



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1755/B
PJK:kmg&cmh:rs

r m i r m

DOA:.....Jablonsky - BB0440, Transfer from patient's compensation fund to new segregated fund

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

*today
Tues
(2-4)*

*do not
you cut*

1 AN ACT *relating to:* the budget.

Analysis by the Legislative Reference Bureau

INSURANCE

Under current law, certain health care providers are required to carry health care liability insurance with liability limits of at least \$1,000,000 for each occurrence and at least \$3,000,000 for all occurrences in a policy year. Any portion of a medical malpractice claim against a health care provider subject to the health care liability insurance requirements that exceeds the policy limits of the health care provider's health care liability insurance is paid by the patients compensation fund. Money for the fund comes from annual assessments paid by the health care providers subject to the health care liability insurance requirements.

This bill creates the health care provider availability and cost control fund and transfers \$200,000,000 from the patients compensation fund to the health care provider availability and cost control fund. The health care provider availability and cost control fund may be used to assist in the education and training of health care providers, ensure that health care providers serving recipients under the Medical Assistance program ~~and other health care programs established by the state receive payment sufficient to retain their participation in these programs, and to defray the cost of other health-related programs that the secretary of ~~the~~ determines are effective in ensuring the availability of health care providers in the state and~~

or

health and family services

administration

controlling the cost of health care services. The bill authorizes the secretary of ~~Health~~, in consultation with the ~~Commissioner of Insurance~~, to transfer a portion of the account balance of the patients compensation fund to the health care provider availability and cost control fund if the secretary determines that compensation to patients from the patients compensation fund will not be delayed or diminished as a result of the transfer. The bill creates a general purpose revenue sum sufficient appropriation to cover payment of any medical malpractice claim that exceeds the moneys remaining in the patients compensation fund. Under the bill, moneys in the health care provider availability and cost control fund are used for benefits under the Medical Assistance program.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 SECTION 1. 20.145 (2) (a) of the statutes is created to read:

2 20.145 (2) (a) *Claims payable by patients compensation fund.* A sum sufficient
3 for paying any portion of a claim for damages arising out of the rendering of health
4 care services that the patients compensation fund under s. 655.27 is required to pay
5 under ch. 655 but that the patients compensation fund is unable to pay because of
6 insufficient moneys.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

7 SECTION 2. 20.435 (4) (b) of the statutes is amended to read:

8 20.435 (4) (b) *Medical assistance Assistance program benefits.* Biennially, the
9 amounts in the schedule to provide a portion of the state share of ~~medical assistance~~

a portion of the

10 Medical Assistance program benefits administered under s. 49.45, to provide
11 ~~medical assistance~~ Medical Assistance program benefits administered under s.
12 49.45 that are not also provided under par. (o), to fund the pilot project under s. 46.27

13 (9) and (10), to provide the facility payments under 1999 Wisconsin Act 9, section
14 9123 (9m), to fund services provided by resource centers under s. 46.283, and for

→ a portion of

Health care provider availability and cost control

1 services under the family care benefit under s. 46.284 (5). Notwithstanding s. 20.002
2 (1), the department may transfer from this appropriation account to the
3 appropriation account under sub. (7) (kb) funds in the amount of and for the purposes
4 specified in s. 46.485. Notwithstanding ss. 20.001 (3) (b) and 20.002 (1), the
5 department may credit or deposit into this appropriation account and may transfer
6 between fiscal years funds that it transfers from the appropriation account under
7 sub. (7) (kb) for the purposes specified in s. 46.485 (3r). Notwithstanding s. 20.002
8 (1), the department may transfer from this appropriation account to the
9 appropriation account under sub. (7) (bd) funds in the amount and for the purposes
10 specified in s. 49.45 (6v).

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

11 SECTION 3. 20.435 (4) (r) of the statutes is created to read:

health care ✓ ✓

12 20.435 (4) (r) ~~Medical Assistance program~~ From the provider availability and
13 cost control fund, as a continuing appropriation, the amounts in the schedule to
14 provide a portion of the state share of Medical Assistance program benefits
15 administered under s. 49.45, to provide ^{a portion of the} Medical Assistance program benefits
16 administered under s. 49.45 that are not also provided under par. (o), to fund the pilot
17 project under s. 46.27 (9) and (10), to provide ^{a portion of} the facility payments under 1999
18 Wisconsin Act 9, section 9123 (9m), to fund services provided by resource centers
19 under s. 46.283, and for services under the family care benefit under s. 46.284 (5).

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

20 SECTION 4. 25.14 (1) (a) 9m. of the statutes is created to read:

21 25.14 (1) (a) 9m. The health care provider availability and cost control fund.

22 SECTION 5. 25.17 (1) (ky) of the statutes is created to read:

1 25.17 (1) (ky) Health care provider availability and cost control fund (s. 655.75);

2 **SECTION 6.** 25.17 (3) (a) of the statutes is amended to read:

3 25.17 (3) (a) Invest the fixed retirement investment trust, state life fund,
4 veterans trust fund ~~and~~, patients compensation fund, and health care provider
5 availability and cost control fund in loans, securities and any other investments
6 authorized by s. 620.22, and in bonds or other evidences of indebtedness or preferred
7 stock of companies engaged in the finance business whether as direct lenders or as
8 holding companies owning subsidiaries engaged in the finance business.
9 Investments permitted by sub. (4) are permitted investments under this subsection.

10 **SECTION 7.** 46.27 (9) (a) of the statutes is amended to read:

11 46.27 (9) (a) The department may select up to 5 counties that volunteer to
12 participate in a pilot project under which they will receive certain funds allocated for
13 long-term care. The department shall allocate a level of funds to these counties
14 equal to the amount that would otherwise be paid under s. 20.435 (4) (b), (r), or (w)
15 to nursing homes for providing care because of increased utilization of nursing home
16 services, as estimated by the department. In estimating these levels, the department
17 shall exclude any increased utilization of services provided by state centers for the
18 developmentally disabled. The department shall calculate these amounts on a
19 calendar year basis under sub. (10).

20 **SECTION 8.** 46.27 (10) (a) 1. of the statutes is amended to read:

21 46.27 (10) (a) 1. The department shall determine for each county participating
22 in the pilot project under sub. (9) a funding level of state medical assistance
23 expenditures to be received by the county. This level shall equal the amount that the
24 department determines would otherwise be paid under s. 20.435 (4) (b), (r), or (w)

1 because of increased utilization of nursing home services, as estimated by the
2 department.

3 **SECTION 9.** 46.275 (5) (a) of the statutes is amended to read:

4 46.275 (5) (a) Medical assistance reimbursement for services a county, or the
5 department under sub. (3r), provides under this program is available from the
6 appropriations under s. 20.435 (4) (b), (o), (r), and (w). If 2 or more counties jointly
7 contract to provide services under this program and the department approves the
8 contract, medical assistance reimbursement is also available for services provided
9 jointly by these counties.

10 **SECTION 10.** 46.275 (5) (c) of the statutes is amended to read:

11 46.275 (5) (c) The total allocation under s. 20.435 (4) (b), (o), (r), and (w) to
12 counties and to the department under sub. (3r) for services provided under this
13 section may not exceed the amount approved by the federal department of health and
14 human services. A county may use funds received under this section only to provide
15 services to persons who meet the requirements under sub. (4) and may not use
16 unexpended funds received under this section to serve other developmentally
17 disabled persons residing in the county.

18 **SECTION 11.** 46.278 (6) (d) of the statutes is amended to read:

19 46.278 (6) (d) If a county makes available nonfederal funds equal to the state
20 share of service costs under a waiver received under sub. (3), the department may,
21 from the appropriation under s. 20.435 (4) (o), provide reimbursement for services
22 that the county provides under this section to persons who are in addition to those
23 who may be served under this section with funds from the appropriation under s.
24 20.435 (4) (b), (r), or (w).

25 **SECTION 12.** 46.283 (5) of the statutes is amended to read:

1 46.283 (5) FUNDING. From the appropriation accounts under s. 20.435 (4) (b),
2 (bm), (pa), (r), and (w) and (7) (b), (bd), and (md), the department may contract with
3 organizations that meet standards under sub. (3) for performance of the duties under
4 sub. (4) and shall distribute funds for services provided by resource centers.

5 **SECTION 13.** 46.284 (5) (a) of the statutes is amended to read:

6 46.284 (5) (a) From the appropriation accounts under s. 20.435 (4) (b), (g), (im),
7 (o), (r), and (w) and (7) (b) and (bd), the department shall provide funding on a
8 capitated payment basis for the provision of services under this section.
9 Notwithstanding s. 46.036 (3) and (5m), a care management organization that is
10 under contract with the department may expend the funds, consistent with this
11 section, including providing payment, on a capitated basis, to providers of services
12 under the family care benefit.

13 **SECTION 14.** 49.45 (2) (a) 17. of the statutes is amended to read:

14 49.45 (2) (a) 17. Notify the governor, the joint committee on legislative
15 organization, the joint committee on finance, and appropriate standing committees,
16 as determined by the presiding officer of each house, if the appropriation
17 appropriations under s. 20.435 (4) (b) is and (r) are insufficient to provide the state
18 share of medical assistance.

19 **SECTION 15.** 49.45 (5m) (am) of the statutes is amended to read:

20 49.45 (5m) (am) Notwithstanding sub. (3) (e), from the appropriations under
21 s. 20.435 (4) (b), (o), (r), and (w), the department shall distribute not more than
22 \$2,256,000 in each fiscal year, to provide supplemental funds to rural hospitals that,
23 as determined by the department, have high utilization of inpatient services by
24 patients whose care is provided from governmental sources, and to provide
25 supplemental funds to critical access hospitals, except that the department may not

1 distribute funds to a rural hospital or to a critical access hospital to the extent that
2 the distribution would exceed any limitation under 42 USC 1396b (i) (3).

