ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE

AND THE

BOARD OF GOVERNORS OF THE INJURED PATIENTS AND FAMILIES COMPENSATION FUND

AMENDING A RULE

The office of the commissioner of insurance and the board of governors of the injured patients and families compensation fund adopt an order to amend ss. Ins 17. 01 (3) and 17.28 (6) (intro.), (6) (k) 2., (6) (L) 2., (6) m)2., (6) (n) 3., (6) (q) 2., Wis. Adm. Code, relating to annual patients compensation fund and mediation panel fees for the fiscal year beginning July 1, 2008.

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 (2), 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 which participating health care providers must pay to the fund for the fiscal year beginning July 1, 2008. These fees represent a 0% change with fees paid for the 2007-08 fiscal year. The board approved these fees at its meeting on December 12, 2007, 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. 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 $18.00 for physicians and $2.50 per occupied bed for hospitals, representing an increase of $1.00 per physician and $1.50 per occupied bed for hospitals from 2007-08 fiscal year mediation panel fees.

This rule also clarifies the fees charged to employers for employed allied health care professionals. The fees charged are based upon the number of full-time equivalents (FTEs) as of the most recent survey completed by the employer and submitted to the Fund.

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 mediation panel fees will have an effect on some small businesses in Wisconsin. The mediation panel fee is assessed only on physicians and hospitals, not on corporations or other health care entities. The increase will affect only those small business that pay the mediation panel fees on behalf of their employed physicians. However, the increase in the mediation panel fee 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. The cost of mediation panel fees is a very

small portion of the expenses incurred by health care providers. 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 mediation panel fee which will increase the operational expenses for the providers. However, this increase is very minimal 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:

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Web site: **http://oci.wi.gov/ocirules.htm**

The 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, ~~2007~~2008:

(a) For physicians-- $~~17.00~~18.00

(b) For hospitals, per occupied bed-- $~~1.00~~2.50

SECTION 2. Ins 17.28 (6) (intro.), (k) 2., (L) 2., (m) 2., (n) 3., (q) 2. is amended to read:

Ins 17.28 (6) FEE SCHEDULE. The following fee schedule is in effect from July 1, ~~2007~~ 2008 to June 30, ~~2008~~2009:

(6) (k) 2. The following fee for each full-time equivalent allied health care professional ~~of the following employees~~ employed by the partnership ~~as of July 1, 2007~~ as of the most recent completed survey submitted:

Employed Health Care Persons	~~July 1, 2007~~ Fund Fee
Nurse Practitioners	$ 282
Advanced Nurse Practitioners	395
Nurse Midwives	2,482
Advanced Nurse Midwives	2,594
Advanced Practice Nurse Prescribers	395
Chiropractors	451
Dentists	226
Oral Surgeons	1,692
Podiatrists-Surgical	4,794

Optometrists	226
Physician Assistants	226

(6) (L) 2. The following fee for each full-time equivalent allied health care professional ~~of the following empl~~oyees employed by the corporation ~~as of July 1, 2007~~ as of the most recent completed survey submitted:

Employed Health Care Persons	~~July 1, 2007~~ Fund Fee
Nurse Practitioners	$ 282
Advanced Nurse Practitioners	395
Nurse Midwives	2,482
Advanced Nurse Midwives	2,594
Advanced Practice Nurse Prescribers	395
Chiropractors	451
Dentists	226
Oral Surgeons	1,692
Podiatrists-Surgical	4,794
Optometrists	226
Physician Assistants	226

(6) (m) 2. The following fee for each full-time equivalent allied health care professional ~~of the following employees~~ employed by the corporation ~~as of July 1, 2007~~ as of the most recent completed survey submitted:

Employed Health Care Persons	~~July 1, 2007~~ Fund Fee
Nurse Practitioners	$ 282
Advanced Nurse Practitioners	395
Nurse Midwives	2,482

Advanced Nurse Midwives	2,594
Advanced Practice Nurse Prescribers	395
Chiropractors	451
Dentists	226
Oral Surgeons	1,692
Podiatrists-Surgical	4,794
Optometrists	226
Physician Assistants	226

(6) (n) 3. The following fee for each full-time equivalent allied health care professional ~~of the following employees~~ employed by the operational cooperative sickness plan ~~as of July 1, 2007~~ as of the most recent completed survey submitted:

Employed Health Care Persons	~~July 1, 2007~~ Fund Fee
Nurse Practitioners	$ 282
Advanced Nurse Practitioners	395
Nurse Midwives	2,482
Advanced Nurse Midwives	2,594
Advanced Practice Nurse Prescribers	395
Chiropractors	451
Dentists	226
Oral Surgeons	1,692
Podiatrists-Surgical	4,794
Optometrists	226
Physician Assistants	226

(6) (q) 2. The following for each full-time equivalent allied health care professional ~~of the following employees~~ employed by the organization or enterprise not specified as a

partnership or corporation ~~as of July 1, 2007~~ as of the most recent completed survey submitted:

Employed Health Care Persons	~~July 1, 2007~~ Fund Fee
Nurse Practitioners	$ 282
Advanced Nurse Practitioners	395
Nurse Midwives	2,482
Advanced Nurse Midwives	2,594
Advanced Practice Nurse Prescribers	395
Chiropractors	451
Dentists	226
Oral Surgeons	1,692
Podiatrists-Surgical	4,794
Optometrists	226
Physician Assistants	226

SECTION 3. EFFECTIVE DATE. This rule will take effect on July 1, 2008.

Dated at Madison, Wisconsin, this ___ day of _____ 2008.

_____
Sean Dilweg
Commissioner of Insurance

Section 1.

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Section Ins 17.01 (3) and 17.28 (6) relating to fund fees and mediation panel fees for fiscal year 2009 and affecting small business beginning July 1, 2008

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 mediation panel fee which will increase the operational expenses for the providers. However, this increase is very minimal and will have no effect on the provider's competitive abilities.

Wisconsin Department of Administration

Division of Executive Budget and Finance

DOA-2047 (R10/2000)

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

		LRB Number	Amendment No. if Applicable
☒ ORIGINAL	☐ UPDATED		
☐ CORRECTED	☐ SUPPLEMENTAL	Bill Number	Administrative Rule Number **INS 17.28**

Subject

annual injured patients and families compensation fund fees and mediation panel fees for fiscal year beginning July 1, 2008

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:**	
A. State Costs by Category	**Increased Costs**	**Decreased Costs**
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 Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	**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

	STATE	LOCAL
NET CHANGE IN COSTS	$ **None 0**	$ **None 0**
NET CHANGE IN REVENUES	$ **None 0**	$ **None 0**

Prepared by: Theresa Wedekind	**Telephone No.** 608-266-0953	**Agency** IPFCF/OCII
Authorized Signature:	**Telephone No.**	**Date** (mm/dd/ccyy) 1/9/2008

Wisconsin Department of Administration

Division of Executive Budget and Finance
DOA-2048 (R10/2000)

FISCAL ESTIMATE

☒ ORIGINAL ☐ UPDATED

☐ CORRECTED ☐ SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number **INS 17.28**

Subject

annual injured patients and families compensation fund fees and mediation panel fees for fiscal year beginning July 1, 2008

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 ☐ WTCS 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 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 December 12, 2007 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.

Long-Range Fiscal Implications

None

Prepared by:	**Telephone No.**	**Agency**
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Authorized Signature:	**Telephone No.**	**Date** (mm/dd/ccyy) 1/9/2008