2003-04 SESSION COMMITTEE HEARING RECORDS

Committee Name:

Senate Committee on Health, Children, Families, Aging and Long Term Care

(SC-HCFALTC)

Sample:

Record of Comm. Proceedings ... RCP

- 03hrAC-EdR_RCP_pt01a
- 03hrAC-EdR_RCP_pt01b
- 03hrAC-EdR_RCP_pt02

- *Appointments ... Appt*
- **

- *Clearinghouse Rules ... CRule*
- **

- *Committee Hearings ... CH*
- **

- *Committee Reports ... CR*
- **

- *Executive Sessions ... ES*
- **

- *Hearing Records ... HR*
- *03hr_ab0560_pt01*

- *Miscellaneous ... Misc*
- **

- *Record of Comm. Proceedings ... RCP*
- **

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

JANE DEE HULL
Governor

2910 NORTH 44th STREET, SUITE 210
PHOENIX, ARIZONA 85018-7256
602/912-8456 (phone) 602/912-8452 (fax)

CHARLES R. COHEN
Director of Insurance

Former Director Susan Gallinger issued the following Circular Letter on April 17, 1992:

CIRCULAR LETTER NO. 92-3

TO: ALL HEALTH CARE SERVICES ORGANIZATIONS; HOSPITAL, MEDICAL SERVICE CORPORATIONS; LIFE AND DISABILITY INSURERS; INSURANCE TRADE ASSOCIATIONS; INSURANCE MEDIA PUBLICATIONS; AND OTHER INTERESTED PERSONS

FROM: SUSAN GALLINGER, DIRECTOR OF INSURANCE

DATE: APRIL 17, 1992

RE: **USE OF UNITED STATES DRUG ENFORCEMENT ADMINISTRATION (DEA) REGISTRATION NUMBERS AS PHYSICIAN IDENTIFICATION NUMBERS**

The Arizona Department of Insurance ("ADOI") has recently received complaints from physicians regarding insurers' use of DEA registration numbers as physician identification numbers. One physician who complained stated that his patient was denied service by a pharmacy for a prescription for a medication that was not a controlled substance (an antibiotic). Both the physician and the patient were told that the physician's DEA number was required before the pharmacy could file an insurance claim for reimbursement. Thus, the pharmacy would not fill the prescription for an antibiotic without the physician's DEA registration number.

As a result of these complaints, ADOI has sought input from DEA on the appropriateness of insurers' use of DEA registration numbers as physician identification numbers. The response from G. Thomas Gitchel, Chief of the DEA Liaison and Policy Section states:

> The DEA system of registration was designed to establish a closed system of distribution of controlled substances from the point of manufacture to the point at which they are dispensed to the ultimate user. **DEA strongly opposes the use of a DEA registration number for any purpose other than to provide certification of registration in**

transactions involving controlled substances. The use of DEA numbers as identification numbers by the insurance industry is not a legitimate use of the system. DEA believes that abuses such as these could lead to a weakening of the registration system.

ADOI supports the efforts of DEA in protecting the integrity of the registration system for monitoring and controlling the distribution of controlled substances. Alternative means of physician identification are readily available in the form of social security numbers, federal tax identification numbers or license numbers assigned by the various licensing boards. Insurers are therefore requested to discontinue the use of DEA registration numbers as physician identification numbers.

Minnesota Session Laws

Minnesota Session Laws - 1998

Key: ~~language to be deleted~~...new language Change language enhancement display.

Legislative history and Authors

CHAPTER 316-S.F.No. 2207

An act relating to health; exempting certain prescriptions from bearing a federal drug enforcement administration registration number; restricting the use and the release of the federal drug enforcement administration registration number; amending Minnesota Statutes 1996, section 152.11, by adding subdivisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1996, section 152.11, is amended by adding a subdivision to read:

Subd. 2a. [FEDERAL REGISTRATION NUMBER EXEMPTION.] A prescription need not bear a federal drug enforcement administration registration number that authorizes the prescriber to prescribe controlled substances if the drug prescribed is not a controlled substance in schedule II, III, IV, or V. No person shall impose a requirement inconsistent with this subdivision.

Sec. 2. Minnesota Statutes 1996, section 152.11, is amended by adding a subdivision to read:

Subd. 2b. [RESTRICTION ON RELEASE OF FEDERAL REGISTRATION NUMBER.] No person or entity may offer for sale, sell, lease, or otherwise release a federal drug enforcement administration registration number for any reason, except for drug enforcement purposes authorized by this chapter and the federal controlled substances registration system. For purposes of this section, an entity includes a state governmental agency or regulatory board, a health plan company as defined under section 62Q.01, subdivision 4, a managed care organization as defined under section 62Q.01, subdivision 5, or any other entity that maintains prescription data.

