



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0117/1
PJK&CTS:jld&kjf:jf

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 259**

May 17, 2005 - Offered by Representative GIELOW.

1 **AN ACT to amend** 448.08 (4), 655.001 (7t), 655.005 (2t), 655.23 (5m) and 655.27
2 (3) (a) 4.; and **to create** 448.03 (2) (o) and 655.002 (1) (em) of the statutes;
3 **relating to:** provider organizations subject to health care liability
4 requirements and the formation of limited liability companies by physicians.

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 substitute amendment adds, as another type of health care provider that is subject to the health care liability requirements, any organization or enterprise organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists.

Also under current law, a limited liability company may be formed for any lawful purpose. The attorney general, however, has opined that current law prohibits physicians from practicing medicine as employees of a business entity other than a service corporation. 75 Op. Att’y Gen. 200 (1986). Current law allows physicians and certain other professionals to organize and own shares in a service corporation if all of the shareholders hold the same professional licensure or certification. A service corporation may own, operate, and maintain an establishment and may serve the convenience of its shareholders in carrying on their profession.

The attorney general’s opinion is based upon interpretations of two provisions in current law. First, current law prohibits a person from engaging in the practice of medicine and surgery unless the person has been granted a license by the Medical Examining Board, but a business entity is not itself capable of satisfying the requirements for obtaining a license to practice medicine. In the opinion of the attorney general, if a business entity employs a physician to provide professional services, the entity is itself engaged in the practice of medicine.

Second, current law prohibits a physician from compensating another in exchange for patient referrals. In the opinion of the attorney general, this provision prohibits an arrangement in which a physician receives patients through the physician’s employment with a business entity and the business entity receives payment for the physician’s services.

This substitute amendment specifies that the requirement for a license to practice medicine and surgery does not apply to a limited liability company if: 1) the company is organized to own, operate, and maintain an establishment and otherwise serve the convenience of its members; 2) all the members of the company are licensed to practice medicine and surgery; and 3) professional services are rendered only by persons who are licensed to practice medicine and surgery. The substitute amendment also specifies that it is lawful for a limited liability company that meets the requirements specified above to render a bill in the name of the company, if the bill identifies each physician for whose services the bill is rendered. As a result, a physician may engage in the practice of medicine as an employee of a limited liability company organized and controlled by physicians.

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

1 **SECTION 1.** 448.03 (2) (o) of the statutes is created to read:

1 448.03 (2) (o) A limited liability company organized under ch. 183 to own,
2 operate, and maintain an establishment and otherwise serve the convenience of its
3 members, but only if all of the following are true:

4 1. All members of the company are licensed under sub. (1) (a).

5 2. Professional services are rendered only by persons who are licensed under
6 sub. (1) (a).

7 **SECTION 2.** 448.08 (4) of the statutes is amended to read:

8 448.08 (4) PROFESSIONAL PARTNERSHIPS AND, CORPORATIONS, AND COMPANIES
9 PERMITTED. Notwithstanding any other provision in this section, it is lawful for 2 or
10 more physicians, who have entered into a bona fide partnership for the practice of
11 medicine, to render a single bill for such services in the name of such partnership,
12 and it also is lawful for a service corporation or a limited liability company organized
13 under ch. 183 to render a single bill for services in the name of the corporation or
14 company, provided that each individual licensed, registered or certified under this
15 chapter or ch. 446, 449, 450, 455, 457 or 459 that renders billed services is
16 individually identified as having rendered such services.

17 **SECTION 3.** 655.001 (7t) of the statutes is amended to read:

18 655.001 (7t) "Health care practitioner" means a health care professional, as
19 defined in s. 180.1901 (1m), who is an employee of a health care provider described
20 in s. 655.002 (1) (d), (e), (em), or (f) and who has the authority to provide health care
21 services that are not in collaboration with a physician under s. 441.15 (2) (b) or under
22 the direction and supervision of a physician or nurse anesthetist.

23 **SECTION 4.** 655.002 (1) (em) of the statutes is created to read:

1 655.002 (1) (em) Any organization or enterprise not specified under par. (d) or
2 (e) that is organized and operated in this state for the primary purpose of providing
3 the medical services of physicians or nurse anesthetists.

4 **SECTION 5.** 655.005 (2t) of the statutes is amended to read:

5 655.005 (2t) Subsection (2) does not affect the liability of a health care provider
6 described in s. 655.002 (1) (d), (e), (em), or (f) for the acts of its employees.

7 **SECTION 6.** 655.23 (5m) of the statutes is amended to read:

8 655.23 (5m) The limits set forth in sub. (4) shall apply to any joint liability of
9 a physician or nurse anesthetist and his or her corporation ~~or~~, partnership, or other
10 organization or enterprise under s. 655.002 (1) (d) ~~or~~, (e), or (em).

11 **SECTION 7.** 655.27 (3) (a) 4. of the statutes is amended to read:

12 655.27 (3) (a) 4. For a health care provider described in s. 655.002 (1) (d), (e),
13 (em), or (f), risk factors and past and prospective loss and expense experience
14 attributable to employees of that health care provider other than employees licensed
15 as a physician or nurse anesthetist.

16 **SECTION 8. Initial applicability.**

17 (1) ORGANIZATIONS SUBJECT TO INSURANCE REQUIREMENTS. The treatment of
18 sections 655.001 (7t), 655.002 (1) (em), 655.005 (2t), 655.23 (5m), and 655.27 (3) (a)
19 4. of the statutes first applies to all of the following:

20 (a) Policies issued or renewed on the effective date of this paragraph.

21 (b) Claims made under policies issued or renewed on the effective date of this
22 paragraph.

23 **SECTION 9. Effective dates.** This act takes effect on the day after publication,
24 except as follows:

1 (1) ORGANIZATIONS SUBJECT TO INSURANCE REQUIREMENTS. The treatment of
2 sections 655.001 (7t), 655.002 (1) (em), 655.005 (2t), 655.23 (5m), and 655.27 (3) (a)
3 4. of the statutes and SECTION 8 (1) of this act take effect on September 30, 2005, or
4 on the day after publication, whichever is later.

5

(END)