

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on
Insurance
(AC-In)

File Naming Example:

Record of Comm. Proceedings ... RCP

- 05hr_AC-Ed_RCP_pt01a
- 05hr_AC-Ed_RCP_pt01b
- 05hr_AC-Ed_RCP_pt02

COMMITTEE NOTICES ...

➤ Committee Hearings ... CH (Public Hearing Announcements)

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Record of Comm. Proceedings ... RCP

➤ **

INFORMATION COLLECTED BY COMMITTEE
CLERK FOR AND AGAINST PROPOSAL

➤ Appointments ... Appt

➤ **

Name:

➤ Clearinghouse Rules ... CRule

➤ **

➤ Hearing Records ... HR (bills and resolutions)

➤ **05hr_ab0259_AC-In_pt01**

➤ Miscellaneous ... Misc

➤ **



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Jorge Gomez, Commissioner

Wisconsin.gov

September 28, 2004

125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 266-3585 • Fax: (608) 266-9935
E-Mail: information@oci.state.wi.us
Web Address: oci.wi.gov

Dear Sir/Ms:

The Fund has recently become aware that _____ is a limited liability company and is filed as such with the Wisconsin Department of Financial Institutions. The Fund has received certificates on behalf of the above mentioned Limited Liability Company (LLC) from your primary insurance company.

Pursuant to s. 655.002(1)(e), Wis. Stats., only a corporation organized and operated in this state for the primary purpose of providing medical services of physicians or nurse anesthetists is eligible for fund coverage. An LLC is not a corporation and therefore is not eligible for fund coverage under this statute.

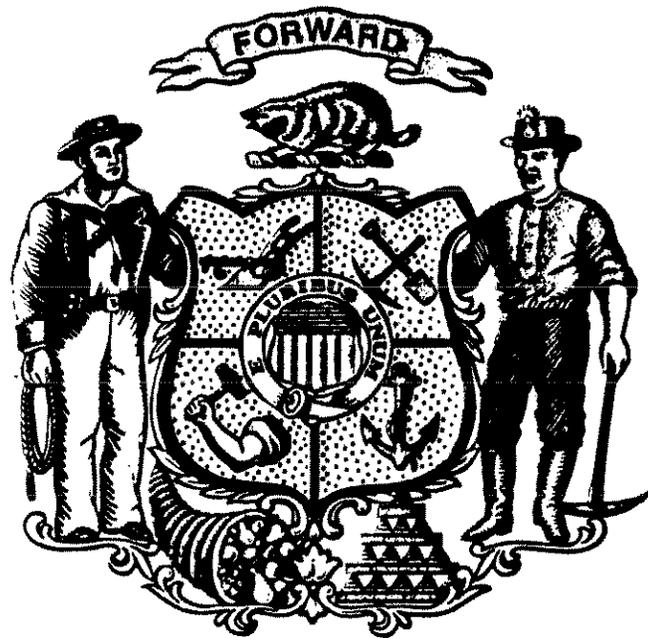
The Fund Board has given this issue serious consideration and is aware that the LLCs in question likely believe that Fund coverage currently exists for them. While the Board is unlikely to oppose any effort to amend the statutes to permit LLCs to be afforded coverage, no such effort is known to be underway and without such amendments, the Fund cannot provide coverage to new LLCs and cannot continue coverage indefinitely for those whose certificates have previously been filed. The Board is also aware that Section 448.08(4) of the Statutes may also need to be addressed in any effort to seek Legislative approval of LLC eligibility. Additional discussion of these issues is scheduled for the next Board meeting. In the interim, this letter is intended to alert you to the situation and the Board's determination.

In order to ensure that LLCs currently participating in the Fund are not harmed by this decision, the Board has authorized Fund staff to honor certificates already filed, and to accept renewals for existing fund participating LLCs with an expiration date of July 1, 2005 or the contracted date for primary coverage renewal not to extend beyond December 31, 2005. The Board is aware that LLCs with renewal dates after January 1, 2005 will have less than a one-year period of Fund coverage. However, the Board determined that this notice combined with permissible renewal to December 31, 2005, allows LLCs sufficient time to evaluate their options.

