



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Assembly Bill 139

Senate Amendment 1

Memo published: October 14, 2013

Contact: Anne Sappenfield, Senior Staff Attorney (267-9485)

Assembly Bill 139 amends current law regarding the duty of physicians to inform patients of treatment options.

Assembly Bill 139, as Amended by the Assembly

Under current law, any physician who treats a patient must inform the patient about the availability of all alternate, viable medical modes of treatment and about the benefits and risks of these treatments. The physician's duty to inform the patient under this provision does not require disclosure of specified information, including information beyond what a reasonably well-qualified physician in a similar medical classification would know and extremely remote possibilities that might falsely or detrimentally alarm the patient.

In actions alleging that a physician has failed to provide informed consent, the Wisconsin Supreme Court has held since at least 1975 that the "reasonable patient" standard must be applied. The Court has described the standard as follows: "Wisconsin law requires that a physician disclose information necessary for a reasonable person to make an intelligent decision with respect to the choices of treatment or diagnosis." [*Jandre v. Physicians Insurance Company of Wisconsin*, 2012 WI 39, ¶¶ 7-8, citations omitted.]

Assembly Bill 139 requires a physician to inform the patient about the availability of reasonable alternate medical modes of treatment, instead of all alternate, viable medical modes of treatment. The bill specifies that the reasonable physician standard is the standard for informing a patient under this provision. The bill provides that the reasonable physician standard requires disclosure only of information that a reasonable physician in the same or similar medical specialty would know and disclose under the circumstances.

The bill **repeals** the provision under which a physician is not required to disclose information beyond what a reasonably well-qualified physician in a similar medical classification would know. The

bill **adds** a provision that provides that a physician is not required to disclose information about alternate medical modes of treatment for conditions that the physician does not believe the patient has at the time the physician informs the patient.

The bill would first apply to a physician required to inform a patient about modes of treatment on the effective date of the legislation.

Senate Amendment 1

Senate Amendment 1 modifies the provision of the bill under which a physician is not required to disclose information about alternate medical modes of treatment for conditions that the physician does not believe the patient has at the time the physician informs the patient. Under the amendment, a physician is not required to disclose information about alternate modes of treatment for **any condition the physician has not included in his or her diagnosis** at the time the physician informs the patient.

Assembly Action

Assembly Amendment 1

Assembly Amendment 1 modified the initial applicability of the bill so that it first applies to a physician required to inform a patient about modes of treatment, instead of to a cause of action that accrues, on the effective date of the legislation.

Bill History

Senator Grothman offered Senate Amendment 1. On October 9, 2013, the Senate Committee on Judiciary and Labor voted unanimously to adopt the amendment and recommended concurrence in the bill, as amended, on a vote of Ayes, 3; Noes, 2.

AS:ksm