

2003 DRAFTING REQUEST

Assembly Amendment (AA-AB487)

Received: **09/18/2003**

Received By: **pkahler**

Wanted: **Soon**

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 - other insurance**

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>
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FE Sent For:

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9-18-03

<END>

FE Sent For:

Kahler, Pam

From: Mark Grapentine
Sent: Thursday, September 11, 2003 10:24 AM
To: Pam.Kahler@legis.state.wi.us
Cc: Mark Adams
Subject: RE: Contractual Rights in PCF draft

The authors are looking for direction: they'd like to amend the bills as long as the Fund monies are constitutionally protected. According to OCI's proposal, that "irrevocable trust" language they put in their offering seemed to do the trick for them. But both Mark Adams and I question whether the trial bar's concerns are actually valid, considering the use of "contract" language elsewhere in the statutes.

So I guess the first question is: do you think the trial bar's concerns are valid? If so, then how would the bill be best amended to avoid those potential problems while still protecting the Fund as strongly as possible?

If you believe the trial bar's concerns are an overreaction, then the authors would most likely be more comfortable with the current language.

mg

>>> "Kahler, Pam" <Pam.Kahler@legis.state.wi.us> 9/11/2003 10:17:13 AM >>>
 I'm not sure what you're asking for. Do you want an amendment?

-----Original Message-----

From: Mark Grapentine [mailto:MarkG@WISMED.ORG]
Sent: Thursday, September 11, 2003 10:09 AM
To: Pam.Kahler@legis.state.wi.us
Cc: Eileen.ONeill@legis.state.wi.us; janine.hale@legis.state.wi.us; Sarah.Popp@legis.state.wi.us; Alice O'Connor; Liz Schumacher; Mark Adams
Subject: Contractual Rights in PCF draft

Ms. K:

Rep. Ladwig mentioned to me yesterday that she had spoken with Sen. Schultz about a potential amendment to the two Patients Compensation Fund companion bills: AB 487/SB 238. She said that the two authors would like the Medical Society to discuss an issue that came up from the Trial Bar re: the bills providing "contract rights."

The following e-mail summarizes our thoughts on what came up at the hearing — bottom line is that the trial bar is nervous about an undefined "contractual rights" clause. According to their testimony:

"What contractual rights are these? Where is the contract defining these rights? Does it mean that a physician or hospital has a right to PCF assets if bankruptcy is declared? Does it mean third parties owed money by a physician or hospital can put a lien on the assets of the PCF?" etc.

I believe the Society and the authors have the same overarching concern: that under the bill, any monkey business with the Fund would fall under "takings" scrutiny. Whether the magic words of "contract rights" are used or not, that concern is paramount.

If you need further information, please don't hesitate to get in touch with Mark Adams (442-3745) or myself (442-3768) either by phone or e-mail.

Thanks!

09/11/2003

mg

>>> Mark Grapentine 9/9/2003 3:59:37 PM >>>

Regarding the concern raised by the trial bar today on the scope of what "contractual rights" means. Mark Adams and I had a discussion about this, and I thought I'd share what we think.

First of all, we're not sure the language as it currently exists (in SB 238, page 8 lines 24-25) is going to cause any potential problems (such as liens, etc.) that the trial bar raised. This language was modeled after the statutory protection contained in the Public Employee Trust Fund language:

Rights exercised and benefits accrued to an employee under this chapter for service rendered shall be due as a contractual right and shall not be abrogated by any subsequent legislative act. WI STATS, sec. 40.19(1).

I don't think the "contractual right" clause in the above section has caused the problems mentioned by the trial bar, but maybe there's something I'm not aware of. Indeed, the phrase falls into the rubric of legal "magic words," that to a court connote property rights, meaning that the raid of that property falls into the constitutionally-barred land of Taking. This is alluded to in Attorney General Lautenschlager's informal opinion, which cites WI Pension Fund case law.

Therefore, if any changes are contemplated for that language, our opinion is that we want to make darn sure that whatever the amended language is would hold the same level of protection for the Fund monies.

Along with the 9/8/03 letter Commissioner-designee Gomez sent to the committee chairs is the copy of LRBb0266/1, which was OCI's attempt at PCF I and PCF II. On the bullet point page titled "Proposed PCF Transfer Changes," the 6th bullet reads: "New statutory language makes clear that claimants and participating providers have a constitutionally protected property interest in the fund." To accomplish this, OCI proposes that the new "Integrity of the Fund" language would read:

(The fund is) held in irrevocable trust for the benefit of health care providers participating in the fund and proper claimants. Moneys in the fund may not be spent for any other purpose of the state. LRBb0266/1, p 2, lines 1-4.

I think your bosses would be best served by a Leg. Council opinion/examination of the contract rights magic words vs. what OCI proposed, to see if they reach the same constitutional muster. The goal here, I assume, is getting the claimants and health care providers rights to the Fund that reach the level of constitutional protection.

If you have questions, give us a shout.

mg

Kahler, Pam

From: Popp, Sarah
Sent: Thursday, September 18, 2003 9:51 AM
To: Kahler, Pam

Pam
Here is the cheat sheet I wrote out...



amendment
suggested text.doc

This text is almost word for word from page 2 lines 1-4 of LRBb0266/1.

I will call you as soon as I get back.

Again, this amendment needs to be drafted for the Assembly and Senate bill.

*Sarah Popp
Legislative Assistant
Office of Rep. Bonnie Ladwig
113 West State Capitol
Madison, WI 53708
(608) 266-9171*

Amend bill to include language from OCI bill.

Page 8 line 24 Strike the sentence "Health care providers and claimants have contractual rights in all assets of the fund for those purposes.

In it's place, add (from OCI language):

"The fund, including any net worth of the fund, is held in irrevocable trust for the sole benefit of health care providers participating in the fund and proper claimants. Moneys in the fund may not be utilized for any other purpose of the state."



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBa0961/

PJK/.....
Amey

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~
ASSEMBLY AMENDMENT ,
TO 2003 ASSEMBLY BILL 487

*(Thurs)
today
Friday*

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 8, line 24: delete the material beginning with "Health" and ending
3 with "state." on page 9, line 2^v and substitute ^g "The fund, including any net worth of
4 the fund, is held in irrevocable trust for the sole benefit of health care providers
5 participating in the fund and proper claimants. Moneys in the fund may not be used
6 for any other purpose of the state."

7 (END)