If you have any questions or concerns regarding this issue, please contact me at the number or e-mail address below.

Sincerely,

Theresa L. Wedekind
Director
Patients Compensation Fund
Theresa.wedekind@oci.state.wi.us



April 21, 2005

Representative Ann Nischke, Chairperson
Assembly Committee on Insurance
Room 8 North
State Capitol
P. O. Box 8953
Madison, Wisconsin 53708

RE: Assembly Bill 259

Dear Representative Nischke:

I am writing in support of Assembly Bill 259 which would amend Chapter 655 of the Statutes to expand the coverage of the Patient Compensation Fund (the "Fund") to include limited liability companies ("LLCs"). My perspective on this issue has been shaped by experiences in representing physicians and physician entities with respect to the organization and operation of their professional practices.

My understanding is that LLCs have been covered by the Fund since the LLC form of business organization was first permitted in Wisconsin in 1994. My Firm's experience, and I believe the experience of other lawyers in Wisconsin, has been that some physicians have relied on the availability of such coverage by the Fund when making decisions regarding the form of business organization to be used to conduct their professional practices. They have selected the LLC form over partnerships or service corporations because of the greater flexibility afforded LLC's with respect to tax and organizational matters, and because there is no explicit Wisconsin statutory provision regarding the business entities that physicians must utilize for their professional practices. If Assembly Bill 259 does not become law, these physicians will be required to incur the expense of reorganizing and restructuring the form of their practices.

The significance of Assembly Bill 259 extends, however, beyond considerations of convenience and expense for certain physicians. Assembly Bill 259 addresses and resolves other questions which, if not addressed, could be disruptive and harmful to Wisconsin's health care system and consumers. These questions include:

- If LLCs are neither mandated nor permitted to participate in the Fund, must physician LLCs nevertheless obtain malpractice insurance or satisfy self-insurance requirements as provided in Section 655.23(3)(i) of the Statutes?
- Will alternative coverage for LLCs be available at reasonable cost?

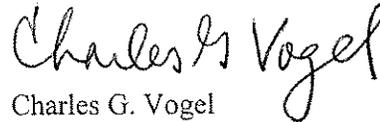
Representative Ann Nischke, Chairperson
Assembly Committee on Insurance
April 21, 2005
Page 2

- Will injured patients be adversely affected if LLCs used by physicians are inadequately insured?
- Will Wisconsin's relatively favorable malpractice insurance environment and reputation (which I believe is due in part to the Patient Compensation Fund system) be adversely affected by uncertainties relating to the use of LLCs and the availability of Fund coverage for LLCs?

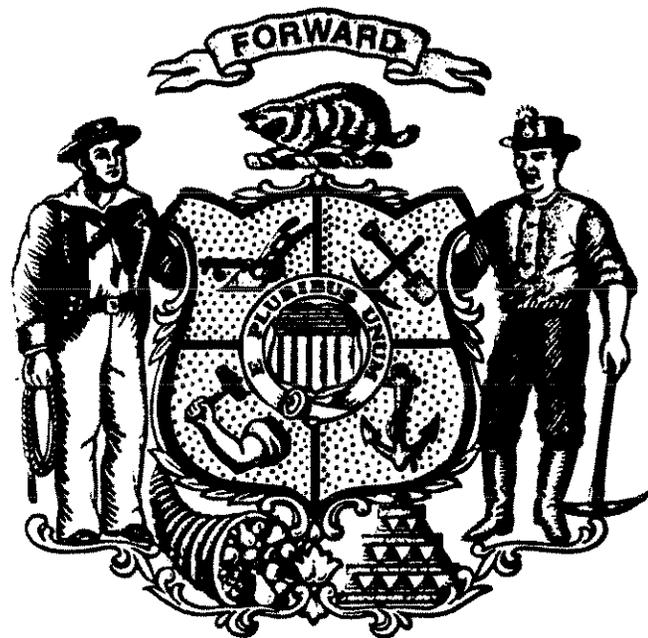
In light of these questions and concerns, the best interests of Wisconsin's health care system, consumers and professionals will be served enacting Assembly Bill 259.

