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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

1995-96

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Insurance, Securities and Corporate Policy...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (October 2012)

MEMORANDUM

TO: INTERESTED PARTIES

FROM: REPRESENTATIVE ALBERS, CHAIR OF THE INSURANCE, SECURITIES AND CORPORATE
POLICY COMMITTEE OF THE ASSEMBLY

RE: MEDICAL MALPRACTICE LEGISLATION

DATE: JANUARY 31, 1994

In light of the unfortunate acrimony surrounding the timing of procedural matters during the Welfare Reform Debate, I have decided to enumerate a timetable of events surrounding the medical malpractice legislation, AB 36. Please note that 'notice was distributed' denotes distribution in compliance with both applicable statutory and Assembly rule provisions.

The events surrounding AB36 transpired as follows:

- (1) The initial notice of a January 19, 1995 public hearing on medical malpractice reform was sent out on Friday 13, 1995. This notice was published in the official publication and was distributed as required by the rules applicable to the first weeks of session.
- (2) On January 17, 1995 revised notice was distributed noting a room change from 318 SW to 417 North. (An intermediate notice had been posted for 15 minutes incorrectly identifying the new room as GAR hall, North Hearing Room 3rd floor)
- (3) The members of the committee and the press received copies of LRB 1913 on Tuesday, January 17, 1995, two days prior to the hearing. The LRB number was not noticed yet at that point in the hopes that an AB number could be noticed that same day.
- (4) The notice containing the reference to LRB 1913 was posted at 8:45 a.m. on January 18, 1994. The AB number was posted on January 19, 1995.
- (5) January 19, 1995--hearing was held. Members were informed amendments needed to be in my office by 3:00 on Tuesday January 24, 1995 for purposes of executive session sometime on Wednesday January 25, 1995.
- (6) Notice of executive session to be held on Wednesday, January 25, 1995 at 5:30 p.m. in MLK 2, was distributed Monday January 23, 1995.

(7) Amendments were distributed to members upon receipt on Tuesday, January 24, 1995.

(8) Executive Session was held, as scheduled, on January 25, 1995. E.S. was recessed during the Governor's State of the State Address. We reconvened upon completion of the address.

(6) AB36 was reported out of committee on January 26, 1995 at 1:00 p.m.

(7) The rules committee took up AB36 upon adjournment by the Assembly on January 26, 1995 and reported it out of committee that afternoon.

(8) Medical Malpractice reform was scheduled for debate on the floor of the Assembly back on 12/28/94. A reminder notice was again distributed on 1/6/95.

I hope this information is useful and serves to answer any questions which may have been posed with respect to AB 36 procedural matters.





State of Wisconsin ASSEMBLY CALENDAR



Thursday, February 2, 1995
9:00 A.M.

1. Call of Roll.
2. Introduction, first reading and reference of proposals.
3. Committee reports and subsequent reference of proposals.
4. Messages from the senate, and other communications.
5. Consideration of conference committee reports and vetoes.
6. Consideration of senate action on proposals approved by the assembly
7. Consideration of motions for reconsideration of passage or concurrence.
8. Motions may be offered.
9. Consideration of resolutions.
10. Third reading of assembly proposals.

QUESTION: Having been read three times, shall the proposal be passed?

Assembly Bill 36 *AB 36*

Relating to: limiting medical malpractice noneconomic damage awards and granting rule-making authority. (FE)

By Representatives Green, Albers, Urban and Handrick; cosponsored by Senator Huelsman.

Ordered to a third reading.

11. Third reading of senate proposals.

QUESTION: Having been read three times, shall the proposal be concurred in?

12. Second reading and amendment of assembly proposals.

QUESTION: Shall the proposal be ordered engrossed and read a third time?

Assembly Bill 37

Relating to: various changes in the campaign finance law.

By Representatives Walker, Freese and Handrick; cosponsored by Senator Drzewiecki

Report Assembly amendment 1 to Assembly amendment 2 to Assembly substitute amendment 1 adoption, Ayes 9, Noes 0, Assembly amendment 2 to Assembly substitute amendment 1 adoption, Ayes 9, Noes 0, Assembly amendment 1 to Assembly

amendment 3 to Assembly substitute amendment 1 adoption, Ayes 6, Noes 3, Assembly amendment 2 to Assembly amendment 3 to Assembly substitute amendment 1 adoption, Ayes 9, Noes 0, Assembly amendment 3 to Assembly substitute amendment 1 adoption, Ayes 9, Noes 0, Assembly amendment 1 to Assembly amendment 4 to Assembly substitute amendment 1 adoption, Ayes 9, Noes 0, Assembly amendment 4 to Assembly substitute amendment 1 adoption, Ayes 8, Noes 1, Assembly amendment 7 to Assembly substitute amendment 1 adoption, Ayes 8, Noes 1, Assembly amendment 9 to Assembly substitute amendment 1 adoption, Ayes 9, Noes 0, Assembly amendment 11 to Assembly substitute amendment 1 adoption, Ayes 9, Noes 0, Assembly amendment 12 to Assembly substitute amendment 1 adoption, Ayes 9, Noes 0, Assembly amendment 15 to Assembly substitute amendment 1 adoption, Ayes 8, Noes 1, Assembly amendment 16 to Assembly substitute amendment 1 adoption, Ayes 9, Noes 0, Assembly substitute amendment 1 adoption, Ayes 9, Noes 0, passage recommended by committee on Elections and Constitutional Law, Ayes 5, Noes 4. Placed on calendar 2-2-95 by committee on Rules.

13. Second reading and amendment of senate proposals.

QUESTION: Shall the proposal be ordered to a third reading?

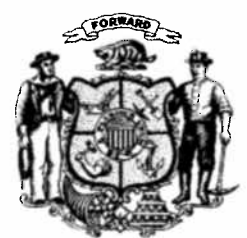
14. Announcements.

