

## 2003 ASSEMBLY BILL 487

August 29, 2003 – Introduced by Representatives LADWIG, GIELOW, WEBER, ALBERS, BIES, J. FITZGERALD, FREESE, GUNDERSON, JENSEN, JESKEWITZ, KERKMAN, KRAWCZYK, KREIBICH, M. LEHMAN, LEMAHIEU, LOTHIAN, MCCORMICK, D. MEYER, MONTGOMERY, NISCHKE, OLSEN, PETROWSKI, PETTIS, SERATTI, STONE, SUDER, TOWNS, TOWNSEND, VAN ROY, VUKMIR, WASSERMAN and OWENS, cosponsored by Senators SCHULTZ, ROESSLER, BROWN, DARLING, S. FITZGERALD, KANAVAS, KEDZIE, A. LASEE, PANZER, REYNOLDS, STEPP, ZIEN and WELCH. Referred to Committee on Insurance.

1     **AN ACT to amend** 13.94 (1) (de), 15.405 (7) (c), 20.145 (2) (title), 20.145 (2) (q),  
 2           20.145 (2) (u), 20.145 (2) (um), 20.145 (2) (v), 25.14 (1) (a) 9., 25.17 (1) (kp), 25.17  
 3           (3) (a), 50.37 (intro.), 165.25 (6) (a), 619.04 (5) (b), 619.04 (5m) (b), 619.04 (9),  
 4           chapter 655 (title), 655.001 (7), subchapter IV (title) of chapter 655 [precedes  
 5           655.27], 655.27 (title), 655.27 (1), 655.27 (3) (a) 2m., 655.27 (3) (am), 655.27 (3)  
 6           (bg) 2., 655.275 (title), 655.275 (1), 893.55 (4) (b), 893.82 (2) (d) 3., 895.46 (4) and  
 7           895.70 (5); and **to repeal and recreate** 655.27 (6) of the statutes; **relating to:**  
 8           the purpose and integrity of the patients compensation fund and changing its  
 9           name to the injured patients and families compensation fund.

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### ***Analysis by the Legislative Reference Bureau***

The health care liability provisions of the statutes require certain health care providers to carry health care liability (medical malpractice) 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 that exceeds the policy limits is paid by the patients compensation fund (fund) for health care providers that are subject to the health care liability provisions. Money for the fund comes from annual assessments paid by those health care providers.

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Current law provides that the fund is to be held in trust for the purposes of the chapter of the statutes containing the health care liability provisions and may not be used for purposes other than those of that chapter, but does not specifically provide what the purposes of the chapter are. This bill provides: 1) that the purposes of the fund are to curb rising health care costs by financing part of the liability incurred by health care providers from medical malpractice claims and to ensure that medical malpractice claims are satisfied; 2) that the health care providers and claimants have contractual rights in all assets of the fund for those purposes; and 3) that, instead of being held in trust for the purposes of the chapter, the fund is held in trust exclusively for the benefit of health care providers and claimants and may not be spent for any other purpose of the state. The bill also changes the name of the fund to the injured patients and families compensation fund.

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

1           **SECTION 1.** 13.94 (1) (de) of the statutes is amended to read:

2           13.94 (1) (de) At least once every 3 years, perform a financial audit of the state  
3 life insurance fund, the local government property insurance fund, and the patients  
4 injured patients and families compensation fund.

5           **SECTION 2.** 15.405 (7) (c) of the statutes is amended to read:

6           15.405 (7) (c) The chairperson of the patients injured patients and families  
7 compensation fund peer review council under s. 655.275 shall serve as a nonvoting  
8 member of the medical examining board.

9           **SECTION 3.** 20.145 (2) (title) of the statutes is amended to read:

10           20.145 (2) (title) ~~PATIENTS~~ INJURED PATIENTS AND FAMILIES COMPENSATION FUND.

11           **SECTION 4.** 20.145 (2) (q) of the statutes is amended to read:

12           20.145 (2) (q) *Interest earned on future medical expenses.* From the patients  
13 injured patients and families compensation fund under s. 655.27 a sum sufficient  
14 equal to the interest earned by the patients injured patients and families  
15 compensation fund that is attributable to future medical expense payments held by

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1 the fund under s. 655.015, to be credited to individual claimants' future medical  
2 expense payments accounts as provided in s. 655.015, for the purpose of paying  
3 future medical expenses.

4 **SECTION 5.** 20.145 (2) (u) of the statutes is amended to read:

5 20.145 (2) (u) *Administration.* From the ~~patients~~ injured patients and families  
6 compensation fund under s. 655.27 (3), the amounts in the schedule for  
7 administration, except for costs of the ~~patients~~ injured patients and families  
8 compensation fund peer review council and its associated administrative costs  
9 assessed under s. 655.27 (3) (am).

10 **SECTION 6.** 20.145 (2) (um) of the statutes is amended to read:

11 20.145 (2) (um) *Peer review council.* From the ~~patients~~ injured patients and  
12 families compensation fund under s. 655.27 (3) (am), the amounts in the schedule for  
13 payment of costs, including costs of administration, incurred by the ~~patients~~ injured  
14 patients and families compensation fund peer review council under s. 655.275 (5).