Very truly yours,

GODFREY & KAHN, S.C.



Charles G. Vogel





Wisconsin Medical Society

Your Doctor. Your Health.

TO: Members, Assembly Committee on Insurance
Representative Ann Nischke, Chairperson

FROM: Mark Grapentine, JD – Vice President, Government Relations

DATE: April 21, 2005

RE: SUPPORT Assembly Bill 259

On behalf of the 10,000 members of the Wisconsin Medical Society, thank you for this opportunity to testify in strong support for Assembly Bill 259, allowing physicians greater flexibility in organizing their businesses.

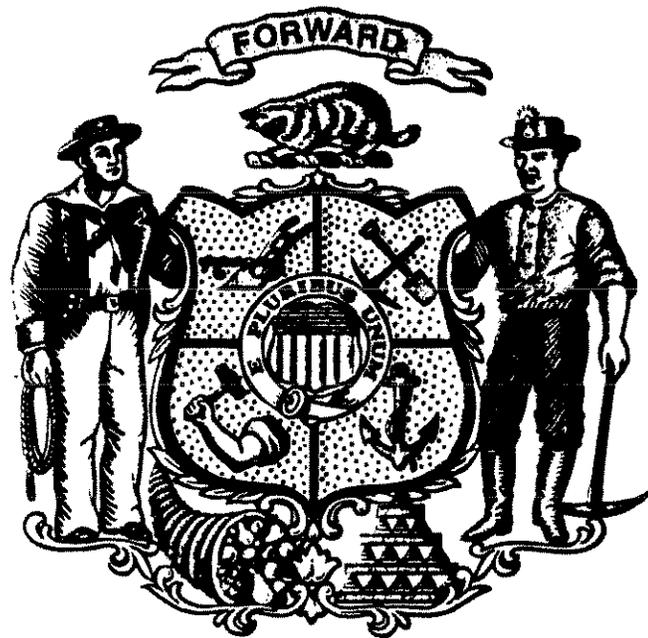
One of the requirements of practicing medicine in this state is holding personal primary medical liability insurance to cover claims up to \$1 million/claim and \$3 million/year in claims. Most physicians must also carry umbrella coverage above this primary coverage requirement by paying into the Injured Patients and Families Compensation Fund (Fund).

When the Fund was created in 1975, it did not anticipate all future types of business organizations. Chapter 655 of the Wisconsin Statutes specifically lists partnerships and corporations as covered entities, meaning newer business organizations such as Limited Liability Companies (LLCs) do not qualify for Fund coverage. What seems to have happened, though, points to an oversight rather than a specific legislative exclusion.

For example, the legislative history of 1993 Assembly Bill 820 – the legislation creating LLCs in Wisconsin – shows that the drafting attorney was awaiting further instructions from the bill's author before tackling the bill's potential impact on Chapter 655 and other statutory overlap. It appears the drafting attorney did not get a reply on that specific point, and therefore submitted the bill as it stood. The bill passed, but a loophole was created.

This loophole – LLCs created as a new business entity but not eligible for Fund coverage – appears to be nothing more than a simple oversight. We commend the authors of the bill for drafting legislation that not only fixes a current problem, but looks to prevent these kinds of oversights in the future. Rather than simply adding LLCs to the list of eligible entities the Fund can cover, AB 259 allows any entity coverage so long as that business' primary purpose is providing medical services of various health care professionals. This keeps to the spirit of the Fund's creation in 1975 while allowing 21st century updates to business law.

Thank you again for this opportunity to testify in support of AB 259. If you have any further questions or need additional information, please feel free to contact me at markg@wismed.org or 608.442.3768.





Wisconsin Medical Society

Your Doctor. Your Health.

Fax Cover Sheet

Date: 5/24/05
To: Representative Ann Nischke, Chair
Organization: Assembly Committee on Insurance
Fax Number: 282-3697
Total Pages Including Cover: 2
From: Mark Grapentine

Message:

Please support Substitute Amendment 2 to Assembly Bill 259 at tomorrow's executive session.

