

2003 DRAFTING REQUEST

Bill

Received: **07/29/2003**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Bonnie Ladwig (608) 266-9171**

By/Representing: **Sarah Popp**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Insurance - health**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Ladwig@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Patients compensation fund purpose

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 07/30/2003	jdye 08/01/2003		_____			
/1			rschluet 08/01/2003	_____	lemery 08/01/2003		
/2	pkahler	kfollett	chaskett	_____	sbasford	lemery	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	08/12/2003	08/19/2003	08/19/2003	_____	08/19/2003	08/19/2003	

FE Sent For:

<END>

↳ Not
Needed

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/1		12 kjl 8/1/03	rschluet 08/01/2003		lemery 08/01/2003		

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Addl. Drafters:

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Extra Copies:

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1/?	pkahler	11/8/1 jld					

FE Sent For:

Handwritten signature and date 8-1-03

<END>

Kahler, Pam

From: Mark Grapentine [MarkG@WISMED.ORG]
Sent: Tuesday, July 29, 2003 10:45 AM
To: pam.kahler@legis.state.wi.us; Mark Adams
Cc: Eileen.ONeill@legis.state.wi.us; Sarah.Popp@legis.state.wi.us; Alice O'Connor; Liz
Subject: Possible PCF bill language

Ms. Kahler:

By now you have been contacted by both Sen. Schultz' and Rep. Ladwig's offices regarding companion bills to further clarify sec. 655.27(6) in WI STATS, related to the Patients Compensation Fund. Our general counsel, Mark Adams, has the following suggested language for the bill.

Suggested statutory changes: 1) Delete current text of Chap. 655.27(6) as it's somewhat duplicative to the proposed new provision language. 2) Insert the following language as a revised Chap. 655.27(6) - **"The fund is established to curb the rising costs of health care by financing part of the liability incurred by health care providers as a result of medical malpractice claims and to ensure that such claims are satisfied. The fund establishes contractual rights for health care providers and such claimants for such purposes. The fund, including any net worth of the fund, is held in irrevocable trust for the sole benefit of participant health care providers and proper claimants. It may not be spent for any other purpose of the state."**

Mark Adams' direct phone line is 442-3745, if you have questions. We will be working with both legislative offices throughout the drafting process to ensure that everyone's on the same page.

Thanks in advance for your work!

mg

Mark M. Grapentine, JD
Legislative Counsel
Wisconsin Medical Society
608.442.3768 (ofc)
608.575.2514 (cell)
608.442.3802 (fax)
<http://www.wisconsinmedicalsociety.org/>

07/29/2003



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3036

PJK:.....

Handwritten initials: JLD

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Handwritten: D - into

Handwritten: gen cost

1 AN ACT ^{gen cost}; relating to: the purpose and integrity of the patients compensation
2 fund.

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.

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 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 purpose of the state.

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

1 SECTION 1. 655.27 (6)^X of the statutes is repealed and recreated to read:

2 655.27 (6) PURPOSE AND INTEGRITY OF FUND. The fund is established to curb the

3 rising costs of health care by financing part of the liability incurred by health care

4 providers as a result of medical malpractice claims and to ensure that proper claims

5 are satisfied. Health care providers and claimants have contractual rights in the

6 fund for those purposes. The fund, including any net worth of the fund, is held in

7 trust exclusively for the benefit of health care providers and proper claimants and

8 may not be spent for any other purpose of the state.

(END)

note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3036/dn

PJK:.....

JC

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

1. No other reference in the statutes to a fund or other property being held in trust included the word "irrevocable."

2. An irrevocable trust usually refers to a trust that is designated ~~to be~~ ^{as} irrevocable by the person creating the trust, which, in the case of the patients compensation fund, is really the legislature, not the providers paying into the fund. Providing in the statute that the fund is held in irrevocable trust does not make that trust any more irrevocable than would be without the use of the word, because one legislature cannot bind another legislature, which could amend the statute to remove the word "irrevocable."

