

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: **06/26/99**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Senate Democratic Caucus 266-2257**

By/Representing: **Walter**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact:

Alt. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **TAY**

Pre Topic:

SDC:.....Walter - #2713,

Topic:

Confidentiality of health care information

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|---------------------|---------------------|--------------------|----------------|--------------------------|-----------------|-----------------|
| /? | kenneda 06/27/99 | gilfokm 06/27/99 | | _____ | | | |
| /1 | | | ismith 06/28/99 | _____ | lrb_docadmin 06/28/99 | | |
| /2 | kenneda 06/29/99 | gilfokm 06/29/99 | mclark 06/29/99 | _____ | lrb_docadmin 06/29/99 | | |

FE Sent For:

<END>

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|--------------|---------------------|---------------------|--------------------|--------------------------|--------------------------|-----------------|-----------------|
| /? | kenneda 06/27/99 | gilfokm 06/27/99 | | _____ | | | |
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| FE Sent For: | | | MRC 6/29 | DEO/MGD 6/29 <END> | | | |

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|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| 1? | kenneda | 11-6-99 KMG | IS 6/28 | IS/SH 6/28 | | | |

FF Sent For:

<END>

yes

SDC

Agency: Health and Family Services - Public Health

caucus number: 2713

duplicate flag:

Other reference numbers: Paper 509 alt 1e

LFB Sum #:

duplicate with:

bill number/amendment number:

LRB draft #

LRB P-draft:

description: Office of Health Care Information Data Collection. Adopt alt. 3 to Paper 509 which provides funding and positions to support the collection, analysis and dissemination of physician patient encounter data.

other notes:

drafting instructions: Adopt alt. 1e to Paper 509 (see above)

60776

more instructions:

Agency: **Health and Family Services - Public Health**

Number of Amendments: 1

Adopt Alternative 1E to Paper 509, which provides funding and positions to support the collection, analysis and dissemination of physician patient encounter data.



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

April 27, 1999

Joint Committee on Finance

Paper #509

Office of Health Care Information Data Collection (DHFS -- Public Health)

CURRENT LAW

Chapter 153 of the statutes governs the collection, analysis and dissemination of health care information by the DHFS Bureau of Health Information (BHI). Prior to 1997 Wisconsin Act 231, the BHI collected, analyzed and disseminated information about hospital service utilization, charges, revenues, expenditures, mortality and morbidity rates, health care coverage and uncompensated health care coverage. In addition to data on hospitals, BHI collected information on selected hospital-based outpatient surgery and ambulatory surgery centers and other health care providers. BHI and the Board on Health Care Information, an advisory board attached to DHFS, are funded from assessments made on hospitals' respective gross private-pay patient revenues during each hospital's most recently concluded fiscal year and ambulatory surgery center assessments. BHI also requires user fees for providing data compilation and special reports.

Act 231 made a number of modifications to the Department's authority and responsibility to collect and disseminate health care information. Act 231 deleted specific sources of health care information to be collected and the specific reports that DHFS was required to prepare. Instead, the act requires DHFS to specify by rule the standard reports that it would issue and the uniform data set of information that it would collect.

DHFS is required by law to produce an annual report on uncompensated health care provided by hospitals. Act 231 also requires DHFS to prepare and submit to the Governor and the Legislature an annual guide to assist consumers in selecting health providers and health care plans. DHFS must write the consumer guide in language that is understandable to laypersons and widely publicize and distribute the guide to consumers.

Act 231 requires BHI to study, develop and implement a voluntary system of health care plan reporting that enables purchasers and consumers to assess the performance of health care plans and health care providers that are employed or reimbursed by the health care plans.

Act 231 modified the Department's authority relating to assessments so that DHFS may assess all health care providers that are in a class of health providers from which BHI collects health care data, rather than just hospitals and ambulatory surgery centers. BHI may not assess health care providers, other than facilities, more than \$75 per fiscal year. The Board on Health Care Information must approve all assessments.

GOVERNOR

No provision.

DISCUSSION POINTS

1. BHI has been collecting hospital inpatient and ambulatory surgery data since 1987. The Act 231 provisions broaden the focus of BHI activities and responsibilities to include outpatient data collection so that the state can provide consumers, employers, insurers and others with comparative utilization, cost and quality information. Subsequent to the passage of Act 231, BHI developed five proposals to comply with Act 231 requirements. These proposals relate to: (a) voluntary submission of health plan data; (b) health care provider workforce data; (c) emergency department data; (d) non-physician outpatient encounter data; and (e) physician outpatient data. BHI has contracted with the Center for Health Systems Research and Analysis (CHSRA) at the University of Wisconsin-Madison to assist with the implementation of Act 231.

Voluntary Health Plan Data

2. The voluntary health plan data proposal would be the basis for the consumer guide mandated in Act 231. All of the data elements that would be included in the guide are currently collected either by the Department of Employee Trust Funds (ETF), the DHFS Division of Health Care Financing (DHCF) through the medical assistance program or the Office of the Commissioner of Insurance (OCI). BHI has been working with the DHCF, ETF and OCI to coordinate each agency's respective activities related to the collection of health plan information. Staff from each of the three agencies have been meeting to: (a) define appropriate data elements; (b) standardize the data elements; and (c) work toward a common consumer satisfaction survey for all three agencies.

3. Act 231 requires the BHI to widely publicize and distribute a consumer guide. Based on recent evidence regarding the use of the internet to obtain health information, the Department has determined that the most effective vehicle for distributing the consumer guide would be to create a website for health care consumers. Excerpts from the world wide web (WWW) consumer guide would also be produced as paper documents on specific topics, such as "how to select a doctor." CHSRA has designed, developed and tested a prototype consumer guide web page. The prototype has also been tested in consumer focus groups and is being modified to reflect suggestions made by the consumer focus groups. BHI is drafting a memorandum of understanding between the three agencies regarding this project and an implementation timeline.

4. The budget for the voluntary health plan data project is \$120,000 PR annually and the project would require 1.5 PR positions, beginning in 1999-00. The full-time position would be responsible for management and analysis of the data and the preparation of the data for public release. The half-time position would be responsible for interagency coordination, provider assessment and budgetary issues and contract development and monitoring and other administrative tasks.

DHFS would assess HMOs to support the costs of the project. Although DHFS has no authority to assess HMOs to support the project, the Department anticipates that HMOs may voluntarily pay an assessment because this proposal could reduce HMO costs. HMOs are currently required to submit data to multiple state agencies at different times and in different formats. Under this proposal, HMO data submission would be consolidated between the various state agencies, which could result in HMO administrative savings.

Health Care Workforce Data

5. The Department has been collecting information about the state's health care provider workforce since 1992. Although DHFS is statutorily required to collect this data, staff have only collected this data periodically through paper surveys when LTEs, permanent staff or interns have been available. DHFS staff indicate that the lack of permanent staff to manage this project has not only affected the regularity of the survey, but also the understanding and use of the data. This data has only been available in electronic format and only persons with certain analytic capabilities have been able to use this information.

The surveys vary by provider type, but each survey collects general practice information, including: (a) education level and degrees; (b) specialties; (c) board certification; (d) managed care affiliation; and (e) acceptance of medical assistance and Medicare patients. Each of these surveys was reviewed by an advisory committee consisting of providers from whom the data was collected. The following table provides a summary of prior health care provider workforce surveys and the year(s) in which they were conducted:

| <u>Provider</u> | <u>Year(s) of Survey</u> |
|------------------------------------|--------------------------|
| Alcohol and Other Drugs Counselors | 1995 |
| Chiropractor | 1993 and 1995 |
| Dentist | 1993 |
| Nurse, Advanced Practice | 1994 |
| Nurse, R.N. | 1994 |
| Occupational Therapist | 1993 |
| Optometrist | 1993 |
| Physical Therapist | 1993 |
| Physician, M.D. and D.O. | 1991, 1993 and 1996 |
| Physician Assistant | 1993 and 1996 |
| Podiatrist | 1993 |
| Psychologist | 1993 |

6. Workforce data has many applications for a variety of organizations, including other state agencies, researchers, health care professional associations and other private sector organizations. The Department regularly uses this data to identify health care professional shortage areas (HPSAs) in the state. HPSA designations are used to adjust Medicare and MA payment rates and to bring additional federal dollars to the state.

7. Under the BHI proposal, the Department would continue to involve provider advisory committees in the development of the surveys. Providers would be required to complete the survey biennially in order to comply with the statutes and administrative rule, but not as a condition of licensure.

8. This proposal includes the authorization of 1.0 PR position to manage the project. In addition to planning the surveys, this position would: (a) analyze and edit the data; (b) construct the database; and (c) provide descriptive statistical reports and special tabulations. Total costs would be \$120,000 PR annually. These costs would be supported by an assessment on the provider that would be surveyed. The following table provides a summary of the estimated assessment amount for the survey, by provider type:

| <u>Provider Type</u> | <u>Estimated Survey Assessment</u> |
|--------------------------|------------------------------------|
| Chiropractor | \$6.10 |
| Dental Hygienist | 4.67 |
| Dentist | 4.46 |
| Nurse, Advanced Practice | 9.25 |
| Nurse, R.N. | 2.81 |
| Occupational Therapist | 4.82 |
| Physician Therapist | 4.61 |
| Physician Assistant | 9.99 |
| Physician | 3.17 |
| Podiatrist | 20.56 |

Funds generated by an assessment on a particular provider group would only be used to fund the collection, processing and analysis of that provider group's survey. In other words, an assessment on dentists would only be used to support the costs of the dental survey. If the assessment revenues were more than the cost of the survey, the difference would be available to offset the costs of the next survey.

