



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1487/1

RLR:kjf:ph

2009 ASSEMBLY BILL 44

February 17, 2009 - Introduced by Representatives KAUFERT, BENEDICT, M. WILLIAMS, GRIGSBY, BROOKS, HINTZ, GOTTLIEB, STASKUNAS, GUNDERSON, STEINBRINK, KERKMAN, ZIEGELBAUER, KNODL, LEMAHIEU, LOTHIAN, MURSAU, MURTHA, PETERSEN, PETROWSKI, RIPP, ROTH, SPANBAUER, STONE, STRACHOTA, TAUCHEN, TOWNSEND, VAN ROY, VOS and KLEEFISCH, cosponsored by Senators COGGS, KREITLOW, KAPANKE, HOLPERIN, OLSEN, LAZICH, GROTHMAN and SCHULTZ. Referred to Committee on Public Health.

1 AN ACT ***to renumber and amend*** 146.89 (1) (r); and ***to amend*** 146.89 (4) and
2 895.46 (1) (a) of the statutes; ***relating to:*** the Volunteer Health Care Provider
3 Program.

Analysis by the Legislative Reference Bureau

Currently, under the Volunteer Health Care Provider Program (program), the state indemnifies certain health care providers who provide health care services for a nonprofit agency or elementary school free of charge or, in the case of some dental service, for a discounted fee. In order to serve as a volunteer health care provider under the program, a person must submit a joint application with a nonprofit agency or elementary school, and the Department of Administration must approve the application. If volunteering for a nonprofit agency, the agency must primarily serve low-income people. The following people may become volunteer health care providers under the program: physicians, dentists, dental hygienists, registered nurses, practical nurses, nurse-midwives, optometrists, physician assistants, pharmacists, dieticians, nurse practitioners, and pharmacy technicians. If a claim is brought against a volunteer health care provider for acts or omissions committed in the course of providing health care services under the program, the state must provide or pay for legal representation for the volunteer health care provider and must pay damages and costs awarded against the volunteer health care provider to the extent that legal representation, damages, and costs are not covered by any applicable insurance.

This bill requires the state to provide or pay for legal representation and pay damages and costs awarded against a volunteer health care provider in connection

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with a claim arising against the volunteer health care provider for acts or omissions committed in the course of providing volunteer health care services under the program, regardless of whether any applicable insurance covers the costs of legal representation, damages, or costs. The bill also allows chiropractors and physical therapists to become volunteer health care providers under the program.

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:

1 **SECTION 1.** 146.89 (1) (r) of the statutes is renumbered 146.89 (1) (r) (intro.) and
2 amended to read:

3 146.89 (1) (r) (intro.) "Volunteer health care provider" means an individual who
4 is licensed one of the following and who receives no income from the practice of his
5 or her health care profession or who receives no income from the practice of that
6 health care profession when providing services at the nonprofit agency specified
7 under sub. (3) or for the school board or governing body specified under sub. (3r):

8 1. Licensed as a physician under ch. 448, dentist or dental hygienist under ch.
9 447, or registered nurse, practical nurse, or nurse-midwife under ch. 441, an
10 optometrist under ch. 449, or a physician assistant under ch. 448, or pharmacist
11 under ch. 450, who is certified chiropractor under ch. 446, or physical therapist under
12 subch. III of ch. 448.

13 2. Certified as a dietitian under subch. V of ch. 448, or who is a,

14 3. A nurse practitioner, as defined in s. 255.06 (1) (d), or,

15 4. An individual who performs functions described for pharmacy technicians
16 in rules promulgated by the pharmacy examining board, and who receives no income
17 from the practice of that health care profession or who receives no income from the

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1 practice of that health care profession when providing services at the nonprofit
2 agency or school specified under sub. (3).

3 **SECTION 2.** 146.89 (4) of the statutes is amended to read:

4 146.89 (4) Volunteer health care providers who provide services under this
5 section are, for the provision of these services, state agents of the department of
6 health services for purposes of ss. 165.25 (6), 893.82 (3) and 895.46. This state agency
7 status applies regardless of whether the volunteer health care provider has coverage
8 under a policy of health care liability insurance that would extend to services
9 provided by the volunteer health care provider under this section; and the
10 limitations under s. 895.46 (1) (a) on the payment by the state of damages and costs
11 in excess of any insurance coverage applicable to the agent and on the duty of a
12 governmental unit to provide or pay for legal representation do not apply. Any policy
13 of health care liability insurance providing coverage for services of a health care
14 provider may exclude coverage for services provided by the health care provider
15 under this section.

16 **SECTION 3.** 895.46 (1) (a) of the statutes is amended to read:

17 895.46 (1) (a) If the defendant in any action or special proceeding is a public
18 officer or employee and is proceeded against in an official capacity or is proceeded
19 against as an individual because of acts committed while carrying out duties as an
20 officer or employee and the jury or the court finds that the defendant was acting
21 within the scope of employment, the judgment as to damages and costs entered
22 against the officer or employee, except as provided in s. 146.89 (4), in excess of any
23 insurance applicable to the officer or employee shall be paid by the state or political
24 subdivision of which the defendant is an officer or employee. Agents of any
25 department of the state shall be covered by this section while acting within the scope

1 of their agency. Regardless of the results of the litigation the governmental unit, if
2 it does not provide legal counsel to the defendant officer or employee, shall pay
3 reasonable attorney fees and costs of defending the action, unless it is found by the
4 court or jury that the defendant officer or employee did not act within the scope of
5 employment. The Except as provided in s. 146.89 (4), the duty of a governmental unit
6 to provide or pay for the provision of legal representation does not apply to the extent
7 that applicable insurance provides that representation. If the employing state
8 agency or the attorney general denies that the state officer, employee or agent was
9 doing any act growing out of or committed in the course of the discharge of his or her
10 duties, the attorney general may appear on behalf of the state to contest that issue
11 without waiving the state's sovereign immunity to suit. Failure by the officer or
12 employee to give notice to his or her department head of an action or special
13 proceeding commenced against the defendant officer or employee as soon as
14 reasonably possible is a bar to recovery by the officer or employee from the state or
15 political subdivision of reasonable attorney fees and costs of defending the action.
16 The attorney fees and expenses shall not be recoverable if the state or political
17 subdivision offers the officer or employee legal counsel and the offer is refused by the
18 defendant officer or employee. If the officer, employee or agent of the state refuses
19 to cooperate in the defense of the litigation, the officer, employee or agent is not
20 eligible for any indemnification or for the provision of legal counsel by the
21 governmental unit under this section.

22 **SECTION 4. Initial applicability.**

23 (1) HEALTH CARE LIABILITY INSURANCE. This act first applies to health care
24 liability insurance policies issued or renewed on the effective date of this subsection.