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

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3036/1dn
PJK:jld:rs

August 1, 2003

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

Kahler, Pam

From: Mark Grapentine [MarkG@WISMED.ORG]
Sent: Monday, August 11, 2003 12:16 PM
To: Pam.Kahler@legis.state.wi.us
Cc: Eileen.ONeill@legis.state.wi.us; Sarah.Popp@legis.state.wi.us; Alice O'Connor; Liz Schumacher; Mark Adams
Subject: PCF bill: Drafter's note
Importance: High

Ms. K:

Last week we took a look at the draft of the PCF bill (LRB 3036/1) as well as your drafter's note. Our general counsel, Mark Adams, had some thoughts about the contents of the note.

Even though the note is only for the authors of the bill, and may not necessarily be included in the bill history if my understanding is correct, we wanted you to see Mark A's thoughts — they reflect both Sen. Schultz' and Rep. Ladwig's intent on the companion bills. I'm unsure as to the protocol here, but can the drafter's note reflect this intent more strongly?

What might be best for all involved is for you and Mark A. to have a conversation regarding the intent of the bill. After you take a look at the string below, could you give Mark A a call? His direct line here at the Medical Society is 442-3745.

Thanks so much for your work thus far, Pam!

mg

Mark M. Grapentine, JD
 Legislative Counsel
 Wisconsin Medical Society
 608.442.3768 (ofc)
 608.575.2514 (cell)
 608.442.3802 (fax)
<http://www.wisconsinmedicalsociety.org/>

>>> Mark Adams 8/5/2003 3:23:35 PM >>>

Mark,

The drafter's notes are fine except the last two sentences which I somewhat disagree with. I suggest that the true legislative intent for creating contractual rights in the fund for participants should read something like: "A health care provider's contractual rights in the fund are not limited to the amount required to pay the portion of a claim against the health care provider that exceeds the limits of the health care provider's liability insurance but also includes, on a prorated basis with all fund participants, any amount deemed to exceed the actuarially projected amounts necessary to pay all current and future claims." This suggested language would properly reflect contractual rights in ALL fund monies, including any so-called "surplus" assets which might exceed fund liabilities which include those incurred but not reported (IBNR). This is appropriate and necessary since all fund monies were paid into the fund by fund participants, plus, all fund investment earnings were generated from those monies originally paid by participants and are intended to be used solely for payments to rightful fund claimants - both of which, original fund participant payments plus investment earnings, are included in the actuarial calculations.

If the drafter for some reason disagrees with the above legislative intent language, then at an absolute minimum the final sentence should be changed to read something like: "Therefore, there may be no contractual rights in amounts in the fund that exceed the amount actuarially deemed necessary to do that." - this change deletes "statistically" and inserts "actuarially" to better reflect the legislative intent to convey

08/12/2003

contractual rights to participants on all fund monies determined by the Patients Compensation Fund Board of Governors, with recommendations from its Actuarial Committee in consultation with its official outside actuaries, to be actuarially necessary to pay current and projected future claims, including IBNR. However, this modified language leaves open the possibility that any so-called "surplus" fund monies may not be subject to contractual rights.

Kahler, Pam

From: O'Neill, Eileen
Sent: Wednesday, August 13, 2003 9:53 AM
To: Kahler, Pam
Cc: Popp, Sarah
Subject: LRB 3035/1, pcf fund language

Pam,

I have heard that you have talked with Mark Adams of the Medical Society and they are now ok with the draft of the Patients Compensation Fund bill.

We would like to make one change yet. We would like the name of the fund changed. The new name would be the "Injured Patients and Families Compensation Fund".

Can you please redraft the LRB with a /2 to include this change? I know that you drafted an Assembly version for Rep. Ladwig and they would also like this added to their bill. Talk to Sarah if you need to get approval from their office. Thanks.

Eileen O'Neill
Office of Senator Dale Schultz
608-266-0703
800-978-8008



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3036/1 ²
PJK:jld:rs
v m is run

TODAY, if possible

2003 BILL

D-note

and changing its name to the injured patients and families compensation fund

regenerate ↓

1 AN ACT *to repeal and recreate* 655.27 (6) of the statutes; relating to: the purpose and integrity of the patients compensation fund

2

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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→ all assets of

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3035/2ins
PJK:jld:rs

INSERT 1

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.