15 **SECTION 7.** 20.145 (2) (v) of the statutes is amended to read:

16 20.145 (2) (v) *Specified responsibilities, investment board payments, and future*  
17 *medical expenses.* After deducting the amounts appropriated under pars. (q), (u), and  
18 (um), the balance of the moneys paid into the ~~patients~~ injured patients and families  
19 compensation fund under s. 655.27 (3) to carry out the responsibilities of the  
20 commissioner of insurance specified under s. 655.27, excluding payment of expenses  
21 related to administering the fund, to make payments to the investment board under  
22 s. 20.536, and to pay future medical expenses under s. 655.015.

23 **SECTION 8.** 25.14 (1) (a) 9. of the statutes is amended to read:

24 25.14 (1) (a) 9. The ~~patients~~ injured patients and families compensation fund.

25 **SECTION 9.** 25.17 (1) (kp) of the statutes is amended to read:

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1           25.17 (1) (kp) ~~Patients~~ Injured patients and families compensation fund (s.  
2 655.27);

3           **SECTION 10.** 25.17 (3) (a) of the statutes is amended to read:

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

11           **SECTION 11.** 50.37 (intro.) of the statutes is amended to read:

12           **50.37 Notification to accrediting organization.** (intro.) The department  
13 shall notify a private accrediting organization that has accredited a hospital and the  
14 board of governors of the ~~patients~~ injured patients and families compensation fund  
15 under s. 619.04 (3) if the department has done any of the following:

16           **SECTION 12.** 165.25 (6) (a) of the statutes is amended to read:

17           165.25 (6) (a) At the request of the head of any department of state government,  
18 the attorney general may appear for and defend any state department, or any state  
19 officer, employee, or agent of the department in any civil action or other matter  
20 brought before a court or an administrative agency which is brought against the state  
21 department, or officer, employee, or agent for or on account of any act growing out  
22 of or committed in the lawful course of an officer's, employee's, or agent's duties.  
23 Witness fees or other expenses determined by the attorney general to be reasonable  
24 and necessary to the defense in the action or proceeding shall be paid as provided for  
25 in s. 885.07. The attorney general may compromise and settle the action as the

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1 attorney general determines to be in the best interest of the state. Members, officers,  
2 and employees of the Wisconsin state agencies building corporation and the  
3 Wisconsin state public building corporation are covered by this section. Members of  
4 the board of governors created under s. 619.04 (3), members of a committee or  
5 subcommittee of that board of governors, members of the patients injured patients  
6 and families compensation fund peer review council created under s. 655.275 (2), and  
7 persons consulting with that council under s. 655.275 (5) (b) are covered by this  
8 section with respect to actions, claims, or other matters arising before, on, or after  
9 April 25, 1990. The attorney general may compromise and settle claims asserted  
10 before such actions or matters formally are brought or may delegate such authority  
11 to the department of administration. This paragraph may not be construed as a  
12 consent to sue the state or any department thereof or as a waiver of state sovereign  
13 immunity.

14 **SECTION 13.** 619.04 (5) (b) of the statutes is amended to read:

15 619.04 (5) (b) A rating plan which takes into consideration the loss and expense  
16 experience of the individual health care provider which resulted in the payment of  
17 money, by the plan or other sources, for damages arising out of the rendering of  
18 health care by the health care provider or an employee of the health care provider,  
19 except that an adjustment to a health care provider's premiums may not be made  
20 under this paragraph prior to the receipt of the recommendation of the patients  
21 injured patients and families compensation fund peer review council under s.  
22 655.275 (5) (a) and the expiration of the time period provided, under s. 655.275 (7),  
23 for the health care provider to comment or prior to the expiration of the time period  
24 under s. 655.275 (5) (a).

25 **SECTION 14.** 619.04 (5m) (b) of the statutes is amended to read:



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1           **SECTION 19.** 655.27 (title) of the statutes is amended to read:

2           **655.27** (title) **~~Patients~~ Injured patients and families compensation**  
3 **fund.**

4           **SECTION 20.** 655.27 (1) of the statutes is amended to read:

5           655.27 **(1)** FUND. There is created a ~~patients~~ an injured patients and families  
6 compensation fund for the purpose of paying that portion of a medical malpractice  
7 claim which is in excess of the limits expressed in s. 655.23 (4) or the maximum  
8 liability limit for which the health care provider is insured, whichever limit is  
9 greater, paying future medical expense payments under s. 655.015, and paying  
10 claims under sub. (1m). The fund shall provide occurrence coverage for claims  
11 against health care providers that have complied with this chapter, and against  
12 employees of those health care providers, and for reasonable and necessary expenses  
13 incurred in payment of claims and fund administrative expenses. The coverage  
14 provided by the fund shall begin July 1, 1975. The fund shall not be liable for  
15 damages for injury or death caused by an intentional crime, as defined under s.  
16 939.12, committed by a health care provider or an employee of a health care provider,  
17 whether or not the criminal conduct is the basis for a medical malpractice claim.