3 **SECTION 16.** 49.45 (6m) (ag) (intro.) of the statutes is amended to read:

4 49.45 (6m) (ag) (intro.) Payment for care provided in a facility under this
5 subsection made under s. 20.435 (4) (b), (pa), (o), (r), (w), or (wm) shall, except as
6 provided in pars. (bg), (bm), and (br), be determined according to a prospective
7 payment system updated annually by the department. The payment system shall
8 implement standards that are necessary and proper for providing patient care and
9 that meet quality and safety standards established under subch. II of ch. 50 and ch.
10 150. The payment system shall reflect all of the following:

11 **SECTION 17.** 49.45 (6v) (b) of the statutes is amended to read:

12 49.45 (6v) (b) The department shall, each year, submit to the joint committee
13 on finance a report for the previous fiscal year, except for the 1997–98 fiscal year, that
14 provides information on the utilization of beds by recipients of medical assistance in
15 facilities and a discussion and detailed projection of the likely balances,
16 expenditures, encumbrances and carry over of currently appropriated amounts in
17 the appropriation accounts under s. 20.435 (4) (b) ~~and~~, (o), and (r).

18 **SECTION 18.** 49.45 (6x) (a) of the statutes is amended to read:

19 49.45 (6x) (a) Notwithstanding sub. (3) (e), from the appropriations under s.
20 20.435 (4) (b), (o), (r), and (w), the department shall distribute not more than
21 \$4,748,000 in each fiscal year, to provide funds to an essential access city hospital,
22 except that the department may not allocate funds to an essential access city hospital
23 to the extent that the allocation would exceed any limitation under 42 USC 1396b
24 (i) (3).

25 **SECTION 19.** 49.45 (6y) (a) of the statutes is amended to read:

1 49.45 (6y) (a) Notwithstanding sub. (3) (e), from the appropriations under s.
2 20.435 (4) (b), (o), (r), and (w), the department shall distribute funding in each fiscal
3 year to provide supplemental payment to hospitals that enter into a contract under
4 s. 49.02 (2) to provide health care services funded by a relief block grant, as
5 determined by the department, for hospital services that are not in excess of the
6 hospitals' customary charges for the services, as limited under 42 USC 1396b (i) (3).
7 If no relief block grant is awarded under this chapter or if the allocation of funds to
8 such hospitals would exceed any limitation under 42 USC 1396b (i) (3), the
9 department may distribute funds to hospitals that have not entered into a contract
10 under s. 49.02 (2).

11 **SECTION 20.** 49.45 (6y) (am) of the statutes is amended to read:

12 49.45 (6y) (am) Notwithstanding sub. (3) (e), from the appropriations under s.
13 20.435 (4) (b), (h), (o), (r), and (w), the department shall distribute funding in each
14 fiscal year to provide supplemental payments to hospitals that enter into contracts
15 under s. 49.02 (2) with a county having a population of 500,000 or more to provide
16 health care services funded by a relief block grant, as determined by the department,
17 for hospital services that are not in excess of the hospitals' customary charges for the
18 services, as limited under 42 USC 1396b (i) (3).

19 **SECTION 21.** 49.45 (6z) (a) (intro.) of the statutes is amended to read:

20 49.45 (6z) (a) (intro.) Notwithstanding sub. (3) (e), from the appropriations
21 under s. 20.435 (4) (b), (o), (r), and (w), the department shall distribute funding in
22 each fiscal year to supplement payment for services to hospitals that enter into a
23 contract under s. 49.02 (2) to provide health care services funded by a relief block
24 grant under this chapter, if the department determines that the hospitals serve a
25 disproportionate number of low-income patients with special needs. If no medical

1 relief block grant under this chapter is awarded or if the allocation of funds to such
2 hospitals would exceed any limitation under 42 USC 1396b (i) (3), the department
3 may distribute funds to hospitals that have not entered into a contract under s. 49.02
4 (2). The department may not distribute funds under this subsection to the extent
5 that the distribution would do any of the following:

6 **SECTION 22.** 49.45 (8) (b) of the statutes is amended to read:

7 49.45 (8) (b) Reimbursement under s. 20.435 (4) (b), (o), (r), and (w) for home
8 health services provided by a certified home health agency or independent nurse
9 shall be made at the home health agency's or nurse's usual and customary fee per
10 patient care visit, subject to a maximum allowable fee per patient care visit that is
11 established under par. (c).

12 **SECTION 23.** 49.45 (24m) (intro.) of the statutes is amended to read:

13 49.45 (24m) HOME HEALTH CARE AND PERSONAL CARE PILOT PROGRAM. (intro.)
14 From the appropriations under s. 20.435 (4) (b), (o), (r), and (w), in order to test the
15 feasibility of instituting a system of reimbursement for providers of home health care
16 and personal care services for medical assistance recipients that is based on
17 competitive bidding, the department shall:

18 **SECTION 24.** 49.472 (6) (a) of the statutes is amended to read:

19 49.472 (6) (a) Notwithstanding sub. (4) (a) 3., from the appropriation under s.
20 20.435 (4) (b), (r), or (w), the department shall, on the part of an individual who is
21 eligible for medical assistance under sub. (3), pay premiums for or purchase
22 individual coverage offered by the individual's employer if the department
23 determines that paying the premiums for or purchasing the coverage will not be more
24 costly than providing medical assistance.

25 **SECTION 25.** 49.472 (6) (b) of the statutes is amended to read:

1 49.472 (6) (b) If federal financial participation is available, from the
2 appropriation under s. 20.435 (4) (b), (r), or (w), the department may pay medicare
3 Part A and Part B premiums for individuals who are eligible for medicare and for
4 medical assistance under sub. (3).

5 **SECTION 26.** 49.473 (5) of the statutes is amended to read:

6 49.473 (5) The department shall audit and pay, from the appropriation
7 accounts under s. 20.435 (4) (b) ~~and~~, (o), and (r), allowable charges to a provider who
8 is certified under s. 49.45 (2) (a) 11. for medical assistance on behalf of a woman who
9 meets the requirements under sub. (2) for all benefits and services specified under
10 s. 49.46 (2).

11 **SECTION 27.** 655.26 (2) of the statutes is amended to read:

12 655.26 (2) By the 15th day of each month, the board of governors shall report
13 the information specified in sub. (1) to the medical examining board for each claim
14 paid by the fund or from the appropriation under s. 20.145 (2) (a) during the previous
15 month for damages arising out of the rendering of health care services by a health
16 care provider or an employee of a health care provider.

17 **SECTION 28.** 655.27 (3) (am) of the statutes is amended to read:

18 655.27 (3) (am) *Assessments for peer review council.* The fund, a mandatory
19 health care liability risk-sharing plan established under s. 619.04, and a private
20 health care liability insurer shall be assessed, as appropriate, fees sufficient to cover
21 the costs of the patients compensation fund peer review council, including costs of
22 administration, for reviewing claims paid by the fund, or from the appropriation
23 under s. 20.145 (2) (a), by the plan, and by the insurer, respectively, under s. 655.275
24 (5). The fees shall be set by the commissioner by rule, after approval by the board
25 of governors, and shall be collected by the commissioner for deposit in the fund. The

1 costs of the patients compensation fund peer review council shall be funded from the
2 appropriation under s. 20.145 (2) (um).

3 **SECTION 29.** 655.27 (4) (a) of the statutes is amended to read:

4 655.27 (4) (a) Moneys shall be withdrawn from the fund, or paid from the
5 appropriation under s. 20.145 (2) (a), by the commissioner only upon vouchers
6 approved and authorized by the board of governors.

7 **SECTION 30.** 655.27 (5) (e) of the statutes is amended to read:

8 655.27 (5) (e) Claims filed against the fund shall be paid in the order received
9 within 90 days after filing unless appealed by the fund. If the amounts in the fund
10 are not sufficient to pay all of the claims, claims received after the funds are
11 exhausted shall be ~~immediately payable the following year in the order in which they~~
12 were received paid from the appropriation under s. 20.145 (2) (a).

13 **SECTION 31.** 655.27 (6) of the statutes is amended to read:

14 655.27 (6) INTEGRITY OF FUND. The fund shall be held in trust for the purposes
15 of this chapter and may not be used for purposes other than those of this chapter.
16 The secretary of administration, in consultation with the commissioner, may
17 transfer to the health care provider availability and cost control fund a portion of the
18 account balance of the patients compensation fund if the secretary, in consultation
19 with the commissioner, determines that the provision of compensation to patients by
20 the patients compensation fund will not as a result of the transfer be delayed or
21 diminished.

22 **SECTION 32.** 655.275 (5) (a) (intro.) of the statutes is amended to read:

23 655.275 (5) (a) (intro.) The council shall review, within one year of the date of
24 first payment on the claim, each claim that is paid by the fund, or from the
25 appropriation under s. 20.145 (2) (a), by a mandatory health care liability

under A. 655.75

1 risk-sharing plan established under s. 619.04, by a private health care liability
2 insurer, or by a self-insurer for damages arising out of the rendering of medical care
3 by a health care provider or an employee of the health care provider and shall make
4 recommendations to all of the following:

5 SECTION 33. Subchapter VIII of chapter 655 [precedes 655.75] of the statutes
6 is created to read:

7 CHAPTER 655

8 SUBCHAPTER VIII

9 HEALTH CARE PROVIDER AVAILABILITY

10 AND COST CONTROL FUND

11 655.75 Health care provider availability and cost control fund. (1)

12 There is created a health care provider availability and cost control fund to ensure
13 the availability of health care providers in the state and to control the cost of health
14 care services to state taxpayers, workers, and employers. The fund may be used for
15 all of the following purposes:

16 (a) To assist in the education and training of health care providers.

17 (b) To ensure that health care providers who serve recipients under the Medical
18 Assistance program ~~with coverage under the Budget Care health~~
19 ~~care program~~ or other health care programs established by the state receive levels
20 of payment sufficient to retain their participation in the programs and to reduce the
21 risk of shifting costs to private sector employers.

22 (c) To defray the cost of other health-related programs that the secretary of
23 health and family services determines are effective in ensuring the availability of
24 health care providers in the state and controlling the cost of health care services to
25 state taxpayers, workers, and employers.

Kahler, Pam

From: Johnston, James
Sent: Wednesday, February 05, 2003 8:37 AM
To: Kahler, Pam
Cc: Jablonsky, Sue
Subject: Patient Compensation Fund Draft (LRB 1755/2)

Pam,
This follows up on my email from this morning:
On the Patient Compensation Fund draft (LRB # 1755/2)

✓ On p. 12, lines 12, delete "to ensure" and substitute "for the purpose of ensuring".

On p. 12, line 13, delete "to control" and substitute "and controlling".

Thus, Sec. 655.75 would start: "655.75 Health care provider availability and cost control fund.

