Date of enactment: **April 26, 1990**
1989 Senate Bill 381 Date of publication*: **May 10, 1990**

1989 WISCONSIN ACT 332

AN ACT ***to repeal*** 619.12 (1) (e); ***to renumber and amend*** 102.31 (1) (e) and (f) and 601.42 (6); ***to amend*** 618.11 (14), 619.10 (4), 619.12 (1) (intro.), 619.14 (3) (k), 626.31 (1) (b), 631.36 (2) (a) (intro.), 631.36 (3) and (4) (a), 631.36 (5) (a), 631.36 (6), 632.45 (1), 632.81, 632.895 (3), 646.12 (1) (a), 646.12 (2) (e), 655.23 (3) (a), 655.23 (4), 655.23 (5) and 655.27 (5) (c); ***to repeal and recreate*** 601.64 (1), 631.36 (5) (b) and 655.23 (3) (a); and ***to create*** 102.31 (1) (e), 601.42 (6) (b), 619.14 (3) (c) 3, 626.35 (title), 631.36 (5) (c) and (d) and 655.23 (3) (c) and (d) of the statutes, **relating to:** renewals and cancellations of insurance policies, making certain changes to the laws governing the health insurance risk sharing plan, medical malpractice insurance, various other changes to the insurance laws and granting rule–making authority.

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

SECTION 1. 102.31 (1) (e) and (f) of the statutes, as created by 1989 Wisconsin Act 64, are renumbered 626.35 (1) and (2) and amended to read:

626.35 **(1)** FILING. An insurer who provides a contract under ~~par.~~ s. 102.31 (1) (a) shall file with the ~~Wisconsin compensation rating~~ bureau a copy of the contract, or other evidence of the contract as designated by the ~~Wisconsin compensation rating~~ bureau, not more than 60 days after the effective date of the contract.

(2) PENALTY. The ~~Wisconsin compensation rating~~ bureau may assess a penalty, in accordance with a schedule adopted by the ~~Wisconsin compensation rating~~ bureau, against an insurer who fails to comply with ~~par. (e)~~ sub. (1).

SECTION 2. 102.31 (1) (e) of the statutes is created to read:

102.31 **(1)** (e) An insurer who provides a contract under par. (a) shall file the contract as provided in s. 626.35.

SECTION 3. 601.42 (6) of the statutes is renumbered 601.42 (6) (a) and amended to read:

601.42 **(6)** (a) In the absence of actual malice, no communication to the commissioner required by law or by the commissioner shall subject the person making it to an action for damages for defamation. This paragraph applies to communications received by the commissioner before the effective date of this paragraph .... [revisor inserts date], or on or after June 1, 1994.

SECTION 4. 601.42 (6) (b) of the statutes is created to read:

601.42 **(6)** (b) In the absence of actual malice, no communication to the commissioner or office required by law or by the commissioner shall subject the person making it to an action for damages for the communication. This paragraph applies to communications received by the commissioner or office on or after the effective date of this paragraph .... [revisor inserts date], and before June 1, 1994.

SECTION 6. 601.64 (1) of the statutes is repealed and recreated to read:

601.64 **(1)** INJUNCTIONS AND RESTRAINING ORDERS. The commissioner may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction or by temporary restraining order any violation of chs. 600 to 655, any rule promulgated under chs. 600 to 655 or any order issued under s. 601.41 (4). Except as provided in s. 641.20, the commissioner need not show irreparable harm or lack of an adequate

remedy at law in an action commenced under this subsection.

SECTION 7. 618.11 (14) of the statutes is amended to read:

618.11 **(14)** Authorization to the commissioner or office to make inquiry of any person about the applicant, its manager under a management contract, its attorney in fact, its general agents, and any of the officers, directors or shareholders of any of them designated by the commissioner or office, and agreement by the applicant and any other persons so designated that in the absence of actual malice, no communication made in response to any such inquiry will subject the persons making it to an action for damages for ~~defamation~~ the communication brought by the applicant or the designated person or a legal representative of either. No such action shall lie whether such agreement is made or not.

