1997 ASSEMBLY BILL 349

May 6, 1997 - Introduced by Representative Underheim, by request of Dr. Albert L. Fisher. Referred to Committee on Government Operations.

AN ACT to amend 655.001 (8) and 655.002 (1) (intro.); and to create 655.002 (3) of the statutes; relating to: health care liability, the patients compensation fund, the mediation system and granting rule-making authority.

Analysis by the Legislative Reference Bureau

The health care liability provisions of the statutes require certain health care providers to carry health care liability insurance with liability limits of at least \$400,000 for each occurrence and at least \$1,000,000 for all occurrences in a policy year. Any portion of a medical malpractice claim that exceeds the policy limits is paid by the patients compensation fund for health care providers that are subject to the health care liability provisions. Money for the fund comes from annual assessments paid by those health care providers.

The mediation system under the health care liability provisions of the statutes also affects health care providers that are subject to the provisions. Any person who has a medical malpractice claim against a health care provider subject to the provisions may, and any person who files a medical malpractice action in court against a health care provider subject to the provisions must, file a request for mediation. The claimant and the health care provider are required to participate in mediation of the claim. Mediation costs are paid by the mediation fund, which is financed from filing fees paid by claimants and annual assessments paid by health care providers subject to the health care liability provisions.

This bill allows health care providers that are subject to the health care liability provisions of the statutes to elect not to be subject to the provisions for a fiscal year

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or a portion of a fiscal year. The commissioner of insurance must designate by rule the manner in which health care providers can make the election. A health care provider that makes the election would not be required, while the election is in effect, to carry health care liability insurance and would not be subject to the health care liability insurance limits, the assessments for the patients compensation fund and the mediation fund or the requirement to participate in mediation of a malpractice claim against the health care provider. Because the patient's compensation fund provides occurrence coverage, the patient's compensation fund would not pay for any portion of a medical malpractice claim against a health care provider that is based on services rendered while an election was in effect.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 655.001 (8) of the statutes is amended to read:

655.001 **(8)** "Health care provider" means a person to whom this chapter applies under s. 655.002 (1) and for whom the election under s. 655.002 (3) is not in effect or a person who elects to be subject to this chapter under s. 655.002 (2).

SECTION 2. 655.002 (1) (intro.) of the statutes is amended to read:

655.002 (1) MANDATORY PARTICIPATION. (intro.) Except as provided in <u>sub. (3)</u> and s. 655.003, this chapter applies to all of the following:

Section 3. 655.002 (3) of the statutes is created to read:

655.002 (3) ELECTION NOT TO PARTICIPATE. Any person to whom this chapter applies under s. 655.002 (1) may elect, in the manner designated by the commissioner by rule under s. 655.004, not to be subject to this chapter for a fiscal year or a portion of a fiscal year.

13 (END)