15. Adjournment.

*If no state set
fund - no state set
premiums we ~~not~~ may
not be here addressing
this issue - premiums got
too high -
communities who recruit
a public health nurse -
a local doc -*



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: February 2, 1995

TO: REPRESENTATIVE SHERYL ALBERS, COCHAIRPERSON, ASSEMBLY
COMMITTEE ON INSURANCE, SECURITIES AND CORPORATE
POLICY

FROM: Gordon A. Anderson, Senior Staff Attorney

SUBJECT: Provisions of 1995 Assembly Bill 36, Relating to Medical Malpractice
Noneconomic Damage Awards and Granting Rule-Making Authority; as
Amended by Actions of the Assembly on January 30, 1995

This memorandum describes the provisions of 1995 Assembly Bill 36, relating to limiting medical malpractice noneconomic damage awards and granting rule-making authority, as amended by Assembly Amendments 1 to 8, 12, 17, 18 and 20 that were adopted by the Assembly on January 30, 1995. All references to "the Bill" are to the engrossed (amended) version.

A. FUTURE MEDICAL EXPENSES

In 1975, the Legislature enacted a medical malpractice reform law [Ch. 37, Laws of 1975] which contained provisions relating to future medical expenses. The law provided that if a settlement, panel award or court judgment was made under ch. 655, Stats., and provided for future medical expense payments in excess of \$25,000, the portion of future medical expense payments in excess of \$25,000 would be paid into the Patients Compensation Fund (the "Fund"). The Commissioner of Insurance would manage and disburse the money. ~~The payments would be made until either the amount in the Fund for that patient was exhausted or the patient died.~~ If the patient died before the amount was exhausted, the remaining amount would be retained by the Fund.

As part of the malpractice legislation enacted in 1986 (1985 Wisconsin Act 340), this provision was "sunsetting" effective on June 14, 1986.

The Bill provides that if a settlement or judgment under ch. 655, Stats., resulting from an act or omission that occurs on or after the effective date of the Bill as an "act" provides for future medical expense payments in excess of \$100,000, the portion in excess of \$100,000, after deducting the reasonable costs of collection that are attributable to those future medical

L

D. WRONGFUL DEATH

Under current law, if a wrongful death action is brought against anyone, the amount recoverable for the loss of "society and companionship" is limited to \$150,000. [This amount was increased from \$50,000 to \$150,000 by 1991 Wisconsin Act 308, effective May 16, 1992.]

In Rineck v. Johnson, 155 Wis. 2d 659, 456 N.W. 2d 336 (1990) cert. den., 498 U.S. 1068 (1991), the Wisconsin Supreme Court ruled that the prior \$50,000 limit under the wrongful death statute was inapplicable to actions involving medical malpractice because the \$1,000,000 limit on noneconomic damages in medical malpractice actions created by the Legislature in 1986 had superseded the wrongful death limit.

Subsequently, in Jelinek v. St. Paul Fire and Casualty Insurance Company, 182 Wis. 2d 1, 512 N.W. 2d 764 (1994), the Court ruled that after the limit on noneconomic damages expired on January 1, 1991, the right to recovery for loss of society and companionship in a medical malpractice action that involves death is unlimited.

The Bill provides that, notwithstanding the limits on noneconomic damages described on page 2, damages recoverable in wrongful death actions against health care providers, and employees of health care providers acting within the scope of their employment and providing health care services, are subject to the provisions of s. 895.04 (4), Stats., the \$150,000 wrongful death limit on loss of society and companionship. It further provides that if damages in excess of the limit are found, the court will make any necessary reductions for contributory negligence and award the lesser of the reduced amount or the limit under s. 895.04 (4), Stats.

E. REPORT BY COMMISSIONER

The Bill requires the Commissioner to submit a report to the Legislature within two years after the effective date of the legislation and an additional report within two years thereafter. The report would compare data for the year before the effective date of the Act with data for the years after the effective date to evaluate the effects that the Act has on the number of health care providers practicing in Wisconsin, the fees that health care providers pay to the Fund and the premiums that health care providers pay for health care liability insurance.

F. OTHER CHANGES

Under the Bill, future medical expenses will be paid from the Fund for occurrences of malpractice on or after the effective date of the Bill. Therefore, the Bill deletes references in s. 20.145 (2) (v), Stats., and s. 655.27 (3) (c), Stats., to "settlements, patients compensation panel awards and judgments entered into or rendered before June 14, 1986."

If you have any questions or I can be of further assistance, please let me know.

GAA:rjl:ksm:kja;wu

expenses, will be paid into the Fund and disbursed by the Commissioner. Also, the Commissioner must promulgate a rule specifying the criteria that will be used to determine the medical expenses that are related to the settlement or judgment and will "take into consideration developments in the provision of health care."

The periodic payment of future medical expenses will continue until the patient dies. Thus, if the amounts set aside in the Fund for future medical expenses for that patient are exhausted, payments will continue to be made until the patient dies. Conversely, if the patient dies before the amounts set aside for future medical expenses are exhausted, the amounts will remain in the Fund.