SECTION 8. 619.10 (4) of the statutes is amended to read:

619.10 **(4)** "Health insurance" means surgical, medical, hospital, major medical and other health service coverage provided on an expense–incurred basis and fixed indemnity policies. "Health insurance" does not include ancillary coverages such as income continuation, short–term, accident only, ~~fixed indemnity policies,~~ credit insurance, automobile medical payment coverage, coverage issued as a supplement to liability coverage, loss of time or accident benefits.

SECTION 9. 619.12 (1) (intro.) of the statutes is amended to read:

619.12 **(1)** (intro.) Except as provided in sub. (2), the board or administering carrier shall certify as eligible a person who is covered by medicare because he or she is disabled under 42 USC 423, a person who submits evidence that he or she has tested positive for the presence of HIV or an antibody to HIV, and any person who receives any of the following based wholly or partially on medical underwriting considerations within 9 months prior to making application for coverage by the plan:

SECTION 10. 619.12 (1) (e) of the statutes is repealed.

SECTION 11. 619.14 (3) (c) 3. of the statutes is created to read:

619.14 **(3)** (c) 3. Subject to the limits under subd. 2 and to rules promulgated by the commissioner, services for the chronically mentally ill in community support programs operated under s. 51.421.

SECTION 12. 619.14 (3) (k) of the statutes is amended to read:

619.14 **(3)** (k) Rental or purchase, as appropriate, of durable medical equipment or disposable medical supplies, other than eyeglasses and hearing aids.

SECTION 13. 626.31 (1) (b) of the statutes is amended to read:

626.31 **(1)** (b) *Representation.* ~~One–half of the members of the managing committee and of the rating committee~~ The rating committee shall consist of 10 members. Two members of the rating committee shall represent noninsurer, employer interests and shall be appointed by and serve at the pleasure of the governor. Of the remaining 8 members, 4 shall be chosen by stock insurers and ~~one–half~~ 4 by mutual insurers. Both ~~classes of~~ stock and mutual insurers shall be represented equally on all other committees, including the managing committee. Each ~~committee~~ member of a committee shall have one vote, with the commissioner deciding the matter in the event of a tie.

SECTION 14. 626.35 (title) of the statutes is created to read:

626.35 (title) **Worker's compensation insurance contracts.**

SECTION 15. 631.36 (2) (a) (intro.) of the statutes is amended to read:

631.36 **(2)** (a) *Permissible grounds.* (intro.) Except as provided by par. (c) and sub. (3), no insurance policy may be canceled by the insurer prior to the expiration of the agreed term ~~or one year from the effective date of the policy or renewal, whichever is less,~~ except for failure to pay a premium when due or on grounds stated in the policy, which must be comprehended within one of the following classes:

SECTION 16. 631.36 (3) and (4) (a) of the statutes are amended to read:

631.36 **(3)** (title) ANNIVERSARY CANCELLATION OR ALTERATION. A policy may be issued for a term longer than one year or for an indefinite term with a clause providing for cancellation by the insurer ~~by giving~~ in the manner provided in sub. (4) (a) for nonrenewals, except the notice must be given at least 60 days prior to any anniversary date~~, as provided in sub. (4) (a) for nonrenewals except that~~ and an insurer may not cancel a policy solely because of the termination of an insurance marketing intermediary's contract with the insurer unless the insurer complies with sub. (4m). The clause may also provide for alteration of the terms or premium by the insurer as provided in sub. (5) (c), except the clause must then permit cancellation by the policyholders as provided in sub. (5) (c).

(4) (a) *Notice required.* Subject to subs. (2) and (3), a policyholder has a right to have the policy renewed, on the terms then being applied by the insurer to similar risks, for an additional period of time equivalent to the expiring term if the agreed term is one year or less, or for one year if the agreed term is longer than one year, unless at least 60 days prior to the date of expiration provided in the policy a notice of intention not to renew the policy beyond the agreed expiration date is mailed or delivered to the policyholder, or with respect to failure timely to pay a renewal premium a notice is given, not more than ~~60~~ 75 days nor less than 10 days prior to the due date of the premium, which states clearly the effect of nonpayment of premium by the due date.