Sec. 3. Minnesota Statutes 1996, section 152.11, is amended by adding a subdivision to read:

Subd. 2c. [RESTRICTION ON USE OF FEDERAL REGISTRATION NUMBER.] No entity may use a federal drug enforcement administration registration number to identify or monitor the prescribing practices of a prescriber to whom that number has been assigned, except for drug enforcement purposes authorized by this chapter and the federal controlled substances registration system. For purposes of this section, an entity includes a health plan company as defined under section 62Q.01, subdivision 4, a managed care organization as defined under section 62Q.01, subdivision 5, or any other entity that maintains prescription data.

Sec. 4. [EFFECTIVE DATE.]

Sections 1 to 3 are effective 24 months after the date on which a unique health identifier is adopted or established under United States Code, title 42, sections 1320d to 1320d-8 (1996

and subsequent amendments).

Presented to the governor March 19, 1998

Signed by the governor March 23, 1998, 10:53 a.m.

Minnesota Statutes 2002, Table of Chapters

Table of contents for Chapter 152

152.11 Written or oral prescriptions, requisites.

Subdivision 1. **Written prescription requirement for schedule II controlled substances.** No person may dispense a controlled substance included in Schedule II of section 152.02 without a prescription written by a doctor of medicine, a doctor of osteopathy licensed to practice medicine, a doctor of dental surgery, a doctor of dental medicine, a doctor of podiatry, or a doctor of veterinary medicine, lawfully licensed to prescribe in this state, or a state bordering Minnesota, and having a current federal drug enforcement administration registration number. Provided that in emergency situations, as authorized by federal law, such drug may be dispensed upon oral prescription reduced promptly to writing and filed by the pharmacist. Such prescriptions shall be retained in conformity with section 152.101. No prescription for a Schedule II substance may be refilled.

For the purposes of this chapter, a written prescription or oral prescription, which shall be reduced to writing, for a controlled substance in schedule II, III, IV or V is void unless (1) it is written in ink and contains the name and address of the person for whose use it is intended; (2) it states the amount of the controlled substance to be compounded or dispensed, with directions for its use; (3) if a written prescription, it contains the signature, address and federal registry number of the prescriber and a designation of the branch of the healing art pursued by the prescriber; and if an oral prescription, the name and address of the prescriber and a designation of the prescriber's branch of the healing art; and (4) it shows the date when signed by the prescriber, or the date of acceptance in the pharmacy if an oral prescription. Every licensed pharmacist who compounds any such prescription shall retain such prescription in a file for a period of not less than two years, open to inspection by any officer of the state, county, or municipal government, whose duty it is to aid and assist with the enforcement of this chapter. Every such pharmacist shall distinctly label the container with the directions contained in the prescription for the use thereof.

Subd. 2. **Written or oral prescription requirement for schedule III or IV controlled substances.** No person may dispense a controlled substance included in schedule III or IV of section 152.02 without a written or oral prescription from a doctor of medicine, a doctor of osteopathy licensed to practice medicine, a doctor of dental surgery, a doctor of dental medicine, a doctor of podiatry, or a doctor of veterinary medicine, lawfully licensed to prescribe in this state or a state bordering Minnesota, and having a current federal drug enforcement administration registration number. Such prescription may not be dispensed or refilled except with the written or verbal consent of the prescriber, and in no event more than six months after the date on which such prescription was issued and no such prescription may be refilled more than

five times.

Subd. 2a. **Federal registration number exemption.** A prescription need not bear a federal drug enforcement administration registration number that authorizes the prescriber to prescribe controlled substances if the drug prescribed is not a controlled substance in schedule II, III, IV, or V. No person shall impose a requirement inconsistent with this subdivision.

Subd. 2b. **Restriction on release of federal registration number.** No person or entity may offer for sale, sell, lease, or otherwise release a federal drug enforcement administration registration number for any reason, except for drug enforcement purposes authorized by this chapter and the federal controlled substances registration system. For purposes of this section, an entity includes a state governmental agency or regulatory board, a health plan company as defined under section 62Q.01, subdivision 4, a managed care organization as defined under section 62Q.01, subdivision 5, or any other entity that maintains prescription data.

Subd. 2c. **Restriction on use of federal registration number.** No entity may use a federal drug enforcement administration registration number to identify or monitor the prescribing practices of a prescriber to whom that number has been assigned, except for drug enforcement purposes authorized by this chapter and the federal controlled substances registration system. For purposes of this section, an entity includes a health plan company as defined under section 62Q.01, subdivision 4, a managed care organization as defined under section 62Q.01, subdivision 5, or any other entity that maintains prescription data.

Subd. 3. **Dispensing orphan drugs.** For the purpose of subdivisions 1 and 2, nothing shall prohibit the dispensing of orphan drugs prescribed by a person practicing in and licensed by another state as a physician, dentist, veterinarian, or podiatrist; who has a current federal drug enforcement administration registration number; and who may legally prescribe Schedule II, III, IV, or V controlled substances in that state.

