

State of Wisconsin



2003 Assembly Bill 487

Date of enactment: **December 18, 2003**

Date of publication*: **January 7, 2004**

2003 WISCONSIN ACT 111

AN ACT *to amend* 13.94 (1) (de), 15.405 (7) (c), 20.145 (2) (title), 20.145 (2) (q), 20.145 (2) (u), 20.145 (2) (um), 20.145 (2) (v), 25.14 (1) (a) 9., 25.17 (1) (kp), 25.17 (3) (a), 50.37 (intro.), 165.25 (6) (a), 619.04 (5) (b), 619.04 (5m) (b), 619.04 (9), chapter 655 (title), 655.001 (7), subchapter IV (title) of chapter 655 [precedes 655.27], 655.27 (title), 655.27 (1), 655.27 (3) (a) 2m., 655.27 (3) (am), 655.27 (3) (bg) 2., 655.275 (title), 655.275 (1), 893.55 (4) (b), 893.82 (2) (d) 3., 895.46 (4) and 895.70 (5); and *to repeal and recreate* 655.27 (6) of the statutes; **relating to:** the purpose and integrity of the patients compensation fund and changing its name to the injured patients and families compensation fund.

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

SECTION 1. 13.94 (1) (de) of the statutes is amended to read:

13.94 (1) (de) At least once every 3 years, perform a financial audit of the state life insurance fund, the local government property insurance fund, and the patients injured patients and families compensation fund.

SECTION 2. 15.405 (7) (c) of the statutes is amended to read:

15.405 (7) (c) The chairperson of the patients injured patients and families compensation fund peer review council under s. 655.275 shall serve as a nonvoting member of the medical examining board.

SECTION 3. 20.145 (2) (title) of the statutes is amended to read:

20.145 (2) (title) PATIENTS INJURED PATIENTS AND FAMILIES COMPENSATION FUND.

SECTION 4. 20.145 (2) (q) of the statutes is amended to read:

20.145 (2) (q) *Interest earned on future medical expenses.* From the patients injured patients and families

compensation fund under s. 655.27 a sum sufficient equal to the interest earned by the patients injured patients and families compensation fund that is attributable to future medical expense payments held by the fund under s. 655.015, to be credited to individual claimants' future medical expense payments accounts as provided in s. 655.015, for the purpose of paying future medical expenses.

SECTION 5. 20.145 (2) (u) of the statutes is amended to read:

20.145 (2) (u) *Administration.* From the patients injured patients and families compensation fund under s. 655.27 (3), the amounts in the schedule for administration, except for costs of the patients injured patients and families compensation fund peer review council and its associated administrative costs assessed under s. 655.27 (3) (am).

SECTION 6. 20.145 (2) (um) of the statutes is amended to read:

20.145 (2) (um) *Peer review council.* From the patients injured patients and families compensation fund under s. 655.27 (3) (am), the amounts in the schedule for payment of costs, including costs of administration,

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

incurred by the ~~patients~~ injured patients and families compensation fund peer review council under s. 655.275 (5).

SECTION 7. 20.145 (2) (v) of the statutes is amended to read:

20.145 (2) (v) *Specified responsibilities, investment board payments, and future medical expenses.* After deducting the amounts appropriated under pars. (q), (u), and (um), the balance of the moneys paid into the ~~patients~~ injured patients and families compensation fund under s. 655.27 (3) to carry out the responsibilities of the commissioner of insurance specified under s. 655.27, excluding payment of expenses related to administering the fund, to make payments to the investment board under s. 20.536, and to pay future medical expenses under s. 655.015.

SECTION 8. 25.14 (1) (a) 9. of the statutes is amended to read:

25.14 (1) (a) 9. The ~~patients~~ injured patients and families compensation fund.

SECTION 9. 25.17 (1) (kp) of the statutes is amended to read:

25.17 (1) (kp) ~~Patients~~ Injured patients and families compensation fund (s. 655.27);

SECTION 10. 25.17 (3) (a) of the statutes is amended to read:

25.17 (3) (a) Invest the fixed retirement investment trust, state life fund, veterans trust fund, and ~~patients~~ injured patients and families compensation fund in loans, securities, and any other investments authorized by s. 620.22, and in bonds or other evidences of indebtedness or preferred stock of companies engaged in the finance business whether as direct lenders or as holding companies owning subsidiaries engaged in the finance business. Investments permitted by sub. (4) are permitted investments under this subsection.

