

SECTION 4. 146.02 (5) of the statutes is created to read:

146.02 (5) RELATED SERVICES. The department shall disseminate information to families whose children suffer from metabolic disorders and to women of child-bearing age with a history of metabolic disorders concerning the need for and availability of special dietary treatment and the necessity for testing infants. The department shall also refer families of children who suffer from metabolic disorders to available health and social services programs and shall coordinate the provision of these programs.

SECTION 5. **Program responsibility changes.** In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

A	B	C
Statute Sections	References Deleted	References Inserted
15.911 (2)	none	146.02

1983 Senate Bill 512

Date of enactment: **March 14, 1984**

Date of publication: **March 19, 1984**

### 1983 Wisconsin Act 158

AN ACT to repeal 619.04 (5) (d) and 655.21 (1) (a) and (b); to renumber and amend 655.21 (1) (intro.) and 655.23 (3); to amend 619.01 (1) (c) 2, 655.015, 655.14, 655.21 (2), 655.23 (2), 655.23 (4), 655.27 (1), 655.27 (3) (a) (intro.) and (c), 655.27 (5) (a) and (d), 808.07 (2) (b), (3) and (5) and 814.27; to repeal and recreate 20.680 (2) (q) and 655.10; and to create subchapter V of chapter 655, 619.04 (6) and (11), 655.22, 655.23 (3) (b), 655.27 (3) (title) and 655.27 (5) (a) 2 of the statutes, relating to mandatory health care liability risk sharing plans, creating a patients compensation panels fund, patients compensation fund procedures, requesting the legislative council to conduct a study and making an appropriation.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 20.680 (2) (q) of the statutes is repealed and recreated to read:

20.680 (2) (q) *Patients compensation panels fund.* From the patients compensation panels fund created under s. 655.28, all moneys in the fund to be used for administrative expenses of the patients compensation panels created under s. 655.02.

SECTION 2. 619.01 (1) (c) 2 of the statutes is amended to read:

619.01 (1) (c) 2. Each health care liability insurance plan shall require participation by all insurers insuring persons in this state against liability resulting from personal injuries. Any deficit in a health care liability insurance plan in any year shall be recouped by actuarially sound rate increases for such plan which take into account any plan surplus and are applicable prospectively. ~~Any surplus over the loss reserves in such a plan in any year shall be distributed by rate decreases for such plan applicable prospectively~~ Each plan shall maintain a surplus determined by the commissioner acting under ss. 623.11 and 623.12.

SECTION 3. 619.04 (5) (d) of the statutes is repealed.

SECTION 4. 619.04 (6) and (11) of the statutes are created to read:

619.04 (6) (a) If the plan accumulates funds in excess of the surplus required under s. 619.01 (1) (c) 2 and incurred liabilities, including reserves for claims incurred but not yet reported, the board of governors shall return those excess funds to the insureds by means of refunds or prospective rate decreases.

(b) The board of governors shall annually determine whether excess funds have accumulated.

(c) If it determines that excess funds have accumulated, the board of governors shall specify the method and formula for distributing the excess funds.

(11) Upon dissolution of the plan under this section, any assets in excess of incurred liabilities shall be paid to the general fund.

SECTION 5. 655.015 of the statutes is amended to read:

**655.015 Future medical expenses.** If a settlement, ~~arbitration panel~~ award or judgment under this chapter provides for future medical expense payments in excess of \$25,000, that portion of future medical expense payments in excess of \$25,000 shall be paid into the patients compensation fund created under s. 655.27. The commissioner shall develop by rule a system for managing and disbursing those moneys through ~~periodic~~ payments for these expenses. The ~~periodic~~ payments shall be made under the system until either the amount is exhausted or the patient dies.

SECTION 6. 655.10 of the statutes is repealed and recreated to read:

**655.10 Joinder of parties.** Joinder of parties is governed by ss. 655.065 (2) (a) 2, 803.03 and 803.04. The panel may order joinder of the fund or any additional claimant or respondent if joinder is necessary to determine the claim. The panel shall notify the party joined.

SECTION 7. 655.14 of the statutes is amended to read:

**655.14 Filing fee.** Submissions of controversy filed with the director are subject to a filing fee of \$11. The filing fee shall be paid into the patients compensation panels fund created under s. ~~655.27~~ 655.28.