HIST: (3906-14) 1939 c 102 s 4; 1939 c 193 s 4; 1955 c 185 s 2; 1967 c 408 s 7; 1971 c 937 s 15; 1973 c 693 s 7; 1986 c 444; 1993 c 82 s 2; 1994 c 465 art 1 s 23; 1995 c 66 s 1,2; 1998 c 316 s 1-3

* NOTE: Subdivisions 2a, 2b, and 2c, as added by Laws 1998, *chapter 316, sections 1 to 3, are effective 24 months after the *date on which a unique health identifier is adopted or *established under United States Code, title 42, sections 1320d *to 1320d-8 (1996 and subsequent amendments). Laws 1998, chapter *316, section 4.

U. S. Department of Justice
Drug Enforcement Administration

www.dea.gov

Washington, D.C. 20537

OCT 07 2003

Mr. Dean S. Cady, Jr.
Office of State Representative Leah Vukmir
P.O. Box 8953
Madison, Wisconsin 53708-8953

Dear Mr. Cady:

Thank you for sending this office a copy of Representative Vukmir's proposed legislation to prohibit the misuse of Drug Enforcement Administration (DEA) registration numbers. Practitioners are required to enter their registration number on each prescription which they issue for a controlled substance. However, many insurance firms which pay for prescriptions use the DEA number as an identifier for the practitioner and require it for all prescriptions including those which are not for controlled substances.

The DEA and several associations that represent medical practitioners have been concerned about this practice. We joined together to develop a Consensus Statement to Eliminate the Improper Use of Drug Enforcement Administration Registration Numbers. This Consensus Statement, enclosed, has been endorsed by the American Academy of Family Physicians, American College of Physicians – American Society of Internal Medicine, American Academy of Nurse Practitioners, National Association of Boards of Pharmacy, American Academy of Physician Assistants, American Optometric Association, Federation of State Medical Boards, and American Osteopathic Association. The statement encourages the Secretary of Health and Human Services to accelerate implementation of the national provider identifier system, as mandated by the Health Insurance Portability and Accountability Act.

Additional information regarding DEA's Diversion Control Program is available on our web site at www.DEAdiversion.usdoj.gov. If you have further questions, do not hesitate to contact Sally Haskell, Liaison Unit, at (202) 307-7297.

Sincerely,

Patricia M. Good, Chief
Liaison and Policy Section
Office of Diversion Control

Enclosure

Consensus Statement to Eliminate the Improper Use of Drug Enforcement Administration Registration Numbers

Drug Enforcement Administration

American Academy of Family Physicians

American College of Physicians – American Society of Internal Medicine

American Academy of Nurse Practitioners

National Association of Boards of Pharmacy

American Academy of Physician Assistants

American Optometric Association

Federation of State Medical Boards

American Osteopathic Association

The Controlled Substances Act of 1970 (CSA) was enacted to regulate the lawful use of, and eliminate the illegal distribution of controlled substances.

The CSA and regulations adopted pursuant to the Act require a practitioner to obtain and maintain a current Drug Enforcement Administration (DEA) registration in order to purchase, possess, distribute, and prescribe controlled substances.

The intent of the DEA registration number is to identify and validate those individuals who have been authorized by the federal DEA to prescribe controlled substances in the course of their professional practice.

The disclosure of a practitioner's DEA registration number to entities other than those involved in the legal distribution of controlled substances or the enforcement of the laws governing their legal distribution may facilitate the diversion of controlled substances from the legal channels of distribution.

The improper use of the DEA registration number by insurance companies and/or other health care providers for identification purposes is contrary to the spirit of the CSA and national drug control policies.

The improper use of the DEA registration number for identification purposes results in an unnecessary proliferation in the issuance of DEA registrations to many health care professionals who have neither a need nor desire to use or handle controlled substances in their chosen professions. This increases the probability of prescription fraud and diversion.

The associated use of "fake" or "dummy" DEA registration numbers in pharmacies as an effort to satisfy insurance claims increases the probability that improper DEA numbers will be used for controlled drug prescriptions, which is a violation of DEA regulations.

The Congress of the United States mandated that the Department of Health and Human Services implement a national provider identifier system when it passed the Health Insurance Portability and Accountability Act of 1996, which was signed by the President on August 21, 1996. This national identifier system should be funded and implemented as authorized by the Congress.

It is therefore agreed to and affirmed by the listed entities that the use of the DEA number for uses other than its original intention should be eliminated through appropriate public policy initiatives, which include, but are not limited to: voluntary actions by individual firms or groups; revised state laws or regulations; Congressional mandates and/or federal legislation. We encourage the Secretary of Health and Human Services to accelerate efforts to implement the national provider identifier system. It is a solution to the problems identified above and it is mandated by law.