If you have any questions, please get in touch.

Best Regards,

Mark Grapentine
Vice President – Government Relations
608.442.3768 (office)
608.575.2514 (cell)

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Wisconsin Medical Society

Your Doctor. Your Health.

TO: Members, Assembly Committee on Insurance
Representative Ann Nischke, Chairperson

FROM: Mark Grapentine, JD – Vice President, Government Relations

DATE: May 24, 2005

RE: **Support** Assembly Substitute Amendment 2 to Assembly Bill 259

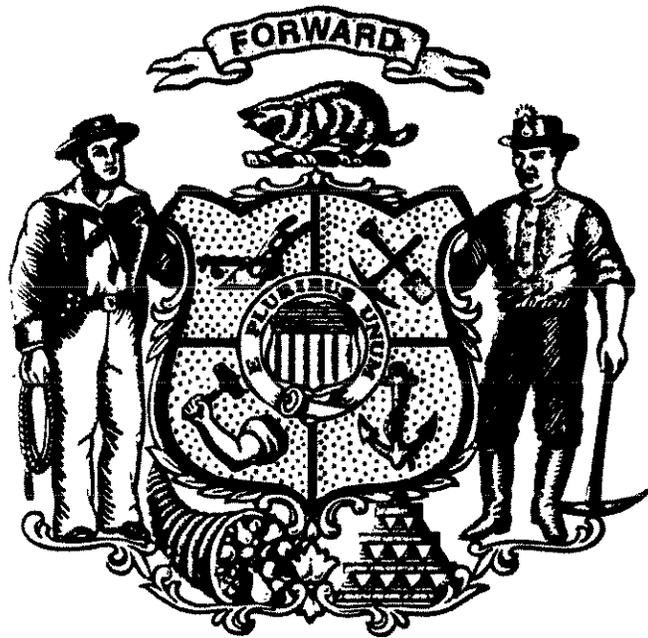
On behalf of the 10,000 members of the Wisconsin Medical Society, we ask you to support Assembly Substitute Amendment 2 to Assembly Bill 259, which allows physicians greater flexibility in organizing their businesses. This amendment will ensure this statutory oversight is corrected before the end-of-year deadline set by Office of Commissioner of Insurance (OCI) for compliance.

Assembly Substitute Amendment 2 (ASA2) combines two changes to the original bill for clarity and consistency:

- 1) It removes the effective date, ensuring immediate application upon enactment,
- 2) Allows for non-profit or not-for-profit business entities to qualify for Injured Patients and Families Compensation Fund coverage as well as for-profit entities.

The Society wishes to thank Representative Curt Gielow for his steady work on this bill to ensure that Wisconsin's IPFCF statutes are brought up to date.

Please support ASA2 and AB 259 as amended. If you have any further questions or need additional information, please feel free to contact me at markg@wismed.org or 608.442.3768.



WISCONSIN HOSPITAL ASSOCIATION, INC.

May 24, 2005



TO: Assembly Committee on Insurance

FROM: Jodi Bloch, Vice President Government Affairs
Laura Leitch, Vice President and General Counsel

RE: Support for AB 259 Substitute Amendment 2

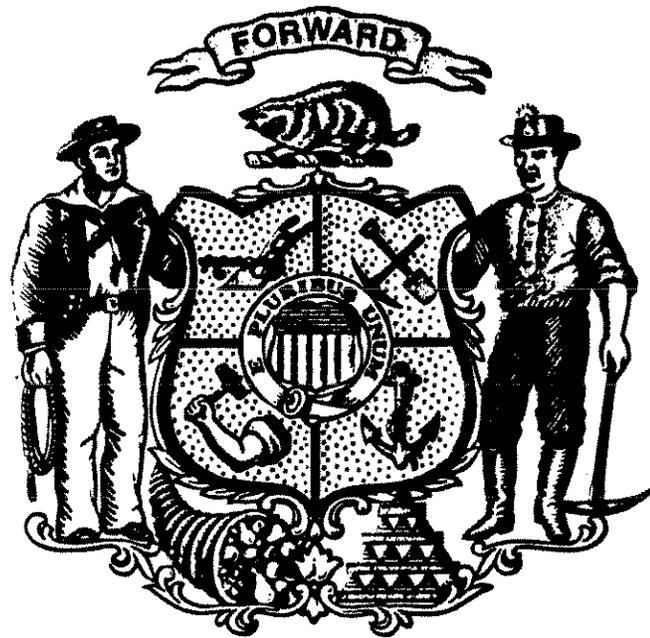
The Wisconsin Hospital Association strongly supports AB 259 Substitute Amendment 2 and respectfully asks Committee Members to vote in favor of the bill.