Emergency Department Data

9. While BHI is able to collect information on hospitalized injury patients, the usefulness of this data is limited by the fact that it does not include injuries that are treated in emergency rooms but do not result in a hospital inpatient admission. It is estimated that 60% to 80% of emergency rooms visits for injuries do not result in an admission. Emergency departments represent the greatest number of encounters for injury treatment and the highest proportion of

charges for injury care. Emergency department data is critical for injury prevention activities and health care cost containment strategies. In addition, emergency room data can be linked with hospital inpatient care data to provide a more comprehensive understanding of health care services.

Many entities support collecting emergency department data and a number of organizations have already requested emergency department data from BHI, including: (a) the Wisconsin Health and Hospital Association; (b) the DHFS Division of Public Health; (c) Metastar (the state's peer review organization); and (d) the Centers for Disease Control and Prevention.

10. In 1996, BHI conducted a pilot for emergency room data collection. The Bureau collected six months worth of emergency data from seven facilities in order to test the feasibility of emergency department data collection. The seven facilities represented one urban area, three large cities and three rural areas. After the conclusion of the pilot, BHI determined that hospital emergency departments were capable of submitting data in an appropriate electronic format.

11. Total costs for this project would be \$60,000 PR annually, including 1.0 PR position, beginning in 1999-00. This position would be responsible for providing technical assistance in the development and implementation of the emergency department database, including database design, data collection and editing and database construction. These costs would be supported by an increase to the assessment on non-public sector hospitals. Each hospital's assessment would be based on the facility's total number of immediate care visits as a percentage of total immediate care visits for the state. For example, if a hospital's immediate care visits represented 1% of the total immediate care visits in the state, its share of the emergency department data assessment would be 1%. Using 1997 hospital data, it is estimated that the lowest assessment paid by a hospital would be \$6 and the highest assessment would be approximately \$2,240.

Non-Physician Patient Encounter Data

12. Under this proposal, BHI would collect patient encounter data from non-physician health care providers. In 1999-01, DHFS indicates that it would collect data from chiropractors and podiatrists. These providers would be required to submit full or abstracted standard billing forms (HCFA -1500 form) to BHI. These forms contain information on procedures, diagnosis, charges and demographic patient information. The name, street address and social security number of the patient would not be included. Collection of this data would complement physician patient encounter data and would be useful to employers, insurers, labor unions and others.

13. DHFS would fully implement this project in the second year of the biennium. In 1999-00, contract staff would conduct technical advisory panels to determine the data elements that should be collected. The contractor would also prepare the data submission manual and conduct trainings around the state for data providers and their staff to learn how to submit the data. In addition, it would be necessary to identify and address security issues, integrate the new software and implement and test the new the new data collection system. In 2000-01, the health care data collection would commence.

14. DHFS estimates that the total costs for this project would be \$70,000 annually, including support for 1.0 PR position, beginning in 2000-01. In 1999-00, the project would be supported with contracted staff. These costs would be supported by an assessment on chiropractors and podiatrists. It is estimated that this assessment would be approximately \$32.50 per provider.

Outpatient Data Collection

15. 1997 Act 237, the budget adjustment act, provided \$250,000 GPR in 1998-99 on a one-time basis to support the costs of developing a system for collecting physician encounter data. BHI developed and implemented a two-year pilot project for the collection of physician data, which began in 1998-99. In addition to the financial investment in the pilot project, BHI staff and other stakeholders have invested significant time in the planning of and training for an outpatient data collection system, including the development of draft administrative rules required under Act 231.

16. The \$250,000 GPR provided for the pilot supports the following activities:

- Development of the data collection mechanism;
- In-house testing of the collection mechanism;
- Development and testing of editing and validation procedures;
- Pilot data submission-testing the system with actual data;
- Development of a technical submission manual for providers;
- Training for submitters of data;
- Technical panel on data uses and risk adjustment;
- Design of consumer materials;
- Testing of risk-adjustment software on pilot data; and
- Notification and communication with providers

17. Three technical meetings were held in October, 1998, in Appleton, Brookfield and Madison. The objective of these meetings was to bring health care providers, businesses and researchers together to develop an approach for the design of an outpatient data collection system. Meeting participants were also provided the opportunity to complete a "tradeoffs" survey. The tradeoffs survey allowed the participants to advise the BHI as to whether they would prefer medical record abstraction or claims data submission or if they would prefer to submit a large percentage of data over a short period of time versus submitting a small percentage of data over a long period of time. Based on input from the survey, BHI decided that a 10% sample of claims would be collected on a year-round basis and physicians would submit claims data.

18. In March, 1999, a working group was convened to address issues related to data submission and implementation timelines. This workgroup included representatives of large and small clinics, physicians, information specialists, health care provider associations and financial and health care claims experts. The result of the workgroup was the development of specifications of the data submission system. Another committee will be convened to address risk-adjustment issues. Risk adjustment committee members would include individuals with expertise in statistics and

claims-based risk adjustment methods. The proposed final design of the system is expected to be completed by August, 1999.

19. BHI would conduct two pilots before fully implementing the outpatient data collection system. The first pilot, which began this year, will focus on acquiring and editing data and testing risk-adjustment methods. Three entities have agreed to submit data to BHI for the pilot, including a large physician group. One of these entities has already provided data from its clinics.

20. BHI contracted with CHRSA to assess the capacity of physicians to submit electronic claims because there was not existing information on the number of physicians that had this capacity. CHRSA utilized the MA claims data system to characterize the number and types of providers that are able to submit electronic claims. Under current law, providers for whom claim submission would be too burdensome would be exempt from the data collection requirements. The analysis conducted by CHRSA will help BHI determine which specialties or practices would be exempt from data submission.

21. Total costs for this proposal in the 1999-01 biennium are \$250,000 PR in 1999-00 and \$500,000 PR in 2000-01 and 3.5 FTE PR positions, beginning in 1999-00. The outpatient data collection system would increase the number of data submitters from 150 to over 10,000 and would increase the number of submitted records from one million to 300 million. The newly authorized staff would be responsible for the technical and statistical aspects of data editing, validation and risk-adjustment processes. Staff would also be responsible for preparing special data requests.

Costs for the outpatient data collection proposal would be supported through assessments on licensed, practicing physicians. It is estimated that this assessment would be \$23.00 in 1999-00 and \$46.00 in 2000-01. This assessment would be in addition to the workforce survey assessment. Under current law, assessments on non-facility health care providers cannot exceed \$75 per year.

22. The Senate Committee on Health, Utilities and Veterans and Military Affairs recommended by a vote of six to one to provide \$536,900 PR in 1999-00 and \$870,000 PR in 2000-01 and 8.5 positions to support the five proposed projects.

23. DHFS submitted these five proposals as part of its 1999-01 budget request. The Governor did not include any of these proposals in the bill. Current BHI staffing levels and expenditure authority are not sufficient to support these projects or to meet the intent of Act 231 provisions. Therefore, the Committee could provide increased expenditure and position authority to support one or more of these projects in order for DHFS to implement the provisions of Act 231.

24. Alternatively, if the Committee does not wish to provide DHFS with the resources to implement Act 231, it could repeal the Act 231 provisions relating to the collection, analysis and dissemination of health care data and restore the statutory provisions relating to the collection, analysis and dissemination of hospital and ambulatory surgery data, include the preparation of specified reports that were deleted under Act 231. The Committee could also repeal the Department's authority to assess providers other than hospitals and ambulatory surgery centers.

ALTERNATIVES

1. Select one or more of the following alternatives:

a. *Voluntary Health Plan Data.* Provide \$120,000 PR annually and 1.5 PR positions, beginning in 1999-00, to support the collection, analysis and dissemination of voluntary health plan data and the development of a consumer health care guide.

| Alternative 1a | PR |
|------------------------------------|-----------|
| 1999-01 REVENUE (Change to Bill) | \$240,000 |
| 1999-01 FUNDING (Change to Bill) | \$240,000 |
| 2000-01 POSITIONS (Change to Bill) | 1.50 |

b. *Health Care Workforce Data.* Provide \$120,000 PR annually and 1.0 PR position, beginning in 1999-00, to support biennial health care provider workforce survey and the analysis and dissemination of survey data.

| Alternative 1b | PR |
|------------------------------------|-----------|
| 1999-01 REVENUE (Change to Bill) | \$240,000 |
| 1999-01 FUNDING (Change to Bill) | \$240,000 |
| 2000-01 POSITIONS (Change to Bill) | 1.50 |

c. *Emergency Department Data.* Provide \$60,000 PR annually and 1.0 PR position, beginning in 1999-00, to support the collection, analysis and dissemination of emergency room data.

| Alternative 1c | PR |
|------------------------------------|-----------|
| 1999-01 REVENUE (Change to Bill) | \$120,000 |
| 1999-01 FUNDING (Change to Bill) | \$120,000 |
| 2000-01 POSITIONS (Change to Bill) | 1.00 |

d. *Non-Physician Patient Encounter Data.* Provide \$70,000 PR annually and 1.0 PR position, beginning in 2000-01, to support the collection, analysis and dissemination of non-physician patient encounter data.

| <u>Alternative 1d</u> | <u>PR</u> |
|------------------------------------|-----------|
| 1999-01 REVENUE (Change to Bill) | \$140,000 |
| 1999-01 FUNDING (Change to Bill) | \$140,000 |
| 2000-01 POSITIONS (Change to Bill) | 1.00 |

*WEAC
Supports*

e. *Outpatient Data Collection.* Provide \$250,000 PR in 1999-00 and \$500,000 PR in 2000-01 and 3.5 PR positions, beginning in 1999-00, to support the collection, analysis and dissemination of physician patient encounter data.

| <u>Alternative 1e</u> | <u>PR</u> |
|------------------------------------|-----------|
| 1999-01 FUNDING (Change to Bill) | \$750,000 |
| 2000-01 POSITIONS (Change to Bill) | 3.50 |

2. Repeal Act 231 provisions relating to the collection, analysis and dissemination of health care data and reinstate statutory provisions relating to the collection, analysis and dissemination of hospital and ambulatory surgery data, including the preparation of specified reports that were repealed under Act 231. Repeal the Department's authority to assess health care providers other than hospitals and ambulatory surgery centers.