American Medical Association

Physicians dedicated to the health of America

Pennsylvania Advisory re: DEA Numbers

IMPROPER USE OF DEA NUMBERS: A DEA ADISORY

December 1996

FROM: U.S. Department of Justice/Drug Enforcement Administration, Philadelphia Field Division

TO: Pennsylvania Medical Society

It has come to the attention of the Drug Enforcement Administration that insurance companies are requiring that a DEA number be placed on non-controlled substances prescriptions. Insurance companies are apparently utilizing the DEA number as an identifier and will not pay for a non-controlled substances prescription without a doctor's DEA number.

The DEA registration number is a crucial part of establishing a closed system of distribution of controlled substances from the point of manufacture to the point at which they are dispensed to the ultimate user. DEA strongly opposes the utilization of a DEA number for other than its intended purpose of providing certification of registration in transactions involving controlled substances. This usage of the DEA number as an identification number for the insurance industry forces practitioners who might otherwise not need a DEA registration to obtain one if they perceive it as a requirement for insurance reimbursement. This manner of usage by the insurance industry is not legitimate practice and could potentially lead to a weakening of the legal control measures imposed by the Controlled Substances Act.

DEA has been actively pursuing legislative action to restrict the use of the DEA registration number as well as supporting the development of an identification number for health care providers which will be used for insurance reimbursement purposes. However, it is imperative that organizations such as the Pennsylvania Medical Society take an active stance and oppose the practice of utilizing a DEA registration number for other than its intended purpose.

We encourage you to advise your members to refuse to provide what should be protected information when it is inappropriately requested. This type of universal effort would serve notice to the insurance industry that the medical and pharmacy community is no longer willing to tolerate this situation, and would obviate the necessity for legal and regulatory measures to solve this problem.

If you have any further questions please contact Acting Diversion Group Supervisor Debra Vaughn at (215) 597-9540.

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

JANE DEE HULL
Governor

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CHARLES R. COHEN
Director of Insurance

Former Director Susan Gallinger issued the following Circular Letter on April 17, 1992:

CIRCULAR LETTER NO. 92-3

TO: ALL HEALTH CARE SERVICES ORGANIZATIONS; HOSPITAL, MEDICAL SERVICE CORPORATIONS; LIFE AND DISABILITY INSURERS; INSURANCE TRADE ASSOCIATIONS; INSURANCE MEDIA PUBLICATIONS; AND OTHER INTERESTED PERSONS

FROM: SUSAN GALLINGER, DIRECTOR OF INSURANCE

DATE: APRIL 17, 1992

RE: **USE OF UNITED STATES DRUG ENFORCEMENT ADMINISTRATION (DEA) REGISTRATION NUMBERS AS PHYSICIAN IDENTIFICATION NUMBERS**

The Arizona Department of Insurance ("ADOI") has recently received complaints from physicians regarding insurers' use of DEA registration numbers as physician identification numbers. One physician who complained stated that his patient was denied service by a pharmacy for a prescription for a medication that was not a controlled substance (an antibiotic). Both the physician and the patient were told that the physician's DEA number was required before the pharmacy could file an insurance claim for reimbursement. Thus, the pharmacy would not fill the prescription for an antibiotic without the physician's DEA registration number.

As a result of these complaints, ADOI has sought input from DEA on the appropriateness of insurers' use of DEA registration numbers as physician identification numbers. The response from G. Thomas Gitchel, Chief of the DEA Liaison and Policy Section states:

> The DEA system of registration was designed to establish a closed system of distribution of controlled substances from the point of manufacture to the point at which they are dispensed to the ultimate user. **DEA strongly opposes the use of a DEA registration number for any purpose other than to provide certification of registration in**

> **transactions involving controlled substances. The use of DEA numbers as identification numbers by the insurance industry is not a legitimate use of the system.** DEA believes that abuses such as these could lead to a weakening of the registration system.

ADOI supports the efforts of DEA in protecting the integrity of the registration system for monitoring and controlling the distribution of controlled substances. Alternative means of physician identification are readily available in the form of social security numbers, federal tax identification numbers or license numbers assigned by the various licensing boards. Insurers are therefore requested to discontinue the use of DEA registration numbers as physician identification numbers.

WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE LEAH VUKMIR

FROM: Richard Sweet, Senior Staff Attorney

RE: Unique Identifiers for Health Care Providers Under Federal Law

DATE: October 8, 2003

This memorandum summarizes federal law and proposed federal regulations with regard to use of unique identifiers for health care providers.

The question arose regarding 2003 Assembly Bill 560, which provides certain prohibitions on use of federal Drug Enforcement Administration (DEA) numbers. However, those prohibitions do not take effect until the first day of the 12th month beginning after the effective date of a federal Department of Health and Human Services (DHHS) regulation that requires use of a unique identifier for health care providers.