B. NONECONOMIC DAMAGES

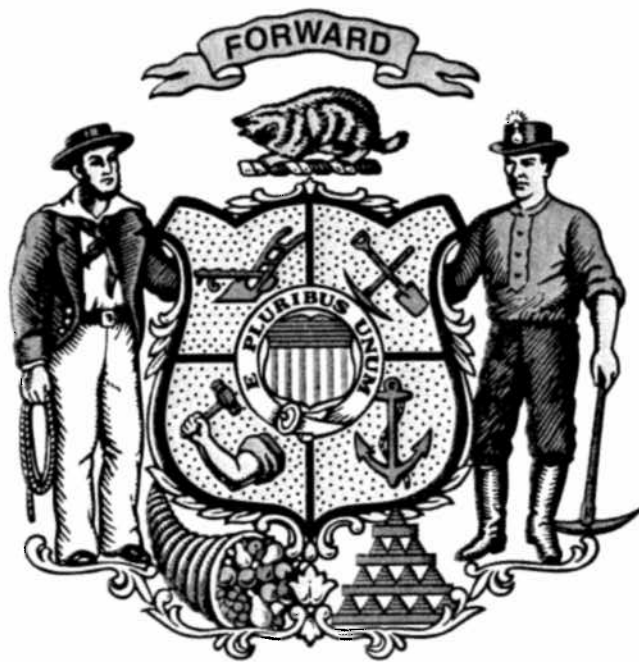
1985 Wisconsin Act 340 created a limitation on noneconomic damages. The amount of noneconomic damages recoverable under ch. 655, Stats., for acts or omissions of a health care provider (physicians, nurses, anesthetists and hospitals) for any action filed on or after June 14, 1986 and before January 1, 1991, would be subject to a \$1,000,000 limit. The limit was required to be adjusted each year by the Director of State Courts to reflect changes in the Consumer Price Index.

The Bill provides that the limitation on noneconomic damages which expired on January 1, 1991 is replaced by a limit that will apply to acts or omissions that occur on or after the effective date of the Bill of all health care providers licensed, certified or registered by the state. The new limit is \$350,000.

C. PERIODIC PAYMENTS FOR LARGE CLAIMS

Under Ch. 37, Laws of 1975, if the Fund incurred liability exceeding \$1,000,000 to any person under a single claim, the Fund would pay not more than \$500,000 per year. The payments would be made until the claim is paid in full and any attorney fees in connection with the claim would be similarly prorated. No interest could be paid by the Fund on the unpaid portion of the claim. 1985 Wisconsin Act 340 made the periodic payment provision applicable only to settlements, panel awards and judgments entered into or rendered before June 14, 1986.

The Bill makes the periodic payment provision for Fund liability of \$1,000,000 or more applicable to acts occurring on or after the effective date of the Bill. It provides that if the costs of medical expenses will exceed \$500,000 per year, the Fund will pay the full amount of the medical expenses. Also, after deducting the reasonable costs of collection attributable to the remaining liability from the remaining liability, the Fund will make payments each year, in an amount determined by the Fund not to exceed \$500,000, that will pay the remaining liability over the person's anticipated lifetime or until that remaining liability is paid in full. A





WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: February 7, 1995
TO: INTERESTED LEGISLATORS
FROM: Gordon A. Anderson, Senior Staff Attorney
SUBJECT: Provisions of Engrossed 1995 Assembly Bill 36, Relating to Medical Malpractice Noneconomic Damage Awards, Granting Rule-Making Authority and Making an Appropriation

This memorandum presents background information on, and describes the provisions of, Engrossed 1995 Assembly Bill 36, relating to limiting medical malpractice noneconomic damage awards, granting rule-making authority and making an appropriation. The Engrossed Bill includes Assembly Amendments 1, 2, 3, as amended by Assembly Amendment 1 to Assembly Amendment 3, 4 to 8, 12, 17, 18 and 20 that were adopted by the Assembly on January 31, 1995. All references to "the Bill" or "Assembly Bill 36" are to the engrossed version.

The Bill passed the Assembly by a vote of Ayes, 64; Noes, 33, on February 2, 1995.

A. FUTURE MEDICAL EXPENSES

1. Background

In 1975, the Legislature enacted a medical malpractice reform law [Ch. 37, Laws of 1975] which contained provisions relating to future medical expenses. The law provided that if a settlement, panel award or court judgment was made under ch. 655, Stats., and provided for future medical expense payments in excess of \$25,000, the portion of future medical expense payments in excess of \$25,000 would be paid into the Patients Compensation Fund (the "Fund"). The Commissioner of Insurance would manage and disburse the money. The payments would be made until either the amount in the Fund for that patient was exhausted or the patient died. If the patient died before the amount was exhausted, the remaining amount would be retained by the Fund.

As part of the malpractice legislation enacted in 1986 (1985 Wisconsin Act 340), this provision was "sunsetting" effective on June 14, 1986.

2. Assembly Bill 36

The Bill provides that if a settlement or judgment under ch. 655, Stats., resulting from an act or omission that occurs on or after the effective date of the Bill as an "act" provides for future medical expense payments in excess of \$100,000, the portion in excess of \$100,000, after deducting the "reasonable costs of collection that are attributable to" those future medical expenses, will be paid into the Fund and disbursed by the Commissioner.

The "reasonable costs of collection" are not defined or specified in the Bill. In some statutes, attorney's fees are specifically included in costs of collection [see ss. 49.65 (5) and 122.29 (1), Stats.], in some statutes such fees are referred to as separate from costs of collection [see ss. 403.106 (1) (e) and 703.16 (9)] and in some statutes such fees are not specifically included or excluded in costs of collection [see s. 895.04 (2), Stats.].

The Commissioner must promulgate a rule specifying the criteria that will be used to determine the medical expenses that are related to the settlement or judgment and will "take into consideration developments in the provision of health care."

The periodic payment of future medical expenses will continue until the patient dies. Thus, if the amounts set aside in the Fund for future medical expenses for that patient are exhausted, payments will continue to be made until the patient dies. Conversely, if the patient dies before the amounts set aside for future medical expenses are exhausted, the amounts will remain in the Fund.