This bill is the result of a determination by the Injured Patients and Families Compensation Fund ("PCF") that certain health care providers who are organized as Limited Liability Companies ("LLCs") are not eligible for medical malpractice coverage under the PCF. Certain health care providers that are organized as LLCs received a notice from the PCF that their coverage under the PCF would be terminated on December 31, 2005, unless there was a change to the PCF statute prior to that date.

The authorizing statute for the PCF provides eligibility for coverage under the PCF to a *corporation* organized and operated in Wisconsin for the primary purpose of providing the medical services of physicians or nurse anesthetists. According to counsel hired by the PCF, LLCs are not corporations but rather are companies and, thus, LLCs are not eligible for coverage under the PCF.

By permitting LLCs to continue to participate in the PCF, the legislature will help ensure that patients who are injured as the result of medical malpractice will continue to have access to the coverage for damages provided by the PCF.

WHA thanks Representative Gielow for his determined efforts on this important issue.



03/18/2005 Assembly Bill 259

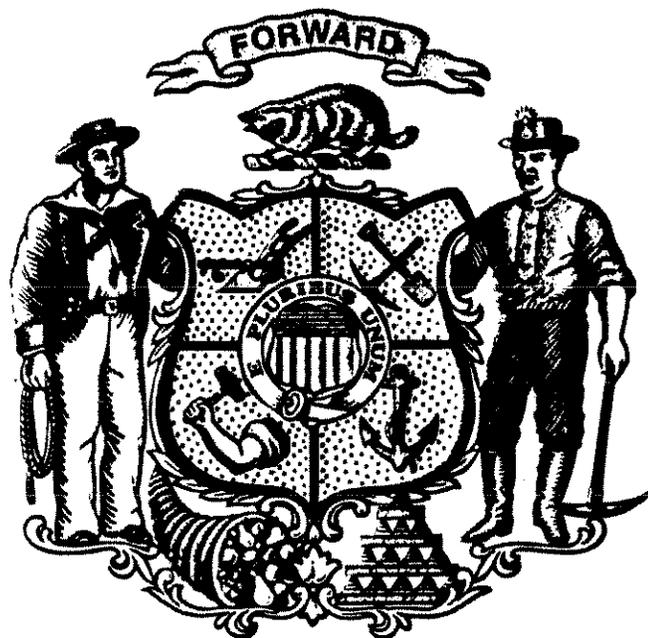
relating to: provider organizations subject to health care liability requirements.

By Representatives Gielow, Nischke, Ainsworth, Albers, Ballweg, Bies, Gunderson, Hahn, Hines, Hundertmark, Jeskewitz, Kerkman, Kestell, Krawczyk, Kreibich, Kreuser, Loeffelholz, Musser, Ott, Petrowski, Rhoades, Strachota, Underheim, Van Roy, Vos, Vrakas, Vukmir and Molepske; cosponsored by Senators Stepp, Brown, Grothman, Kanavas, Kapanke, A. Lasee, Olsen and Roessler.

Analysis by the Legislative Reference Bureau

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. If a medical malpractice claim against a health care provider who is subject to the health care liability insurance requirements exceeds the limits of the provider's health care liability insurance, the injured patients and families compensation fund pays the portion of the claim that exceeds the limits. The injured patients and families compensation fund is funded by assessments paid by the health care providers who are subject to the health care liability requirements.