3. Maintain current law.

Prepared by: Amie T. Goldman

modify

SDC

Agency: Health and Family Services - Public Health

caucus number 2713

duplicate flag:

duplicate with:

| | |
|---|--------------|
| Other reference numbers: Paper 509 alt 1e | LFB Sum #: |
| bill number/amendment number: | |
| LRB draft # | LRB P-draft: |

description: Office of Health Care Information Data Collection. Adopt alt. 3 to Paper 509 which provides funding and positions to support the collection, analysis and dissemination of physician patient encounter data. Modified to reflect comp. B/w Moen&Underheim

other notes **Modify to: effect compromise between Rep. Underheim and Senator Moen per attached LFB memo**

drafting instructions: Adopt alt. 1e to Paper 509 (see above)

more instructions:

Agency: **Health and Family Services - Public Health**

Number of Amendments: 1

From Doug Burnett: unnecessary to draft these under this caucus number; the positions + \$ are duplicated under caucus # 4201 (LRBb1395).

DAK



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
Email: leg.council@legis.state.wi.us

DATE: June 22, 1999
TO: REPRESENTATIVE GREGG UNDERHEIM
FROM: Richard Sweet, Senior Staff Attorney
SUBJECT: Proposal Regarding Confidentiality of Health Care Information

This memorandum summarizes a proposal regarding confidentiality of health care information collected by the Department of Health and Family Services (DHFS) under ch. 153, Stats. The following are the changes that the proposal would make to current law:

1. Under the proposal, all data obtained under ch. 153, Stats., would not be subject to inspection, copying or receipt under the Open Records Law. Under current law, only patient-identifiable data and health care provider-identifiable data are not subject to inspection, copying or receipt under the Open Records Law.
2. One of the methods for DHFS to release data under current law is custom-designed reports. Under the proposal, for information submitted by health care providers who are not hospitals or ambulatory surgery centers, requests for data elements, other than those available for public use files, would require review and approval by a newly created Independent Review Board (IRB) before the data elements may be released in custom-designed reports. DHFS may release information that contains the name of a health care provider who is not a hospital or ambulatory surgery center only if either: (a) the IRB grants approval for the release; or (b) DHFS rules specify information that contains the name of such a provider that does not have to be reviewed and approved by the IRB prior to release.

The IRB would consist of the following members: (a) a statistician or researcher; (b) a medical ethicist from the University of Wisconsin or the Medical College of Wisconsin; (c) a privacy expert; (d) a health care purchaser; and (e) the Commissioner of Insurance or his or her designee. The first four members would be appointed by the Governor. DHFS employees may not be members of the IRB. The IRB would be attached administratively to DHFS and members would serve staggered four-year terms. IRB rules must be approved by the Board on Health Care Information.

3. Under the proposal, for information submitted by health care providers who are not hospitals or ambulatory surgery centers, custom-designed reports may include the patient's zip code only if at least one of the following applies: (a) other potentially identifying data elements are not released; (b) population density is sufficient to mask patient identity; (c) other potentially identifying data elements are grouped to provide population density sufficient to protect identity; or (d) multiple years of data elements are added to protect identity.

4. Current law provides that the identification of patients, employers or health care providers must be protected by all necessary means with respect to release of public use data files, including the deletion of patient identifiers and the use of calculated variables and aggregated variables. The proposal adds that "all necessary means" also includes: (a) the specification of counties as to residence, rather than zip codes; (b) the use of five-year categories for age, rather than exact age; (c) not releasing information regarding a patient's race or ethnicity or dates of admission, discharge, procedures or visits; and (d) masking sensitive diagnoses or procedures by use of larger diagnostic and procedure categories.

5. Under the proposal, DHFS would be required to develop, for use by purchasers of data under ch. 153, Stats., a data use agreement that specifies data use restrictions, appropriate use of data and penalties for misuse of data, and must notify prospective and current purchasers of data of the appropriate uses. In addition, the proposal would require that a purchaser of data sign and have notarized the data use agreement.

6. The definition of "patient-identifiable data" in current law is expanded to include the following items, for information submitted by health care providers who are not hospitals or ambulatory surgery centers: (a) whether the patient's condition is related to employment and occurrence and place of an auto accident or other accident; (b) the date of first symptom of current illness, current injury or current pregnancy; (c) the first date of the patient's same or similar illness, if any; (d) the dates that the patient has been unable to work in his or her current occupation; (e) the dates of receipt by the patient of medical service; and (f) the patient's city. DHFS would be given authority to use calendar quarter of service, rather than date of service, in public use data files except in those instances where DHFS specifies by rule that the number of data elements included is too small to protect patient confidentiality.

For information submitted by health care providers who are not hospitals or ambulatory surgery centers: (a) the patient's month and year of birth may be released in custom-designed reports; and (b) the patient's full date of birth may be used only for the purposes in s. 153.50 (4), Stats., and subject to rules promulgated by DHFS.

Under current law, patient-identifiable data may be released to any of the following: (a) the patient or a person granted written permission by the patient; (b) an agent of DHFS who is responsible for patient-identifiable data in DHFS, in order to store and ensure the accuracy of the data; (c) a health care provider or his or her agent, in order to ensure the accuracy of the data; (d) DHFS, for epidemiological investigations or to eliminate duplicative databases; or (e) an entity that is required by federal or state statute to obtain the data, for epidemiological purposes or to eliminate duplicative databases. The proposal would say that patient-identifiable data may be released "only" under those circumstances. Also, the first circumstance would be repealed.

7. Current law requires DHFS to remove and destroy specified data elements on the uniform patient billing forms that are received by DHFS. Under the proposal, health care providers who are not hospitals or ambulatory surgery centers would be prohibited from submitting these data elements to DHFS. For hospitals and ambulatory surgery centers, the provider could choose not to submit them or to submit them and have DHFS remove them. Also, under the proposal, the following additional items would not be submitted by health care providers who are not hospitals or ambulatory surgery centers: (a) the patient's telephone number; (b) the insured's employer's name or school name; (c) all data regarding other insureds (except as described in item 9.); (d) the patient's employer's or school name; (e) the patient's relationship to the insured; (f) the insured's identification number; (g) the insured's policy or group number; (h) the insured's date of birth and sex; and (i) the patient's marital, employment or student status.

If providers submit any of the prohibited data elements, DHFS would be required to immediately return them to the providers. If the DHFS screening fails to initially detect the prohibited data elements, DHFS would be required to destroy them.

Under the proposal, health care providers submitting information to DHFS under ch. 153, Stats., would be immune from liability for any harm or damages resulting from either an inadvertent or negligent release of prohibited data elements while submitting data to DHFS, would be immune from liability under s. 146.84, Stats., when submitting data under ch. 153, Stats., and would be immune from liability for any harm or damages resulting from the release of any data by DHFS.

8. Under the proposal, the patient's account number would be destroyed by DHFS after verification of data by DHFS and may only be used for verification. Health care providers would be prohibited from using either of the following as a patient account number: (a) the patient's Social Security number or any substantial portion thereof; or (b) a number that is related to another patient identifying number.

9. Under the proposal, for information submitted by health care providers who are not hospitals or ambulatory surgery centers, the name of the insured's payer or other insured's payer would be converted to a DHFS payer category code by the provider prior to submission.

10. Under the proposal, an employer would be prohibited from requesting release of patient-identifiable data that is specific to an employee of that employer.

11. Under current law, whoever intentionally violates specified statutes or rules on release of data collected under ch. 153, Stats., may be fined not more than \$10,000, imprisoned for not more than nine months, or both. The proposal would increase the maximum fine to \$15,000 and the maximum imprisonment to one year.

12. Under the proposal, public use data files for information submitted by health care providers who are not hospitals or ambulatory surgery centers may include only: (a) the patient's county; (b) payment source, by type; (c) the patient's age category by five-year intervals up to age 80, then a category of 80 and over; (d) the patient's procedure code; (e) the patient's diagnosis code; (f) charges per procedure code; (g) the name and address of the facility where services were rendered; (h) the patient's sex; (i) provider-specific information as specified

in item 2.; (j) quarterly dates of service as specified in item 6.; and (k) other information (other than patient-identifiable data) approved by the IRB.

13. Under the proposal, the department may not sell or distribute databases, for individuals who are health care providers, that can be linked with the public use data files, without the approval of the IRB.

14. Under current law, the Board of Health Care Information consists of 11 members, including a record administrator and five representatives of health care providers, two of whom must be physicians and one of whom must be a registered nurse. The proposal would require that the other two provider members be representatives of hospitals. Of the remaining five members, the proposal would require that at least two be employer purchasers of health care.

Feel free to contact me if I can be of further assistance.

RNS:all:wu;tlujal

1999

Date (time) needed

SOON -
In edit 6/27

LRB b 1391 / 1

**CAUCUS BUDGET AMENDMENT
[ONLY FOR CAUCUS]**

DAK : King :

See form **AMENDMENTS — COMPONENTS & ITEMS.**

SDC

**CAUCUS AMENDMENT
TO ASSEMBLY SUBSTITUTE AMENDMENT 1
TO 1999 ASSEMBLY BILL 133**

>>FOR CAUCUS SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

#. Page , line :

ARC:..... *Kratochwill* # *—*, Confidentiality of health care information *1*

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 24, line 9: after that line insert:

3 **“SECTION 3g.** 15.195 (6) of the statutes is amended to read:

4 15.195 (6) BOARD ON HEALTH CARE INFORMATION. There is created a board on
5 health care information which is attached to the department of health and family
6 services under s. 15.03. The board shall consist of 11 members, one of whom shall
7 be a record administrator, registered by the American Medical Record Association,
8 and; 5 of whom shall be or represent health care providers, including one registered
9 nurse, licensed under s. 441.06, and 2 physicians, as defined in s. 448.01 (5); 2 of
10 whom shall represent hospitals, as defined in s. 50.33 (2); and at least 2 of whom shall

1 be employer purchasers of health care. The State Medical Society of Wisconsin may
2 recommend board membership for 5 physicians, one of whom the governor shall
3 appoint. The members shall be appointed for 4-year terms.