18           **SECTION 21.** 655.27 (3) (a) 2m. of the statutes is amended to read:

19           655.27 **(3)** (a) 2m. The loss and expense experience of the individual health care  
20 provider which resulted in the payment of money, from the fund or other sources, for  
21 damages arising out of the rendering of medical care by the health care provider or  
22 an employee of the health care provider, except that an adjustment to a health care  
23 provider's fees may not be made under this subdivision prior to the receipt of the  
24 recommendation of the ~~patients~~ injured patients and families compensation fund  
25 peer review council under s. 655.275 (5) (a) and the expiration of the time period

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1 provided, under s. 655.275 (7), for the health care provider to comment or prior to the  
2 expiration of the time period under s. 655.275 (5) (a).

3 **SECTION 22.** 655.27 (3) (am) of the statutes is amended to read:

4 655.27 (3) (am) *Assessments for peer review council.* The fund, a mandatory  
5 health care liability risk-sharing plan established under s. 619.04, and a private  
6 health care liability insurer shall be assessed, as appropriate, fees sufficient to cover  
7 the costs of the ~~patients~~ injured patients and families compensation fund peer review  
8 council, including costs of administration, for reviewing claims paid by the fund,  
9 plan, and insurer, respectively, under s. 655.275 (5). The fees shall be set by the  
10 commissioner by rule, after approval by the board of governors, and shall be collected  
11 by the commissioner for deposit in the fund. The costs of the ~~patients~~ injured patients  
12 and families compensation fund peer review council shall be funded from the  
13 appropriation under s. 20.145 (2) (um).

14 **SECTION 23.** 655.27 (3) (bg) 2. of the statutes is amended to read:

15 655.27 (3) (bg) 2. The rule shall provide that the automatic increase does not  
16 apply if the board of governors determines that the performance of the ~~patients~~  
17 injured patients and families compensation fund peer review council in making  
18 recommendations under s. 655.275 (5) (a) adequately addresses the consideration set  
19 forth in par. (a) 2m.

20 **SECTION 24.** 655.27 (6) of the statutes is repealed and recreated to read:

21 655.27 (6) PURPOSE AND INTEGRITY OF FUND. The fund is established to curb the  
22 rising costs of health care by financing part of the liability incurred by health care  
23 providers as a result of medical malpractice claims and to ensure that proper claims  
24 are satisfied. Health care providers and claimants have contractual rights in all  
25 assets of the fund for those purposes. The fund, including any net worth of the fund,

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1 is held in trust exclusively for the benefit of health care providers and proper  
2 claimants and may not be spent for any other purpose of the state.

3 **SECTION 25.** 655.275 (title) of the statutes is amended to read:

4 **655.275 (title) Patients Injured patients and families compensation**  
5 **fund peer review council.**

6 **SECTION 26.** 655.275 (1) of the statutes is amended to read:

7 655.275 (1) DEFINITION. In this section, “council” means the patients injured  
8 patients and families compensation fund peer review council.

9 **SECTION 27.** 893.55 (4) (b) of the statutes is amended to read:

10 893.55 (4) (b) The total noneconomic damages recoverable for bodily injury or  
11 death, including any action or proceeding based on contribution or indemnification,  
12 may not exceed the limit under par. (d) for each occurrence on or after May 25, 1995,  
13 from all health care providers and all employees of health care providers acting  
14 within the scope of their employment and providing health care services who are  
15 found negligent and from the patients injured patients and families compensation  
16 fund.

17 **SECTION 28.** 893.82 (2) (d) 3. of the statutes is amended to read:

18 893.82 (2) (d) 3. A member of the board of governors created under s. 619.04  
19 (3), a member of a committee or subcommittee of that board of governors, a member  
20 of the patients injured patients and families compensation fund peer review council  
21 created under s. 655.275 (2), and a person consulting with that council under s.  
22 655.275 (5) (b).

23 **SECTION 29.** 895.46 (4) of the statutes is amended to read:

24 895.46 (4) The protection afforded by this section applies to members of the  
25 board of governors created under s. 619.04 (3), members of a committee or

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1 subcommittee of that board of governors, members of the ~~patients~~ injured patients  
2 and families compensation fund peer review council created under s. 655.275 (2), and  
3 persons consulting with that council under s. 655.275 (5) (b), with respect to  
4 judgments, attorney fees, and costs awarded before, on, or after April 25, 1990.

5 **SECTION 30.** 895.70 (5) of the statutes is amended to read:

6 **895.70 (5) SILENCE AGREEMENTS.** Any provision in a contract or agreement  
7 relating to the settlement of any claim by a patient against a therapist that limits  
8 or eliminates the right of the patient to disclose sexual contact by the therapist to a  
9 subsequent therapist, the department of regulation and licensing, the department  
10 of health and family services, the ~~patients~~ injured patients and families  
11 compensation fund peer review council, or a district attorney is void.

12

(END)