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**Notice of Submittal of Proposed Rule to
Legislative Council Rules Clearinghouse**

On September 6, 2019, the Office of the Commissioner of Insurance submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

Analysis

The proposed rule amends 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, and affecting small business.

Statement of Scope

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.

Agency Procedure for Promulgation

A public hearing is required and will be held on October 8, 2019, at 1:00 pm for the permanent rule hearing.

Agency Organizational Unit Primarily Responsible for Promulgating Rule

Office of the Commissioner of Insurance.

Agency Contact Person

Julie E. Walsh, Senior Attorney
Julie.Walsh@wisconsin.gov
608-264-8101

NOTICE OF PUBLIC HEARING
OFFICE OF THE COMMISSIONER OF INSURANCE

The Office of the Commissioner of Insurance announces that it will hold a public hearing on a Permanent Rule for Ch. INS 17.28, Wis. Adm. Code, relating to the Injured Patients and Families Compensation Fund refund procedures and ISO code modifications and affecting small business. In accordance with s. 227.15, Stats., the Commissioner is seeking public input through the hearing and comment period regarding the content of the proposed permanent rule.

Hearing Information:

Date: October 8, 2019
Time: 1:00 pm
Location: Office of the Commissioner of Insurance
125 S. Webster St., 2nd Floor Rm. 227
Madison, WI 53703

Accessibility:

Pursuant to the American with Disabilities Act reasonable accommodations including the provision of informational materials in an alternative format, will be provided for individuals with disabilities upon request. Please call Karyn Culver at (608) 267-9586 with specific information on your request at least 5 days before the date of the hearing. There is also handicap access to the hearing location.

Appearances at the Hearing and Submittal of Written Comments:

Persons wishing to testify or provide oral or written comments regarding the Permanent Rule for the proposed administrative rule may appear during the hearing. Additionally comments may be submitted at <https://docs.legis.wisconsin.gov/code>.

For additional information please contact Julie E. Walsh at (608) 264-8101 or email at Julie.Walsh@wisconsin.gov in the OCI Legal Unit.

Deadline for submitting comments is October 14, 2019, by 4:00 pm.

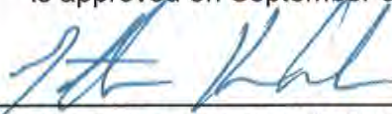
Initial Regulatory Flexibility Analysis:

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.

Agency Small Business Regulatory Coordinator:

The OCI small business coordinator is Kate Ludlum and she may be reached at Kate.Ludlum@wisconsin.gov or (608) 264-6232.

This Notice of Public Hearing
is approved on September 6, 2019.



Nathan D. Houdek, Deputy Commissioner

PROPOSED ORDER AMENDING A RULE

Office of the Commissioner of Insurance

Rule No. Agency 145 – Ins 17.28

The Commissioner of Insurance proposes an order 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 April 5, 2018, published in Register No. 747B, on March 26, 2018 and was approved by the Deputy Commissioner on May 8, 2018.

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") shall have rule-making authority under s. 601.41 (3), Stats., pursuant to s. 227.11 (2), Stats.

4. Related statutes or rules:

None.

5. Plain language analysis:

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.

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 fund administrative refund procedures or ISO codes.

7. 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 to Injured Patients and Families Compensation Fund refund procedures and ISO code modifications. The notice was published in the Wisconsin Administrative Register on April 5, 2018, in Register No. 748A1. A public hearing was held on April 11, 2018 at 10:00 am. Notice was 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 on April 26, 2018. No persons outside of the Office staff were present at the hearing and no comments were received.

8. Comparison of similar rules in adjacent states as found by OCI:

To the fund board's and the OCI's knowledge there are no similar rules in the adjacent states to compare this rule to as none of the 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.

9. A summary of the factual data and analytical methodologies that OCI used in support of 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.

10. 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.

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 and add 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 convenience and is still available for spreading the annual assessment over four quarterly payments.

11. See the attached Private Sector Fiscal Analysis.

The proposed rule will not significantly impact the private sector 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 based upon classification of the type of health care services provided. The resulting change in the fees should not be passed through to the general public.

12. A description of the 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.

13. 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 under Rule-Making Information at:

<https://oci.wi.gov/Pages/RegulationHome.aspx>

or by contacting Karyn Culver, Paralegal, 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

14. 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:

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

Web site: <http://docs.legis.wisconsin.gov/code>

The proposed rule changes are:

SECTION 1. Ins 17.28 (3) (c), are amended to read:

Ins 17.28 (3) (c) 1. Class 1:

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
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
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:

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	
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
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:

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 6th day of September 2019.