4 **SECTION 30r.** 15.195 (9) of the statutes is created to read:

5 15.195 (9) PRIVACY INSTITUTIONAL REVIEW BOARD. There is created a privacy
6 institutional review board that is attached to the department of health and family
7 services under s. 15.03. The board may not include an employe of the department
8 of health and family services and shall consist of the commissioner of insurance or
9 his or her designee and the following members appointed for 4-year terms:

10 (a) A statistician or researcher.

11 (b) A medical ethicist of the University of Wisconsin System or the Medical
12 College of Wisconsin.

13 (c) An expert in issues relating to privacy.

14 (d) A purchaser of health care.”.

15 **2.** Page 1158, line 11: after that line insert:

16 “**SECTION 2251r.** 146.84 (3) of the statutes is amended to read:

17 146.84 (3) DISCIPLINE OF EMPLOYEES. Any person employed by the state, or any
18 political subdivision of the state who violates s. 146.82 or 146.83, except a health care
19 provider that negligently violates s. 153.50 (6) (c), may be discharged or suspended
20 without pay.”.

21 **3.** Page 1170, line 18: after that line insert:

22 “**SECTION 2280b.** 153.45 (1) (b) of the statutes is renumbered 153.45 (1) (b) 1.
23 and amended to read:

1 153.45 (1) (b) 1. ~~Public~~ For information that is submitted by hospitals or
2 ambulatory surgery centers, public use data files which that do not permit the
3 identification of specific patients, employers or health care providers, as defined by
4 rules promulgated by the department. The identification of ~~these groups~~ patients,
5 employers or health care providers shall be protected by all necessary means,
6 including the deletion of patient identifiers and the use of calculated variables and
7 aggregated variables.

8 **SECTION 2280c.** 153.45 (1) (b) 2. of the statutes is created to read:

9 153.45 (1) (b) 2. For information that is submitted by health care providers
10 other than hospitals or ambulatory surgery centers, public use data files that do not
11 permit the identification of specific patients, employers or health care providers, as
12 defined by rules promulgated by the department. The identification of patients,
13 employers or health care providers shall be protected by all necessary means,
14 including the deletion of patient identifiers; the use of calculated variables and
15 aggregated variables; the specification of counties as to residence, rather than zip
16 codes; the use of 5–year categories for age, rather than exact age; not releasing
17 information concerning a patient’s race or ethnicity or dates of admission, discharge,
18 procedures or visits; and masking sensitive diagnoses and procedures by use of
19 larger diagnostic and procedure categories. Public use data files under this
20 subdivision may include only the following:

- 21 a. The patient’s county of residence.
- 22 b. The payment source, by type.
- 23 c. The patient’s age category, by 5–year intervals up to age 80 and a category
24 of 80 years or older.
- 25 d. The patient’s procedure code.

1 e. The patient's diagnosis code.

2 f. Charges assessed with respect to the procedure code.

3 g. The name and address of the facility in which the patient's services were
4 rendered.

5 h. The patient's sex.

6 i. Information that contains the name of a health care provider that is not a
7 hospital or ambulatory surgery center, if the privacy institutional review board first
8 reviews and approves the release or if the department promulgates rules that specify
9 circumstances under which the privacy institutional review board need not review
10 and approve the release.

11 j. Calendar quarters of service.

12 k. Information other than patient-identifiable data, as defined in s. 153.50 (1)
13 (b), as approved by the privacy institutional review board.

14 **SECTION 2280d.** 153.45 (1) (b) 3. of the statutes is created to read:

15 153.45 (1) (b) 3. Public use data files that specify calendar quarters of service,
16 rather than date of service, except if the department specifies by rule that the
17 number of data elements included in the public use data file is too small to enable
18 protection of patient confidentiality.

19 **SECTION 2280e.** 153.45 (1) (c) of the statutes is renumbered 153.45 (1) (c)
20 (intro.) and amended to read:

21 153.45 (1) (c) (intro.) Custom-designed reports containing portions of the data
22 under par. (b). Of information submitted by health care providers that are not
23 hospitals or ambulatory surgery centers, requests under this paragraph for data
24 elements other than those available for public use data files under par. (b) 2.,
25 including the patient's month and year of birth, require review and approval by the

1 privacy institutional review board before the data elements may be released.
2 Information that contains the name of a health care provider that is not a hospital
3 or ambulatory surgery center may be released only if the privacy institutional review
4 board first reviews and approves the release or if the department promulgates rules
5 that specify circumstances under which the privacy institutional review board need
6 not review and approve the release. Reports under this paragraph may include the
7 patient's zip code only if at least one of the following applies:

8 **SECTION 2280f.** 153.45 (1) (c) 1. to 4. of the statutes are created to read:

9 153.45 (1) (c) 1. Other potentially identifying data elements are not released.

10 2. Population density is sufficient to mask patient identity.

11 3. Other potentially identifying data elements are grouped to provide
12 population density sufficient to protect identity.

13 4. Multiple years of data elements are added to protect identity.

14 **SECTION 2280g.** 153.45 (6) of the statutes is created to read:

15 153.45 (6) The department may not sell or distribute data bases of information,
16 from health care providers who are not hospitals or ambulatory surgery centers, that
17 are able to be linked with public use data files, unless first approved by the privacy
18 institutional review board.

19 **SECTION 2280ge.** 153.50 (1) (a) of the statutes is renumbered 153.01 (2m).

20 **SECTION 2280gg.** 153.50 (1) (b) of the statutes is renumbered 153.50 (1) (b) 1.,
21 and 153.50 (1) (b) 1. (intro.), b., c., i. and j., as renumbered, are amended to read:

22 153.50 (1) (b) 1. (intro.) "Patient-identifiable data", for information submitted
23 by hospitals and ambulatory surgery centers, means all of the following data
24 elements:

25 b. Patient control or account number.

1 c. Patient ~~date of birth~~ age category.

2 i. Patient's employer's name or school name.

3 j. Insured's sex and date of birth.

4 **SECTION 2280gm.** 153.50 (1) (b) 2. of the statutes is created to read:

5 153.50 (1) (b) 2. "Patient-identifiable data", for information submitted by
6 health care providers who are not hospitals or ambulatory surgery centers, means
7 all of the following data elements:

8 a. Data elements specified in subd. 1. a. to g.

9 b. Whether the patient's condition is related to employment, and occurrence
10 and place of an auto accident or other accident.

11 c. Date of first symptom of current illness, of current injury or of current
12 pregnancy.

13 d. First date of patient's same or similar illness, if any.

14 e. Dates that the patient has been unable to work in his or her current
15 occupation.

16 f. Dates of receipt by patient of medical service.

17 g. The patient's city, town or village.

18 **SECTION 2280h.** 153.50 (2) of the statutes is repealed.

19 **SECTION 2280i.** 153.50 (3) (b) 7. of the statutes is created to read:

20 153.50 (3) (b) 7. The patient's account number, after use only as verification of
21 data by the department.

22 **SECTION 2280j.** 153.50 (3) (c) of the statutes is created to read:

23 153.50 (3) (c) Develop, for use by purchasers of data under this chapter, a data
24 use agreement that specifies data use restrictions, appropriate uses of data and

1 penalties for misuse of data, and notify prospective and current purchasers of data
2 of the appropriate uses.

3 **SECTION 2280k.** 153.50 (3) (d) of the statutes is created to read:

4 153.50 (3) (d) Require that a purchaser of data under this chapter sign and have
5 notarized the data use agreement of the department specified in par. (c).

6 **SECTION 2280km.** 153.50 (3m) of the statutes is created to read:

7 153.50 (3m) HEALTHCARE PROVIDER MEASURES TO ENSURE PATIENT IDENTITY
8 PROTECTION. A health care provider that is not a hospital or ambulatory surgery
9 center shall, before submitting information required by the department under this
10 chapter, convert to a payer category code as specified by the department any names
11 of an insured's payer or other insured's payer.

12 **SECTION 2280kp.** 153.50 (4) (intro.) of the statutes is renumbered 153.50 (4)
13 (a) (intro.) and amended to read:

14 153.50 (4) (a) (intro.) Under Except as specified in par. (b), under the
15 procedures specified in sub. (5), release of patient-identifiable data may be made
16 only to any of the following:

17 **SECTION 2280kq.** 153.50 (4) (a) of the statutes is repealed.

18 **SECTION 2280kr.** 153.50 (4) (b) to (e) of the statutes are renumbered 153.50 (4)
19 (a) 1. to 4.

20 **SECTION 2280ks.** 153.50 (4) (b) of the statutes is created to read:

21 153.50 (4) (b) Of information submitted by health care providers that are not
22 hospitals or ambulatory surgery centers, patient-identifiable data that contains a
23 patient's date of birth may be released under this subsection only under
24 circumstances as specified by rule by the department.

25 **SECTION 2280ku.** 153.50 (5) (a) (intro.) of the statutes is amended to read:

1 153.50 (5) (a) (intro.) The department may not release or provide access to
2 patient-identifiable data to a person authorized under sub. (4) (a), ~~(e)~~, ~~(d)~~ or ~~(e)~~
3 unless the authorized person requests the department, in writing, to release the
4 patient-identifiable data. The request shall include all of the following:

5 **SECTION 2280kv.** 153.50 (5) (a) 3. of the statutes is amended to read:

6 153.50 (5) (a) 3. For a person who is authorized under sub. (4) (a), ~~(e)~~ or ~~(d)~~ to
7 receive or have access to patient-identifiable data, evidence, in writing, that
8 indicates that authorization.