B. NONECONOMIC DAMAGES

1. Background

1985 Wisconsin Act 340 created a limitation on noneconomic damages. The amount of noneconomic damages recoverable under ch. 655, Stats., for acts or omissions of a health care provider (physicians, nurses, anesthetists and hospitals) for any action filed on or after June 14, 1986 and before January 1, 1991, would be subject to a \$1,000,000 limit. The limit was required to be adjusted each year by the Director of State Courts to reflect changes in the Consumer Price Index. The limitation expired on January 1, 1991.

2. Assembly Bill 36

The Bill creates a new limitation on noneconomic damages for actions against all health care providers that will apply to acts or omissions that occur on or after the effective date of the Bill. The new limit is \$350,000. The Bill does not define "health care provider." Thus, the meaning of the term will be left for court interpretation.

C. PERIODIC PAYMENTS FOR LARGE CLAIMS

1. Background

Under Ch. 37, Laws of 1975, if the Fund incurred liability exceeding \$1,000,000 to any person under a single claim, the Fund would pay not more than \$500,000 per year. The payments would be made until the claim is paid in full and any attorney fees in connection with the claim would be similarly prorated. No interest could be paid by the Fund on the unpaid portion of the claim. 1985 Wisconsin Act 340 made the periodic payment provision applicable only to settlements, panel awards and judgments entered into or rendered before June 14, 1986.

2. Assembly Bill 36

The Bill makes the periodic payment provision for Fund liability of \$1,000,000 or more applicable to acts occurring on or after the effective date of the Bill. After deducting the reasonable costs of collection attributable to the "remaining liability" (the amount remaining after deducting future medical expenses) from that remaining liability, the Fund will pay the full amount of the medical expenses. Also, the Fund will make payments each year, in an amount determined by the Fund not to exceed \$500,000, that will pay the remaining liability over the person's anticipated lifetime or until that remaining liability is paid in full.

D. WRONGFUL DEATH

1. Background

Under current law, if a wrongful death action is brought against anyone, the amount recoverable for the loss of "society and companionship" is limited to \$150,000. [This amount was increased from \$50,000 to \$150,000 by 1991 Wisconsin Act 308, effective May 16, 1992.]

In Rineck v. Johnson, 155 Wis. 2d 659, 456 N.W. 2d 336 (1990) cert. den., 498 U.S. 1068 (1991), the Wisconsin Supreme Court ruled that the prior \$50,000 limit under the wrongful death statute was inapplicable to actions involving medical malpractice because the \$1,000,000 limit on noneconomic damages in medical malpractice actions created by the Legislature in 1986 had superseded the wrongful death limit.

Subsequently, in Jelinek v. St. Paul Fire and Casualty Insurance Company, 182 Wis. 2d 1, 512 N.W. 2d 764 (1994), the Court ruled that after the limit on noneconomic damages expired on January 1, 1991, the right to recovery for loss of society and companionship in a medical malpractice action that involves death is unlimited.

2. Assembly Bill 36

The Bill provides that, notwithstanding the limits on noneconomic damages described on page 2, damages recoverable in wrongful death actions against health care providers, and employes of health care providers acting within the scope of their employment and providing health care services, are subject to the provisions of s. 895.04 (4), Stats., the \$150,000 wrongful

death limit for loss of society and companionship. It further provides that if damages in excess of the limit are found, the court will make any necessary reductions for contributory negligence and award the lesser of the reduced amount or the limit under s. 895.04 (4), Stats.

E. REPORT BY COMMISSIONER

The Bill requires the Commissioner to submit a report to the Legislature within two years after the effective date of the Bill and an additional report within two years thereafter. The report would compare data for the year before the effective date of the Bill with data for the years after the effective date to evaluate the effects that the Bill has on the number of health care providers practicing in Wisconsin, the fees that health care providers pay to the Fund and the premiums that health care providers pay for health care liability insurance.

E. OTHER CHANGES

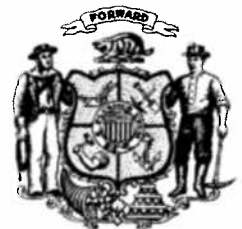
Under the Bill, future medical expenses will be paid from the Fund for occurrences of medical malpractice on or after the effective date of the Bill. Also, in 1986, the arbitration panels for medical malpractice claims under ch. 655, Stats., were replaced by mediation panels which do not make awards. Therefore, the Bill deletes references in current s. 20.145 (2) (v), Stats., and s. 655.27 (3) (c), Stats., to "settlements, patients compensation panel awards and judgments entered into or rendered before June 14, 1986."

If you have any questions or I can be of further assistance, please let me know.

GAA:rjl:ksm:kja;wu



WISCONSIN STATE LEGISLATURE



FEB 15 1995

Dear Rep. Albers,

Thank you for voting in favor of Assembly Bill 36 which places a \$350,000 cap on non-economic damage awards in medical malpractice cases.

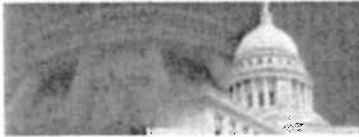
As a health care provider in our community, I believe that this measure is an important step towards controlling health care costs. Without this cap, providers have been forced to avoid "higher risk" practices, such as ob/gyn, because the cost of medical malpractice premiums is so inflated for these professions. Because the cap is expected to decrease the cost of those premiums, this bill will also improve access to care.

Again, I appreciate your support for this important health care legislation.

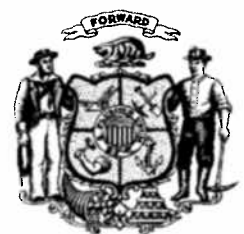
Sincerely,

Sue Sullivan, RN, BSN
Dir. Medical Pediatrics
Hess Memorial Hospital
Mauston, WI.