655.26History: 1971 c. 270 s. 104; 1971 c. 307; 1973 c. 334; 1975 c. 39, 199, 224, 421; 1977 c. 26, 29; 1977 c. 196 s. 131; 1977 c. 418; 1979 c. 34, 314, 324; 1981 c. 20, 335; 1983 a. 27, 36, 96, 381; 1985 a. 29, 57, 120, 176; 1987 a. 27, 119, 186, 320, 328, 354, 399, 403; 1989 a. 31, 122; 1991 a. 39, 269, 316; 1993 a. 16, 27, 107, 263, 399, 491; 1995 a. 27 ss. 43g to 47n, 9116 (5); 1995 a. 56, 216, 225, 274, 289; 1997 a. 27, 252; 1999 a. 9, 65, 105, 167, 197; 2001 a. 16, 105.

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.

655.26History: 1973 c. 90, 156; 1975 c. 39, 86, 199, 200, 383, 422; 1977 c. 26, 29, 203; 1977 c. 418; 1979 c. 34 ss. 45, 47 to 52; 1979 c. 221, 304; 1981 c. 94 ss. 5, 9; 1981 c. 356; 1983 a. 27, 403, 485, 538; 1985 a. 340; 1987 a. 257 s. 2; 1987 a. 264, 265, 316; 1989 a. 316, 340; 1991 a. 39, 78, 160, 189, 269; 1993 a. 16, 102, 463, 465, 491; 1995 a. 27 s. 9126 (19); 1995 a. 225; 1995 a. 305 s. 1; 1995 a. 321, 417; 1997 a. 96, 252, 300; 2001 a. 16, 80.

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.

655.26History: 1971 c. 40 s. 93; 1971 c. 125 ss. 51, 52, 53, 54, 55, 522 (1); 1973 c. 117, 333, 336; 1975 c. 37, 39; 1975 c. 147 s. 54; 1975 c. 372 s. 41; 1977 c. 29, 418; 1979 c. 34 ss. 121 to 127, 2102 (26) (a); 1979 c. 109 s. 16; 1979 c. 221, 313; 1981 c. 20 ss. 142m to 145, 2202 (26) (b); 1983 a. 27, 120; 1985 a. 29, 340; 1987 a. 27; 1989 a. 187; 1991 a. 39, 315; 1993 a. 16; 1995 a. 10, 27, 463; 1997 a. 27, 35, 227, 252; 2001 a. 16.

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

655.26History: 1971 c. 40 s. 93; 1971 c. 125 ss. 51, 52, 53, 54, 55, 522 (1); 1973 c. 117, 333, 336; 1975 c. 37, 39; 1975 c. 147 s. 54; 1975 c. 372 s. 41; 1977 c. 29, 418; 1979 c. 34 ss. 121 to 127, 2102 (26) (a); 1979 c. 109 s. 16; 1979 c. 221, 313; 1981 c. 20 ss. 142m to 145, 2202 (26) (b); 1983 a. 27, 120; 1985 a. 29, 340; 1987 a. 27; 1989 a. 187; 1991 a. 39, 315; 1993 a. 16; 1995 a. 10, 27, 463; 1997 a. 27, 35, 227, 252; 2001 a. 16.

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

1 20.145 (2) (u) *Administration*. From the ~~patients~~ injured patients and families
 2 compensation fund under s. 655.27 (3), the amounts in the schedule for
 3 administration, except for costs of the ~~patients~~ injured patients and families
 4 compensation fund peer review council and its associated administrative costs
 5 assessed under s. 655.27 (3) (am).

655.26History: 1971 c. 40 s. 93; 1971 c. 125 ss. 51, 52, 53, 54, 55, 522 (1); 1973 c. 117, 333, 336; 1975 c. 37, 39; 1975 c. 147 s. 54; 1975 c. 372 s. 41; 1977 c. 29, 418; 1979 c. 34 ss. 121 to 127, 2102 (26) (a); 1979 c. 109 s. 16; 1979 c. 221, 313; 1981 c. 20 ss. 142m to 145, 2202 (26) (b); 1983 a. 27, 120; 1985 a. 29, 340; 1987 a. 27; 1989 a. 187; 1991 a. 39, 315; 1993 a. 16; 1995 a. 10, 27, 463; 1997 a. 27, 35, 227, 252; 2001 a. 16.

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

7 20.145 (2) (um) *Peer review council*. From the ~~patients~~ injured patients and
 8 families compensation fund under s. 655.27 (3) (am), the amounts in the schedule for
 9 payment of costs, including costs of administration, incurred by the ~~patients~~ injured
 10 patients and families compensation fund peer review council under s. 655.275 (5).

