ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE CREATING A RULE

To create Ins 17.28 (3h), Wis. Adm. Code,

Relating to Supervision and Direction.

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

1. **Statutes interpreted:**

   Section 655.005 (2) (a), Stats.

2. **Statutory authority:**

   Sections 601.41 (3) and 655.004, Stats.

3. **Explanation of OCI's authority to promulgate the proposed rule under these statutes:**

   The commissioner of insurance may promulgate such rules under ch. 227, Stats., as are necessary to enable the performance of responsibilities under chapter 655, Stats.

4. **Related statutes or rules:**

   None

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

   This rule clarifies what constitutes direction and supervision of a health care provider's employes defined under s. 655.001 (7t) Stats., as it relates to the health care provider having employee coverage under the injured patients and families compensation 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 administration.

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.

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:**

   The fund's board of governors established a special committee to review issues related to fund coverage. The committee determined that a rule was needed to clarify the meaning of direction and supervision of health care

practitioners. The committee recommended to the board the proposed language and the recommendation was approved by the board.

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 rule will have no effect on small business.

10. See the attached Private Sector Fiscal Analysis.

This rule will have no fiscal impact.

11. A description of the Effect on Small Business:

This rule will have no effect on OCI regulated 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 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 1728
Office of the Commissioner of Insurance
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Web site: **http://oci.wi.gov/ocirules.htm**

The proposed rule changes are:

SECTION 1. Ins 17.28 (3h), Stats. is created to read:

(**3h)** SUPERVISION AND DIRECTION. For the purposes of clarifying s. 655.005(2)(a), health care services that are "under the direction and supervision of a physician or nurse anesthetist" include, but are not limited to the health care services being provided pursuant to and within the scope of the health care practitioner's professional license and:

(a) The health care practitioner is subject to a quality assurance program, peer review process, or other similar program or process that is implemented for and designed to ensure the provision of competent and quality patient care and that program or process also includes participation by a physician or a nurse anesthetist; or

(b) The health care services are provided by the health care practitioner within the scope of standing orders, protocols, procedures or clinical practice guidelines established or approved by a physician or nurse anesthetist.

SECTION 2. These changes will take effect on the first day of the month after publication, as provided in s. 227.22(2)(intro.), 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 17.28 (3h) relating to Supervision and Direction

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	LRB Number	Amendment No. if Applicable
☐ CORRECTED	☐ SUPPLEMENTAL	Bill Number	Administrative Rule Number **INS 1728**

Subject
Supervision and Direction

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 L. Wedekind	**Telephone No.** (608) 266-0953	**Agency** Insurance
Authorized Signature:	**Telephone No.**	**Date** (mm/dd/ccyy)

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

Wisconsin Department of Administration

FISCAL ESTIMATE

☒ ORIGINAL ☐ UPDATED

☐ CORRECTED ☐ SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number **INS 1728**

Subject

Supervision and Direction

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 that provides excess medical malpractice coverage to Wisconsin health care providers. Chapter 655 Wis. Stat. provides employee coverage to health care providers although specific health care practitioners must practice under the supervision and direction of a physician or CRNA. This rule clarifies supervision and direction and has no fiscal effect.

There is no effect on GPR.

Long-Range Fiscal Implications

None

Prepared by:	**Telephone No.**	**Agency**
Theresa L. Wedekind	(608) 266-0953	Insurance
Authorized Signature:	**Telephone No.**	**Date** (mm/dd/ccyy)