SECTION 11. 50.37 (intro.) of the statutes is amended to read:

50.37 Notification to accrediting organization. (intro.) The department shall notify a private accrediting organization that has accredited a hospital and the board of governors of the ~~patients~~ injured patients and families compensation fund under s. 619.04 (3) if the department has done any of the following:

SECTION 12. 165.25 (6) (a) of the statutes is amended to read:

165.25 (6) (a) At the request of the head of any department of state government, the attorney general may appear for and defend any state department, or any state officer, employee, or agent of the department in any civil action or other matter brought before a court or an administrative agency which is brought against the state department, or officer, employee, or agent for or on account of any act growing out of or committed in the lawful course of an officer's, employee's, or agent's duties. Witness fees or other expenses determined by the

attorney general to be reasonable and necessary to the defense in the action or proceeding shall be paid as provided for in s. 885.07. The attorney general may compromise and settle the action as the attorney general determines to be in the best interest of the state. Members, officers, and employees of the Wisconsin state agencies building corporation and the Wisconsin state public building corporation are covered by this section. Members of the board of governors created under s. 619.04 (3), members of a committee or subcommittee of that board of governors, members of the ~~patients~~ injured patients and families compensation fund peer review council created under s. 655.275 (2), and persons consulting with that council under s. 655.275 (5) (b) are covered by this section with respect to actions, claims, or other matters arising before, on, or after April 25, 1990. The attorney general may compromise and settle claims asserted before such actions or matters formally are brought or may delegate such authority to the department of administration. This paragraph may not be construed as a consent to sue the state or any department thereof or as a waiver of state sovereign immunity.

SECTION 13. 619.04 (5) (b) of the statutes is amended to read:

619.04 (5) (b) A rating plan which takes into consideration the loss and expense experience of the individual health care provider which resulted in the payment of money, by the plan or other sources, for damages arising out of the rendering of health care by the health care provider or an employee of the health care provider, except that an adjustment to a health care provider's premiums may not be made under this paragraph prior to the receipt of the recommendation of the ~~patients~~ injured patients and families compensation fund peer review council under s. 655.275 (5) (a) and the expiration of the time period provided, under s. 655.275 (7), for the health care provider to comment or prior to the expiration of the time period under s. 655.275 (5) (a).

SECTION 14. 619.04 (5m) (b) of the statutes is amended to read:

619.04 (5m) (b) The rule shall provide that the automatic increase does not apply if the board determines that the performance of the ~~patients~~ injured patients and families compensation fund peer review council in making recommendations under s. 655.275 (5) (a) adequately addresses the consideration set forth in sub. (5) (b).

SECTION 15. 619.04 (9) of the statutes is amended to read:

619.04 (9) Neither the state nor the board of governors shall be liable for any obligation of the plan or of the ~~patients~~ injured patients and families compensation fund under s. 655.27. The board of governors and members of any committee or subcommittee thereof shall be immune from civil liability for acts or omissions while performing their duties under this section and s. 655.27.

SECTION 16. Chapter 655 (title) of the statutes is amended to read:

CHAPTER 655
HEALTH CARE LIABILITY AND
PATIENTS INJURED PATIENTS
AND FAMILIES COMPENSATION

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

655.001 (7) "Fund" means the patients injured patients and families compensation fund under s. 655.27.

SECTION 18. Subchapter IV (title) of chapter 655 [precedes 655.27] of the statutes is amended to read:

CHAPTER 655
SUBCHAPTER IV
PATIENTS INJURED PATIENTS AND
FAMILIES COMPENSATION FUND

SECTION 19. 655.27 (title) of the statutes is amended to read:

655.27 (title) **Patients Injured patients and families compensation fund.**

SECTION 20. 655.27 (1) of the statutes is amended to read:

655.27 (1) FUND. There is created a ~~patients an~~ injured patients and families compensation fund for the purpose of paying that portion of a medical malpractice claim which is in excess of the limits expressed in s. 655.23 (4) or the maximum liability limit for which the health care provider is insured, whichever limit is greater, paying future medical expense payments under s. 655.015, and paying claims under sub. (1m). The fund shall provide occurrence coverage for claims against health care providers that have complied with this chapter, and against employees of those health care providers, and for reasonable and necessary expenses incurred in payment of claims and fund administrative expenses. The coverage provided by the fund shall begin July 1, 1975. The fund shall not be liable for damages for injury or death caused by an intentional crime, as defined under s. 939.12, committed by a health care provider or an employee of a health care provider, whether or not the criminal conduct is the basis for a medical malpractice claim.