9 **SECTION 2280kw.** 153.50 (5) (a) 4. (intro.) of the statutes is amended to read:

10 153.50 (5) (a) 4. (intro.) For an entity that is authorized under sub. (4) ~~(e)~~ (a)
11 4. to receive or have access to patient-identifiable data, evidence, in writing, of all
12 of the following:

13 **SECTION 2280kx.** 153.50 (5) (b) 3. of the statutes is amended to read:

14 153.50 (5) (b) 3. For a person who believes that he or she is authorized under
15 sub. (4) (a), the action provided under s. 19.37.”.

16 **4.** Page 1170, line 22: after that line insert:

17 **“SECTION 2280p.** 153.50 (6) of the statutes is renumbered 153.50 (6) (a).

18 **SECTION 2280q.** 153.50 (6) (b), (c), (d) and (e) of the statutes are created to read:

19 153.50 (6) (b) The department may not require under this chapter a health care
20 provider that is a hospital or ambulatory surgery center to submit uniform patient
21 billing forms.

22 (c) A health care provider that is not a hospital or ambulatory surgery center
23 may not submit any of the following to the department under the requirements of
24 this chapter:

- 1 1. The data elements specified under sub. (3) (b).
- 2 2. The patient's telephone number.
- 3 3. The insured's employer's name or school name.
- 4 4. Data regarding insureds other than the patient, other than the name of the
- 5 insured's payer or other insured's payer.
- 6 5. The patient's employer's name or school name.
- 7 6. The patient's relationship to the insured.
- 8 7. The insured's identification number.
- 9 8. The insured's policy or group number.
- 10 9. The insured's date of birth or sex.
- 11 10. The patient's marital, employment or student status.

12 (d) If a health care provider that is not a hospital or ambulatory surgery center
13 submits a data element that is specified in par. (c) 1. to 10., the department shall
14 immediately return this information to the health care provider or, if discovered
15 later, shall remove and destroy the information.

16 (e) A health care provider may not submit information that uses any of the
17 following as a patient account number:

18 1. The patient's social security number or any substantial portion of the
19 patient's social security number.

20 2. A number that is related to another patient identifying number.

21 **SECTION 2280r.** 153.55 of the statutes is amended to read:

22 **153.55 Protection of health-care provider confidentiality.** Health-care
23 ~~provider-identifiable data~~ Data obtained under this chapter is not subject to
24 inspection, copying or receipt under s. 19.35 (1).”.

1 **5.** Page 1172, line 14: after that line insert:

2 “SECTION 2283g. 153.67 of the statutes is created to read:

3 **153.67 Privacy institutional review board.** The privacy institutional
4 review board shall review any request under s. 153.45 (1) (c) for data elements other
5 than those available for public use data files under s. 153.45 (1) (b). Unless the
6 privacy institutional review board approves such a request, the data elements
7 requested may not be released.

8 SECTION 2283h. 153.76 of the statutes is created to read:

9 **153.76 Rule-making by the privacy institutional review board.**

10 Notwithstanding s. 15.01 (1r), the privacy institutional review board may
11 promulgate only those rules that are first reviewed and approved by the board on
12 health care information.

13 SECTION 2283k. 153.90 (1) of the statutes is amended to read:

14 153.90 (1) Whoever intentionally violates s. 153.45 (5) or 153.50 or rules
15 promulgated under s. 153.75 (1) (a) may be fined not more than ~~\$10,000~~ \$15,000 or
16 imprisoned for not more than ~~9 months~~ one year or both.”.

17 **6.** Page 1526, line 5: after that line insert:

18 “(12x) INITIAL APPOINTMENTS OF PRIVACY INSTITUTIONAL REVIEW BOARD.

19 Notwithstanding the length of terms specified in section 15.195 (9) (intro.) of the
20 statutes, as created by this act, the initial members of the privacy institutional
21 review board shall be appointed by the first day of the 4th month beginning after the
22 effective date of this subsection for the following terms:

23 (a) The purchaser of health care, for a term expiring on May 1, 2001.

1 (b) The medical ethicist and the privacy expert, for terms expiring on May 1,
2 2003.

3 (c) The statistician or researcher, for a term expiring on May 1, 2005.”

4 (END)

Kennedy, Debora

From: Lonergan, Sandra
Sent: Tuesday, June 29, 1999 10:33 AM
To: Kennedy, Debora
Subject: FW: Data

Debora,
Can you please make the following changes to the health care data patient confidentiality provisions for the "technical" Assembly budget amendment? If you need, please contact Dick Sweet 6-2982.
Thanks. Call me if you need - 6-2254
Sandy
(Underheim's office)

-----Original Message-----

From: Sweet, Richard
Sent: Monday, June 28, 1999 4:48 PM
To: Underheim, Gregg; Lonergan, Sandra
Subject: Data

Gregg and Sandy,

I don't know if it's possible to make changes to the data language, but here are a few that would clarify what has been included in Am. 2 and get the amendment closer to the agreement:

- ✓ 1. On page 12, line 1, "and" should be stricken and the semicolon should be changed to "and". This will clarify that the 2 hospital reps on the Board on Health Care Info are part of the 5 provider reps.
- ✓ 2. "Privacy Institutional Review Board" should be changed to "Independent Review Board" in s. 15.195(9) and throughout ch. 153, Stats. and in the nonstatutory provisions.
- ✓ 3. On page 355, lines 6 and 7 and the first part of line 8 should be deleted. The portion of line 8 that begins with the comma should be moved to the end of line 3.
- ✓ 4. On page 356, lines 17 to 20 should be deleted. These are changes to the definition of "patient identifiable data" for hospitals and ambulatory surgery centers. (This will also necessitate changes on lines 13 and 25.) Also, "date of birth" should be retained as patient identifiable data.
- ✓ 5. On page 358, line 14, "this subsection" should be changed to "par. (a)".
- ✓ 6. On page 359, line 19, the language after the comma should read: "other than the payer category code under sub. (3m)".
- ✓ 7. On page 360, line 21, "or unless board approval is not required under rules of the department promulgated under s. 153.45(1)(c)(intro.)" should be inserted before the comma.

8. I'm not finding anything on provider immunity from liability. Maybe I'm just missing it, but it doesn't seem to be in ch. 153 or 895 (which has other liability exemptions).

Dick Sweet

Richard Sweet, Senior Staff Attorney
Wisconsin Legislative Council Staff
P.O. Box 2536
(1 East Main Street, Room 401)
Madison, WI 53701-2536
Phone (608)266-2982
Fax (608)266-3830
E-mail richard.sweet@legis.state.wi.us

TODAY

1999 - 2000 LEGISLATURE

LRBb1391/2

DAK:kmg

D-NOTE

SDC:.....Walter - #2713, Confidentiality of health care information

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

at least 2 of whom shall be employer purchasers of health care; and

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 24, line 9: after that line insert:

3 "SECTION 3g. 15.195 (6) of the statutes is amended to read:

4 15.195 (6) BOARD ON HEALTH CARE INFORMATION. There is created a board on
5 health care information which is attached to the department of health and family

6 services under s. 15.03. The board shall consist of 11 members, one of whom shall
7 be a record administrator, registered by the American Medical Record Association;

8 and 5 of whom shall be or represent health care providers, including one registered

9 nurse, licensed under s. 441.06, and 2 physicians, as defined in s. 448.01 (5) 2 of

10 ~~whom shall represent hospitals, as defined in s. 50.33 (2) and at least 2 of whom shall~~

representatives of

and

① ~~be employer purchasers of health care.~~ The State Medical Society of Wisconsin may
 2 recommend board membership for 5 physicians, one of whom the governor shall
 3 appoint. The members shall be appointed for 4-year terms.

⑤ INDEPENDENT

4 SECTION 30r. 15.195 (9) of the statutes is created to read:

⑤ 15.195 (9) ~~Privacy Institutional~~ REVIEW BOARD. There is created ~~an independent~~
 ⑥ ~~institutional~~ review board that is attached to the department of health and family
 7 services under s. 15.03. The board may not include an employe of the department
 8 of health and family services and shall consist of the commissioner of insurance or
 9 his or her designee and the following members appointed for 4-year terms:

- 10 (a) A statistician or researcher.
- 11 (b) A medical ethicist of the University of Wisconsin System or the Medical
- 12 College of Wisconsin.
- 13 (c) An expert in issues relating to privacy.
- 14 (d) A purchaser of health care.”.

15 2. Page 1158, line 11: after that line insert:

16 “SECTION 2251r. 146.84 (3) of the statutes is amended to read:

17 146.84 (3) DISCIPLINE OF EMPLOYEES. Any person employed by the state, or any
 18 political subdivision of the state who violates s. 146.82 or 146.83, except a health care
 19 provider that negligently violates s. 153.50 (6) (c), may be discharged or suspended
 20 without pay.”.

21 3. Page 1170, line 18: after that line insert:

22 “SECTION 2280b. 153.45 (1) (b) of the statutes is renumbered 153.45 (1) (b) 1.
 23 and amended to read:

1 153.45 (1) (b) 1. ~~Public~~ For information that is submitted by hospitals or
2 ambulatory surgery centers, public use data files ~~which~~ that do not permit the
3 identification of specific patients, employers or health care providers, as defined by
4 rules promulgated by the department. The identification of ~~these groups~~ patients,
5 employers or health care providers shall be protected by all necessary means,
6 including the deletion of patient identifiers and the use of calculated variables and
7 aggregated variables.