The federal law regarding the unique health identifiers that is referenced in Assembly Bill 560 is 42 U.S.C. s. 1320d-2 (b). [The referenced federal law was created by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).] The law requires the Secretary of DHHS to adopt standards providing for a standard unique health identifier for each individual, employer, health plan, and health care provider for use in the health care system. With respect to identifiers for health plans and health providers, the Secretary must take into account multiple uses for identifiers and multiple locations and specialty classifications for health care providers. Federal law also states that the standards that are adopted must specify the purposes for which a unique health identifier must be used.

Also under federal law, not later than 24 months after the date on which an initial standard is adopted or established under various sections of the law, including the section dealing with unique identifiers, each person to whom the standard applies must be in compliance (36 months for small health plans).

In 1998, federal DHHS published proposed regulations on standards for health care provider identifiers in the Federal Register. [Federal Register, Vol. 63, No. 88, p. 25320, May 7, 1998.] However, the final regulations on health care provider identifiers have not been published by DHHS. Under the regulations proposed by DHHS, if a person conducts a transaction with a health plan as a

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standard transaction, the health plan may not refuse to conduct the transaction as a standard transaction, the health plan may not delay the transaction or otherwise adversely affect the person or the transaction on the ground that it is a standard transaction, and the health information transmitted must be in the form of standard data elements of information. In addition, a health plan that conducts transactions through an agent must assure that an agent meets all these requirements that apply to the health plan. [Proposed 45 C.F.R. s. 142.104.] In addition, under the proposed regulations, each health plan must accept and transmit the national provider identifier of any health care provider that must be identified by that identifier in any standard transaction. The term "transaction" is defined in the proposed federal regulations as the exchange of information between two parties to carry out financial and administrative activities related to health care, and specifically includes health claims.

In addition, the proposed federal regulations would require each health care provider to obtain a national provider identifier and would require each health care provider to accept and transmit the identifier when required in all transactions it accepts or transmits electronically.

Because the proposed DHHS regulations were never finalized, it is somewhat speculative to comment on what they might require when they are finalized. The prohibitions in Assembly Bill 560 take effect only if the federal regulations are finalized. In addition, persons will have approximately 36 months after promulgation of final federal regulations before the prohibitions in Assembly Bill 560 take effect—the 24 months allowed under federal law and the additional approximately 12 months allowed under Assembly Bill 560.

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

RNS:tlu:wu;tlu

LEAH VUKMIR
STATE REPRESENTATIVE

DATE: October 14, 2003

TO: Representative Underheim, Chair
Committee Members
Assembly Committee on Health

FROM: Representative Vukmir

RE: Testimony – Assembly Bill 560

Thank you Chairman Underheim for taking up AB 560. I introduced this legislation at the request of a constituent, Dr.Robert Kettler, whose written testimony is also before you. Dr. Kettler and other doctors are greatly concerned that current industry practices are weakening the impact of the federal Controlled Substances Act and putting the public at risk.

Simply put, AB 560 prohibits the use of Drug Enforcement Agency (DEA) numbers for purposes other than those intended by the agency and provides a penalty for those who do not comply.

In order to explain this bill I must first give you a bit of background history. In 1970, in an effort to combat illicit drug trafficking, the federal government enacted the Controlled Substance Act. This act empowered the Drug Enforcement Agency (DEA) to issue license numbers, commonly known as DEA registration numbers or DEA numbers. The DEA numbers are a crucial part of establishing a closed system of distribution of controlled substances from the point of manufacture to the point at which they are dispensed to the ultimate user. A number is assigned to every participant in this system from physician to pharmacist to distributor.

In order for this system to effectively curb drug trafficking, confidentiality is paramount. Controlled substances are some of the most abused and addictive drugs. It is for this reason that a closed system of control was created. Prescription fraud and theft in the supply chain became far easier to detect and track when everyone in the process was a verifiably registered agent.

Unfortunately, over time, the medical industry gradually adopted the DEA number as a unique identification number and began requiring it for a variety of purposes including processing medical claims. The widespread use of DEA numbers for processing insurance claims and as a form of general identification has undermined the confidentiality of the registration number. The danger with this widespread disclosure is the potential for the numbers to be accessible in the public domain, thereby increasing the potential for abuse. According to the U.S. Drug Enforcement Administration, a typical scenario involving abuse of these numbers occurs over the Internet where individuals pose as medical professionals and illegally buy and sell the substances.

STATE CAPITOL
P.O. BOX 8953 • MADISON, WISCONSIN 53708-8953
(608) 266-9180 • (888) 534-0014 • FAX: (608) 282-3614

The DEA is concerned with the improper use of the DEA number and has labeled this practice as "not legitimate." The DEA has also been actively urging states to adopt legislation such as AB 560 and encouraging doctors to refuse to provide their DEA number for any other purpose. ***The DEA strongly opposes the utilization of a DEA number for other than its intended purpose of providing certification of registration in transactions involving controlled substances.***

I would like to refer the committee to a memo from the Arizona Department of Insurance. It was addressed to the state's health care industry – urging them to develop alternatives to using the DEA number as a universal identifier. I provide this reference primarily for you to see the DEA characterization of the problem and also to demonstrate that this is not a new problem. The memo is dated April of 1992.