J-You file + AB 36
Q & A



WISCONSIN STATE LEGISLATURE



The Placebo Effect:
**Why Restricting Consumers' Rights
Won't Affect Health Care Costs**

**An Analysis of the Relationship Between
Medical Malpractice and Health Care Costs**

Wisconsin Citizen Action
122 State Street, Room 509
Madison, Wisconsin 53703
(608) 256-1250

February 22, 1995

The Placebo Effect: Why Restricting Consumers' Rights Won't Affect Health Care Costs

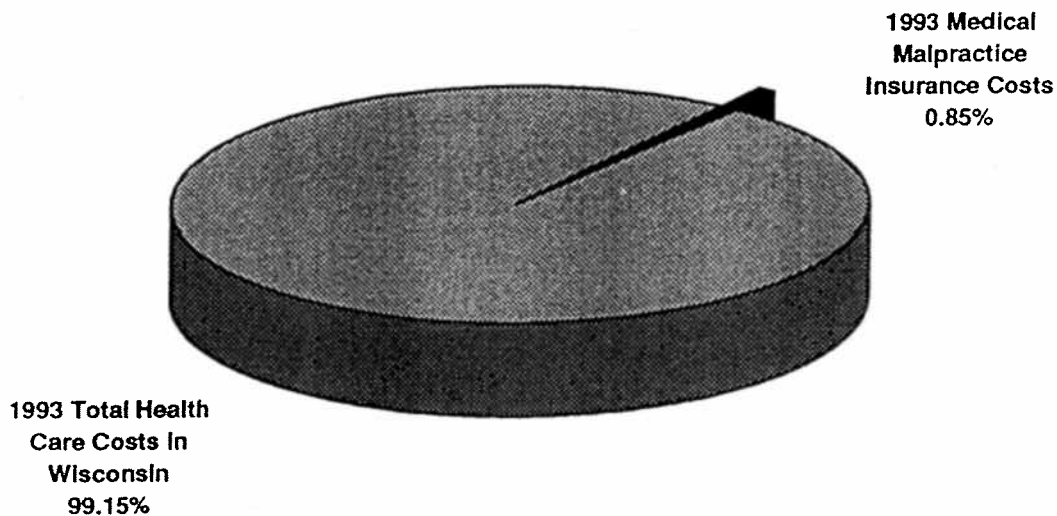
An Analysis of the Relationship Between Medical Malpractice and Health Care Costs

Medical Malpractice Tiny Proportion of Health Care Costs; Same Proportion in 1993 as 1987

Medical malpractice premiums are less than 1% of the cost of health care in Wisconsin.

(See the chart below) Figures from the Health Care Financing Administration and from insurance industry sources show that in 1993, .85% of health care costs were devoted to medical malpractice insurance premiums.

Medical Malpractice Costs are Less Than 1% of Total Health Care Costs in Wisconsin



Sources: Health Care Financing Administration, A. M. Best, and Wisconsin Insurance Report

While the medical industry claims increasing costs of medical malpractice have pushed health care spending higher, the data proves otherwise. From 1987 to 1993, medical malpractice insurance costs in Wisconsin has been constant — less than 1% of total health care spending. (See the chart on the next page) As the chart so accurately illustrates, medical malpractice insurance costs appear like doormats next to the ever-rising pillars of health care spending. Total health care spending has risen about **\$1 billion per year** since 1987.

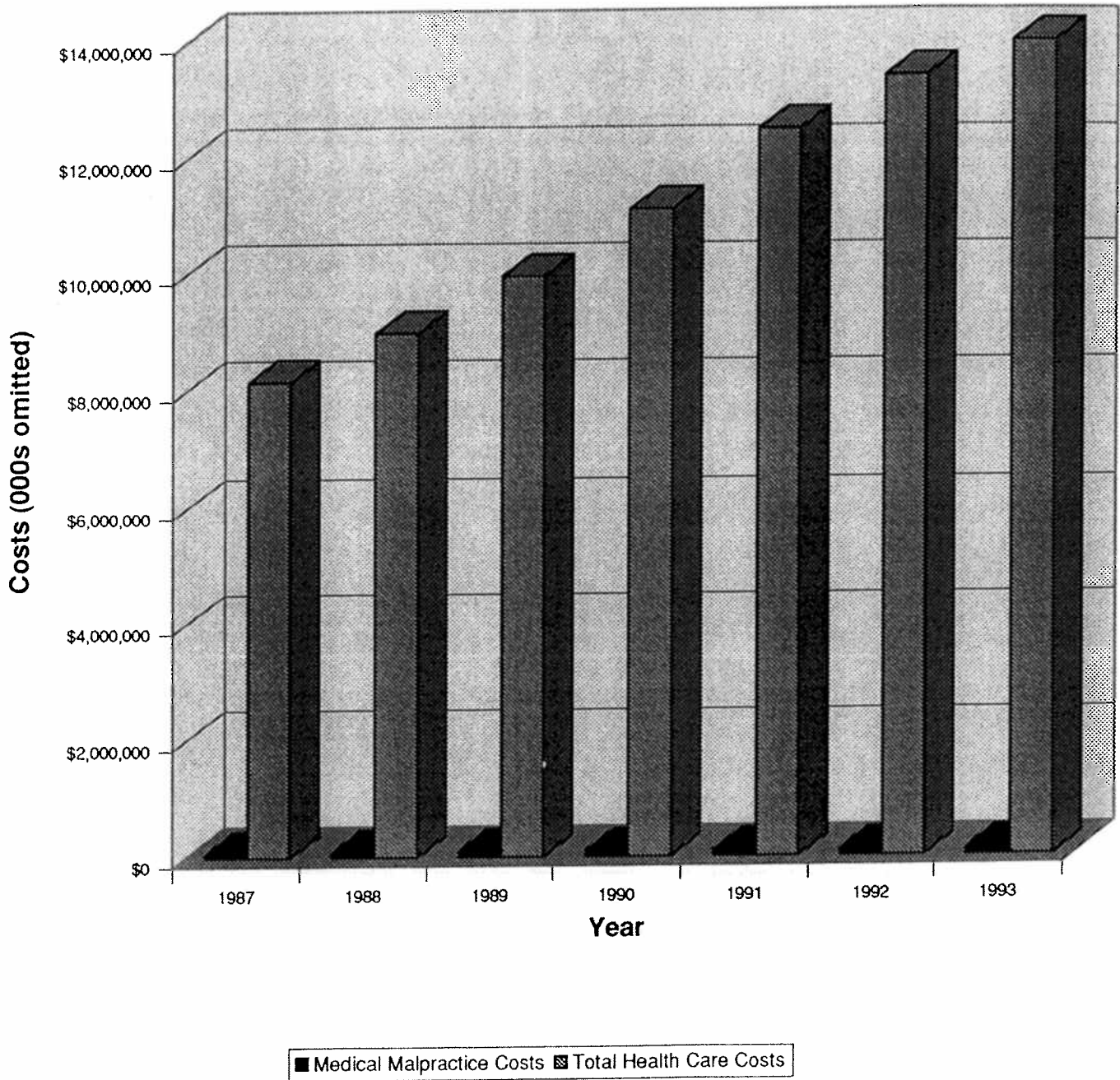
Based on data from the Health Care Financing Administration, total health care spending in Wisconsin was \$8.2 billion in 1987. By 1993, it was estimated at \$14.0 billion, an increase of 71.27%. At the same time, insurance industry figures show medical malpractice premiums rose from \$70.1 million to \$120.2 million, an increase of 71.55%. The insurance industry figures were reported by A. M. Best, the prominent insurance reporting service, and by Wisconsin's Office of the Commissioner of Insurance. The annual figures are listed in the table below.