(1) There is created a health care provider availability and cost control fund for the purpose of ensuring the availability of health care providers in the state and controlling the cost of health care services to state taxpayers, workers, and employers. The fund may be used for all of the following purposes: "

The intent is to clarify that the purpose of chapter 655 clearly includes the provisions of subchapter VIII.

Thanks,
Jim
Jim Johnston

State Budget Office -- WI Dept. of Administration
608/266-3420
608/267-0372 (fax)
james.johnston@doa.state.wi.us



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1755/2
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DOA:.....Jablonsky – BB0440, Transfer from patient’s compensation fund to new segregated fund

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

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1 AN ACT ~~relating to~~; relating to: the budget.

Analysis by the Legislative Reference Bureau

INSURANCE

Under current law, certain health care providers are required to carry health care liability insurance with liability limits of at least \$1,000,000 for each occurrence and at least \$3,000,000 for all occurrences in a policy year. Any portion of a medical malpractice claim against a health care provider subject to the health care liability insurance requirements that exceeds the policy limits of the health care provider’s health care liability insurance is paid by the patients compensation fund. Money for the fund comes from annual assessments paid by the health care providers subject to the health care liability insurance requirements.

This bill creates the health care provider availability and cost control fund and transfers \$200,000,000 from the patients compensation fund to the health care provider availability and cost control fund. The health care provider availability and cost control fund may be used to assist in the education and training of health care providers, ensure that health care providers serving recipients under the Medical Assistance program or other health care programs established by the state receive payment sufficient to retain their participation in these programs, and to defray the cost of other health-related programs that the secretary of health and family services determines are effective in ensuring the availability of health care providers in the state and controlling the cost of health care services. The bill authorizes the

secretary of administration, in consultation with the commissioner of insurance, to transfer a portion of the account balance of the patients compensation fund to the health care provider availability and cost control fund if the secretary determines that compensation to patients from the patients compensation fund will not be delayed or diminished as a result of the transfer. The bill creates a general purpose revenue sum sufficient appropriation to cover payment of any medical malpractice claim that exceeds the moneys remaining in the patients compensation fund. Under the bill, moneys in the health care provider availability and cost control fund are used for benefits under the Medical Assistance program.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 20.145 (2) (a) of the statutes is created to read:

2 20.145 (2) (a) *Claims payable by patients compensation fund.* A sum sufficient
3 for paying any portion of a claim for damages arising out of the rendering of health
4 care services that the patients compensation fund under s. 655.27 is required to pay
5 under ch. 655 but that the patients compensation fund is unable to pay because of
6 insufficient moneys.

 ***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

7 **SECTION 2.** 20.435 (4) (b) of the statutes is amended to read:

8 20.435 (4) (b) *Medical ~~assistance~~ Assistance program benefits.* Biennially, the
9 amounts in the schedule to provide a portion of the state share of ~~medical assistance~~
10 Medical Assistance program benefits administered under s. 49.45, to provide
11 ~~medical assistance~~ a portion of the Medical Assistance program benefits
12 administered under s. 49.45 that are not also provided under par. (o), to fund the pilot
13 project under s. 46.27 (9) and (10), to provide a portion of the facility payments under
14 1999 Wisconsin Act 9, section 9123 (9m), to fund services provided by resource
15 centers under s. 46.283, and for services under the family care benefit under s. 46.284

1 (5). Notwithstanding s. 20.002 (1), the department may transfer from this
2 appropriation account to the appropriation account under sub. (7) (kb) funds in the
3 amount of and for the purposes specified in s. 46.485. Notwithstanding ss. 20.001
4 (3) (b) and 20.002 (1), the department may credit or deposit into this appropriation
5 account and may transfer between fiscal years funds that it transfers from the
6 appropriation account under sub. (7) (kb) for the purposes specified in s. 46.485 (3r).
7 Notwithstanding s. 20.002 (1), the department may transfer from this appropriation
8 account to the appropriation account under sub. (7) (bd) funds in the amount and for
9 the purposes specified in s. 49.45 (6v).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

10 **SECTION 3.** 20.435 (4) (r) of the statutes is created to read:

11 20.435 (4) (r) *Health care provider availability and cost control.* From the
12 health care provider availability and cost control fund, as a continuing
13 appropriation, the amounts in the schedule to provide a portion of the state share of
14 Medical Assistance program benefits administered under s. 49.45, to provide a
15 portion of the Medical Assistance program benefits administered under s. 49.45 that
16 are not also provided under par. (o), to fund the pilot project under s. 46.27 (9) and
17 (10), to provide a portion of the facility payments under 1999 Wisconsin Act 9, section
18 9123 (9m), to fund services provided by resource centers under s. 46.283, and for
19 services under the family care benefit under s. 46.284 (5).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

20 **SECTION 4.** 25.14 (1) (a) 9m. of the statutes is created to read:

21 25.14 (1) (a) 9m. The health care provider availability and cost control fund.

22 **SECTION 5.** 25.17 (1) (ky) of the statutes is created to read:

1 25.17 (1) (ky) Health care provider availability and cost control fund (s. 655.75);

2 **SECTION 6.** 25.17 (3) (a) of the statutes is amended to read:

3 25.17 (3) (a) Invest the fixed retirement investment trust, state life fund,
4 veterans trust fund ~~and~~, patients compensation fund, and health care provider
5 availability and cost control fund in loans, securities and any other investments
6 authorized by s. 620.22, and in bonds or other evidences of indebtedness or preferred
7 stock of companies engaged in the finance business whether as direct lenders or as
8 holding companies owning subsidiaries engaged in the finance business.
9 Investments permitted by sub. (4) are permitted investments under this subsection.

10 **SECTION 7.** 46.27 (9) (a) of the statutes is amended to read:

11 46.27 (9) (a) The department may select up to 5 counties that volunteer to
12 participate in a pilot project under which they will receive certain funds allocated for
13 long-term care. The department shall allocate a level of funds to these counties
14 equal to the amount that would otherwise be paid under s. 20.435 (4) (b), (r), or (w)
15 to nursing homes for providing care because of increased utilization of nursing home
16 services, as estimated by the department. In estimating these levels, the department
17 shall exclude any increased utilization of services provided by state centers for the
18 developmentally disabled. The department shall calculate these amounts on a
19 calendar year basis under sub. (10).

20 **SECTION 8.** 46.27 (10) (a) 1. of the statutes is amended to read:

21 46.27 (10) (a) 1. The department shall determine for each county participating
22 in the pilot project under sub. (9) a funding level of state medical assistance
23 expenditures to be received by the county. This level shall equal the amount that the
24 department determines would otherwise be paid under s. 20.435 (4) (b), (r), or (w)

1 because of increased utilization of nursing home services, as estimated by the
2 department.

3 **SECTION 9.** 46.275 (5) (a) of the statutes is amended to read:

4 46.275 (5) (a) Medical assistance reimbursement for services a county, or the
5 department under sub. (3r), provides under this program is available from the
6 appropriations under s. 20.435 (4) (b), (o), (r), and (w). If 2 or more counties jointly
7 contract to provide services under this program and the department approves the
8 contract, medical assistance reimbursement is also available for services provided
9 jointly by these counties.

10 **SECTION 10.** 46.275 (5) (c) of the statutes is amended to read:

11 46.275 (5) (c) The total allocation under s. 20.435 (4) (b), (o), (r), and (w) to
12 counties and to the department under sub. (3r) for services provided under this
13 section may not exceed the amount approved by the federal department of health and
14 human services. A county may use funds received under this section only to provide
15 services to persons who meet the requirements under sub. (4) and may not use
16 unexpended funds received under this section to serve other developmentally
17 disabled persons residing in the county.

18 **SECTION 11.** 46.278 (6) (d) of the statutes is amended to read:

19 46.278 (6) (d) If a county makes available nonfederal funds equal to the state
20 share of service costs under a waiver received under sub. (3), the department may,
21 from the appropriation under s. 20.435 (4) (o), provide reimbursement for services
22 that the county provides under this section to persons who are in addition to those
23 who may be served under this section with funds from the appropriation under s.
24 20.435 (4) (b), (r), or (w).

25 **SECTION 12.** 46.283 (5) of the statutes is amended to read:

1 46.283 (5) FUNDING. From the appropriation accounts under s. 20.435 (4) (b),
2 (bm), (pa), (r), and (w) and (7) (b), (bd), and (md), the department may contract with
3 organizations that meet standards under sub. (3) for performance of the duties under
4 sub. (4) and shall distribute funds for services provided by resource centers.

5 **SECTION 13.** 46.284 (5) (a) of the statutes is amended to read:

6 46.284 (5) (a) From the appropriation accounts under s. 20.435 (4) (b), (g), (im),
7 (o), (r), and (w) and (7) (b) and (bd), the department shall provide funding on a
8 capitated payment basis for the provision of services under this section.
9 Notwithstanding s. 46.036 (3) and (5m), a care management organization that is
10 under contract with the department may expend the funds, consistent with this
11 section, including providing payment, on a capitated basis, to providers of services
12 under the family care benefit.

13 **SECTION 14.** 49.45 (2) (a) 17. of the statutes is amended to read:

14 49.45 (2) (a) 17. Notify the governor, the joint committee on legislative
15 organization, the joint committee on finance, and appropriate standing committees,
16 as determined by the presiding officer of each house, if the ~~appropriation~~
17 appropriations under s. 20.435 (4) (b) is and (r) are insufficient to provide the state
18 share of medical assistance.

19 **SECTION 15.** 49.45 (5m) (am) of the statutes is amended to read:

20 49.45 (5m) (am) Notwithstanding sub. (3) (e), from the appropriations under
21 s. 20.435 (4) (b), (o), (r), and (w), the department shall distribute not more than
22 \$2,256,000 in each fiscal year, to provide supplemental funds to rural hospitals that,
23 as determined by the department, have high utilization of inpatient services by
24 patients whose care is provided from governmental sources, and to provide
25 supplemental funds to critical access hospitals, except that the department may not

1 distribute funds to a rural hospital or to a critical access hospital to the extent that
2 the distribution would exceed any limitation under 42 USC 1396b (i) (3).