The American Medical Association also opposes the use of the DEA number for any purpose other than for prescribing and dispensing controlled substances. In fact, AB 560 is based on model legislation developed by the AMA and encouraged by the DEA.

So why has this practice continued and why hasn't the DEA stepped in? The federal government has stopped short of prohibiting this practice in large part because the authority to determine who may prescribe controlled substances resides with the states and therefore the responsibility of restricting the use of these numbers also rests with the states.

One measure recently adopted by the federal government offers a potential solution to the problem. In 1996 Congress passed the Health Insurance Portability and Accountability Act (HIPAA). Among other things, the act requires the Department of Health and Human Services (DHHS) to adopt standards that create a unique identifier for health providers. The act further requires that all providers use the numbers within two-years after the standards are adopted. These numbers will be unique identifiers and will become the universal and mandated standard for claims processing, reporting and virtually every other aspect of electronic record keeping in the medical industry. In short, this new numbering system will eliminate the need for using the DEA number for anything other than the purpose of dispensing controlled substances.

The pending changes have been well known to the industry since 1996 when the act was passed and the proposed standards for the numbering system were published in the Federal Register in 1998. While we are not certain when the final standards will be adopted, the industry will have two years from that date. The industry will have had at least a decade to prepare for the change. AB 560 gives Wisconsin's medical community an additional year to discontinue the improper use of DEA Numbers.

With or without AB 560, Wisconsin's medical community will comply with HIPAA standards and utilize a new numbering system. AB 560 does not place a new burden on health care companies and will have no additional fiscal impact whatsoever. At best, AB 560 creates a prohibition but not a mandate and even with the prohibition, a medical practitioner can release the DEA number to third-parties at their own discretion.

In closing, let me share with you a memo that I just received from the chief liaison in the Office of Diversion Control at the DEA. She describes the problem very well and also included a copy

of the "Consensus Statement to Eliminate the Improper Use of Drug Enforcement Administration Registration Numbers". I encourage you to review the statement and the list of supporters. I would also encourage you to consider the remedial action they recommend – in fact I think that it is important enough to read it to the committee and for the benefit of the others present today:

> *It is therefore agreed to and affirmed by the listed entities that the use of the DEA number for uses other than its original intention should be eliminated through appropriate public policy initiatives, which include, but are not limited to: voluntary actions by individual firms or groups; **revised state laws or regulations**; Congressional mandates and/or federal legislation. We encourage the Secretary of Health and Human Services to **accelerate** efforts to implement the national provider identifier system. It is a solution to the problems identified above and it is mandated by law.*

I urge the committee to support this bill and to agree with the Department of Justice's Drug Enforcement Agency – it is a simple and logical solution to a serious problem in Wisconsin and across the nation. We have the opportunity here to set an example for other states to follow.

Oct. 2003

The Wisconsin Society of Anesthesiologists, Inc.

TO: Honorable Members of the Assembly Committee on Health

FROM: Joe Handrick, Governmental Liaison for the Wisconsin Society of Anesthesiologists

RE: Assembly Bill 560 – Relating to the use of DEA Numbers

DATE: October 14, 2003

The Wisconsin Society of Anesthesiologists wishes to express our great appreciation to Chairman Underheim for holding a hearing on Assembly Bill 560 and to the committee for receiving our testimony. We are also very grateful to Representative Leah Vukmir for introducing this measure.

The Wisconsin Society of Anesthesiology strongly supports Assembly Bill 560.

Our expert on this issue is Dr. Robert E. Kettler, an anesthesiologist at Froedtert Hospital in Wauwatosa. Dr. Kettler is in San Francisco for the national conference of the American Society of Anesthesiologists and he sends his regrets for not appearing in person.

I've attached Dr. Kettler's written testimony in support of Assembly 560. I've also attached an advisory from the Drug Enforcement Agency itself that is supportive of this type of legislation.

Please do not hesitate to contact me if I can be of any assistance on this matter.

Joey Handrick
22 East Mifflin Street
Madison WI 53703

(608) 227-0166

joeyhandrick@chartermi.net

The Wisconsin Society of Anesthesiologists, Inc.

Testimony of Dr. Robert E. Kettler

My name is Robert E. Kettler. I am a physician specializing in anesthesiology. I am an associate professor of anesthesiology at the Medical College of Wisconsin, and I serve as the Director of the Froedtert and Medical College Pain Management Center (PMC). I am also a Past-President of the Milwaukee Society of Anesthesiologists and the Wisconsin Society of Anesthesiologists and am a current member of the House of Delegates of the American Society of Anesthesiologists.