SECTION 8. 655.21 (1) (intro.) of the statutes is renumbered 655.21 (1) and amended to read:

655.21 (1) The patients compensation panels fund created under s. 655.28 shall be financed from fees charged to health care providers. ~~The department and the commissioner shall biennially report under s. 16.42 the revenue received from the various types of health care providers. Until otherwise provided by law on the basis of documented cost experience, the annual fees are established as follows: director shall, by February 1 of each year, determine the revenues needed for the operation of the panels during the succeeding fiscal year and inform the board of governors created under s. 619.04 (3) of that amount. The board of governors shall, by rule, set fees to charge health care providers at a level sufficient to provide these revenues. The board shall charge each health care provider permanently practicing in this state an annual fee and shall charge each hospital an annual fee per occupied bed.~~

SECTION 9. 655.21 (1) (a) and (b) of the statutes are repealed.

SECTION 10. 655.21 (2) of the statutes is amended to read:

655.21 (2) The annual fees under sub. (1) ~~(a)~~ shall be collected in a manner prescribed by rule of the commissioner. ~~The annual fees under sub. (1) (b) shall be collected by the department in a manner prescribed by rule of that department. The commissioner and the department shall pay all money so collected under sub. (1) into the patients compensation panels fund created under s. 655.27. At the time of remitting the fee, each health care provider permanently practicing or operating in this state shall submit proof of financial responsibility under s. 655.23 in a manner prescribed by rule of the commissioner 655.28.~~

SECTION 11. 655.22 of the statutes is created to read:

**655.22 Information needed to set fees.** The department shall provide the director, the commissioner and the board of governors created under s. 619.04 (3) with information on hospital bed capacity and occupancy rates as needed to set fees under s. 655.21 or 655.27 (3).

SECTION 12. 655.23 (2) of the statutes is amended to read:

655.23 (2) Every health care provider permanently practicing or operating in this state shall, once in each year as prescribed by the commissioner, file with the commissioner in a form prescribed by the commissioner, proof of financial responsibility as provided in this section. This requirement does not apply to any health care provider whose insurer files a certificate of insurance under sub. (3) (b). No health care provider who retires or ceases operation after July 24, 1975, shall be eligible for the protection provided under this chapter unless proof of financial responsibility for all claims arising out of acts of malpractice occurring after July 24, 1975, is provided to the commissioner as required in this section.

SECTION 13. 655.23 (3) of the statutes is renumbered 655.23 (3) (a) and amended to read:

655.23 (3) (a) Every health care provider permanently practicing or operating in this state either shall insure and keep insured the provider's liability by a policy of insurance issued ~~in accordance with the laws of this state by an insurer authorized to do business in this state or by an unauthorized nondomestic insurer if the commissioner has found the insurer to be reliable and solid as provided in s. 618.41 (6) (d),~~ shall qualify as a self-insurer, or shall furnish to the commissioner a cash or surety bond in accordance with the requirements of this chapter. Such insurance shall be designated "health care providers' professional liability insurance" and shall, in this section and ss. 655.24 and 655.245, be referred to as "health care liability insurance". The submission of a cash or surety bond, or qualification as a self-insurer, shall be subject to the approval of the commissioner and is valid only when approved by the commissioner.

SECTION 14. 655.23 (3) (b) of the statutes is created to read:

655.23 (3) (b) Each insurance company issuing health care liability insurance that meets the requirements of sub. (4) to any health care provider permanently practicing or operating in this state shall, at the times prescribed by the commissioner, file with the commissioner in a form prescribed by the commissioner a certificate of insurance on behalf of the health care provider upon original issuance and each renewal.

SECTION 15. 655.23 (4) of the statutes is amended to read:

655.23 (4) Such health care liability insurance or cash or surety bond shall be in amounts of at least ~~\$100,000~~ \$200,000 per claim and ~~\$300,000~~ \$600,000 per year.