3 **SECTION 16.** 49.45 (6m) (ag) (intro.) of the statutes is amended to read:

4 49.45 (6m) (ag) (intro.) Payment for care provided in a facility under this
5 subsection made under s. 20.435 (4) (b), (pa), (o), (r), (w), or (wm) shall, except as
6 provided in pars. (bg), (bm), and (br), be determined according to a prospective
7 payment system updated annually by the department. The payment system shall
8 implement standards that are necessary and proper for providing patient care and
9 that meet quality and safety standards established under subch. II of ch. 50 and ch.
10 150. The payment system shall reflect all of the following:

11 **SECTION 17.** 49.45 (6v) (b) of the statutes is amended to read:

12 49.45 (6v) (b) The department shall, each year, submit to the joint committee
13 on finance a report for the previous fiscal year, except for the 1997–98 fiscal year, that
14 provides information on the utilization of beds by recipients of medical assistance in
15 facilities and a discussion and detailed projection of the likely balances,
16 expenditures, encumbrances and carry over of currently appropriated amounts in
17 the appropriation accounts under s. 20.435 (4) (b) ~~and~~, (o), and (r).

18 **SECTION 18.** 49.45 (6x) (a) of the statutes is amended to read:

19 49.45 (6x) (a) Notwithstanding sub. (3) (e), from the appropriations under s.
20 20.435 (4) (b), (o), (r), and (w), the department shall distribute not more than
21 \$4,748,000 in each fiscal year, to provide funds to an essential access city hospital,
22 except that the department may not allocate funds to an essential access city hospital
23 to the extent that the allocation would exceed any limitation under 42 USC 1396b
24 (i) (3).

25 **SECTION 19.** 49.45 (6y) (a) of the statutes is amended to read:

1 49.45 (6y) (a) Notwithstanding sub. (3) (e), from the appropriations under s.
2 20.435 (4) (b), (o), (r), and (w), the department shall distribute funding in each fiscal
3 year to provide supplemental payment to hospitals that enter into a contract under
4 s. 49.02 (2) to provide health care services funded by a relief block grant, as
5 determined by the department, for hospital services that are not in excess of the
6 hospitals' customary charges for the services, as limited under 42 USC 1396b (i) (3).
7 If no relief block grant is awarded under this chapter or if the allocation of funds to
8 such hospitals would exceed any limitation under 42 USC 1396b (i) (3), the
9 department may distribute funds to hospitals that have not entered into a contract
10 under s. 49.02 (2).

11 **SECTION 20.** 49.45 (6y) (am) of the statutes is amended to read:

12 49.45 (6y) (am) Notwithstanding sub. (3) (e), from the appropriations under s.
13 20.435 (4) (b), (h), (o), (r), and (w), the department shall distribute funding in each
14 fiscal year to provide supplemental payments to hospitals that enter into contracts
15 under s. 49.02 (2) with a county having a population of 500,000 or more to provide
16 health care services funded by a relief block grant, as determined by the department,
17 for hospital services that are not in excess of the hospitals' customary charges for the
18 services, as limited under 42 USC 1396b (i) (3).

19 **SECTION 21.** 49.45 (6z) (a) (intro.) of the statutes is amended to read:

20 49.45 (6z) (a) (intro.) Notwithstanding sub. (3) (e), from the appropriations
21 under s. 20.435 (4) (b), (o), (r), and (w), the department shall distribute funding in
22 each fiscal year to supplement payment for services to hospitals that enter into a
23 contract under s. 49.02 (2) to provide health care services funded by a relief block
24 grant under this chapter, if the department determines that the hospitals serve a
25 disproportionate number of low-income patients with special needs. If no medical

1 relief block grant under this chapter is awarded or if the allocation of funds to such
2 hospitals would exceed any limitation under 42 USC 1396b (i) (3), the department
3 may distribute funds to hospitals that have not entered into a contract under s. 49.02
4 (2). The department may not distribute funds under this subsection to the extent
5 that the distribution would do any of the following:

6 **SECTION 22.** 49.45 (8) (b) of the statutes is amended to read:

7 49.45 (8) (b) Reimbursement under s. 20.435 (4) (b), (o), (r), and (w) for home
8 health services provided by a certified home health agency or independent nurse
9 shall be made at the home health agency's or nurse's usual and customary fee per
10 patient care visit, subject to a maximum allowable fee per patient care visit that is
11 established under par. (c).

12 **SECTION 23.** 49.45 (24m) (intro.) of the statutes is amended to read:

13 49.45 (24m) HOME HEALTH CARE AND PERSONAL CARE PILOT PROGRAM. (intro.)
14 From the appropriations under s. 20.435 (4) (b), (o), (r), and (w), in order to test the
15 feasibility of instituting a system of reimbursement for providers of home health care
16 and personal care services for medical assistance recipients that is based on
17 competitive bidding, the department shall:

18 **SECTION 24.** 49.472 (6) (a) of the statutes is amended to read:

19 49.472 (6) (a) Notwithstanding sub. (4) (a) 3., from the appropriation under s.
20 20.435 (4) (b), (r), or (w), the department shall, on the part of an individual who is
21 eligible for medical assistance under sub. (3), pay premiums for or purchase
22 individual coverage offered by the individual's employer if the department
23 determines that paying the premiums for or purchasing the coverage will not be more
24 costly than providing medical assistance.

25 **SECTION 25.** 49.472 (6) (b) of the statutes is amended to read:

1 49.472 (6) (b) If federal financial participation is available, from the
2 appropriation under s. 20.435 (4) (b), (r), or (w), the department may pay medicare
3 Part A and Part B premiums for individuals who are eligible for medicare and for
4 medical assistance under sub. (3).

5 **SECTION 26.** 49.473 (5) of the statutes is amended to read:

6 49.473 (5) The department shall audit and pay, from the appropriation
7 accounts under s. 20.435 (4) (b) ~~and, (o), and (r)~~, allowable charges to a provider who
8 is certified under s. 49.45 (2) (a) 11. for medical assistance on behalf of a woman who
9 meets the requirements under sub. (2) for all benefits and services specified under
10 s. 49.46 (2).

11 **SECTION 27.** 655.26 (2) of the statutes is amended to read:

12 655.26 (2) By the 15th day of each month, the board of governors shall report
13 the information specified in sub. (1) to the medical examining board for each claim
14 paid by the fund or from the appropriation under s. 20.145 (2) (a) during the previous
15 month for damages arising out of the rendering of health care services by a health
16 care provider or an employee of a health care provider.

17 **SECTION 28.** 655.27 (3) (am) of the statutes is amended to read:

18 655.27 (3) (am) *Assessments for peer review council.* The fund, a mandatory
19 health care liability risk-sharing plan established under s. 619.04, and a private
20 health care liability insurer shall be assessed, as appropriate, fees sufficient to cover
21 the costs of the patients compensation fund peer review council, including costs of
22 administration, for reviewing claims paid by the fund, or from the appropriation
23 under s. 20.145 (2) (a), by the plan, and by the insurer, respectively, under s. 655.275
24 (5). The fees shall be set by the commissioner by rule, after approval by the board
25 of governors, and shall be collected by the commissioner for deposit in the fund. The

1 costs of the patients compensation fund peer review council shall be funded from the
2 appropriation under s. 20.145 (2) (um).

3 **SECTION 29.** 655.27 (4) (a) of the statutes is amended to read:

4 655.27 (4) (a) Moneys shall be withdrawn from the fund, or paid from the
5 appropriation under s. 20.145 (2) (a), by the commissioner only upon vouchers
6 approved and authorized by the board of governors.

7 **SECTION 30.** 655.27 (5) (e) of the statutes is amended to read:

8 655.27 (5) (e) Claims filed against the fund shall be paid in the order received
9 within 90 days after filing unless appealed by the fund. If the amounts in the fund
10 are not sufficient to pay all of the claims, claims received after the funds are
11 exhausted shall be ~~immediately payable the following year in the order in which they~~
12 were received paid from the appropriation under s. 20.145 (2) (a).

13 **SECTION 31.** 655.27 (6) of the statutes is amended to read:

14 655.27 (6) INTEGRITY OF FUND. The fund shall be held in trust for the purposes
15 of this chapter and may not be used for purposes other than those of this chapter.
16 The secretary of administration, in consultation with the commissioner, may
17 transfer to the health care provider availability and cost control fund under s. 655.75
18 a portion of the account balance of the patients compensation fund if the secretary,
19 in consultation with the commissioner, determines that the provision of
20 compensation to patients by the patients compensation fund will not as a result of
21 the transfer be delayed or diminished.

22 **SECTION 32.** 655.275 (5) (a) (intro.) of the statutes is amended to read:

23 655.275 (5) (a) (intro.) The council shall review, within one year of the date of
24 first payment on the claim, each claim that is paid by the fund, or from the
25 appropriation under s. 20.145 (2) (a), by a mandatory health care liability

1 risk-sharing plan established under s. 619.04, by a private health care liability
2 insurer, or by a self-insurer for damages arising out of the rendering of medical care
3 by a health care provider or an employee of the health care provider and shall make
4 recommendations to all of the following:

5 **SECTION 33.** Subchapter VIII of chapter 655 [precedes 655.75] of the statutes
6 is created to read:

7 **CHAPTER 655**

8 **SUBCHAPTER VIII**

9 **HEALTH CARE PROVIDER AVAILABILITY**

10 **AND COST CONTROL FUND**

11 **655.75 Health care provider availability and cost control fund. (1)**

12 There is created a health care provider availability and cost control fund ~~to be used~~
13 the availability of health care providers in the state and ~~to control~~ ^{controlling} the cost of health
14 care services to state taxpayers, workers, and employers. The fund may be used for
15 all of the following purposes:

16 (a) To assist in the education and training of health care providers.

17 (b) To ensure that health care providers who serve recipients under the Medical
18 Assistance program or other health care programs established by the state receive
19 levels of payment sufficient to retain their participation in the programs and to
20 reduce the risk of shifting costs to private sector employers.

21 (c) To defray the cost of other health-related programs that the secretary of
22 health and family services determines are effective in ensuring the availability of
23 health care providers in the state and controlling the cost of health care services to
24 state taxpayers, workers, and employers.

for the purpose of ensuring

1 (2) The health care provider availability and cost control fund shall be
2 administered by the commissioner.

3 (3) The health care provider availability and cost control fund shall be funded
4 with the transfer of moneys from the patients compensation fund under 2003
5 Wisconsin Act (this act), section 9228 (1).

6 **SECTION 9228. Appropriation changes; insurance.**

7 (1) PATIENTS COMPENSATION FUND TRANSFER. There is transferred from the
8 patients compensation fund to the health care provider availability and cost control
9 fund \$200,000,000 in fiscal year 2003–04.

