

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3035/1dn
PJK:jld:rs

August 1, 2003

I followed the proposed language very closely, except that I did not use the word "irrevocable" in the "held in trust" phrase because:

1. No other reference in the statutes to a fund or other property being held in trust includes the word "irrevocable."
2. An irrevocable trust usually refers to a trust that is designated as irrevocable by the person creating the trust, which, in the case of the patients compensation fund, is really the legislature, not the providers paying into the fund. Providing in the statute that the fund is held in irrevocable trust does not make that trust any more irrevocable than it would be without the use of the word, because one legislature cannot bind another legislature, which could amend the statute to remove the word "irrevocable."

A health care provider's contractual rights in the fund, arguably, are limited to the amount required to pay the portion of a claim against the health care provider that exceeds the limits of the health care provider's liability insurance. Therefore, there may be no contractual rights in amounts in the fund that exceed the amount statistically necessary to do that.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us