Wisconsin's health care providers enjoy the best medical malpractice insurance protection available in the country. They purchase insurance in two parts: the first \$400,000 from private insurers and unlimited coverage from the state-run Patients Compensation Fund. The totals listed in the table below include payments made to both of those sources.

The figures are particularly important because Wisconsin had a limit on damages in medical malpractice lawsuits for the years 1987 through 1990, but had no limit in 1991 through 1993. Regardless of the restrictions on consumers' rights, both medical malpractice insurance premiums and health care costs rose over this 7-year period. To illustrate the weak connection,

	Medical Malpractice Direct Premiums Earned (000s omitted)			Total Health Care Expenditures in Wisconsin (000s omitted)
	Private Insurers	Pat. Comp. Fund	Insurers & Fund	
1993	\$69,019	\$51,213	\$120,232	\$13,977,069
1992	\$63,582	\$45,606	\$109,188	\$13,386,479
1991	\$59,686	\$42,350	\$102,036	\$12,476,000
1990	\$57,184	\$43,937	\$101,121	\$11,109,000
1989	\$58,655	\$43,161	\$101,816	\$9,961,000
1988	\$49,011	\$37,970	\$86,981	\$8,984,000
1987	\$36,439	\$33,643	\$70,082	\$8,161,000

Medical Malpractice Costs Compared to Total Health Care Costs



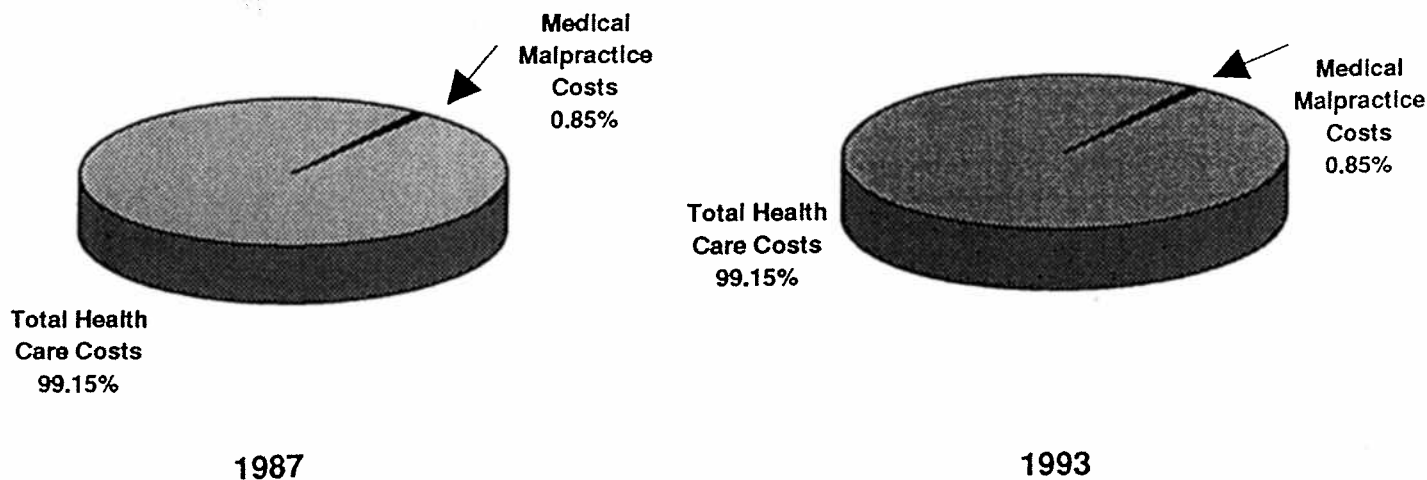
Sources: Health Care Financing Administration, A. M. Best, and Wisconsin Insurance Report

note that medical malpractice insurance premiums **decreased** from 1989 to 1990, yet health care expenditures rose by more than \$1.1 billion during the same year.

