

Fiscal Estimate Narratives

OCI 1/10/2011

LRB Number 11-0388/1	Introduction Number SB-001 (JR1)	Estimate Type Original
Description Limiting noneconomic damages awarded in actions against long-term care providers; actions against manufacturers, distributors, sellers, and promoters of certain products; confidentiality of health care services reviews; use as evidence of information regarding health care providers; reporting of quality indicators identifying individual hospitals; homicide or injury by negligent handling of a dangerous weapon, explosives, or fire; criminal abuse of individuals at risk; criminal abuse and neglect of patients and residents; evidence of lay and expert witnesses; damages for frivolous claims; and punitive damage awards		

Assumptions Used in Arriving at Fiscal Estimate

OCI does not expect January 2011 Senate Bill 1 (SB 1) to have a significant overall effect on the Injured Patients and Families Compensation Fund (IPFCF or Fund). The provisions of SB 1 as they relate to reporting of hospital quality indicators and the confidentiality of health care services reviews will promote more sharing of information related to quality assurance and risk management within healthcare organizations. Studies have shown that good risk management programs reduce both the frequency and severity of claims and contribute to reducing medical malpractice claims that may impact a primary insurance carrier and the Fund.

The provisions of SB 1 relating to limits on noneconomic damages as they apply to long-term care providers would have no impact on the Fund. Currently there are 28 nursing homes in the IPFCF that are operated as a single entity with a hospital to which the existing limits on noneconomic damages presently apply. The provisions of SB 1 would extend the same noneconomic damage limits to long-term care and nursing home facilities that are not Fund participants.

The provisions of SB 1 as they relate to the testimony of expert and lay witnesses is a codification of the Wisconsin Supreme Court's decision *Alt v. Cline*, 224 Wis.2d 72, 589 N.W.2d 21 (1999). The Fund has successfully relied on this decision to defend its position regarding the use of lay persons as expert witnesses. Although the IPFCF has been more successful in challenging plaintiff counsel's attempts to convert a lay witness to provide an expert opinion, the provisions of SB 1 will bolster the Fund's defense and potentially reduce legal expenses related to filing motions to block such treatment of lay witnesses. Further, lay witnesses may be more willing to participate in cases if they perceive a greater protection of their role as a lay not expert witness.

The provisions in SB 1 relating to Product Liability may impact the IPFCF as it occasionally brings or joins action to subrogate damages from related medical malpractice cases. Historically the Fund has filed subrogation cases against the manufacturers of medical equipment and has been able to mitigate losses paid in medical malpractice cases. One such example was the series of product liability suits the Fund joined against the manufacturer of a pedicle screw, a screw used in orthopedic surgical procedures that failed and resulted in numerous medical malpractice cases in which the Fund was a named defendant. (See, *Steve Staudt, et. al v. Froedtert Memorial Lutheran Hospital, et. al.*, 217 Wis.2d 773, 580 N.W.2d 361, 1998 Wisc. App. LEXIS 343.). This provision may potentially impact the Fund's ability to join or file such claims in the future.

The provisions of SB 1 related to frivolous lawsuits would likely have no impact on IPFCF claims as frivolous medical malpractice claims are rarely taken up by counsel. However, the IPFCF does occasionally participate in subrogation or contribution actions as a plaintiff. There are circuit court rulings that resulted in a determination by the court that since the plaintiff did not prevail the suit was therefore frivolous. If the provisions of SB 1 are interpreted by the courts in this manner, the Fund could potentially face exposure to additional litigation expense and monetary sanctions for bringing frivolous actions. Again, the Fund being in a plaintiff position occurs infrequently.

Long-Range Fiscal Implications