10 **(END)**



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1755/3
PJK:kmg/cmh/wlj:cph
pm not run

DOA:.....Jablonsky - BB0440, Transfer from patient's compensation fund to new segregated fund

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

D-ute

do not get cut

1 AN ACT; relating to: the budget.

Analysis by the Legislative Reference Bureau

INSURANCE

Under current law, certain health care providers are required to carry health care liability insurance with liability limits of at least \$1,000,000 for each occurrence and at least \$3,000,000 for all occurrences in a policy year. Any portion of a medical malpractice claim against a health care provider subject to the health care liability insurance requirements that exceeds the policy limits of the health care provider's health care liability insurance is paid by the patients compensation fund. Money for the fund comes from annual assessments paid by the health care providers subject to the health care liability insurance requirements.

This bill creates the health care provider availability and cost control fund and transfers \$200,000,000 from the patients compensation fund to the health care provider availability and cost control fund. The health care provider availability and cost control fund may be used to assist in the education and training of health care providers, ensure that health care providers serving recipients under the Medical Assistance program or other health care programs established by the state receive payment sufficient to retain their participation in these programs, and to defray the cost of other health-related programs that the secretary of health and family services determines are effective in ensuring the availability of health care providers in the state and controlling the cost of health care services. The bill authorizes the

secretary of administration, in consultation with the commissioner of insurance, to transfer a portion of the account balance of the patients compensation fund to the health care provider availability and cost control fund if the secretary determines that compensation to patients from the patients compensation fund will not be delayed or diminished as a result of the transfer. The bill creates a general purpose revenue sum sufficient appropriation to cover payment of any medical malpractice claim that exceeds the moneys remaining in the patients compensation fund. Under the bill, moneys in the health care provider availability and cost control fund are used for benefits under the Medical Assistance program.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 20.145 (2) (a) of the statutes is created to read:

2 20.145 (2) (a) *Claims payable by patients compensation fund.* A sum sufficient
3 for paying any portion of a claim for damages arising out of the rendering of health
4 care services that the patients compensation fund under s. 655.27 is required to pay
5 under ch. 655 but that the patients compensation fund is unable to pay because of
6 insufficient moneys.

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

7 **SECTION 2.** 20.435 (4) (b) of the statutes is amended to read:

8 20.435 (4) (b) *Medical ~~assistance~~ Assistance program benefits.* Biennially, the
9 amounts in the schedule to provide a portion of the state share of medical assistance
10 Medical Assistance program benefits administered under s. 49.45, to provide
11 ~~medical assistance~~ a portion of the Medical Assistance program benefits
12 administered under s. 49.45 that are not also provided under par. (o), to fund the pilot
13 project under s. 46.27 (9) and (10), to provide a portion of the facility payments under
14 1999 Wisconsin Act 9, section 9123 (9m), to fund services provided by resource
15 centers under s. 46.283, and for services under the family care benefit under s. 46.284

1 (5). Notwithstanding s. 20.002 (1), the department may transfer from this
2 appropriation account to the appropriation account under sub. (7) (kb) funds in the
3 amount of and for the purposes specified in s. 46.485. Notwithstanding ss. 20.001
4 (3) (b) and 20.002 (1), the department may credit or deposit into this appropriation
5 account and may transfer between fiscal years funds that it transfers from the
6 appropriation account under sub. (7) (kb) for the purposes specified in s. 46.485 (3r).
7 Notwithstanding s. 20.002 (1), the department may transfer from this appropriation
8 account to the appropriation account under sub. (7) (bd) funds in the amount and for
9 the purposes specified in s. 49.45 (6v).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

10 **SECTION 3.** 20.435 (4) (r) of the statutes is created to read:

11 20.435 (4) (r) *Health care provider availability and cost control.* From the
12 health care provider availability and cost control fund, as a continuing
13 appropriation, the amounts in the schedule to provide a portion of the state share of
14 Medical Assistance program benefits administered under s. 49.45, to provide a
15 portion of the Medical Assistance program benefits administered under s. 49.45 that
16 are not also provided under par. (o), to fund the pilot project under s. 46.27 (9) and
17 (10), to provide a portion of the facility payments under 1999 Wisconsin Act 9, section
18 9123 (9m), to fund services provided by resource centers under s. 46.283, and for
19 services under the family care benefit under s. 46.284 (5).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

20 **SECTION 4.** 25.14 (1) (a) 9m. of the statutes is created to read:

21 25.14 (1) (a) 9m. The health care provider availability and cost control fund.

22 **SECTION 5.** 25.17 (1) (ky) of the statutes is created to read:

1 25.17 (1) (ky) Health care provider availability and cost control fund (s. 655.75);

2 SECTION 6. 25.17 (3) (a) of the statutes is amended to read:

3 25.17 (3) (a) Invest the fixed retirement investment trust, state life fund,
4 veterans trust fund ~~and~~, patients compensation fund, and health care provider
5 availability and cost control fund in loans, securities and any other investments
6 authorized by s. 620.22, and in bonds or other evidences of indebtedness or preferred
7 stock of companies engaged in the finance business whether as direct lenders or as
8 holding companies owning subsidiaries engaged in the finance business.
9 Investments permitted by sub. (4) are permitted investments under this subsection.

10 SECTION 7. 46.27 (9) (a) of the statutes is amended to read:

11 46.27 (9) (a) The department may select up to 5 counties that volunteer to
12 participate in a pilot project under which they will receive certain funds allocated for
13 long-term care. The department shall allocate a level of funds to these counties
14 equal to the amount that would otherwise be paid under s. 20.435 (4) (b), (r), or (w)
15 to nursing homes for providing care because of increased utilization of nursing home
16 services, as estimated by the department. In estimating these levels, the department
17 shall exclude any increased utilization of services provided by state centers for the
18 developmentally disabled. The department shall calculate these amounts on a
19 calendar year basis under sub. (10).

20 SECTION 8. 46.27 (10) (a) 1. of the statutes is amended to read:

21 46.27 (10) (a) 1. The department shall determine for each county participating
22 in the pilot project under sub. (9) a funding level of state medical assistance
23 expenditures to be received by the county. This level shall equal the amount that the
24 department determines would otherwise be paid under s. 20.435 (4) (b), (r), or (w)

1 because of increased utilization of nursing home services, as estimated by the
2 department.

3 **SECTION 9.** 46.275 (5) (a) of the statutes is amended to read:

4 46.275 (5) (a) Medical assistance reimbursement for services a county, or the
5 department under sub. (3r), provides under this program is available from the
6 appropriations under s. 20.435 (4) (b), (o), (r), and (w). If 2 or more counties jointly
7 contract to provide services under this program and the department approves the
8 contract, medical assistance reimbursement is also available for services provided
9 jointly by these counties.

10 **SECTION 10.** 46.275 (5) (c) of the statutes is amended to read:

11 46.275 (5) (c) The total allocation under s. 20.435 (4) (b), (o), (r), and (w) to
12 counties and to the department under sub. (3r) for services provided under this
13 section may not exceed the amount approved by the federal department of health and
14 human services. A county may use funds received under this section only to provide
15 services to persons who meet the requirements under sub. (4) and may not use
16 unexpended funds received under this section to serve other developmentally
17 disabled persons residing in the county.

18 **SECTION 11.** 46.278 (6) (d) of the statutes is amended to read:

19 46.278 (6) (d) If a county makes available nonfederal funds equal to the state
20 share of service costs under a waiver received under sub. (3), the department may,
21 from the appropriation under s. 20.435 (4) (o), provide reimbursement for services
22 that the county provides under this section to persons who are in addition to those
23 who may be served under this section with funds from the appropriation under s.
24 20.435 (4) (b), (r), or (w).

25 ~~**SECTION 12.** 46.283 (5) of the statutes is amended to read:~~

1 46.283 (5) FUNDING. From the appropriation accounts under s. 20.435 (4) (b),
2 (bm), (pa), (r), and (w) and (7) (b), (bd), and ~~(md)~~, the department may contract with
3 organizations that meet standards under sub. (3) for performance of the duties under
4 sub. (4) and shall distribute funds for services provided by resource centers.

5 **SECTION 13.** 46.284 (5) (a) of the statutes is amended to read:

6 46.284 (5) (a) From the appropriation accounts under s. 20.435 (4) (b), (g), (im),
7 (o), (r), and (w) and (7) (b) and (bd), the department shall provide funding on a
8 capitated payment basis for the provision of services under this section.
9 Notwithstanding s. 46.036 (3) and (5m), a care management organization that is
10 under contract with the department may expend the funds, consistent with this
11 section, including providing payment, on a capitated basis, to providers of services
12 under the family care benefit.

13 **SECTION 14.** 49.45 (2) (a) 17. of the statutes is amended to read:

14 49.45 (2) (a) 17. Notify the governor, the joint committee on legislative
15 organization, the joint committee on finance, and appropriate standing committees,
16 as determined by the presiding officer of each house, if the appropriation
17 appropriations under s. 20.435 (4) (b) is and (r) are insufficient to provide the state
18 share of medical assistance.

19 **SECTION 15.** 49.45 (5m) (am) of the statutes is amended to read:

20 49.45 (5m) (am) Notwithstanding sub. (3) (e), from the appropriations under
21 s. 20.435 (4) (b), (o), (r), and ~~(w)~~, the department shall distribute not more than
22 \$2,256,000 in each fiscal year, to provide supplemental funds to rural hospitals that,
23 as determined by the department, have high utilization of inpatient services by
24 patients whose care is provided from governmental sources, and to provide
25 supplemental funds to critical access hospitals, except that the department may not

1 distribute funds to a rural hospital or to a critical access hospital to the extent that
2 the distribution would exceed any limitation under 42 USC 1396b (i) (3).

3 **SECTION 16.** 49.45 (6m) (ag) (intro.) of the statutes is amended to read:

4 49.45 (6m) (ag) (intro.) Payment for care provided in a facility under this
5 subsection made under s. 20.435 (4) (b), (pa), (o), ~~(r)~~, (w), or (wm) shall, except as
6 provided in pars. (bg), (bm), and (br), be determined according to a prospective
7 payment system updated annually by the department. The payment system shall
8 implement standards that are necessary and proper for providing patient care and
9 that meet quality and safety standards established under subch. II of ch. 50 and ch.
10 150. The payment system shall reflect all of the following:

11 **SECTION 17.** 49.45 (6v) (b) of the statutes is amended to read:

12 49.45 (6v) (b) The department shall, each year, submit to the joint committee
13 on finance a report for the previous fiscal year, except for the 1997-98 fiscal year, that
14 provides information on the utilization of beds by recipients of medical assistance in
15 facilities and a discussion and detailed projection of the likely balances,
16 expenditures, encumbrances and carry over of currently appropriated amounts in
17 the appropriation accounts under s. 20.435 (4) (b) ~~and~~, (o), ~~and~~ (r).