Health care providers who are currently subject to the health care liability requirements include physicians, nurse anesthetists, partnerships composed of physicians or nurse anesthetists, corporations that operate for the primary purpose of providing the medical services of physicians or nurse anesthetists, cooperative sickness care associations, and such entities as hospitals, ambulatory surgery centers, and nursing homes whose operations are combined as a single entity with a hospital. This bill adds, as another type of health care provider that is subject to the health care liability requirements, any business entity organized and operated in this state for profit for the primary purpose of providing the medical services of physicians or nurse anesthetists, including, for example, a firm, a limited liability company, and a joint venture.



Contact: Mary Jan Rosenak, Office of Rep. Ann Nischke

AB 259: Limited Liability Corporation participation in Injured Patients and Families Compensation Fund

Relating to: provider organizations subject to health care liability requirements.

By Representatives Gielow, Nischke, Ainsworth, Albers, Ballweg, Bies, Gunderson, Hahn, Hines, Hundertmark, Jeskewitz, Kerkman, Kestell, Krawczyk, Kreibich, Kreuser, Loeffelholz, Musser, Ott, Petrowski, Rhoades, Strachota, Underheim, Van Roy, Vos, Vrakas, Vukmir and Molepske; cosponsored by Senators Stepp, Brown, Grothman, Kanavas, Kapanke, A. Lasee, Olsen and Roessler.

Date: June 14, 2005

BACKGROUND

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. If a medical malpractice claim against a health care provider who is subject to the health care liability insurance requirements exceeds the limits of the provider's health care liability insurance, the injured patients and families compensation fund pays the portion of the claim that exceeds the limits. The injured patients and families compensation fund is funded by assessments paid by the health care providers who are subject to the health care liability requirements.

Health care providers who are currently subject to the health care liability requirements include physicians, nurse anesthetists, partnerships composed of physicians or nurse anesthetists, corporations that operate for the primary purpose of providing the medical services of physicians or nurse anesthetists, cooperative sickness care associations, and such entities as hospitals, ambulatory surgery centers, and nursing homes whose operations are combined as a single entity with a hospital.

SUMMARY OF AB 259 AS AMENDED BY COMMITTEE

Assembly Bill 259 Adds another health care provider that is subject to these provisions and coverage by the IPFCP, namely, *any organization or enterprise operated For Profit* (other than a partnership or professional service corporation, which are already covered under current law) *that is organized and operated in Wisconsin for the primary purpose of providing the medical services of physicians and nurse anesthetists*. The cross-referenced definition specifies that it includes, but is not limited to, a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, limited liability company, or association.

Adds another health care provider that is subject to these provisions and coverage by the IPFCP, namely, *any organization or enterprise* (other than a partnership or professional service corporation, which are already covered under current law) *that is organized and operated in Wisconsin for the primary purpose of providing the medical services of physicians and nurse anesthetists*. (Unlike the bill, this provision is not limited to for profit organizations and enterprises.)

Becomes effective on the day after the act's publication.

AMENDMENTS

Assembly Amendment 2 to Assembly Bill 259 was adopted 13-0-2 with Representatives Wieckert and Staskunas absent.

FISCAL EFFECT

A fiscal estimate was not required for Assembly Bill 259.

PROS

1. Health care providers who are organized as Limited Liability Companies (LLCs) have been notified that they are not eligible for medical malpractice coverage under the Injured Patients and Families Compensation Fund (PCF). This appears to be an unintended consequence, and the providers want to be included.
2. By permitting LLCs to continue to participate in the PCF, the legislature will help ensure that patients who are injured as a result of medical malpractice will continue to have access to the coverage for damages provided by the PCF.

CONS

1. There are no cons with what has been done, but there are still some technical errors in the PCF language which were beyond the scope of this bill to repair.