8 **SECTION 2280c.** 153.45 (1) (b) 2. of the statutes is created to read:

9 153.45 (1) (b) 2. For information that is submitted by health care providers
10 other than hospitals or ambulatory surgery centers, public use data files that do not
11 permit the identification of specific patients, employers or health care providers, as
12 defined by rules promulgated by the department. The identification of patients,
13 employers or health care providers shall be protected by all necessary means,
14 including the deletion of patient identifiers; the use of calculated variables and
15 aggregated variables; the specification of counties as to residence, rather than zip
16 codes; the use of 5-year categories for age, rather than exact age; not releasing
17 information concerning a patient's race or ethnicity or dates of admission, discharge,
18 procedures or visits; and masking sensitive diagnoses and procedures by use of
19 larger diagnostic and procedure categories. Public use data files under this
20 subdivision may include only the following:

- 21 a. The patient's county of residence.
- 22 b. The payment source, by type.
- 23 c. The patient's age category, by 5-year intervals up to age 80 and a category
24 of 80 years or older.
- 25 d. The patient's procedure code.

- 1 e. The patient's diagnosis code.
- 2 f. Charges assessed with respect to the procedure code.
- 3 g. The name and address of the facility in which the patient's services were
- 4 rendered.

5 h. The patient's sex.

6 i. Information that contains the name of a health care provider that is not a
 7 hospital or ambulatory surgery center, if the ~~privacy institutional~~ review board first
 8 reviews and approves the release or if the department promulgates rules that specify
 9 circumstances under which the ~~privacy institutional~~ review board need not review
 10 and approve the release.

11 j. Calendar quarters of service.

12 k. Information other than patient-identifiable data, as defined in s. 153.50 (1)
 13 (b), as approved by the ~~privacy institutional~~ review board.

14 ~~SECTION 2280d. 153.45 (1) (b) 3. of the statutes is created to read:~~

15 ~~153.45 (1) (b) 3. Public use data files that specify calendar quarters of service,~~
 16 ~~rather than date of service, except if the department specifies by rule that the~~
 17 ~~number of data elements included in the public use data file is too small to enable~~
 18 ~~protection of patient confidentiality.~~

19 **SECTION 2280e.** 153.45 (1) (c) of the statutes is renumbered 153.45 (1) (c)
 20 (intro.) and amended to read:

21 153.45 (1) (c) (intro.) Custom-designed reports containing portions of the data
 22 under par. (b). Of information submitted by health care providers that are not
 23 hospitals or ambulatory surgery centers, requests under this paragraph for data
 24 elements other than those available for public use data files under par. (b) 2.,
 25 including the patient's month and year of birth, require review and approval by the

independent

independent

independent

1 ~~privacy institutional~~ review board before the data elements may be released.
 2 Information that contains the name of a health care provider that is not a hospital
 3 or ambulatory surgery center may be released only if the ~~privacy institutional~~ review
 4 board first reviews and approves the release or if the department promulgates rules
 5 that specify circumstances under which the ~~privacy institutional~~ review board need
 6 not review and approve the release. Reports under this paragraph may include the
 7 patient's zip code only if at least one of the following applies:

8 SECTION 2280f. 153.45 (1) (c) 1. to 4. of the statutes are created to read:

9 153.45 (1) (c) 1. Other potentially identifying data elements are not released.

10 2. Population density is sufficient to mask patient identity.

11 3. Other potentially identifying data elements are grouped to provide
12 population density sufficient to protect identity.

13 4. Multiple years of data elements are added to protect identity.

14 SECTION 2280g. 153.45 (6) of the statutes is created to read:

15 153.45 (6) The department may not sell or distribute data bases of information,
16 from health care providers who are not hospitals or ambulatory surgery centers, that
17 are able to be linked with public use data files, unless first approved by the ~~privacy~~

18 ~~institutional~~ review board.

independent

19 SECTION 2280ge. 153.50 (1) (a) of the statutes is renumbered 153.01 (2m).

20 SECTION 2280gg. 153.50 (1) (b) of the statutes is renumbered 153.50 (1) (b) 1.,
21 and 153.50 (1) (b) 1. (intro.) ~~is~~ as renumbered, ~~the~~ ^{is} amended to read:

22 153.50 (1) (b) 1. (intro.) "Patient-identifiable data", for information submitted
23 by hospitals and ambulatory surgery centers, means all of the following data
24 elements:

25 ~~b. Patient control or account number,~~

- 1 ~~c. Patient date of birth age category.~~
- 2 ~~i. Patient's employer's name or school name.~~
- 3 ~~j. Insured's sex and date of birth.~~

4 **SECTION 2280gm.** 153.50 (1) (b) 2. of the statutes is created to read:

5 153.50 (1) (b) 2. "Patient-identifiable data", for information submitted by
6 health care providers who are not hospitals or ambulatory surgery centers, means
7 all of the following data elements:

- 8 a. Data elements specified in subd. 1. a. to g. *L and m*
- 9 b. Whether the patient's condition is related to employment, and occurrence
10 and place of an auto accident or other accident.
- 11 c. Date of first symptom of current illness, of current injury or of current
12 pregnancy.
- 13 d. First date of patient's same or similar illness, if any.
- 14 e. Dates that the patient has been unable to work in his or her current
15 occupation.
- 16 f. Dates of receipt by patient of medical service.
- 17 g. The patient's city, town or village.

18 **SECTION 2280h.** 153.50 (2) of the statutes is repealed.

19 **SECTION 2280i.** 153.50 (3) (b) 7. of the statutes is created to read:

20 153.50 (3) (b) 7. The patient's account number, after use only as verification of
21 data by the department.

22 **SECTION 2280j.** 153.50 (3) (c) of the statutes is created to read:

23 153.50 (3) (c) Develop, for use by purchasers of data under this chapter, a data
24 use agreement that specifies data use restrictions, appropriate uses of data and

1 penalties for misuse of data, and notify prospective and current purchasers of data
2 of the appropriate uses.

3 **SECTION 2280k.** 153.50 (3) (d) of the statutes is created to read:

4 153.50 (3) (d) Require that a purchaser of data under this chapter sign and have
5 notarized the data use agreement of the department specified in par. (c).

6 **SECTION 2280km.** 153.50 (3m) of the statutes is created to read:

7 153.50 (3m) HEALTHCARE PROVIDER MEASURES TO ENSURE PATIENT IDENTITY
8 PROTECTION. A health care provider that is not a hospital or ambulatory surgery
9 center shall, before submitting information required by the department under this
10 chapter, convert to a payer category code as specified by the department any names
11 of an insured's payer or other insured's payer.

12 **SECTION 2280kp.** 153.50 (4) (intro.) of the statutes is renumbered 153.50 (4)
13 (a) (intro.) and amended to read:

14 153.50 (4) (a) (intro.) Under Except as specified in par. (b), under the
15 procedures specified in sub. (5), release of patient-identifiable data may be made
16 only to any of the following:

17 **SECTION 2280kq.** 153.50 (4) (a) of the statutes is repealed.

18 **SECTION 2280kr.** 153.50 (4) (b) to (e) of the statutes are renumbered 153.50 (4)
19 (a) 1. to 4.

20 **SECTION 2280ks.** 153.50 (4) (b) of the statutes is created to read:

21 153.50 (4) (b) Of information submitted by health care providers that are not
22 hospitals or ambulatory surgery centers, patient-identifiable data that contains a
23 patient's date of birth may be released under ~~this subsection~~ ^{par. (a)} only under
24 circumstances as specified by rule by the department.

25 **SECTION 2280ku.** 153.50 (5) (a) (intro.) of the statutes is amended to read:

1 153.50 (5) (a) (intro.) The department may not release or provide access to
2 patient-identifiable data to a person authorized under sub. (4) (a), ~~(e), (d) or (e)~~
3 unless the authorized person requests the department, in writing, to release the
4 patient-identifiable data. The request shall include all of the following:

5 **SECTION 2280kv.** 153.50 (5) (a) 3. of the statutes is amended to read:

6 153.50 (5) (a) 3. For a person who is authorized under sub. (4) (a), ~~(e) or (d)~~ to
7 receive or have access to patient-identifiable data, evidence, in writing, that
8 indicates that authorization.

9 **SECTION 2280kw.** 153.50 (5) (a) 4. (intro.) of the statutes is amended to read:

10 153.50 (5) (a) 4. (intro.) For an entity that is authorized under sub. (4) ~~(e)~~ (a)
11 4. to receive or have access to patient-identifiable data, evidence, in writing, of all
12 of the following:

13 **SECTION 2280kx.** 153.50 (5) (b) 3. of the statutes is amended to read:

14 153.50 (5) (b) 3. For a person who believes that he or she is authorized under
15 sub. (4) (a), the action provided under s. 19.37.”.

16 **4.** Page 1170, line 22: after that line insert:

17 **“SECTION 2280p.** 153.50 (6) of the statutes is renumbered 153.50 (6) (a).

18 **SECTION 2280q.** 153.50 (6) (b), (c), (d) and (e) of the statutes are created to read:

19 153.50 (6) (b) The department may not require under this chapter a health care
20 provider that is a hospital or ambulatory surgery center to submit uniform patient
21 billing forms.

22 (c) A health care provider that is not a hospital or ambulatory surgery center
23 may not submit any of the following to the department under the requirements of
24 this chapter:

- 1 1. The data elements specified under sub. (3) (b).
- 2 2. The patient's telephone number.
- 3 3. The insured's employer's name or school name.

4 4. Data regarding insureds other than the patient, other than the ~~name of the~~

5 ~~insured's payer or other insured's payer.~~ category code under sub. (3m)

- 6 5. The patient's employer's name or school name.
- 7 6. The patient's relationship to the insured.
- 8 7. The insured's identification number.
- 9 8. The insured's policy or group number.
- 10 9. The insured's date of birth or sex.
- 11 10. The patient's marital, employment or student status.