18 **SECTION 18.** 49.45 (6x) (a) of the statutes is amended to read:

19 49.45 (6x) (a) Notwithstanding sub. (3) (e), from the appropriations under s.
20 20.435 (4) (b), (o), ~~(r)~~, and (w), the department shall distribute not more than
21 \$4,748,000 in each fiscal year, to provide funds to an essential access city hospital,
22 except that the department may not allocate funds to an essential access city hospital
23 to the extent that the allocation would exceed any limitation under 42 USC 1396b
24 (i) (3).

25 **SECTION 19.** 49.45 (6y) (a) of the statutes is amended to read:

1 49.45 (6y) (a) Notwithstanding sub. (3) (e), from the appropriations under s.
2 20.435 (4) (b), (o), (r), and (w), the department shall distribute funding in each fiscal
3 year to provide supplemental payment to hospitals that enter into a contract under
4 s. 49.02 (2) to provide health care services funded by a relief block grant, as
5 determined by the department, for hospital services that are not in excess of the
6 hospitals' customary charges for the services, as limited under 42 USC 1396b (i) (3).
7 If no relief block grant is awarded under this chapter or if the allocation of funds to
8 such hospitals would exceed any limitation under 42 USC 1396b (i) (3), the
9 department may distribute funds to hospitals that have not entered into a contract
10 under s. 49.02 (2).

11 SECTION 20. 49.45 (6y) (am) of the statutes is amended to read:

12 49.45 (6y) (am) Notwithstanding sub. (3) (e), from the appropriations under s.
13 20.435 (4) (b), (h), (o), (r), and (w), the department shall distribute funding in each
14 fiscal year to provide supplemental payments to hospitals that enter into contracts
15 under s. 49.02 (2) with a county having a population of 500,000 or more to provide
16 health care services funded by a relief block grant, as determined by the department,
17 for hospital services that are not in excess of the hospitals' customary charges for the
18 services, as limited under 42 USC 1396b (i) (3).

19 SECTION 21. 49.45 (6z) (a) (intro.) of the statutes is amended to read:

20 49.45 (6z) (a) (intro.) Notwithstanding sub. (3) (e), from the appropriations
21 under s. 20.435 (4) (b), (o), (r), and (w), the department shall distribute funding in
22 each fiscal year to supplement payment for services to hospitals that enter into a
23 contract under s. 49.02 (2) to provide health care services funded by a relief block
24 grant under this chapter, if the department determines that the hospitals serve a
25 disproportionate number of low-income patients with special needs. If no medical

1 relief block grant under this chapter is awarded or if the allocation of funds to such
2 hospitals would exceed any limitation under 42 USC 1396b (i) (3), the department
3 may distribute funds to hospitals that have not entered into a contract under s. 49.02
4 (2). The department may not distribute funds under this subsection to the extent
5 that the distribution would do any of the following:

6 **SECTION 22.** 49.45 (8) (b) of the statutes is amended to read:

7 ~~49.45 (8) (b) Reimbursement under s. 20.435 (4) (b), (o), (r), and (w) for home~~
8 ~~health services provided by a certified home health agency or independent nurse~~
9 ~~shall be made at the home health agency's or nurse's usual and customary fee per~~
10 ~~patient care visit, subject to a maximum allowable fee per patient care visit that is~~
11 ~~established under par. (c).~~

12 **SECTION 23.** 49.45 (24m) (intro.) of the statutes is amended to read:

13 ~~49.45 (24m) HOME HEALTH CARE AND PERSONAL CARE PILOT PROGRAM. (intro.)~~
14 ~~From the appropriations under s. 20.435 (4) (b), (o), (r), and (w), in order to test the~~
15 ~~feasibility of instituting a system of reimbursement for providers of home health care~~
16 ~~and personal care services for medical assistance recipients that is based on~~
17 ~~competitive bidding, the department shall:~~

18 **SECTION 24.** 49.472 (6) (a) of the statutes is amended to read:

19 ~~49.472 (6) (a) Notwithstanding sub. (4) (a) 3., from the appropriation under s.~~
20 ~~20.435 (4) (b), (r), or (w), the department shall, on the part of an individual who is~~
21 ~~eligible for medical assistance under sub. (3), pay premiums for or purchase~~
22 ~~individual coverage offered by the individual's employer if the department~~
23 ~~determines that paying the premiums for or purchasing the coverage will not be more~~
24 ~~costly than providing medical assistance.~~

25 **SECTION 25.** 49.472 (6) (b) of the statutes is amended to read:

1 49.472 (6) (b) If federal financial participation is available, from the
2 appropriation under s. 20.435 (4) (b), (r), or (w), the department may pay medicare
3 Part A and Part B premiums for individuals who are eligible for medicare and for
4 medical assistance under sub. (3).

5 **SECTION 26.** 49.473 (5) of the statutes is amended to read:

6 49.473 (5) The department shall audit and pay, from the appropriation
7 accounts under s. 20.435 (4) (b) and, (o), and (r), allowable charges to a provider who
8 is certified under s. 49.45 (2) (a) 11. for medical assistance on behalf of a woman who
9 meets the requirements under sub. (2) for all benefits and services specified under
10 s. 49.46 (2).

11 **SECTION 27.** 655.26 (2) of the statutes is amended to read:

12 655.26 (2) By the 15th day of each month, the board of governors shall report
13 the information specified in sub. (1) to the medical examining board for each claim
14 paid by the fund or from the appropriation under s. 20.145 (2) (a) during the previous
15 month for damages arising out of the rendering of health care services by a health
16 care provider or an employee of a health care provider.

17 **SECTION 28.** 655.27 (3) (am) of the statutes is amended to read:

18 655.27 (3) (am) *Assessments for peer review council.* The fund, a mandatory
19 health care liability risk-sharing plan established under s. 619.04, and a private
20 health care liability insurer shall be assessed, as appropriate, fees sufficient to cover
21 the costs of the patients compensation fund peer review council, including costs of
22 administration, for reviewing claims paid by the fund, or from the appropriation
23 under s. 20.145 (2) (a), by the plan, and by the insurer, respectively, under s. 655.275
24 (5). The fees shall be set by the commissioner by rule, after approval by the board
25 of governors, and shall be collected by the commissioner for deposit in the fund. The

1 costs of the patients compensation fund peer review council shall be funded from the
2 appropriation under s. 20.145 (2) (um).

3 **SECTION 29.** 655.27 (4) (a) of the statutes is amended to read:

4 655.27 (4) (a) Moneys shall be withdrawn from the fund, or paid from the
5 appropriation under s. 20.145 (2) (a), by the commissioner only upon vouchers
6 approved and authorized by the board of governors.

7 **SECTION 30.** 655.27 (5) (e) of the statutes is amended to read:

8 655.27 (5) (e) Claims filed against the fund shall be paid in the order received
9 within 90 days after filing unless appealed by the fund. If the amounts in the fund
10 are not sufficient to pay all of the claims, claims received after the funds are
11 exhausted shall be ~~immediately payable the following year in the order in which they~~
12 ~~were received~~ paid from the appropriation under s. 20.145 (2) (a).

13 **SECTION 31.** 655.27 (6) of the statutes is amended to read:

14 655.27 (6) INTEGRITY OF FUND. The fund shall be held in trust for the purposes
15 of this chapter and may not be used for purposes other than those of this chapter.
16 The secretary of administration, in consultation with the commissioner, may
17 transfer to the health care provider availability and cost control fund under s. 655.75
18 a portion of the account balance of the patients compensation fund if the secretary,
19 in consultation with the commissioner, determines that the provision of
20 compensation to patients by the patients compensation fund will not as a result of
21 the transfer be delayed or diminished.

22 **SECTION 32.** 655.275 (5) (a) (intro.) of the statutes is amended to read:

23 655.275 (5) (a) (intro.) The council shall review, within one year of the date of
24 first payment on the claim, each claim that is paid by the fund, or from the
25 appropriation under s. 20.145 (2) (a), by a mandatory health care liability

1 risk-sharing plan established under s. 619.04, by a private health care liability
2 insurer, or by a self-insurer for damages arising out of the rendering of medical care
3 by a health care provider or an employee of the health care provider and shall make
4 recommendations to all of the following:

5 **SECTION 33.** Subchapter VIII of chapter 655 [precedes 655.75] of the statutes
6 is created to read:

7 **CHAPTER 655**

8 **SUBCHAPTER VIII**

9 **HEALTH CARE PROVIDER AVAILABILITY**

10 **AND COST CONTROL FUND**

11 **655.75 Health care provider availability and cost control fund. (1)**

12 There is created a health care provider availability and cost control fund for the
13 purposes of ensuring the availability of health care providers in the state and
14 controlling the cost of health care services to state taxpayers, workers, and
15 employers. The fund may be used for all of the following purposes:

16 (a) To assist in the education and training of health care providers.

17 (b) To ensure that health care providers who serve recipients under the Medical
18 Assistance program or other health care programs established by the state receive
19 levels of payment sufficient to retain their participation in the programs and to
20 reduce the risk of shifting costs to private sector employers.

21 (c) To defray the cost of other health-related programs that the secretary of
22 health and family services determines are effective in ensuring the availability of
23 health care providers in the state and controlling the cost of health care services to
24 state taxpayers, workers, and employers.

1 (2) The health care provider availability and cost control fund shall be
2 administered by the commissioner.

3 (3) The health care provider availability and cost control fund shall be funded
4 with the transfer of moneys from the patients compensation fund under 2003
5 Wisconsin Act (this act), section 9228 (1).

6 **SECTION 9228. Appropriation changes; insurance.**

7 (1) PATIENTS COMPENSATION FUND TRANSFER. There is transferred from the
8 patients compensation fund to the health care provider availability and cost control
9 fund \$200,000,000 in fiscal year 2003-04.

10 (END)

D-note

1. This draft reconciles LRB-0194,
LRB-1253, LRB-1755, and LRB-1760.
All four drafts should continue to
appear in the compiled bill.