SECTION 17. 631.36 (5) (a) of the statutes is amended to read:

631.36 **(5)** (a) *General.* Subject to ~~par.~~ pars. (b) and (d), if the insurer offers or purports to renew the policy but on less favorable terms or at higher ~~rates~~ premiums, the new terms or ~~rates~~ premiums take effect on the renewal date if the insurer sent by 1st class mail or delivered to the policyholder notice of the new terms or ~~rates~~ premiums at least 60 days prior to the ~~expiration~~ renewal date. If the insurer ~~has not so notified~~ notifies the policyholder within 60 days prior to the renewal date, the new terms or ~~rates~~ premiums do not take effect until 60 days after the notice is mailed or delivered, in which case the policyholder may elect to cancel the renewal policy at any time during the 60–day period. ~~Return~~ The notice shall include a statement of the policyholder's right to cancel. If the policyholder elects to cancel the renewal policy during the 60–day period, return premiums or additional premium charges shall be calculated proportionately on the basis of the old ~~rates~~ premiums. If the insurer does not notify the policyholder of the new premiums or terms as required by this subsection prior to the renewal date, the insurer shall continue the policy for an additional period of time equivalent to the expiring term and at the same premiums and terms of the expiring policy, except as permitted under sub. (2) or (3).

SECTION 18. 631.36 (5) (b) of the statutes is repealed and recreated to read:

631.36 **(5)** (b) *Exception.* Paragraph (a) does not apply if the only change that is adverse to the policyholder is a premium increase and if either of the following applies to the premium increase:

1. The premium increase is less than 25% and is generally applicable to the class of business to which the policy belongs.

2. The premium increase results from a change based on action by the insured that alters the nature or extent of the risk insured against, including but not limited to a change in the classification or the units of exposure or increased policy coverage.

SECTION 19. 631.36 (5) (c) and (d) of the statutes are created to read:

631.36 **(5)** (c) *Anniversary alteration.* Subject to par. (d), an insurer may alter the terms or premium of a policy issued for a term longer than one year or for an indefinite term on the anniversary date only if notice of less favorable terms or premiums is sent by 1st class mail or delivered to the policyholder at least 60 days prior to the anniversary date. If the insurer notifies the policyholder within 60 days prior to the anniversary date, the new terms or premiums do not take effect until 60 days after the notice is mailed or delivered, in which case the policyholder may elect to cancel the policy at any time during the 60–day period. The notice shall include a statement of the policyholder's right to cancel. If the policyholder elects to cancel the policy during the 60–day period, return premiums or additional premium charges shall be calculated proportionately on the basis of the old premiums. If the insurer does not notify the policyholder of the new premiums or terms as required by this subsection prior to the anniversary date, the insurer shall continue the policy until the next anniversary date or the renewal date, whichever is earlier, at the same premiums and terms as for the previous period, except as permitted under sub. (2) or (3).

(d) *Estimate.* An insurer may give notice under par. (a) or (c) of a new premium by stating the actual amount or percentage increase to be charged. If the insurer cannot reasonably determine the actual amount or percentage increase 60 days prior to the renewal or anniversary date, the notice shall include a good faith estimate of the increase based on information that the insurer can reasonably obtain. If an estimate is stated, the insurer shall renew or continue the policy at a premium that does not exceed the increase stated in the notice except as permitted under sub. (5) (b).

SECTION 20. 631.36 (6) of the statutes is amended to read:

631.36 **(6)** INFORMATION ABOUT GROUNDS. ~~If a~~ A notice of cancellation or nonrenewal under sub. (2) (b) or (4) ~~does not~~ shall state with reasonable precision the facts on which the insurer's decision is based~~, the insurer must mail or deliver that information within 5 working days after receipt of a written request by the policyholder~~. No such notice is effective unless it ~~contains adequate information about the policyholder's right to make the request~~ so states the facts.

SECTION 21. 632.45 (1) of the statutes is amended to read:

632.45 **(1)** IDENTIFICATION. Any contract issued under s. 611.25 or under any section of chs. 600 to 646 incorporating s. 611.25 by reference which provides for payment of benefits in variable amounts shall contain a statement of the essential features of the procedure to be followed by the insurer in determining the dollar amount of the variable benefits. It shall contain appropriate nonforfeiture benefits in lieu of those under s. 632.43 or 632.435 and a grace provision appropriate to such a contract in lieu of the provision required by s. 632.44. Any such individual contract and any such certificate issued under a group contract shall state that the dollar amount may decrease or increase and shall conspicuously display on its first page a statement that the benefits thereunder are on a variable basis, with a statement where in the contract the details of the variable provisions may be found.