I am sorry that I cannot attend the Committee hearing, but I'm attending the Annual Meeting of the American Society of Anesthesiologists. I thank the members of the Committee for accepting my written testimony. I would be glad to answer any questions that Committee members have, and Mr. Joe Handrick can provide you with contact information.

I think that the best way for me to explain why I urge approval of A.B. 560 is to relate the following story:

> About one year ago I saw a patient in the PMC who had been discharged from several other pain clinics in the Southeastern Wisconsin area. One of the reasons for her discharge from other pain clinics is that she had forged prescriptions for narcotics using the illicitly obtained DEA number of a physician. She had been prosecuted for this crime. She had also undergone a rehabilitation treatment program and was presumed not to be abusing narcotics at that time. We evaluated her, and, considering her pain syndrome and her past history, provided a multi-component pain therapy program that did not include narcotics. When I gave her the prescriptions she said to me, "Wait a minute, you forgot to write your DEA number on the prescription." I explained to her that the medications were not for controlled substances, so the DEA number wasn't necessary. Although I didn't discuss this with her, I also thought it would be foolish on my part to unnecessarily provide my DEA number to someone who had a history of using these numbers to commit a crime. She said that her insurance wouldn't let her receive the medications if I didn't provide the DEA number, and I naively assured her that wasn't the case. Shortly her pharmacy called the clinic asking for my DEA number. I asked why they needed it for non-controlled substances, and I was told that insurance companies use the DEA number as a universal identifier of physicians and would not reimburse the pharmacy without it.

Please let me provide some background information on this issue. The Drug Enforcement Agency (DEA) has established several categories (also known as schedules) of drugs that have abuse potential. The best known of these drugs are probably the narcotic analgesics. These drugs are extremely potent pain-killers, and they are extremely potent euphoria inducing drugs. While the euphoria doesn't seem to be a problem when these drugs are used to treat pain, it can cause addiction when the drugs are taken for recreational purposes. Even though it's rare to see addiction when pain is treated, this complication can occur even then. Because of their abuse potential, these drugs must be used under medical supervision. Only individuals or institutions registered with the DEA can prescribe or dispense these drugs. Once registered with the DEA, the individual or institution is identified by a number, the DEA number. The DEA number is in some ways like a Social Security Number (SSN). Just as identity theft can result in unauthorized use of someone's SSN, a similar type of physician identity theft can result in the unauthorized and inappropriate use of a DEA number. For example, someone could steal a prescription pad, write a prescription for narcotics, forge a physician's signature, and write the stolen DEA number and illegally obtain narcotics.

Continued...

Because of my experience I've done some investigation into this matter. I've found out that some medical equipment companies ask for a DEA number to obtain reimbursement for provision of medical supplies and equipment. While pharmacies will get physician DEA numbers because of the need to dispense controlled substances, medical supply and equipment providers don't need the DEA number, except for reimbursement purposes. When a DEA number is provided to these entities, a whole host of individuals are unnecessarily provided with knowledge of a physician's DEA number. I have spoken with risk management personnel at the Medical College of Wisconsin and personnel in Wisconsin's regulatory agency about this problem. I will not speak for them, but I think it's fair to state that they agree with me that this is not the purpose for which the DEA established this identification system; that the current excessive use of DEA numbers is ill-advised; and that this bill works toward an important goal.

I can understand that insurance and managed care organizations may need a mechanism to track physician services. I'm not opposed to some type of identification number like the identification numbers for University of Wisconsin students that have replaced social security numbers. I try not to be someone who only proposes eliminating an established system without proposing an alternative, but this area (insurance reimbursement) is so complex that I feel unqualified to propose alternatives. I think those who are knowledgeable in this area could better propose alternatives. I also don't think that prohibiting the use of DEA numbers for non-narcotic drugs will eliminate inappropriate narcotic use. However, I do think that it's important to minimize the possibility of prescription forgery, and I believe A. B. 560 will move Wisconsin towards that goal. I hope that the Committee will approve the bill.

Thank you.

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American Medical Association

Physicians dedicated to the health of America

Pennsylvania Advisory re: DEA Numbers

IMPROPER USE OF DEA NUMBERS: A DEA ADISORY

December 1996

FROM: U.S. Department of Justice/Drug Enforcement Administration, Philadelphia Field Division

TO: Pennsylvania Medical Society

It has come to the attention of the Drug Enforcement Administration that insurance companies are requiring that a DEA number be placed on non-controlled substances prescriptions. Insurance companies are apparently utilizing the DEA number as an identifier and will not pay for a non-controlled substances prescription without a doctor's DEA number.