2. The following sections ^{ns} have been removed from
this draft and the changes incorporated ~~into~~
into LRB-0194, LRB-1253, or LRB-1760: ss. 46.27(9)(a) and
(10)(a)1., 46.275(5)(a) and (c), 46.283(5), 46.284(5)(a),
17., (5m)(am), (6m)(ag)(intro.), (6v)(b), (6x)(a), (6y)(a) and
(am), ~~6z~~ (6z)(a)(intro.), (8)(b), and (24m)(intro.), 49.472
(6)(a) and (b), and 49.473(5).

PJK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1755/3dn
PJK:kmg:pg

February 6, 2003

1. This draft reconciles LRB-0194, LRB-1253, LRB-1755, and LRB-1760. All four drafts should continue to appear in the compile bill.
2. The following sections have been removed from this draft and the changes incorporated into LRB-0194, LRB-1253, or LRB-1760: ss. 46.27 (9) (a) and (10) (a) 1., 46.275 (5) (a) and (c), 46.283 (5), 46.284 (5) (a), 49.45 (2) (a) 17., (5m) (am), (6m) (ag) (intro.), (6v) (b), (6x) (a), (6y) (a) and (am), (6z) (a) (intro.), (8) (b), and (24m) (intro.), 49.472 (6) (a) and (b), and 49.473 (5).

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State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1755/2
PJK:kmg/cmh/wlj:dg

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DOA:.....Jablonsky – BB0440, Transfer from patient’s compensation fund to new segregated fund

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

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1 AN ACT . . . relating to: the budget.

Analysis by the Legislative Reference Bureau

INSURANCE

Under current law, certain health care providers are required to carry health care liability insurance with liability limits of at least \$1,000,000 for each occurrence and at least \$3,000,000 for all occurrences in a policy year. Any portion of a medical malpractice claim against a health care provider subject to the health care liability insurance requirements that exceeds the policy limits of the health care provider’s health care liability insurance is paid by the patients compensation fund. Money for the fund comes from annual assessments paid by the health care providers subject to the health care liability insurance requirements.

This bill creates the health care provider availability and cost control fund and transfers \$200,000,000 from the patients compensation fund to the health care provider availability and cost control fund. The health care provider availability and cost control fund may be used to assist in the education and training of health care providers, ^{to} ensure that health care providers serving recipients under the Medical Assistance program or other health care programs established by the state receive payment sufficient to retain their participation in these programs, and to defray the cost of other health-related programs that the secretary of health and family services determines are effective in ensuring the availability of health care providers in the state and controlling the cost of health care services. *The bill authorizes the*



secretary of administration, in consultation with the commissioner of insurance, to transfer a portion of the account balance of the patients compensation fund to the health care provider availability and cost control fund if the secretary determines that compensation to patients from the patients compensation fund will not be delayed or diminished as a result of the transfer. The bill creates a general purpose revenue sum sufficient appropriation to cover payment of any medical malpractice claim that exceeds the moneys remaining in the patients compensation fund. Under the bill, moneys in the health care provider availability and cost control fund are used for benefits under the Medical Assistance program.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 20.145 (2) (a) of the statutes is created to read:

2 20.145 (2) (a) *Claims payable by patients compensation fund.* A sum sufficient
3 for paying any portion of a claim for damages arising out of the rendering of health
4 care services that the patients compensation fund under s. 655.27 is required to pay
5 under ch. 655 but that the patients compensation fund is unable to pay because of
6 insufficient moneys.

 ***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

7 **SECTION 2.** 20.435 (4) (b) of the statutes is amended to read:

8 20.435 (4) (b) *Medical assistance Assistance program benefits.* Biennially, the
9 amounts in the schedule to provide a portion of the state share of medical assistance
10 Medical Assistance program benefits administered under s. 49.45, to provide
11 medical assistance a portion of the Medical Assistance program benefits
12 administered under s. 49.45 that are not also provided under par. (o), to fund the pilot
13 project under s. 46.27 (9) and (10), to provide a portion of the facility payments under
14 1999 Wisconsin Act 9, section 9123 (9m), to fund services provided by resource
15 centers under s. 46.283, and for services under the family care benefit under s. 46.284

1 (5). Notwithstanding s. 20.002 (1), the department may transfer from this
2 appropriation account to the appropriation account under sub. (7) (kb) funds in the
3 amount of and for the purposes specified in s. 46.485. Notwithstanding ss. 20.001
4 (3) (b) and 20.002 (1), the department may credit or deposit into this appropriation
5 account and may transfer between fiscal years funds that it transfers from the
6 appropriation account under sub. (7) (kb) for the purposes specified in s. 46.485 (3r).
7 Notwithstanding s. 20.002 (1), the department may transfer from this appropriation
8 account to the appropriation account under sub. (7) (bd) funds in the amount and for
9 the purposes specified in s. 49.45 (6v).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

10 **SECTION 3.** 20.435 (4) (r) of the statutes is created to read:

11 20.435 (4) (r) *Health care provider availability and cost control.* From the
12 health care provider availability and cost control fund, as a continuing
13 appropriation, the amounts in the schedule to provide a portion of the state share of
14 Medical Assistance program benefits administered under s. 49.45, to provide a
15 portion of the Medical Assistance program benefits administered under s. 49.45 that
16 are not also provided under par. (o), to fund the pilot project under s. 46.27 (9) and
17 (10), to provide a portion of the facility payments under 1999 Wisconsin Act 9, section
18 9123 (9m), to fund services provided by resource centers under s. 46.283, and for
19 services under the family care benefit under s. 46.284 (5).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

20 **SECTION 4.** 25.14 (1) (a) 9m. of the statutes is created to read:

21 25.14 (1) (a) 9m. The health care provider availability and cost control fund.

22 **SECTION 5.** 25.17 (1) (ky) of the statutes is created to read:

1 25.17 (1) (ky) Health care provider availability and cost control fund (s. 655.75);

2 **SECTION 6.** 25.17 (3) (a) of the statutes is amended to read:

3 25.17 (3) (a) Invest the fixed retirement investment trust, state life fund,
4 veterans trust fund ~~and, patients compensation fund, and health care provider~~
5 availability and cost control fund in loans, securities and any other investments
6 authorized by s. 620.22, and in bonds or other evidences of indebtedness or preferred
7 stock of companies engaged in the finance business whether as direct lenders or as
8 holding companies owning subsidiaries engaged in the finance business.
9 Investments permitted by sub. (4) are permitted investments under this subsection.

10 **SECTION 7.** 46.278 (6) (d) of the statutes is amended to read:

11 46.278 (6) (d) If a county makes available nonfederal funds equal to the state
12 share of service costs under a waiver received under sub. (3), the department may,
13 from the appropriation under s. 20.435 (4) (o), provide reimbursement for services
14 that the county provides under this section to persons who are in addition to those
15 who may be served under this section with funds from the appropriation under s.
16 20.435 (4) (b), ~~(r)~~, or (w).

17 **SECTION 8.** 655.26 (2) of the statutes is amended to read:

18 655.26 (2) By the 15th day of each month, the board of governors shall report
19 the information specified in sub. (1) to the medical examining board for each claim
20 paid by the fund ~~or from the appropriation under s. 20.145 (2) (a)~~ during the previous
21 month for damages arising out of the rendering of health care services by a health
22 care provider or an employee of a health care provider.

23 **SECTION 9.** 655.27 (3) (am) of the statutes is amended to read:

24 655.27 (3) (am) *Assessments for peer review council.* The fund, a mandatory
25 health care liability risk-sharing plan established under s. 619.04, and a private

1 health care liability insurer shall be assessed, as appropriate, fees sufficient to cover
2 the costs of the patients compensation fund peer review council, including costs of
3 administration, for reviewing claims paid by the fund, or from the appropriation
4 under s. 20.145 (2) (a), by the plan, and by the insurer, respectively, under s. 655.275
5 (5). The fees shall be set by the commissioner by rule, after approval by the board
6 of governors, and shall be collected by the commissioner for deposit in the fund. The
7 costs of the patients compensation fund peer review council shall be funded from the
8 appropriation under s. 20.145 (2) (um).

9 **SECTION 10.** 655.27 (4) (a) of the statutes is amended to read:

10 655.27 (4) (a) Moneys shall be withdrawn from the fund, or paid from the
11 appropriation under s. 20.145 (2) (a), by the commissioner only upon vouchers
12 approved and authorized by the board of governors.

13 **SECTION 11.** 655.27 (5) (e) of the statutes is amended to read:

14 655.27 (5) (e) Claims filed against the fund shall be paid in the order received
15 within 90 days after filing unless appealed by the fund. If the amounts in the fund
16 are not sufficient to pay all of the claims, claims received after the funds are
17 exhausted shall be ~~immediately payable the following year in the order in which they~~
18 ~~were received~~ paid from the appropriation under s. 20.145 (2) (a).

19 **SECTION 12.** 655.27 (6) of the statutes is amended to read:

20 ~~655.27 (6) INTEGRITY OF FUND. The fund shall be held in trust for the purposes~~
21 ~~of this chapter and may not be used for purposes other than those of this chapter.~~
22 ~~The secretary of administration, in consultation with the commissioner, may~~
23 ~~transfer to the health care provider availability and cost control fund under s. 655.75~~
24 ~~a portion of the account balance of the patients compensation fund if the secretary,~~
25 ~~in consultation with the commissioner, determines that the provision of~~

1 ~~compensation to patients by the patients compensation fund will not as a result of~~
2 ~~the transfer be delayed or diminished.~~

3 SECTION 13. 655.275 (5) (a) (intro.) of the statutes is amended to read:

4 655.275 (5) (a) (intro.) The council shall review, within one year of the date of
5 first payment on the claim, each claim that is paid by the fund, or from the
6 appropriation under s. 20.145 (2) (a), by a mandatory health care liability
7 risk-sharing plan established under s. 619.04, by a private health care liability
8 insurer, or by a self-insurer for damages arising out of the rendering of medical care
9 by a health care provider or an employee of the health care provider and shall make
10 recommendations to all of the following:

11 SECTION 14. Subchapter VIII of chapter 655 [precedes 655.75] of the statutes
12 is created to read:

13 CHAPTER 655

14 SUBCHAPTER VIII

15 HEALTH CARE PROVIDER AVAILABILITY

16 AND COST CONTROL FUND

17 **655.75 Health care provider availability and cost control fund. (1)**

18 There is created a health care provider availability and cost control fund for the
19 purposes of ensuring the availability of health care providers in the state and
20 controlling the cost of health care services to state taxpayers, workers, and
21 employers. The fund may be used for all of the following purposes:

22 (a) To assist in the education and training of health care providers.