655.26History: 1971 c. 40 s. 93; 1971 c. 125 ss. 51, 52, 53, 54, 55, 522 (1); 1973 c. 117, 333, 336; 1975 c. 37, 39; 1975 c. 147 s. 54; 1975 c. 372 s. 41; 1977 c. 29, 418; 1979 c. 34 ss. 121 to 127, 2102 (26) (a); 1979 c. 109 s. 16; 1979 c. 221, 313; 1981 c. 20 ss. 142m to 145, 2202 (26) (b); 1983 a. 27, 120; 1985 a. 29, 340; 1987 a. 27; 1989 a. 187; 1991 a. 39, 315; 1993 a. 16; 1995 a. 10, 27, 463; 1997 a. 27, 35, 227, 252; 2001 a. 16.

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

12 20.145 (2) (v) *Specified responsibilities, investment board payments, and future*
 13 *medical expenses*. After deducting the amounts appropriated under pars. (q), (u), and
 14 (um), the balance of the moneys paid into the ~~patients~~ injured patients and families
 15 compensation fund under s. 655.27 (3) to carry out the responsibilities of the
 16 commissioner of insurance specified under s. 655.27, excluding payment of expenses
 17 related to administering the fund, to make payments to the investment board under
 18 s. 20.536 and to pay future medical expenses under s. 655.015.

655.26History: 1971 c. 40 s. 93; 1971 c. 125 ss. 51, 52, 53, 54, 55, 522 (1); 1973 c. 117, 333, 336; 1975 c. 37, 39; 1975 c. 147 s. 54; 1975 c. 372 s. 41; 1977 c. 29, 418; 1979 c. 34 ss. 121 to 127, 2102 (26) (a); 1979 c. 109 s. 16; 1979 c. 221, 313; 1981 c. 20 ss. 142m to 145, 2202 (26) (b); 1983 a. 27, 120; 1985 a. 29, 340; 1987 a. 27; 1989 a. 187; 1991 a. 39, 315; 1993 a. 16; 1995 a. 10, 27, 463; 1997 a. 27, 35, 227, 252; 2001 a. 16.

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

20 25.14 (1) (a) 9. The ~~patients~~ injured patients and families compensation fund.

655.26History: 1973 c. 137; 1977 c. 418; 1979 c. 102; 1983 a. 27, 192; 1985 a. 29; 1987 a. 27; 1989 a. 31, 187; 1993 a. 16; 1995 a. 27, 403; 1999 a. 83; 2001 a. 7, 16, 104.

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

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

655.26History: 1971 c. 41 s. 12; 1971 c. 74; 1971 c. 100 s. 23; 1971 c. 125 s. 522 (1); 1971 c. 164; 1971 c. 214 s. 147; 1971 c. 260 s. 92 (3) to (5); 1973 c. 117, 137, 151; 1973 c. 208 s. 17; 1973 c. 209, 333, 336; 1975 c. 26, 27, 39, 118, 147, 164, 180, 189, 200, 422; 1977 c. 29 ss. 439 to 439f, 1654 (1); 1977 c. 31, 107, 377, 418, 423; 1979 c. 32; 1979 c. 34 ss. 705 to 707b, 2102 (56) (a); 1979 c. 102; 1979 c. 109 s. 16; 1979 c. 221; 1979 c. 318 ss. 1 to 3; 1979 c. 361 s. 113; 1981 c. 20, 86; 1981 c. 96 ss. 18 to 21, 67; 1981 c. 169, 386; 1983 a. 27; 1983 a. 36 ss. 31, 96 (4); 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 142, 189, 192, 368, 410; 1985 a. 25, 29, 53, 120; 1985 a. 332 s. 251 (1); 1987 a. 27, 38, 119, 186, 252, 399; 1989 a. 13, 31, 64, 187, 307, 335, 359, 366; 1991 a. 32, 38, 39, 152, 174, 221, 269, 315; 1993 a. 16, 112, 263, 477; 1995 a. 27 ss. 1394m to 1396, 9116 (5); 1995 a. 56, 213, 227, 274, 403; 1997 a. 27, 35, 191; 1999 a. 9, 11, 63, 65, 83, 167, 196; 2001 a. 7, 13, 16, 92, 104, 109.