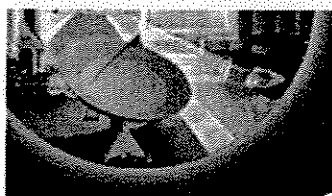
The DEA registration number is a crucial part of establishing a closed system of distribution of controlled substances from the point of manufacture to the point at which they are dispensed to the ultimate user. DEA strongly opposes the utilization of a DEA number for other than its intended purpose of providing certification of registration in transactions involving controlled substances. This usage of the DEA number as an identification number for the insurance industry forces practitioners who might otherwise not need a DEA registration to obtain one if they perceive it as a requirement for insurance reimbursement. This manner of usage by the insurance industry is not legitimate practice and could potentially lead to a weakening of the legal control measures imposed by the Controlled Substances Act.

DEA has been actively pursuing legislative action to restrict the use of the DEA registration number as well as supporting the development of an identification number for health care providers which will be used for insurance reimbursement purposes. However, it is imperative that organizations such as the Pennsylvania Medical Society take an active stance and oppose the practice of utilizing a DEA registration number for other than its intended purpose.

We encourage you to advise your members to refuse to provide what should be protected information when it is inappropriately requested. This type of universal effort would serve notice to the insurance industry that the medical and pharmacy community is no longer willing to tolerate this situation, and would obviate the necessity for legal and regulatory measures to solve this problem.

If you have any further questions please contact Acting Diversion Group Supervisor Debra Vaughn at (215) 597-9540.

Taken from the website of the American Medical Association



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DEA: Searchable CD-ROM

- This is the Official DEA Authorized Database.
- Contains easy-to-use search and retrieval software.
- The CD-ROM package includes the full database that is easy to use.
- Users may export records in an MS Access or .dbf format
- Quarterly issues appear in April, July, October, and January

Product Details

Product	NTIS Order No:	Issues
Controlled Substances Act (CSA) Registration Database...(more)	SUB-5438INQ	Updated Monthly
	SUB-5331INQ	Updated Quarterly

Plan Options	Price	
	Monthly	Quarterly
Single user subscription	$2,115	$990
Single Issue for Single User Only (plus handling fee)	$297	$297
Up to 5 concurrent users*	$3,520	$1,650
Up to 10 concurrent users*	$5,830	$2,750
11+ concurrent users*	$11,220	$5,280

Product	NTIS Order No:	Issues
Drug Enforcement Administration (DEA) List 1 Database...(more)	SUB-5432INQ	Updated Quarterly

Plan Options	Price
	Quarterly
Single user subscription	$1,155
Single Issue for Single User Only (plus handling fee)	$346
Up to 5 concurrent users*	$1,925
Up to 10 concurrent users*	$3,210
11+ concurrent users*	$6,160

*The CD-ROM can only be shared over local area networks, not wide area networks

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Record Content For DEA Controlled Substances Act Registration Database

Raw Data File Specifications

The following information is contained in each record in the DEA Registration Database:

- **DEA Registration Number**
- **Business Activity Code (BAC)***
- **Drug Schedules**
- **Expiration Date**
- **Name of Company or Individual**
  Street Address
- **City, State, and Zip Code**
- **Business Activity Sub-Code**

Every record is assigned one of the following Business Activity Codes:

A - Pharmacy
B - Hospital/Clinic
C - Practitioner
D - Teaching Institution
E - Manufacturer
F - Distributor
G - Researcher
H - Analytical Lab
J - Importer
K - Exporter
M - Mid Level Practitioner
N, P, R, S, T, U - Narcotic Treatment Programs

CLOSE WINDOW

1/21/04

Joe Hendrick (Represents Anesthesiologists)

Supporting of bill: WMS, Med. College of Wi., Froedtert, Academy of Family Physicians.

Insurance Companies & pharmacists use DEA #'s to track physicians.

* Insurance Co.'s originally argued that the bill would cost them to change their system.

Authors of the bill then said agreed to delay the effective date of the bill until the HIPPA #'s come out.

- The ~~pharmacists~~ Pharmacists initially agreed but then testified in opp. to bill stating that bill not needed, just wait for HIPAA #'s.

- There is no guarantee that Insurance Co.'s will change their system of tracking ~~it~~ after HIPPA #'s issued.

- So far, the activity for this bill has been in the Assembly.

  She thinks it would be good for us to have a pub. hearing on the senate version.

2003 - 2004 LEGISLATURE

LRBa1904/1
DAK:cjs:pg

ASSEMBLY AMENDMENT ,

TO 2003 ASSEMBLY BILL 560

Amendment wanted by Assn. & Hdq Hth Plans + Dean H.C.

At the locations indicated, amend the bill as follows:

1. Page 2, line 4: after that line insert:

"(am) "Disease management" has the meaning given in s. 49.45 (50) (a).".

2. Page 2, line 6: after that line insert:

"(bm) "Health care operations" has the meaning given in 42 CFR 164.501.".

3. Page 2, line 9: after that line insert:

"(f) "Treatment" has the meaning given in s. 632.835 (1) (d).".

4. Page 3, line 3: after "substances" insert "and except for the purposes of treatment, disease management, health care operations, or payment of claims".

(END)