund fees a 10% decrease and although the rule proposes an increase from zero for mediation panel fees, the proposed fees are less than the 2011-2012 fees.

12. **Long-Range Fiscal Implications**

None

| | | |
|---|------------------------------------|---------------------|
| 13. Name - Prepared by Julie E. Walsh | Telephone Number (608) 264-8101 | Date May 9, 2014 |
| 14. Name -- Analyst Reviewer | Telephone Number | Date |
| Signature—Secretary or Designee  | Telephone Number (608) 267-3782 | Date 12 June 14 |