SECTION 16. 655.27 (1) of the statutes is amended to read:

655.27 (1) **FUND.** There is created a patients compensation fund for the purpose of paying that portion of a medical malpractice claim which is in excess of the limit expressed in s. 655.23 (5) and paying future medical expense ~~periodic~~ payments under s. 655.015. The fund shall provide occurrence coverage for health care providers permanently practicing or operating in this state. The fund shall be liable only for payment of claims against health care providers permanently practicing or operating in this state who have complied with this chapter and reasonable and necessary expenses incurred in payment of claims and fund administrative expenses. The coverage provided by the fund shall begin July 1, 1975, ~~and run thereafter on a fiscal year basis.~~

SECTION 17. 655.27 (3) (title) of the statutes is created to read:

655.27 (3) (title) **FEES.**

SECTION 18. 655.27 (3) (a) (intro.) and (c) of the statutes are amended to read:

655.27 (3) (a) (title) *Assessment*. (intro.) Each health care provider permanently practicing or operating in this state shall pay operating fees to ~~the department or the commissioner for deposit into the fund in a manner prescribed by them by rule.~~ The operating fees, which shall be assessed based on the following considerations:

(c) *Collection and deposit of fees*. Annual fees under pars. (a) and (b) and future medical expense payments specified for the fund shall be collected by the commissioner ~~or the department for deposit into the fund in a manner prescribed by them~~ the commissioner by rule.

SECTION 19. 655.27 (5) (a) and (d) of the statutes are amended to read:

655.27 (5) (a) 1. Any person may file an action a claim for damages arising out of the rendering of medical care or services within this state against a health care provider covered under the fund provided that such person filing the claim shall not recover against the fund any portion of a judgment for damages arising out of the rendering of medical care or services against a health care provider covered under the fund unless the fund was named as a defendant in the suit. A person filing a claim may only recover from the fund if the fund is named as a party in the controversy.

3. If after reviewing the facts upon which the claim or action is based, it appears reasonably probable that damages paid on the claim will exceed \$200,000, the fund may appear and actively defend itself when named as a defendant party in the suit controversy. In such action, the fund may retain counsel and pay out of the fund attorney's attorney fees and expenses including court costs incurred in defending the fund. The attorney or law firm retained to defend the fund shall not be retained or employed by the board of governors to perform legal services for the board of governors other than those directly connected with the fund. Any judgment affecting the fund may be appealed as provided by law. The fund may not be required to file any undertaking in any judicial action, proceeding or appeal.

(d) A person who has recovered a final judgment or a settlement approved by the board of governors against a health care provider who is covered by the fund may file a claim with the board of governors to recover that portion of such judgment or settlement which is in excess of \$200,000. In the event the fund incurs liability exceeding \$1,000,000 to any person under a single claim the fund shall pay not more than \$500,000 per year from money collected and paid into the fund under sub. (3) and interest thereon until the claim has been paid in full, and any attorney's fees in connection with such claim shall be similarly prorated. Payment of not more than \$500,000 per year includes direct or indirect payment or commitment of moneys to or on behalf of any person under a single claim by any funding mechanism.

SECTION 20. 655.27 (5) (a) 2 of the statutes is created to read:

655.27 (5) (a) 2. Any person may file an action for damages arising out of the rendering of medical care or services outside this state against a health care provider covered under the fund. A person filing an action may only recover from the fund if the fund is named as a party in the action or, if the rules of procedure of the jurisdiction in which the action is brought do not permit including the fund as a party, if the fund is notified of the action within 60 days of service of process on the health care provider. The board of governors may extend this time limit if it finds that enforcement of the time limit would be prejudicial to the purposes of the fund and would benefit neither insureds nor claimants.

SECTION 21. Subchapter V of chapter 655 of the statutes is created to read:

CHAPTER 655  
SUBCHAPTER V  
PATIENTS COMPENSATION PANELS FUND

**655.28 Patients compensation panels fund.** (1) CREATION OF THE FUND. There is created a patients compensation panels fund to pay the administrative expenses of patients compensation panels created under subch. II.

(2) FUND ADMINISTRATION AND OPERATION. Management of the fund is vested with the director.

(3) FEES. The fund is financed from fees generated under ss. 655.14 and 655.21.

(4) FUND ACCOUNTING AND FINANCIAL REPORTS. (a) Any person authorized to receive deposits, withdraw moneys, issue vouchers or otherwise disburse fund moneys shall post a blanket fidelity bond in an amount reasonably sufficient to protect fund assets. The cost of the bond shall be paid from the fund.

(b) The state investment board shall invest money held in the fund in short-term fixed return interest-bearing investments. All income derived from these investments returns to the fund.

(c) The director shall submit a report on the operation of the patients compensation panels and on the status of the fund to the presiding officer of each house of the legislature on or before March 1 of each year.