Nathan D. Houdek
Deputy Commissioner

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Repeal Modification

2. Administrative Rule Chapter, Title and Number

Ins 17.28 (3) (c) and (4) (f), Wis. Adm. Code

3. Date Rule promulgated and/or revised; Date of most recent Evaluation

June 2014

4. Plain Language Analysis of the Rule, its Impact on the Policy Problem that Justified its Creation and Changes in Technology, Economic Conditions or Other Factors Since Promulgation that alter the need for or effectiveness of the Rule.

The proposed 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 medical 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 designated ISO codes have been added for two specialties previously listed only under the Doctor of Medicine ISO codes. The rule additionally modifies the refund procedures of the fund by no longer requiring the fund to refund, with interest, the \$3.00 convenience administrative fee charged for providers choosing to pay the annual assessments in quarterly installments.

5. Describe the Rule's Enforcement Provisions and Mechanisms

Generally provisions of the insurance code are enforced by the commissioner of insurance under the authority granted in ss. 601.41 and 601.64 (3), Wis. Stats. Additionally, participants in the injured patients and families compensation fund may appeal to the board of governors to challenge a classification code under s. Ins 17.24, Wis. Adm. Code.

6. Repealing or Modifying the Rule Will Impact the Following

(Check All That Apply)

State's Economy

Local Government Units

Specific Businesses/Sectors

Public Utility Rate Payers

Small Businesses

7. Summary of the Impacts, including Compliance Costs, identifying any Unnecessary Burdens the Rule places on the ability of Small Business to conduct their Affairs.

Updating the ISO codes will improve accuracy in assessing providers an accurate fees based upon the specific type of practice in which physicians are engaged. The ISO codes are the same codes used by licensed insurers that issue underlying medical malpractice insurance coverage to the same providers. The proposed rule may alter the classification of a provider but will do so with increased accuracy resulting in overall fair and accurate assessments for providers. The change in reimbursement of a convenience fee will slightly affect the providers who avail themselves of the quarterly billing option but will balance the cost to the fund administrative time to track down quarterly payments and calculate interest on a de minimus fee.

8. List of Small Businesses, Organizations and Members of the Public that commented on the Rule and its Enforcement and a Summary of their Comments.

Although the proposed rule draft was provided to all interested parties including medical and hospital state organizations, the Office of the Commissioner of Insurance did not receive any comments on this rule or its potential economic impact.

9. Did the Agency consider any of the following Rule Modifications to reduce the Impact of the Rule on Small Businesses in lieu of repeal?

Less Stringent Compliance or Reporting Requirements

Less Stringent Schedules or Deadlines for Compliance or Reporting

Consolidation or Simplification of Reporting Requirements

Establishment of performance standards in lieu of Design or Operational Standards

Exemption of Small Businesses from some or all requirements

Other, describe: The office balanced the need to better define classification codes and the potential realignment of some providers into different fee assessment classifications and determined the accurate classification was a necessary

EXISTING ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

change. Additionally, the de minimus amount of the convenience fee for utilizing quarterly billing was outweighed by the amount of fund staff time that is required to identify and compute a refund with interest.

<p>10. 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</p>	<p>11. Chapter 20, Stats. Appropriations Affected None</p>
<p>12. Fiscal Effect of Repealing or Modifying the Rule <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"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Cost</p>	
<p>13. Summary of Costs and Benefits of Repealing or Modifying the Rule The costs to providers for both the adjusted ISO codes and change to the refund of a de minimus convenience fee was determined by be offset by increased accuracy of the assessment fee for the specific practice code utilized currently by the insurance industry writing the underlying coverage and use of staff time.</p>	
<p>14. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>15. Long Range Implications of Repealing or Modifying the Rule The long range implication is improved assessment allocations and use of fund staff time.</p>	
<p>16. Compare With Approaches Being Used by Federal Government The fund and the office are unaware of any federal regulation or approaches used that are similar to how the fund operates.</p>	
<p>17. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota) No neighboring states have a fund similar to the injured patients and families compensation fund therefore, no comparison can be made. ISO codes are standardized codes used by medical malpractice insurers throughout the U.S.</p>	
<p>18. Contact Name Julie Walsh</p>	<p>19. Contact Phone Number (608) 264-8101</p>

This document can be made available in alternate formats to individuals with disabilities upon request.