In fact, since 1987 medical malpractice premiums have risen at the same rate as overall health care costs – not faster. Medical malpractice insurance costs are an identical percentage in a side-by-side comparison of 1987 and 1993. (See the side-by-side pie charts comparing 1987 and 1993 below.)

Medical Malpractice Remains a Tiny Portion of Health Care Costs in Wisconsin

From 1987 to 1993, the percentage of health care costs paid for medical malpractice remained at less than 1%!



**Insurers Overcharging Doctors:
Insurers Collect More in Premiums But Pay Out Less in Losses**

While private insurance companies collected more dollars in premiums in Wisconsin during the last seven years, they estimate they will pay out less and less of those dollars. The figures listed below show the premiums collected¹, losses incurred², and reported loss ratios³ for private medical malpractice insurance companies.

Year	Direct Premiums Earned	Direct Losses Incurred	Loss Ratio
1993	\$75,000,989	\$20,101,693	27
1992	\$73,297,720	\$34,780,827	47
1991	\$73,176,610	\$37,802,712	52
1990	\$74,158,912	\$44,039,779	59
1989	\$74,899,510	\$34,937,305	47
1988	\$65,274,869	\$35,120,999	54
1987	\$49,137,646	\$33,983,814	69

Source: OCI

Conclusion

Limits on consumers' rights to pursue legitimate claims for medical malpractice fit the definition of a placebo: It might make the doctors feel good, but it does nothing to lower health care costs or to protect consumers. Furthermore, it fails to treat the real epidemic of doctors who commit malpractice.

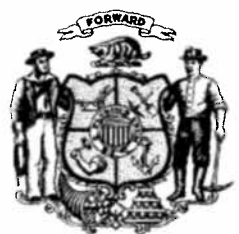
¹ Direct premiums earned — the amount of money received during the calendar year for the risks assumed and occurring during that year.

² Direct losses incurred — the sum of losses actually paid plus funds held in reserve for future loss payments for the risks occurring during that year. Losses incurred are not the same as paid losses. Losses incurred are estimates of what may some day be paid out.

³ Loss ratio — direct losses incurred as a percentage of direct premiums earned in a given year.



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

MA

DATE: March 9, 1995
TO: INTERESTED LEGISLATORS
FROM: Gordon A. Anderson, Senior Staff Attorney
SUBJECT: Senate Substitute Amendment 1 to 1995 Assembly Bill 36, Relating to Limiting Medical Malpractice Noneconomic Damage Awards, Granting Rule-Making Authority and Making an Appropriation

This memorandum describes the changes made to Engrossed 1995 Assembly Bill 36 by Senate Substitute Amendment 1, as affected by Senate Amendment 1 to Senate Substitute Amendment 1. The Substitute Amendment was adopted by the Senate prior to concurring in Assembly Bill 36. The description of the changes are made under the appropriate subject heading.

A. FUTURE MEDICAL EXPENSES

1100 reduction

1. SECTION 1 of Senate Substitute Amendment 1 creates an appropriation for the interest earned by the Patients Compensation Fund that is attributable to amounts for future medical expense payments that are held by the Fund. Under the Substitute Amendment, interest earnings will be credited to each individual's future medical expense payment account. Also, related to this change, SECTION 4 of the Substitute Amendment contains a provision requiring the Commissioner of Insurance to include in the rule that provides for managing and disbursing future medical expense payments, a provision for the creation of separate accounts for each person and for crediting each person's account with a proportionate share of any interest earned by the Fund based on the account's proportionate share of the total Fund.

Engrossed Assembly Bill 36 does not provide for interest on an injured person's future medical expense funds or for creation of separate accounts for each person's future medical expenses.

2. Under SECTION 4 of Senate Substitute Amendment 1, the payments of future medical expenses will be made only until the amount in the person's account is exhausted or the person dies. Engrossed Assembly Bill 36 required payments to continue until the person's death, even if the account for that person is exhausted.

19 If you outline off
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Senate removed the life pay guarantee -

3. Engrossed Assembly Bill 36 provides that after deducting the first \$100,000 of future medical expenses plus an amount sufficient to pay "the reasonable costs of collection attributable to future medical expenses," the remaining amount for future medical expenses will be paid into the Fund. Substitute Amendment 1 deletes "reasonable." It also provides that the costs of collection include "attorney fees reduced to present value."

The term "reasonable costs of collection" is not defined or specified in Engrossed Assembly Bill 36. Senate Substitute Amendment 1 makes it clear that attorney fees are a part of the costs of collection. Senate Substitute Amendment 1 deletes "reasonable" from the provision because the Fund is not responsible for determining whether the expenses and attorney fees are reasonable. This is a matter of agreement between the attorney and his or her client, subject only to the provisions of s. 655.013 (1m), Stats., which governs attorney fees in malpractice actions.

B. PERIODIC PAYMENTS

1. In SECTION 7 of Senate Substitute Amendment 1, the provision relating to periodic payments of large awards from the Fund is amended to provide that it applies only to settlements or judgments that relate to acts or omissions that occur on or after the effective date of the Bill. Engrossed Assembly Bill 36 applies the periodic payments to settlements or judgments that occur on or after the effective date of the Bill, regardless of when the act or omission occurred. [See page 4, lines 6 to 8, of the Engrossed Bill.]

However, in the first sentence of s. 655.27 (5) (d), Stats., on page 3, lines 23 to 25, of the Engrossed Bill, language is inserted that appears to be intended to make the provision apply only to acts or omissions that occur after the effective date of the Bill. Because the new language was inserted in the first sentence, it does not have that effect. Thus, the change made by Senate Substitute Amendment 1 will correct the apparent conflict.

2. The clarification relating to costs of collection and attorney fees described in Section A, 3, of this memorandum is also made in the periodic payment section.