23 (b) To ensure that health care providers who serve recipients under the Medical
24 Assistance program or other health care programs established by the state receive

1 levels of payment sufficient to retain their participation in the programs and to
2 reduce the risk of shifting costs to private sector employers.

3 (c) To defray the cost of other health-related programs that the secretary of
4 health and family services determines are effective in ensuring the availability of
5 health care providers in the state and controlling the cost of health care services to
6 state taxpayers, workers, and employers.

7 (2) The health care provider availability and cost control fund shall be
8 administered by the commissioner.

9 (3) The health care provider availability and cost control fund shall be funded
10 with the transfer of moneys from the patients compensation fund under 2003
11 Wisconsin Act (this act), section 9228 (1).

12 **SECTION 9228. Appropriation changes; insurance.**

13 (1) PATIENTS COMPENSATION FUND TRANSFER. There is transferred from the
14 patients compensation fund to the health care provider availability and cost control
15 fund \$200,000,000 in fiscal year 2003–04.

16 (END)



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-1755/4
PJK:kmg/cmh/wlj:pg

DOA:.....Jablonsky – BB0440, Transfer from patient's compensation fund to
new segregated fund

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

INSURANCE

Under current law, certain health care providers are required to carry health care liability insurance with liability limits of at least \$1,000,000 for each occurrence and at least \$3,000,000 for all occurrences in a policy year. Any portion of a medical malpractice claim against a health care provider subject to the health care liability insurance requirements that exceeds the policy limits of the health care provider's health care liability insurance is paid by the patients compensation fund. Money for the fund comes from annual assessments paid by the health care providers subject to the health care liability insurance requirements.

This bill creates the health care provider availability and cost control fund and transfers \$200,000,000 from the patients compensation fund to the health care provider availability and cost control fund. The health care provider availability and cost control fund may be used to assist in the education and training of health care providers, ensure that health care providers serving recipients under the Medical Assistance program or other health care programs established by the state receive payment sufficient to retain their participation in these programs, and to defray the cost of other health-related programs that the secretary of health and family services determines are effective in ensuring the availability of health care providers in the state and controlling the cost of health care services. The bill creates a general

purpose revenue sum sufficient appropriation to cover payment of any medical malpractice claim that exceeds the moneys remaining in the patients compensation fund. Under the bill, moneys in the health care provider availability and cost control fund are used for benefits under the Medical Assistance program.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 20.145 (2) (a) of the statutes is created to read:

2 20.145 (2) (a) *Claims payable by patients compensation fund.* A sum sufficient
3 for paying any portion of a claim for damages arising out of the rendering of health
4 care services that the patients compensation fund under s. 655.27 is required to pay
5 under ch. 655 but that the patients compensation fund is unable to pay because of
6 insufficient moneys.

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

7 **SECTION 2.** 20.435 (4) (b) of the statutes is amended to read:

8 20.435 (4) (b) *Medical assistanee Assistance program benefits.* Biennially, the
9 amounts in the schedule to provide a portion of the state share of medical assistanee
10 Medical Assistance program benefits administered under s. 49.45, to provide
11 medical assistanee a portion of the Medical Assistance program benefits
12 administered under s. 49.45 that are not also provided under par. (o), to fund the pilot
13 project under s. 46.27 (9) and (10), to provide a portion of the facility payments under
14 1999 Wisconsin Act 9, section 9123 (9m), to fund services provided by resource
15 centers under s. 46.283, and for services under the family care benefit under s. 46.284
16 (5). Notwithstanding s. 20.002 (1), the department may transfer from this
17 appropriation account to the appropriation account under sub. (7) (kb) funds in the
18 amount of and for the purposes specified in s. 46.485. Notwithstanding ss. 20.001

1 (3) (b) and 20.002 (1), the department may credit or deposit into this appropriation
2 account and may transfer between fiscal years funds that it transfers from the
3 appropriation account under sub. (7) (kb) for the purposes specified in s. 46.485 (3r).
4 Notwithstanding s. 20.002 (1), the department may transfer from this appropriation
5 account to the appropriation account under sub. (7) (bd) funds in the amount and for
6 the purposes specified in s. 49.45 (6v).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

7 **SECTION 3.** 20.435 (4) (r) of the statutes is created to read:

8 20.435 (4) (r) *Health care provider availability and cost control.* From the
9 health care provider availability and cost control fund, as a continuing
10 appropriation, the amounts in the schedule to provide a portion of the state share of
11 Medical Assistance program benefits administered under s. 49.45, to provide a
12 portion of the Medical Assistance program benefits administered under s. 49.45 that
13 are not also provided under par. (o), to fund the pilot project under s. 46.27 (9) and
14 (10), to provide a portion of the facility payments under 1999 Wisconsin Act 9, section
15 9123 (9m), to fund services provided by resource centers under s. 46.283, and for
16 services under the family care benefit under s. 46.284 (5).

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

17 **SECTION 4.** 25.14 (1) (a) 9m. of the statutes is created to read:

18 25.14 (1) (a) 9m. The health care provider availability and cost control fund.

19 **SECTION 5.** 25.17 (1) (ky) of the statutes is created to read:

20 25.17 (1) (ky) Health care provider availability and cost control fund (s. 655.75);

21 **SECTION 6.** 25.17 (3) (a) of the statutes is amended to read:

1 25.17 (3) (a) Invest the fixed retirement investment trust, state life fund,
2 veterans trust fund ~~and~~, patients compensation fund, and health care provider
3 availability and cost control fund in loans, securities and any other investments
4 authorized by s. 620.22, and in bonds or other evidences of indebtedness or preferred
5 stock of companies engaged in the finance business whether as direct lenders or as
6 holding companies owning subsidiaries engaged in the finance business.
7 Investments permitted by sub. (4) are permitted investments under this subsection.

8 **SECTION 7.** 46.278 (6) (d) of the statutes is amended to read:

9 46.278 (6) (d) If a county makes available nonfederal funds equal to the state
10 share of service costs under a waiver received under sub. (3), the department may,
11 from the appropriation under s. 20.435 (4) (o), provide reimbursement for services
12 that the county provides under this section to persons who are in addition to those
13 who may be served under this section with funds from the appropriation under s.
14 20.435 (4) (b), (r), or (w).

15 **SECTION 8.** 655.26 (2) of the statutes is amended to read:

16 655.26 (2) By the 15th day of each month, the board of governors shall report
17 the information specified in sub. (1) to the medical examining board for each claim
18 paid by the fund or from the appropriation under s. 20.145 (2) (a) during the previous
19 month for damages arising out of the rendering of health care services by a health
20 care provider or an employee of a health care provider.

21 **SECTION 9.** 655.27 (3) (am) of the statutes is amended to read:

22 655.27 (3) (am) *Assessments for peer review council.* The fund, a mandatory
23 health care liability risk-sharing plan established under s. 619.04, and a private
24 health care liability insurer shall be assessed, as appropriate, fees sufficient to cover
25 the costs of the patients compensation fund peer review council, including costs of

1 administration, for reviewing claims paid by the fund, or from the appropriation
2 under s. 20.145 (2) (a), by the plan, and by the insurer, respectively, under s. 655.275
3 (5). The fees shall be set by the commissioner by rule, after approval by the board
4 of governors, and shall be collected by the commissioner for deposit in the fund. The
5 costs of the patients compensation fund peer review council shall be funded from the
6 appropriation under s. 20.145 (2) (um).

7 **SECTION 10.** 655.27 (4) (a) of the statutes is amended to read:

8 655.27 (4) (a) Moneys shall be withdrawn from the fund, or paid from the
9 appropriation under s. 20.145 (2) (a), by the commissioner only upon vouchers
10 approved and authorized by the board of governors.

11 **SECTION 11.** 655.27 (5) (e) of the statutes is amended to read:

12 655.27 (5) (e) Claims filed against the fund shall be paid in the order received
13 within 90 days after filing unless appealed by the fund. If the amounts in the fund
14 are not sufficient to pay all of the claims, claims received after the funds are
15 exhausted shall be ~~immediately payable the following year in the order in which they~~
16 ~~were received~~ paid from the appropriation under s. 20.145 (2) (a).

17 **SECTION 12.** 655.275 (5) (a) (intro.) of the statutes is amended to read:

18 655.275 (5) (a) (intro.) The council shall review, within one year of the date of
19 first payment on the claim, each claim that is paid by the fund, or from the
20 appropriation under s. 20.145 (2) (a), by a mandatory health care liability
21 risk-sharing plan established under s. 619.04, by a private health care liability
22 insurer, or by a self-insurer for damages arising out of the rendering of medical care
23 by a health care provider or an employee of the health care provider and shall make
24 recommendations to all of the following:

1 **SECTION 13.** Subchapter VIII of chapter 655 [precedes 655.75] of the statutes
2 is created to read:

3 **CHAPTER 655**
4 **SUBCHAPTER VIII**
5 **HEALTH CARE PROVIDER AVAILABILITY**
6 **AND COST CONTROL FUND**

7 **655.75 Health care provider availability and cost control fund. (1)**

8 There is created a health care provider availability and cost control fund for the
9 purposes of ensuring the availability of health care providers in the state and
10 controlling the cost of health care services to state taxpayers, workers, and
11 employers. The fund may be used for all of the following purposes:

- 12 (a) To assist in the education and training of health care providers.
- 13 (b) To ensure that health care providers who serve recipients under the Medical
14 Assistance program or other health care programs established by the state receive
15 levels of payment sufficient to retain their participation in the programs and to
16 reduce the risk of shifting costs to private sector employers.
- 17 (c) To defray the cost of other health-related programs that the secretary of
18 health and family services determines are effective in ensuring the availability of
19 health care providers in the state and controlling the cost of health care services to
20 state taxpayers, workers, and employers.

21 **(2)** The health care provider availability and cost control fund shall be
22 administered by the commissioner.

23 **(3)** The health care provider availability and cost control fund shall be funded
24 with the transfer of moneys from the patients compensation fund under 2003
25 Wisconsin Act (this act), section 9228 (1).