SECTION 22. 632.81 of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

632.81 Minimum standards for certain disability policies. The commissioner may by rule establish minimum standards for benefits, claims payments, marketing practices, compensation arrangements and reporting practices for medicare supplement policies, medicare

replacement policies and long–term care insurance policies ~~to ensure that the benefits under and terms of medicare supplement policies, medicare replacement policies and long–term care insurance policies are reasonable~~. The commissioner may by rule exempt from the minimum standards certain types of coverage, if the commissioner finds the exemption is not adverse to the interests of policyholders and certificate holders.

SECTION 23. 632.895 (3) of the statutes is amended to read:

632.895 **(3)** SKILLED NURSING CARE. Every disability insurance policy filed after November 29, 1979, which provides coverage for hospital care shall provide coverage for at least 30 days for skilled nursing care to patients who enter a licensed skilled nursing care facility. A disability insurance policy, other than a medicare supplement policy or medicare replacement policy, may limit coverage under this subsection to patients who enter a licensed skilled nursing care facility within 24 hours after discharge from a general hospital. The daily rate payable under this subsection to a licensed skilled nursing care facility shall ~~not exceed~~ be no less than the maximum daily rate established for ~~licensed~~ skilled nursing care ~~facilities~~ in that facility by the department of health and social services for purposes of reimbursement under the medical assistance program under ss. 49.45 to 49.47. The coverage under this subsection shall apply only to skilled nursing care which is certified as medically necessary by the attending physician and is recertified as medically necessary every 7 days. ~~The~~ If the disability insurance policy is other than a medicare supplement policy or medicare replacement policy, coverage under this subsection shall apply only to the continued treatment for the same medical or surgical condition for which the insured had been treated at the hospital prior to entry into the skilled nursing care facility ~~and~~. Coverage under any disability insurance policy governed by this subsection may be subject to a deductible that applies to the hospital care coverage provided by the policy. The coverage under this subsection shall not apply to care which is essentially domiciliary or custodial, or to care which is available to the insured without charge or under a governmental health care program, other than a program provided under ch. 49.

SECTION 24. 646.12 (1) (a) of the statutes is amended to read:

646.12 **(1)** (a) *Members.* The fund shall be administered by a board of directors which shall consist of not fewer than 7 nor more than ~~11~~ 13 members. The attorney general, the state treasurer and the commissioner are members with full voting rights. Other members shall be chosen from representatives of insurers subject to this chapter under procedures specified by the commissioner by rule. The rule may provide that, instead of natural persons, specific insurers or associations of insurers may be selected as members of the board and may act through any duly authorized representative.

SECTION 25. 646.12 (2) (e) of the statutes is amended to read:

646.12 **(2)** (e) Advise and make recommendations to the commissioner on any matter related to the possible insolvency of an insurer covered by this chapter, and respond to any reasonable questions presented by the commissioner. Information, recommendations and advice under this subsection are privileged and confidential and are not open to public inspection under s. ~~601.46 (4)~~ 19.35 (1).

SECTION 26. 655.23 (3) (a) of the statutes is amended to read:

655.23 **(3)** (a) ~~Every~~ Except as provided in par. (d), every health care provider permanently practicing or operating in this state either shall insure and keep insured the health care provider's liability by a policy of health care liability insurance issued 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)~~,~~ or 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~~. Qualification as a self–insurer~~, shall be~~ is subject to ~~the approval of~~ conditions established by the commissioner and is valid only when approved by the commissioner.

SECTION 27. 655.23 (3) (a) of the statutes, as affected by 1989 Wisconsin Act .... (this act), is repealed and recreated to read:

655.23 **(3)** (a) Except as provided in par. (d), every health care provider permanently practicing or operating in this state either shall insure and keep insured the health care provider's liability by a policy of health care liability insurance issued by an insurer authorized to do business in this state or shall qualify as a self–insurer. Qualification as a self–insurer is subject to conditions established by the commissioner and is valid only when approved by the commissioner.