3. A provision is added to permit the Fund to pay the remaining liability in a single lump sum payment, rather than in periodic payments upon the death of an injured person if the person's death occurs before the full amount of remaining liability has been paid. Engrossed Assembly Bill 36 continues periodic payments until the amount is paid in full. There is no authorization for a lump sum payment of the balance on the death of an injured person.

C. CONTRIBUTORY NEGLIGENCE

A provision is added by Senate Substitute Amendment 1 to s. 893.55, Stats., to provide that medical malpractice actions will continue to be subject to statutory rules on contributory negligence contained in s. 895.045, Stats.

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D. EVIDENCE OF COLLATERAL PAYMENTS

Senate Amendment 1 to Senate Substitute Amendment 1 inserted an amended version of a provision that was in Assembly Bill 36 as introduced.

The version of the provision included by the Senate allows evidence of compensation for a bodily injury of the plaintiff to be admitted in an action for medical malpractice. The compensation must have been from sources other than the defendant and be for the purpose of compensating the plaintiff for the injury which is the subject of the action. The provision also states that it does not limit the rights of persons who have claims based upon subrogation.

If you have any questions or I can be of further assistance, please let me know.

GAA:lah:rjl:kja;kjf

Protect patients who blow the wad

Give us
Commitment

- ① 16 shortage areas
- ② Preserve Integrity of food
- ③ 11.2% reduction in premiums

get out of act
DACA

We are now 60%

① Dual tier - what Senate almost did

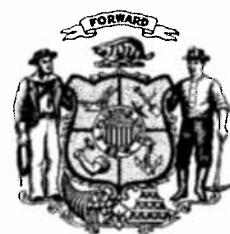
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WISCONSIN STATE LEGISLATURE



WISCONSIN CITIZEN ACTION



The State's Largest Independent Citizens' Lobby

MEMORANDUM

TO: Members of the Wisconsin State Assembly
FROM: Robert Hudek, Executive Director of Wisconsin Citizen Action
RE: Oppose AB 36
DATE: April 4, 1995

Wisconsin Citizen Action, the state's largest consumer organization urges you to vote against concurrence on AB 36. This bill does nothing to protect consumers and treat the real epidemic: doctors who commit malpractice.

Based on a study by the Harvard Medical Practice Group, it is estimated that medical malpractice causes 80,000 deaths each year. That is the equivalent of a jumbo-jet crashing each day. Since the Assembly vote on February 2, two brave and determined individuals, Frank Cornelius and Karin Smith, passed away from injuries caused by medical negligence.

Citizen Action brought Frank Cornelius to Wisconsin from Indiana to testify against AB 36. Mr. Cornelius was a former lobbyist for an insurance company, who lobbied for malpractice reforms in Indiana and then become a victim of malpractice. On March 1, Frank Cornelius died. I enclose a *New York Times* editorial written by Mr. Cornelius less than 5 months before he passed away. He prophetically wrote, "Make no mistake, damage caps are arbitrary, wholly disregarding the nature of the injury and the pain experienced by the plaintiff. ... Medical negligence cannot be reduced simply by restricting consumers' legal rights. That will happen only when the medical industry begins to effectively police its own. I don't expect to live to see that day." He did not.

Karin Smith was a 29-year old Wisconsin resident of Nashotah, WI. Her battle for better health care and against the arbitrary limits of malpractice caps was indeed courageous. I enclose an editorial she wrote condemning malpractice caps along with an editorial written by John Nichols of *The Capital Times* remembering Karin's legacy. Karin's death is now being investigated by the Milwaukee County Attorney.

Frank's and Karin's deaths are not isolated. The crisis of escalating health care errors has come into sharp focus at a time when the medical industry hopes to limit patients rights and doctor discipline in the courts. A series of well-publicized negligence cases have appeared across the country, showing that the malpractice "crisis" is not caused by too many lawsuits, but by too much medical negligence. I have enclosed newspaper stories that report:

- A Tampa Hospital amputated a patient's healthy foot rather than his diseased one. Later, a hospital employee accidentally disconnected a stroke victim's breathing machine.

*Impaired
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news +
malpractice*

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- In Michigan, a surgeon doing a mastectomy removed a woman's healthy breast, not the one with cancer.
- In Dallas, a Texas man died of cancer after a surgeon removed a healthy right lung and left a tumor in his remaining lung.
- *Boston Globe* Journalist Betsy Lehman was killed when the Dana-Faber hospital staff administered **4 times** the correct dosage of a powerful anti-cancer drug.
- A New York doctor was criminally prosecuted when he failed to transfer a patient to a hospital after he had mistook a dialysis catheter in her abdomen for a feeding tube and ordered feeding solution pumped through it. The medical community had declined to penalize the doctor since this was not a "flagrant or dramatic departure from standards."

When considering the lives destroyed by medical negligence, remember that medical malpractice insurance costs are less than 1% of the total cost of health care in Wisconsin and any change in doctors' malpractice costs will not affect health care costs. I am enclosing a study we recently released, "The Placebo Effect: Why Restricting Consumers' Rights Won't Affect Health Care Costs," which found that the percentage of health care costs paid for medical malpractice premiums has remained the same since 1987 even as insurers use less of the medical malpractice premiums for losses.

The amount spent on medical malpractice as a percentage of health care costs was tiny back in 1987 and it is still tiny in 1993, .85% of all health care costs. Limits on damages for health care consumers will have such a minuscule effect on health care costs that most consumers won't save a penny in health care costs. The figures are particularly important because Wisconsin had a limit on damages in medical malpractice lawsuits for the years 1987 through 1990, but had no limit in 1991 through 1993. The study shows the changes in the damages limit did not affect the percentage of health care costs devoted to medical malpractice.

Assembly Bill 36 is a bad bill for consumers. Please vote against concurrence.