



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2005 Wisconsin Act 51**  
[2005 Assembly Bill 765]

**Graduate Medical Education  
Program Participation Under the  
Injured Patients and Families  
Compensation Fund**

### Background

Certain health care providers are required to carry medical malpractice coverage with certain liability limits and to pay assessments into the Injured Patients and Families Compensation Fund (IPFCF), which then pays eligible claims that exceed those limits. In addition, the statutory cap on noneconomic damages recoverable in a medical malpractice action applies only if the action is against a health care provider who is subject to these health care liability insurance requirements. (The Wisconsin Supreme Court has held that the current statute capping the amount of noneconomic damage is unconstitutional. [*Ferdon v. Wisconsin Patients Compensation Fund*, 2005 WI 125 (2005)].)

In *Phelps v. Physicians Insurance Company*, 2005 WI 85 (2005), the Wisconsin Supreme Court determined that a medical resident was not a health care provider under the health care liability insurance requirements and, therefore, the IPFCF was not responsible for paying damages and the statutory cap on noneconomic damages in effect at the time of that case did not apply.

### 2005 Wisconsin Act 51

2005 Wisconsin Act 51 creates a definition for a graduate medical education program, such as the one involved in the *Phelps* case, and provides that a graduate medical education program may elect to be subject to the statutory health care liability insurance requirements. (A graduate medical education program is defined in the Act as a program approved by the Medical Examining Board that provides post-graduate medical education and training for a person who possesses a diploma from a medical or osteopathic college or who has the equivalent education and experience from certain foreign medical schools.)

Thus, under the Act, if a medical malpractice claim is made against a medical resident who is determined to be an employee of a graduate medical education program that has elected to be subject to these insurance requirements and that pays assessments to the IPFCF, then: (a) the IPFCF would be

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

responsible for paying any amounts exceeding the underlying health care liability insurance; and (b) if a cap on noneconomic damages were in effect, that cap would apply.

***Effective Date:*** The Act takes effect on December 17, 2005.

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December 9, 2005

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