SUPPORTERS

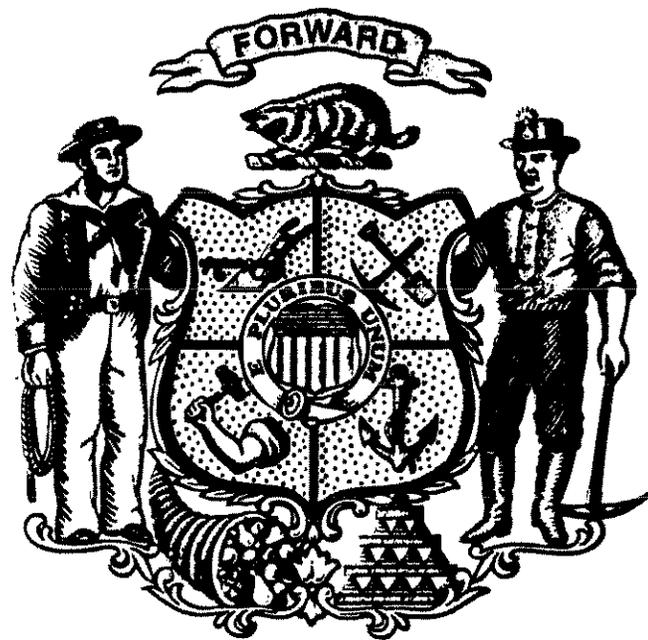
Rep. Curt Gielow, author; Sen. Cathy Stepp, lead co-sponsor; Tim Hoven, Academy of Family Physicians; Mark Grapentine, Wisconsin Medical Society; Ron Kuehn, Professional Insurance Agents of Wisconsin, Independent Insurance Agents of Wisconsin, and National Association of Insurance and Financial Advisors (NAIFA); Charles Vogel, Godfrey & Kahn; and Dan Schwartzter, Wisconsin Association of Health Underwriters and Wisconsin Association of Provider Networks

OPPOSITION

No one registered or testified in opposition to Assembly Bill 259.

HISTORY

Assembly Bill 259 was introduced on March 18, 2005 and referred to the Assembly Committee on Insurance. A public hearing was held on April 21, 2005. On June 1, 2005, the Committee voted 13-0-2 with Representatives Wieckert and Staskunas absent to recommend passage of AB 259 as amended.





Wisconsin Academy of Family Physicians

142 North Main Street • Thiensville, Wisconsin 53092
Phone: (262) 512-0606 • Toll Free (WI): 1-800-272-WAFP • Fax: (262) 242-1862
E-Mail: academy@wafp.org Web site: www.wafp.org

WAFP Bill Analysis

No Date

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WMS Alternate Delegate
Glenn A. Loomis, M.D. '05
Janesville

Executive Director
Larry Pfeifer
Thiensville

Assembly Bill 259

The Wisconsin Academy of Family Physicians and the 2,200 physician members we represent strongly support Assembly Bill 259. The bill would close a loophole in current and allow physicians and other healthcare practitioners who are legally organized as a Limited Liability Corporation (and other business entities) to participate in the Injured Patients and Family Compensation Fund.

Background:

Under current law, Wisconsin physicians and other health care providers are required to carry private medical malpractice insurance with liability limits of at least \$1 million per incident and at least \$3 million for total incidents annually.

In addition, the Injured Patients and Family Compensation Fund provides malpractice coverage for certain health care professionals over and above their primary coverage obtained from private insurers. The Fund—which is financed through assessments on participating providers—has brought stability to Wisconsin's medical liability environment for 30 years and offers security to patients involved in medical liability claims.

Health care providers who can currently participate in the Fund include, physicians, nurse anesthetists, partnerships composed of physicians or nurse anesthetists, corporations whose primary purpose is to provide the medical services of physicians or nurse anesthetists and hospitals.

Unfortunately, an oversight in current law denies healthcare professionals who are organized as Limited Liability Corporations (and other business entities) from participating in the Fund.

Legislative Action:

Assembly Bill 259 would specify any business entity organized and operated in Wisconsin—for profit—for the primary purpose of providing the medical services of physicians or nurse anesthetists would be eligible to participate in the Fund.

Essentially, AB 259 closes the loophole and would allow physicians and other healthcare practitioners who are legally organized as an LLC (or other business entity, such as a firm, joint venture, business trust, etc.) to participate in the Injured Patients and Family Compensation Fund.