SECTION 28. 655.23 (3) (c) and (d) of the statutes are created to read:

655.23 **(3)** (c) Each self–insured health care provider furnishing coverage that meets the requirements of sub. (4) shall, at the times and in the form prescribed by the commissioner, file with the commissioner a certificate of self–insurance and a separate certificate of insurance for each additional health care provider covered by the self–insured plan.

(d) If a cash or surety bond furnished by a health care provider for the purpose of insuring and keeping insured the health care provider's liability was approved by the commissioner before the effective date of this paragraph .... [revisor inserts date], par. (a) does not apply to the health care provider while the cash or surety bond remains in effect. A cash or surety bond remains in effect unless the commissioner, at the request of the health care provider or the surety, approves its cancellation.

SECTION 29. 655.23 (4) of the statutes is amended to read:

655.23 **(4)** ~~Such health~~ Health care liability insurance, self–insurance or a cash or surety bond under sub. (3) (d) shall be in amounts of at least $200,000 for each occurrence and $600,000 per year for all occurrences in any one policy year for occurrences before July 1, 1987, $300,000 for each occurrence and $900,000 for all occurrences in any one policy year for occurrences on or after July 1, 1987 and before July 1, 1988, and $400,000 for each occurrence and $1,000,000 for all occurrences in any one policy year for occurrences on or after July 1, 1988.

SECTION 30. 655.23 (5) of the statutes is amended to read:

655.23 **(5)** While ~~such~~ health care liability insurance, self–insurance or a cash or surety bond ~~approved by the commissioner~~ under sub. (3) (d) remains in force, the health care provider, the health care provider's estate and those conducting the health care provider's business, including the health care provider's health care liability insurance carrier, are liable for malpractice for no more than the limits expressed in sub. (4) or the maximum liability limit for which the health care provider is insured, whichever is higher, if the health care provider has met the requirements of this chapter.

SECTION 31. 655.27 (5) (c) of the statutes is amended to read:

655.27 **(5)** (c) It shall be the responsibility of any health care provider ~~choosing to post bond or establish an escrow account under this chapter~~ with a cash or surety bond in effect under s. 655.23 (3) (d) to provide an adequate defense of the fund on any malpractice claim filed or any claim filed under sub. (1m) that may potentially affect the fund. The health care provider shall act in good faith and in a fiduciary relationship with respect to any claim affecting the fund. No settlement exceeding an amount which could require payment by the fund may be agreed to unless approved by the board of governors.

SECTION 32. Nonstatutory provisions. (1) HEALTH CARE LIABILITY INSURANCE. If, on the effective date of this subsection, a health care provider is insured under a policy of health care liability insurance that is issued by an unauthorized nondomestic insurer and that satisfies section 655.23 (3) (a), 1987 stats., section 655.23 (3) (a) of the statutes, as affected by this act, does not apply to the health care provider until the renewal date of the policy or termination of coverage under the policy, whichever occurs first.

(2) HEALTH INSURANCE RISK SHARING PLAN. The commissioner of insurance shall submit the proposed rules required under section 619.14 (3) (c) 3. of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 7th month beginning after the effective date of this subsection.

SECTION 33. Initial applicability. (1) HEALTH INSURANCE RISK SHARING PLAN COVERAGE. (a) *Disposable medical supplies.* The treatment of section 619.14 (3) (k) of the statutes first applies to policies that are issued or renewed under the plan, as defined in section 619.10 (8) of the statutes, on the first day of the 4th month beginning after the effective date of this paragraph.

(b) *Community support programs.* The treatment of section 619.14 (3) (c) 3. of the statutes first applies to policies that are issued or renewed under the plan, as defined in section 619.10 (8) of the statutes, on the first day of the 10th month beginning after the effective date of this paragraph.

(2) SKILLED NURSING CARE. The treatment of section 632.895 (3) of the statutes first applies to insurance contracts that are issued or renewed on the first day of the 7th month beginning after the effective date of this subsection.

(3) CANCELLATION AND NONRENEWAL. The treatment of section 631.36 (2) (a) (intro.), (3), (4) (a), (5) (a) to (d) and (6) of the statutes first applies to insurance contracts that are issued or renewed on the first day of the 7th month beginning after the effective date of this subsection.

SECTION 34. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The repeal and recreation of section 655.23 (3) (a) of the statutes and SECTION 32 (1) of this act take effect on July 1, 1990, or the day after publication, whichever is later.