SECTION 21g. 808.07 (2) (b), (3) and (5) of the statutes are amended to read:

808.07 (2) (b) ~~Relief~~ Except as provided in s. 655.27 (5) (a) 3, relief under this subsection may be conditioned upon the filing of an undertaking in the trial court.

(3) UNDERTAKING FOR COSTS. An undertaking for costs is not required unless specifically required by statute, or, except as provided in s. 655.27 (5) (a) 3, by the trial court acting in its discretion.

(5) PUBLIC OFFICIALS. A person or agency suing or being sued in an official public capacity is not required to execute an undertaking as a condition for relief under this section unless, except as provided in s. 655.27 (5) (a) 3, required by the court in its discretion.

SECTION 21r. 814.27 of the statutes is amended to read:

**814.27 Security for costs.** ~~In~~ Except as provided in s. 655.27 (5) (a) 3, in all cases where it shall appear reasonable and proper the court may require the plaintiff to give sufficient security for such costs as may be awarded against him.

SECTION 22. **Nonstatutory provisions; patients compensation panels.** (1) TRANSFERS BETWEEN FUNDS. The board of governors created under section 619.04 (3) of the statutes shall transfer the balance of funds in the patients compensation fund that are received as fees generated under sections 655.14 and 655.21 of the statutes and the earnings thereon to the patients compensation panels fund, as created by this act.

(2) LEGISLATIVE COUNCIL STUDY. (a) The legislative council is requested to study the health care providers' professional liability and patients compensation provisions of section 619.04 and chapter 655 of the statutes and related statutory and common law. It is requested that the study include, but not be limited to, the following topics:

1. The operations and solvency of the patients compensation fund and the Wisconsin health care liability insurance plan.

2. The legal doctrines and professional standards relating to the determination of professional liability of health care providers.

3. The operations and effectiveness of patients compensation panels.

(b) The legislative council is requested to report its findings and recommendations to the 1985 legislature.

SECTION 23. **Initial applicability.** The treatment of section 655.23 (4) of the statutes by this act applies to health care liability insurance or surety bonds issued or renewed or cash bonds posted on or after the effective date of this act.

SECTION 24. **Effective date.** This act takes effect on July 1, 1983, or on the day following publication, whichever is later.

1983 Senate Bill 523

Date of enactment: **March 14, 1984**

Date of publication: **March 19, 1984**

## 1983 Wisconsin Act 159

AN ACT to amend 114.32 (1), (3) and (4); and to create 114.002 (18m) of the statutes, relating to authorizing the secretary of transportation to act as agent for owners of public-use airports in contracting for federal airport improvement funds.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 114.002 (18m) of the statutes is created to read:

114.002 (18m) "Public-use airport" means any of the following as provided in 49 USC 2202:

- (a) Any public airport.
- (b) Any privately owned reliever airport.
- (c) Any privately owned airport used for public purposes and determined by the secretary of the U.S. department of transportation to enplane annually 2,500 or more passengers and receive scheduled passenger service of aircraft.

SECTION 2. 114.32 (1), (3) and (4) of the statutes are amended to read:

114.32 (1) **SECRETARY MAY ACCEPT.** The secretary of transportation may cooperate with the government of the United States, and any agency or department thereof in the acquisition, construction, improvement, maintenance and operation of airports and other air navigation facilities in this state, and comply with the laws of the United States and any regulations made thereunder for the expenditure of federal moneys upon such airports and other air navigation facilities, and may enter into any contracts necessary to accomplish such purpose. He may accept, receive and receipt for federal moneys and other moneys, either public or private, for and in behalf of this state or any municipality thereof, for training and education programs, for the acquisition, construction, improvement, maintenance and operation of airports and other aeronautical facilities, whether such work is to be done by the state or by such municipalities, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by laws of the United States and any rules or regulations made thereunder, and he may act as agent of any municipality of this state or the owner of any public-use airport upon the request of such municipality or the owner of the public-use airport, in accepting, receiving and receipting for such moneys in its behalf for airports, and in contracting for the acquisition, improvement, maintenance or operation of airports financed either in whole or in part by federal moneys, and the governing body of any such municipality or the owner of the public-use airport may designate the secretary of transportation as its agent for such purposes and enter into an agreement with him prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations and with this chapter. Such moneys as are paid over by the U.S. government shall be retained by the state or paid over to said municipalities or to the owners of the public-use airports under such terms and conditions as may be imposed by the U.S. government in making such grants.