

CHAPTER 79, Laws of 1975

AN ACT to amend 619.04 (1), 655.001 (8) and (11), 655.017, 655.04 (2) (a) and (5), 655.06 (1) and 655.27 (1), (3) (a) 1 and 2 and (6); and to create 619.01 (8), 655.002, 655.23 (5m) and 655.27 (3) (a) 3 of the statutes, relating to health care liability insurance.

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

SECTION 1. 619.01 (8) of the statutes is created to read:

619.01 (8) HEALTH CARE LIABILITY POLICY PROVISIONS. Health care liability insurance plans established under this chapter may include liability coverages normally incidental to health care liability insurance if such coverage is not readily available in the voluntary market.

SECTION 2. 619.04 (1) of the statutes, as created by chapter 37, laws of 1975, is amended to read:

619.04 (1) The commissioner shall promulgate rules establishing a plan of health care liability coverage for all medical or osteopathic physicians licensed under ch. 448 and nurse anesthetists licensed under ch. 441 who practice in this state and; for operating cooperative sickness care plans organized under ss. 185.981 to 185.985 which directly provide services in their own facilities with salaried employes; and for all hospitals as defined by s. 140.24 (1) (a) and (c), but excluding those facilities exempted by s. 140.29 (3), which operate in this state.

SECTION 3. 655.001 (8) and (11) of the statutes, as created by chapter 37, laws of 1975, are amended to read:

655.001 (8) "Health care provider" means a medical or osteopathic physician licensed under ch. 448; a nurse anesthetist licensed under ch. 441; a partnership comprised of such physicians or nurse anesthetists; a corporation owned by such physicians or nurse anesthetists and operated for the purposes of providing medical services; an operational cooperative sickness care plan organized under ss. 185.981 to 185.985 which directly provides services through salaried employes in its own facility; or a hospital as defined by s. 140.24 (1) (a) and (c); but excluding state, county or municipal employes or federal employes covered under the federal tort claims act, as amended, while acting within the scope of their employment, and those facilities exempted by s. 140.29 (3) or operated by any governmental agency.

(11) "Permanently practicing in this state" means the full-time or part-time practice in this state of a health care provider's profession for more than ~~6 weeks~~ 240 hours in any calendar year by a health care provider whose principal place of practice is in this state.

SECTION 3m. 655.002 of the statutes is created to read:

**655.002 Exemptions.** Any physician licensed under ch. 448 may be exempted from ss. 655.21, 655.23 and 655.27 upon petition to the department of regulation and licensing while he is a graduate medical student acting within the scope of his resident or fellowship training program. Any such exemption shall not affect the liability of the physician's employer for his acts or omissions.

SECTION 4. 655.017 of the statutes, as created by chapter 37, laws of 1975, is amended to read:

**655.017 Annual training requirement.** No medical or osteopathic physician shall be ~~eligible for~~ afforded the protection provided under this chapter unless, at the time of ~~application for renewing~~ a certificate of registration under s. 448.07, he has completed at least 15 hours of continuing education programs or courses of study approved by the medical examining board within the calendar year immediately preceding such application. The medical examining board shall notify the commissioner and the department of all physicians who have met the requirements of this section. The examining board may waive these requirements if it finds that exceptional circumstances such as prolonged illness, disability or other similar circumstances have prevented a physician from meeting the requirements.

SECTION 5. 655.04 (2) (a) and (5) of the statutes, as created by chapter 37, laws of 1975, are amended to read:

655.04 (2) (a) *Claims of \$10,000 or less.* If the petitioner states in his submission of controversy that he is entitled to recovery in the amount of \$10,000 or less, the controversy shall be heard by an informal panel under s. 655.03 (2), unless ~~both~~ all parties stipulate in writing that the controversy shall be heard by a formal panel under s. 655.03 (1).

(5) **APPLICABILITY.** This ~~chapter~~ subchapter applies only to claims arising out of health care services provided in this state.

SECTION 6. 655.06 (1) of the statutes, as created by chapter 37, laws of 1975, is amended to read:

655.06 (1) **FOR WHOM APPOINTED.** In every controversy involving a victim of alleged malpractice who is a minor or incompetent, the panel shall appoint a guardian ad litem to represent such minor or incompetent. A guardian ad litem shall not be appointed or appear in the same ~~matter~~ controversy for different persons whose interests may be conflicting.

SECTION 6m. 655.23 (5m) of the statutes is created to read:

655.23 (5m) The limits set forth in sub. (5) shall apply to any joint liability of a physician or nurse anesthetist and his corporation or partnership under s. 655.001 (8).

SECTION 7. 655.27 (1) and (3) (a) 1 and 2 of the statutes, as created by chapter 37, laws of 1975, are amended to read:

655.27 (1) **FUND.** There is created a patients compensation fund for the purpose of paying that portion of a medical malpractice claim which is in excess of ~~\$200,000 for such claim or which, in combination with other claims in one policy year is in excess of \$600,000~~ the limit expressed in s. 655.23 (5). The fund shall be liable only for payment of claims against health care providers permanently practicing or operating in this state who have complied with the provisions of this chapter and reasonable and necessary expenses incurred in payment of claims and fund administrative expenses. The coverage provided by the fund shall begin July 1, 1975, and run thereafter on a fiscal year basis.

(3) (a) 1. For the first year of the fund's operation, for any individual physician permanently practicing in this state, ~~\$200~~ plus 10% of the premium he would be charged under the plan established by s. 619.04 for coverage in the amount of \$200,000 per claim and \$600,000 per year; \$50 for any individual nurse anesthetist, and \$75 per bed for any hospital.

2. For the 2nd year of the fund's operation, for any individual physician permanently practicing in this state, ~~\$200~~ plus 10% of the premium he would be charged under the plan established by s. 619.04 for coverage in the amount of

\$200,000 per claim and \$600,000 per year; \$40 for any individual nurse anesthetist; and for any hospital, \$50 per bed plus 10% of the premium it would be charged under the plan established by s. 619.04 for coverage in the amount of \$200,000 per claim and \$600,000 per year.

SECTION 8. 655.27 (3) (a) 3 of the statutes is created to read:

655.27 (3) (a) 3. For a corporation or partnership under s. 655.001 (8), and for a cooperative sickness care plan, an amount to be determined by the board of governors.

SECTION 9. 655.27 (6) of the statutes, as created by chapter 37, laws of 1975, is amended to read:

655.27 (6) AWARD LIMITATIONS. If, at any time after July 1, ~~1978~~ 1979, the commissioner finds that the amount of money in the fund has fallen below a \$2,500,000 level in any one year or below a \$6,000,000 level for any 2 consecutive years, an automatic limitation on awards of \$500,000 for any one injury or death on account of malpractice shall take effect. This subsection does not apply to injury or death resulting from an incident of malpractice which occurred prior to the date on which such an award limitation takes effect. This subsection does not apply to any payments for medical expenses.

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