12 (d) If a health care provider that is not a hospital or ambulatory surgery center
 13 submits a data element that is specified in par. (c) 1. to 10., the department shall
 14 immediately return this information to the health care provider or, if discovered
 15 later, shall remove and destroy the information.

16 (e) A health care provider may not submit information that uses any of the
 17 following as a patient account number:

- 18 1. The patient's social security number or any substantial portion of the
 19 patient's social security number.
- 20 2. A number that is related to another patient identifying number.

21 **SECTION 2280r.** 153.55 of the statutes is amended to read:

22 **153.55 Protection of health care provider confidentiality.** Health care
 23 ~~provider identifiable data~~ Data obtained under this chapter is not subject to
 24 inspection, copying or receipt under s. 19.35 (1).”.

Independent

independent

1 **5.** Page 1172, line 14: after that line insert:

2 "SECTION 2283g. 153.67 of the statutes is created to read:

3 **153.67 ~~Privacy Institutional~~ review board.** The ~~privacy institutional~~

4 review board shall review any request under s. 153.45 (1) (c) for data elements other

5 than those available for public use data files under s. 153.45 (1) (b). Unless the

6 ~~privacy institutional~~ review board approves such a request, the data elements

7 requested may not be released.

or unless independent review board approval is not required under rules of the department promulgated under s. 153.45 (1)(c) (intro.)

8 **SECTION 2283h.** 153.76 of the statutes is created to read:

promulgated under s. 153.45 (1)(c) (intro.)

9 **153.76 Rule-making by the ~~privacy institutional~~ review board.**

10 Notwithstanding s. 15.01 (1r), the ~~privacy institutional~~ review board may

11 promulgate only those rules that are first reviewed and approved by the board on

12 health care information.

independent

independent

✓
INSERT 10-12

13 **SECTION 2283k.** 153.90 (1) of the statutes is amended to read:

14 153.90 (1) Whoever intentionally violates s. 153.45 (5) or 153.50 or rules

15 promulgated under s. 153.75 (1) (a) may be fined not more than \$10,000 \$15,000 or

16 imprisoned for not more than 9 months one year or both."

17 **6.** Page 1526, line 5: after that line insert:

INDEPENDENT

18 "(12x) INITIAL APPOINTMENTS OF ~~PRIVACY INSTITUTIONAL~~ REVIEW BOARD.

19 Notwithstanding the length of terms specified in section 15.195 (9) (intro.) of the

20 statutes, as created by this act, the initial members of the ~~privacy institutional~~

21 ~~review board~~ shall be appointed by the first day of the 4th month beginning after the

independent

22 effective date of this subsection for the following terms:

23 (a) The purchaser of health care, for a term expiring on May 1, 2001.

1 (b) The medical ethicist and the privacy expert, for terms expiring on May 1,
2 2003.

3 (c) The statistician or researcher, for a term expiring on May 1, 2005.”.

4 (END)

D - NOTE

INSERT 10-12

- 1 **19.** Page 360, line 18: delete that line and substitute:
- 2 "153.67 Independent review board. The independent".
- 3 **20.** Page 360, line 21: delete "privacy institutional" and substitute
- 4 "independent".
- 5 **21.** Page 361, line 1: delete "privacy institutional" and substitute
- 6 "independent".
- 7 **22.** Page 361, line 2: delete "privacy institutional" and substitute
- 8 "independent".
- 9 **23.** Page 361, line 4: after that line insert:

10 SECTION 2283i. 153.85 of the statutes is amended to read:

11 **153.85 Civil liability.** Any Except as provided in s. 153.86, any person
12 violating s. 153.50 or rules promulgated under s. 153.75 (1)(a) is liable to the patient
13 for actual damages and costs, plus exemplary damages of up to \$1,000 for a negligent
14 violation and up to \$5,000 for an intentional violation.

15 SECTION 2283j. 153.86 of the statutes is created to read:

16 **153.86 Immunity from liability.** A health care provider that submits
17 information to the department under this chapter is immune from civil liability for
18 any act or omission of an employe, official or agent of the health care provider that
19 results in the release of a prohibited data element while submitting data to the
20 department of health and family services. The immunity provided under this section
21 does not apply to intentional, wilful or reckless acts or omissions. ⁴

22 **24.** Page 562, line 20: delete "PRIVACY INSTITUTIONAL" and substitute
23 "INDEPENDENT".

To Lance Watter:

redraft

This amendment addresses Dick Sweet's concerns.

DAK

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBb1391/2dn
DAK:kmg:mrc

June 29, 1999

To Lance Walter:

This amendment redraft addresses Dick Sweet's concerns.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb1391/2
DAK:kmg:mrc

SDC:.....Walter - #2713, Confidentiality of health care information

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 24, line 9: after that line insert:

3 **"SECTION 3g.** 15.195 (6) of the statutes is amended to read:

4 15.195 (6) BOARD ON HEALTH CARE INFORMATION. There is created a board on
5 health care information which is attached to the department of health and family
6 services under s. 15.03. The board shall consist of 11 members, one of whom shall
7 be a record administrator, registered by the American Medical Record Association,
8 and; at least 2 of whom shall be employer purchasers of health care; and 5 of whom
9 shall be or represent health care providers, including one registered nurse, licensed
10 under s. 441.06, and 2 physicians, as defined in s. 448.01 (5), and 2 representatives

1 of hospitals, as defined in s. 50.33 (2). The State Medical Society of Wisconsin may
2 recommend board membership for 5 physicians, one of whom the governor shall
3 appoint. The members shall be appointed for 4-year terms.

4 **SECTION 30r.** 15.195 (9) of the statutes is created to read:

5 15.195 (9) INDEPENDENT REVIEW BOARD. There is created an independent review
6 board that is attached to the department of health and family services under s. 15.03.
7 The board may not include an employe of the department of health and family
8 services and shall consist of the commissioner of insurance or his or her designee and
9 the following members appointed for 4-year terms:

10 (a) A statistician or researcher.

11 (b) A medical ethicist of the University of Wisconsin System or the Medical
12 College of Wisconsin.

13 (c) An expert in issues relating to privacy.

14 (d) A purchaser of health care.”.

15 **2.** Page 1158, line 11: after that line insert:

16 **“SECTION 2251r.** 146.84 (3) of the statutes is amended to read:

17 146.84 (3) DISCIPLINE OF EMPLOYES. Any person employed by the state, or any
18 political subdivision of the state who violates s. 146.82 or 146.83, except a health care
19 provider that negligently violates s. 153.50 (6) (c), may be discharged or suspended
20 without pay.”.

21 **3.** Page 1170, line 18: after that line insert:

22 **“SECTION 2280b.** 153.45 (1) (b) of the statutes is renumbered 153.45 (1) (b) 1.
23 and amended to read:

1 153.45 (1) (b) 1. ~~Public~~ For information that is submitted by hospitals or
2 ambulatory surgery centers, public use data files ~~which~~ that do not permit the
3 identification of specific patients, employers or health care providers, as defined by
4 rules promulgated by the department. The identification of ~~these groups~~ patients,
5 employers or health care providers shall be protected by all necessary means,
6 including the deletion of patient identifiers and the use of calculated variables and
7 aggregated variables.

8 **SECTION 2280c.** 153.45 (1) (b) 2. of the statutes is created to read:

9 153.45 (1) (b) 2. For information that is submitted by health care providers
10 other than hospitals or ambulatory surgery centers, public use data files that do not
11 permit the identification of specific patients, employers or health care providers, as
12 defined by rules promulgated by the department. The identification of patients,
13 employers or health care providers shall be protected by all necessary means,
14 including the deletion of patient identifiers; the use of calculated variables and
15 aggregated variables; the specification of counties as to residence, rather than zip
16 codes; the use of 5-year categories for age, rather than exact age; not releasing
17 information concerning a patient's race or ethnicity or dates of admission, discharge,
18 procedures or visits; and masking sensitive diagnoses and procedures by use of
19 larger diagnostic and procedure categories. Public use data files under this
20 subdivision may include only the following:

- 21 a. The patient's county of residence.
- 22 b. The payment source, by type.
- 23 c. The patient's age category, by 5-year intervals up to age 80 and a category
24 of 80 years or older.
- 25 d. The patient's procedure code.

- 1 e. The patient's diagnosis code.
- 2 f. Charges assessed with respect to the procedure code.
- 3 g. The name and address of the facility in which the patient's services were
4 rendered.
- 5 h. The patient's sex.
- 6 i. Information that contains the name of a health care provider that is not a
7 hospital or ambulatory surgery center, if the independent review board first reviews
8 and approves the release or if the department promulgates rules that specify
9 circumstances under which the independent review board need not review and
10 approve the release.
- 11 j. Calendar quarters of service, except if the department specifies by rule that
12 the number of data elements included in the public use data file is too small to enable
13 protection of patient confidentiality.
- 14 k. Information other than patient-identifiable data, as defined in s. 153.50 (1)
15 (b), as approved by the independent review board.

16 **SECTION 2280e.** 153.45 (1) (c) of the statutes is renumbered 153.45 (1) (c)
17 (intro.) and amended to read:

18 153.45 (1) (c) (intro.) Custom-designed reports containing portions of the data
19 under par. (b). Of information submitted by health care providers that are not
20 hospitals or ambulatory surgery centers, requests under this paragraph for data
21 elements other than those available for public use data files under par. (b) 2.,
22 including the patient's month and year of birth, require review and approval by the
23 independent review board before the data elements may be released. Information
24 that contains the name of a health care provider that is not a hospital or ambulatory
25 surgery center may be released only if the independent review board first reviews

1 and approves the release or if the department promulgates rules that specify
2 circumstances under which the independent review board need not review and
3 approve the release. Reports under this paragraph may include the patient's zip code
4 only if at least one of the following applies:

5 **SECTION 2280f.** 153.45 (1) (c) 1. to 4. of the statutes are created to read:

6 153.45 (1) (c) 1. Other potentially identifying data elements are not released.

