

Remove Budget Provisions Affecting Wisconsin's Civil Justice System

WHA respectfully requests that the budget bill (AB 75) provisions relating to joint and several liability, contributory negligence and jury instructions be removed from the budget bill to ensure that these proposals be given fair and deliberate consideration.

Wisconsin has a carefully crafted medical malpractice system that includes mandatory, unlimited malpractice coverage for many Wisconsin health care providers through the Injured Patients and Families Compensation Fund (IPFCF). To our knowledge, no other person or employee in the state of Wisconsin is required to have unlimited liability coverage. Changes to joint and several liability, contributory negligence and jury instructions in the budget bill should be removed to ensure thorough consideration of **possible unintended consequences to the IPFCF, Wisconsin health care providers, and patient care in Wisconsin.** For example:

- Will Wisconsin hospitals and physicians, who are required by law to have unlimited malpractice coverage through the IPFCF, become even bigger targets for lawsuits?
- Will Wisconsin providers become reluctant to accept cases from physicians who are employed by the state, counties or municipalities and have special liability limits?
- Will damages caused by health care providers that are public employees be shifted on to private sector health care providers that are minimally at fault?
- Will damages caused by **out of state health care providers** be shifted on to Wisconsin health care providers that are minimally at fault?
- Will the changes affect the delivery of care to patients?
- Will the changes or the uncertainty associated with the changes increase insurance rates?
- Will the changes make Wisconsin a more hostile place for physicians and **discourage physicians from practicing in Wisconsin?**

Joint and Several Liability (AB 75, page 1605)

What the budget bill does:

- Anyone with equal or greater fault than the plaintiff can be held 100% responsible (“jointly and severally liable”), even if only 1% at fault.
- **Never before has Wisconsin law required someone to pay damages to another who is more at fault.**
- In the few states with this law, plaintiff lawyers sue people or entities **that have only minimal connection** with the lawsuit. Defendants in states with such expansive joint and several liability laws often settle out of court for fear of being saddled with paying the entire judgment even though they are only partially liable.

Wisconsin's current law regarding joint and several liability:

- A defendant can only be fully liable for all damages if he or she is 51% or more at fault.
- Current law apportions fault between or among parties and sets the level of damages as a result of the injury.

Comparative Negligence (AB 75, page 1605)

What the budget bill does:

- Unless the plaintiff was more than 50% at fault, a plaintiff could recover from a defendant even **if the plaintiff is more at fault than the particular defendant.**
- On a macro level, plaintiffs will recover more damages and more defendants will be paying damages as a result of the change to the comparative negligence law.

Wisconsin's current law:

- A plaintiff may only recover from a defendant if the defendant was more at fault than the plaintiff.

Jurors to be Told of the Effect of their Verdicts (AB 75, page 1588)

What the budget bill does:

- The court must inform the jury how the jury's findings on fault affect responsibility for damages; that is, to allow the jury to adjust fault determinations to maximize awards.

Wisconsin's current law:

- Existing law limits a jury's duty to fact finding, consistent with over a hundred-year rule of jurisprudence. Prior to 1995, the jury was not instructed how to modify findings of fault to maximize awards.