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.

655.26History: 1971 c. 41 s. 12; 1971 c. 74; 1971 c. 100 s. 23; 1971 c. 125 s. 522 (1); 1971 c. 164; 1971 c. 214 s. 147; 1971 c. 260 s. 92 (3) to (5); 1973 c. 117, 137, 151; 1973 c. 208 s. 17; 1973 c. 209, 333, 336; 1975 c. 26, 27, 39, 118, 147, 164, 180, 189, 200, 422; 1977 c. 29 ss. 439 to 439f, 1654 (1); 1977 c. 31, 107, 377, 418, 423; 1979 c. 32; 1979 c. 34 ss. 705 to 707b, 2102 (56) (a); 1979 c. 102; 1979 c. 109 s. 16; 1979 c. 221; 1979 c. 318 ss. 1 to 3; 1979 c. 361 s. 113; 1981 c. 20, 86; 1981 c. 96 ss. 18 to 21, 67; 1981 c. 169, 386; 1983 a. 27; 1983 a. 36 ss. 31, 96 (4); 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 142, 189, 192, 368, 410; 1985 a. 25, 29, 53, 120; 1985 a. 332 s. 251 (1); 1987 a. 27, 38, 119, 186, 252, 399; 1989 a. 13, 31, 64, 187, 307, 335, 359, 366; 1991 a. 32, 38, 39, 152, 174, 221, 269, 315; 1993 a. 16, 112, 263, 477; 1995 a. 27 ss. 1394m to 1396, 9116 (5); 1995 a. 56, 213, 227, 274, 403; 1997 a. 27, 35, 191; 1999 a. 9, 11, 63, 65, 83, 167, 196; 2001 a. 7, 13, 16, 92, 104, 109.

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:

655.26History: 1989 a. 37.

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

1 of or committed in the lawful course of an officer's, employee's, or agent's duties.
 2 Witness fees or other expenses determined by the attorney general to be reasonable
 3 and necessary to the defense in the action or proceeding shall be paid as provided for
 4 in s. 885.07. The attorney general may compromise and settle the action as the
 5 attorney general determines to be in the best interest of the state. Members, officers,
 6 and employees of the Wisconsin state agencies building corporation and the
 7 Wisconsin state public building corporation are covered by this section. Members of
 8 the board of governors created under s. 619.04 (3), members of a committee or
 9 subcommittee of that board of governors, members of the ~~patients~~ injured patients
 10 and families compensation fund peer review council created under s. 655.275 (2), and
 11 persons consulting with that council under s. 655.275 (5) (b) are covered by this
 12 section with respect to actions, claims, or other matters arising before, on, or after
 13 April 25, 1990. The attorney general may compromise and settle claims asserted
 14 before such actions or matters formally are brought or may delegate such authority
 15 to the department of administration. This paragraph may not be construed as a
 16 consent to sue the state or any department thereof or as a waiver of state sovereign
 17 immunity.

655.26History: 1971 c. 125 s. 522 (1); 1971 c. 215; 1973 c. 333; 1975 c. 81, 199; 1977 c. 29 s. 1656 (27); 1977 c. 187, 260, 273, 344; 1981 c. 20, 62, 96; 1983 a. 27; 1983 a. 36 s. 96 (2), (3), (4); 1983 a. 192; 1985 a. 29, 66; 1987 a. 416; 1989 a. 31, 115, 187, 206, 359; 1991 a. 25, 39, 269; 1993 a. 27, 28, 365; 1995 a. 27 ss. 4453 to 4454m, 9126 (19); 1995 a. 201; 1997 a. 27, 111; 2001 a. 16.

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

19 619.04 (5) (b) A rating plan which takes into consideration the loss and expense
 20 experience of the individual health care provider which resulted in the payment of
 21 money, by the plan or other sources, for damages arising out of the rendering of
 22 health care by the health care provider or an employee of the health care provider,
 23 except that an adjustment to a health care provider's premiums may not be made
 24 under this paragraph prior to the receipt of the recommendation of the ~~patients~~

1 injured patients and families compensation fund peer review council under s.
 2 655.275 (5) (a) and the expiration of the time period provided, under s. 655.275 (7),
 3 for the health care provider to comment or prior to the expiration of the time period
 4 under s. 655.275 (5) (a).