SECTION 21. 655.27 (3) (a) 2m. of the statutes is amended to read:

655.27 (3) (a) 2m. The loss and expense experience of the individual health care provider which resulted in the payment of money, from the fund or other sources, for damages arising out of the rendering of medical care by the health care provider or an employee of the health care provider, except that an adjustment to a health care provider's fees may not be made under this subdivision prior to the receipt of the recommendation of the patients injured patients and families compensation fund peer review council under s. 655.275 (5) (a) and the expiration of the time period provided, under s. 655.275 (7), for the

health care provider to comment or prior to the expiration of the time period under s. 655.275 (5) (a).

SECTION 22. 655.27 (3) (am) of the statutes is amended to read:

655.27 (3) (am) *Assessments for peer review council.* The fund, a mandatory health care liability risk-sharing plan established under s. 619.04, and a private health care liability insurer shall be assessed, as appropriate, fees sufficient to cover the costs of the patients injured patients and families compensation fund peer review council, including costs of administration, for reviewing claims paid by the fund, plan, and insurer, respectively, under s. 655.275 (5). The fees shall be set by the commissioner by rule, after approval by the board of governors, and shall be collected by the commissioner for deposit in the fund. The costs of the patients injured patients and families compensation fund peer review council shall be funded from the appropriation under s. 20.145 (2) (um).

SECTION 23. 655.27 (3) (bg) 2. of the statutes is amended to read:

655.27 (3) (bg) 2. The rule shall provide that the automatic increase does not apply if the board of governors determines that the performance of the patients injured patients and families compensation fund peer review council in making recommendations under s. 655.275 (5) (a) adequately addresses the consideration set forth in par. (a) 2m.

SECTION 24. 655.27 (6) of the statutes is repealed and recreated to read:

655.27 (6) PURPOSE AND INTEGRITY OF FUND. The fund is established to curb the rising costs of health care by financing part of the liability incurred by health care providers as a result of medical malpractice claims and to ensure that proper claims are satisfied. 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 used for any other purpose of the state.

SECTION 25. 655.275 (title) of the statutes is amended to read:

655.275 (title) **Patients Injured patients and families compensation fund peer review council.**

SECTION 26. 655.275 (1) of the statutes is amended to read:

655.275 (1) DEFINITION. In this section, "council" means the patients injured patients and families compensation fund peer review council.

SECTION 27. 893.55 (4) (b) of the statutes is amended to read:

893.55 (4) (b) The total noneconomic damages recoverable for bodily injury or death, including any action or proceeding based on contribution or indemnification, may not exceed the limit under par. (d) for each occurrence on or after May 25, 1995, from all health care providers and all employees of health care providers act-

ing within the scope of their employment and providing health care services who are found negligent and from the ~~patients~~ injured patients and families compensation fund.

SECTION 28. 893.82 (2) (d) 3. of the statutes is amended to read:

893.82 (2) (d) 3. A member of the board of governors created under s. 619.04 (3), a member of a committee or subcommittee of that board of governors, a member of the ~~patients~~ injured patients and families compensation fund peer review council created under s. 655.275 (2), and a person consulting with that council under s. 655.275 (5) (b).

SECTION 29. 895.46 (4) of the statutes is amended to read:

895.46 (4) The protection afforded by this section applies to members of the board of governors created under s. 619.04 (3), members of a committee or subcom-

mittee of that board of governors, members of the ~~patients~~ injured patients and families compensation fund peer review council created under s. 655.275 (2), and persons consulting with that council under s. 655.275 (5) (b), with respect to judgments, attorney fees, and costs awarded before, on, or after April 25, 1990.

SECTION 30. 895.70 (5) of the statutes is amended to read:

895.70 (5) SILENCE AGREEMENTS. Any provision in a contract or agreement relating to the settlement of any claim by a patient against a therapist that limits or eliminates the right of the patient to disclose sexual contact by the therapist to a subsequent therapist, the department of regulation and licensing, the department of health and family services, the ~~patients~~ injured patients and families compensation fund peer review council, or a district attorney is void.