7 2. Population density is sufficient to mask patient identity.

8 3. Other potentially identifying data elements are grouped to provide
9 population density sufficient to protect identity.

10 4. Multiple years of data elements are added to protect identity.

11 **SECTION 2280g.** 153.45 (6) of the statutes is created to read:

12 153.45 (6) The department may not sell or distribute data bases of information,
13 from health care providers who are not hospitals or ambulatory surgery centers, that
14 are able to be linked with public use data files, unless first approved by the
15 independent review board.

16 **SECTION 2280ge.** 153.50 (1) (a) of the statutes is renumbered 153.01 (2m).

17 **SECTION 2280gg.** 153.50 (1) (b) of the statutes is renumbered 153.50 (1) (b) 1.,
18 and 153.50 (1) (b) 1. (intro.), as renumbered, is amended to read:

19 153.50 (1) (b) 1. (intro.) "Patient-identifiable data", for information submitted
20 by hospitals and ambulatory surgery centers, means all of the following data
21 elements:

22 **SECTION 2280gm.** 153.50 (1) (b) 2. of the statutes is created to read:

23 153.50 (1) (b) 2. "Patient-identifiable data", for information submitted by
24 health care providers who are not hospitals or ambulatory surgery centers, means
25 all of the following data elements:

- 1 a. Data elements specified in subd. 1. a. to g., L. and m.
- 2 b. Whether the patient's condition is related to employment, and occurrence
3 and place of an auto accident or other accident.
- 4 c. Date of first symptom of current illness, of current injury or of current
5 pregnancy.
- 6 d. First date of patient's same or similar illness, if any.
- 7 e. Dates that the patient has been unable to work in his or her current
8 occupation.
- 9 f. Dates of receipt by patient of medical service.
- 10 g. The patient's city, town or village.

11 **SECTION 2280h.** 153.50 (2) of the statutes is repealed.

12 **SECTION 2280i.** 153.50 (3) (b) 7. of the statutes is created to read:

13 153.50 (3) (b) 7. The patient's account number, after use only as verification of
14 data by the department.

15 **SECTION 2280j.** 153.50 (3) (c) of the statutes is created to read:

16 153.50 (3) (c) Develop, for use by purchasers of data under this chapter, a data
17 use agreement that specifies data use restrictions, appropriate uses of data and
18 penalties for misuse of data, and notify prospective and current purchasers of data
19 of the appropriate uses.

20 **SECTION 2280k.** 153.50 (3) (d) of the statutes is created to read:

21 153.50 (3) (d) Require that a purchaser of data under this chapter sign and have
22 notarized the data use agreement of the department specified in par. (c).

23 **SECTION 2280km.** 153.50 (3m) of the statutes is created to read:

24 153.50 (3m) HEALTHCARE PROVIDER MEASURES TO ENSURE PATIENT IDENTITY
25 PROTECTION. A health care provider that is not a hospital or ambulatory surgery

1 center shall, before submitting information required by the department under this
2 chapter, convert to a payer category code as specified by the department any names
3 of an insured's payer or other insured's payer.

4 **SECTION 2280kp.** 153.50 (4) (intro.) of the statutes is renumbered 153.50 (4)
5 (a) (intro.) and amended to read:

6 153.50 (4) (a) (intro.) Under Except as specified in par. (b), under the
7 procedures specified in sub. (5), release of patient-identifiable data may be made
8 only to any of the following:

9 **SECTION 2280kq.** 153.50 (4) (a) of the statutes is repealed.

10 **SECTION 2280kr.** 153.50 (4) (b) to (e) of the statutes are renumbered 153.50 (4)
11 (a) 1. to 4.

12 **SECTION 2280ks.** 153.50 (4) (b) of the statutes is created to read:

13 153.50 (4) (b) Of information submitted by health care providers that are not
14 hospitals or ambulatory surgery centers, patient-identifiable data that contains a
15 patient's date of birth may be released under par. (a) only under circumstances as
16 specified by rule by the department.

17 **SECTION 2280ku.** 153.50 (5) (a) (intro.) of the statutes is amended to read:

18 153.50 (5) (a) (intro.) The department may not release or provide access to
19 patient-identifiable data to a person authorized under sub. (4) (a), ~~(e), (d) or (e)~~
20 unless the authorized person requests the department, in writing, to release the
21 patient-identifiable data. The request shall include all of the following:

22 **SECTION 2280kv.** 153.50 (5) (a) 3. of the statutes is amended to read:

23 153.50 (5) (a) 3. For a person who is authorized under sub. (4) (a), ~~(e) or (d)~~ to
24 receive or have access to patient-identifiable data, evidence, in writing, that
25 indicates that authorization.

1 **SECTION 2280kw.** 153.50 (5) (a) 4. (intro.) of the statutes is amended to read:
2 153.50 (5) (a) 4. (intro.) For an entity that is authorized under sub. (4) ~~(e)~~ (a)
3 4. to receive or have access to patient-identifiable data, evidence, in writing, of all
4 of the following:

5 **SECTION 2280kx.** 153.50 (5) (b) 3. of the statutes is amended to read:
6 153.50 (5) (b) 3. For a person who believes that he or she is authorized under
7 sub. (4) (a), the action provided under s. 19.37.”.

8 **4.** Page 1170, line 22: after that line insert:

9 “**SECTION 2280p.** 153.50 (6) of the statutes is renumbered 153.50 (6) (a).
10 **SECTION 2280q.** 153.50 (6) (b), (c), (d) and (e) of the statutes are created to read:

11 153.50 (6) (b) The department may not require under this chapter a health care
12 provider that is a hospital or ambulatory surgery center to submit uniform patient
13 billing forms.

14 (c) A health care provider that is not a hospital or ambulatory surgery center
15 may not submit any of the following to the department under the requirements of
16 this chapter:

- 17 1. The data elements specified under sub. (3) (b).
- 18 2. The patient’s telephone number.
- 19 3. The insured’s employer’s name or school name.
- 20 4. Data regarding insureds other than the patient, other than the payer
21 category code under sub. (3m).
- 22 5. The patient’s employer’s name or school name.
- 23 6. The patient’s relationship to the insured.
- 24 7. The insured’s identification number.

1 8. The insured's policy or group number.

2 9. The insured's date of birth or sex.

3 10. The patient's marital, employment or student status.

4 (d) If a health care provider that is not a hospital or ambulatory surgery center
5 submits a data element that is specified in par. (c) 1. to 10., the department shall
6 immediately return this information to the health care provider or, if discovered
7 later, shall remove and destroy the information.

8 (e) A health care provider may not submit information that uses any of the
9 following as a patient account number:

10 1. The patient's social security number or any substantial portion of the
11 patient's social security number.

12 2. A number that is related to another patient identifying number.

13 **SECTION 2280r.** 153.55 of the statutes is amended to read:

14 **153.55 Protection of health care provider confidentiality.** ~~Health care~~
15 ~~provider identifiable data~~ Data obtained under this chapter is not subject to
16 inspection, copying or receipt under s. 19.35 (1).”

17 **5.** Page 1172, line 14: after that line insert:

18 **SECTION 2283g.** 153.67 of the statutes is created to read:

19 **153.67 Independent review board.** The independent review board shall
20 review any request under s. 153.45 (1) (c) for data elements other than those
21 available for public use data files under s. 153.45 (1) (b). Unless the independent
22 review board approves such a request or unless independent review board approval
23 is not required under rules of the department promulgated under s. 153.45 (1) (c)
24 (intro.), the data elements requested may not be released.

1 **SECTION 2283h.** 153.76 of the statutes is created to read:

2 **153.76 Rule-making by the independent review board.**

3 Notwithstanding s. 15.01 (1r), the independent review board may promulgate only
4 those rules that are first reviewed and approved by the board on health care
5 information.

6 **SECTION 2283i.** 153.85 of the statutes is amended to read:

7 **153.85 Civil liability.** Any Except as provided in s. 153.86, any person
8 violating s. 153.50 or rules promulgated under s. 153.75 (1) (a) is liable to the patient
9 for actual damages and costs, plus exemplary damages of up to \$1,000 for a negligent
10 violation and up to \$5,000 for an intentional violation.

11 **SECTION 2283j.** 153.86 of the statutes is created to read:

12 **153.86 Immunity from liability.** A health care provider that submits
13 information to the department under this chapter is immune from civil liability for
14 any act or omission of an employe, official or agent of the health care provider that
15 results in the release of a prohibited data element while submitting data to the
16 department of health and family services. The immunity provided under this section
17 does not apply to intentional, wilful or reckless acts or omissions.

18 **SECTION 2283k.** 153.90 (1) of the statutes is amended to read:

19 153.90 (1) Whoever intentionally violates s. 153.45 (5) or 153.50 or rules
20 promulgated under s. 153.75 (1) (a) may be fined not more than ~~\$10,000~~ \$15,000 or
21 imprisoned for not more than ~~9 months~~ one year or both.”

22 **6.** Page 1526, line 5: after that line insert:

23 “(12x) INITIAL APPOINTMENTS OF INDEPENDENT REVIEW BOARD. Notwithstanding
24 the length of terms specified in section 15.195 (9) (intro.) of the statutes, as created

1 by this act, the initial members of the independent review board shall be appointed
2 by the first day of the 4th month beginning after the effective date of this subsection
3 for the following terms:

4 (a) The purchaser of health care, for a term expiring on May 1, 2001.

5 (b) The medical ethicist and the privacy expert, for terms expiring on May 1,
6 2003.

7 (c) The statistician or researcher, for a term expiring on May 1, 2005.”.

8 (END)