5 **655.26History:** 1975 c. 37, 79, 199; 1977 c. 131; 1977 c. 203 s. 106; 1983 a. 158; 1983 a. 189 s. 329 (5); 1985 a. 340; 1987 a. 27; 1989 a. 187; 1991 a. 214, 315.

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

6 619.04 (5m) (b) The rule shall provide that the automatic increase does not
 7 apply if the board determines that the performance of the ~~patients~~ injured patients
 8 and families compensation fund peer review council in making recommendations
 9 under s. 655.275 (5) (a) adequately addresses the consideration set forth in sub. (5)
 10 (b).

11 **655.26History:** 1975 c. 37, 79, 199; 1977 c. 131; 1977 c. 203 s. 106; 1983 a. 158; 1983 a. 189 s. 329 (5); 1985 a. 340; 1987 a. 27; 1989 a. 187; 1991 a. 214, 315.

SECTION 15. 619.04 (9) of the statutes is amended to read:

12 619.04 (9) Neither the state nor the board of governors shall be liable for any
 13 obligation of the plan or of the ~~patients~~ injured patients and families compensation
 14 fund under s. 655.27. The board of governors and members of any committee or
 15 subcommittee thereof shall be immune from civil liability for acts or omissions while
 16 performing their duties under this section and s. 655.27.

17 **655.26History:** 1975 c. 37, 79, 199; 1977 c. 131; 1977 c. 203 s. 106; 1983 a. 158; 1983 a. 189 s. 329 (5); 1985 a. 340; 1987 a. 27; 1989 a. 187; 1991 a. 214, 315.

SECTION 16. Chapter 655 (title) of the statutes is amended to read:

18 **CHAPTER 655** #

19 **HEALTH CARE LIABILITY AND ~~PATIENTS~~ INJURED PATIENTS ~~AND~~**
 20 **FAMILIES COMPENSATION** #

21 **SECTION 17.** 655.001 (7) of the statutes is amended to read:

22 655.001 (7) "Fund" means the ~~patients~~ injured patients and families
 23 compensation fund under s. 655.27.

655.26History: 1975 c. 37, 79; 1977 c. 26 s. 75; 1977 c. 131; 1977 c. 203 s. 106; Sup. Ct. Order, 88 Wis. 2d xiii (1979); 1979 c. 124, 185, 355; 1983 a. 189 s. 329 (5); 1985 a. 340; 1987 a. 27, 182, 264, 403; 1989 a. 187; 1991 a. 214; 1993 a. 473; 1995 a. 27 s. 9126 (19); 1999 a. 22; 2001 a. 52.

1 655.27 (3) (a) 2m. The loss and expense experience of the individual health care
 2 provider which resulted in the payment of money, from the fund or other sources, for
 3 damages arising out of the rendering of medical care by the health care provider or
 4 an employee of the health care provider, except that an adjustment to a health care
 5 provider's fees may not be made under this subdivision prior to the receipt of the
 6 recommendation of the ~~patients~~ injured patients and families compensation fund
 7 peer review council under s. 655.275 (5) (a) and the expiration of the time period
 8 provided, under s. 655.275 (7), for the health care provider to comment or prior to the
 9 expiration of the time period under s. 655.275 (5) (a).

655.26History: 1975 c. 37, 79, 199; 1977 c. 29, 131; 1979 c. 34, 194; 1981 c. 20; 1983 a. 27, 158; 1985 a. 340; 1987 a. 27, 186, 247, 399; 1989 a. 102, 187, 332; 1991 a. 214, 315; 1993 a. 473; 1995 a. 10; 2001 a. 65.

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

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

655.26History: 1975 c. 37, 79, 199; 1977 c. 29, 131; 1979 c. 34, 194; 1981 c. 20; 1983 a. 27, 158; 1985 a. 340; 1987 a. 27, 186, 247, 399; 1989 a. 102, 187, 332; 1991 a. 214, 315; 1993 a. 473; 1995 a. 10; 2001 a. 65.

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

22 655.27 (3) (bg) 2. The rule shall provide that the automatic increase does not
 23 apply if the board of governors determines that the performance of the patients

1 injured patients and families compensation fund peer review council in making
2 recommendations under s. 655.275 (5) (a) adequately addresses the consideration set
3 forth in par. (a) 2m.

655.26History: 1975 c. 37, 79, 199; 1977 c. 29, 131; 1979 c. 34, 194; 1981 c. 20; 1983 a. 27, 158; 1985 a. 340; 1987 a. 27, 186, 247, 399; 1989 a. 102, 187, 332; 1991 a. 214, 315; 1993 a. 473; 1995 a. 10; 2001 a. 65.

(END OF INSERT 1)

INSERT 2

4 SECTION ~~24~~ 655.275 (title) of the statutes is amended to read:

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

655.26History: 1985 a. 340; 1989 a. 187; 1991 a. 214, 315; 1999 a. 9.

7 SECTION ~~25~~ 655.275 (1) of the statutes is amended to read:

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

655.26History: 1985 a. 340; 1989 a. 187; 1991 a. 214, 315; 1999 a. 9.

10 SECTION ~~26~~ 893.55 (4) (b) of the statutes is amended to read:

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

655.26History: 1979 c. 323; 1985 a. 140; 1995 a. 10.

18 SECTION ~~27~~ 893.82 (2) (d) 3. of the statutes is amended to read:

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

1 created under s. 655.275 (2), and a person consulting with that council under s.
2 655.275 (5) (b).

655.26History: 1973 c. 333; 1977 c. 29; 1979 c. 221; 1979 c. 323 s. 30; 1979 c. 355; Stats. 1979 s. 893.82; 1983 a. 27; 1985 a. 66, 340; 1987 a. 342; 1987 a. 403 s. 256; 1989 a. 187, 206, 359; 1991 a. 39, 269; 1993 a. 27, 28; 1995 a. 158, 201; 1997 a. 133.

3 ~~SECTION 28.~~ 895.46 (4) of the statutes is amended to read:

4 895.46 (4) The protection afforded by this section applies to members of the
5 board of governors created under s. 619.04 (3), members of a committee or
6 subcommittee of that board of governors, members of the ~~patients~~ injured patients
7 and families compensation fund peer review council created under s. 655.275 (2), and
8 persons consulting with that council under s. 655.275 (5) (b), with respect to
9 judgments, attorney fees, and costs awarded before, on, or after April 25, 1990.

655.26History: 1973 c. 333; Sup. Ct. Order, 67 Wis. 2d 585, 761 (1975); Stats. 1975 s. 895.45; 1975 c. 81, 198, 199; Stats. 1975 s. 895.46; 1977 c. 29; 1979 c. 74, 221; 1981 c. 20; 1981 c. 96 s. 67; 1981 c. 314 s. 136; 1983 a. 6; 1983 a. 27 s. 2202 (32); 1985 a. 29, 66; 1987 a. 342; 1987 a. 403 s. 256; 1989 a. 31, 115, 187, 206, 359; 1991 a. 245, 269; 1993 a. 27, 28, 49, 238, 456, 490; 1995 a. 201, 227, 411; 1997 a. 35; 1999 a. 185.

10 ~~SECTION 29.~~ 895.70 (5) of the statutes is amended to read:

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

655.26History: 1985 a. 275; 1987 a. 352; 1991 a. 160, 217; 1995 a. 27 s. 9126 (19); 1999 a. 85.

(END OF INSERT 2)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3036/2dn

PJK: ~~11/18~~

JK

Date

changes the name of the fund and



This version of the draft adds that the contractual rights of health care providers and claimants extend to *all assets* of the fund. This addition was made to address the response to my drafter's note regarding contractual rights in the fund. I have spoken with Mark Adams regarding this change.

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3036/2dn
PJK:kjf:cph

August 19, 2003

This version of the draft changes the name of the fund and adds that the contractual rights of health care providers and claimants extend to *all assets* of the fund. This addition was made to address the response to my drafter's note regarding contractual rights in the fund. I have spoken with Mark Adams regarding this change.

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Emery, Lynn

From: Popp, Sarah
Sent: Tuesday, August 19, 2003 3:47 PM
To: LRB.Legal
Subject: Draft review: LRB 03-3036/2 Topic: Patients compensation fund purpose

It has been requested by <Popp, Sarah> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-3036/2 Topic: Patients compensation fund purpose