



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Assembly Bill 448	Assembly Amendments 1 and 2
<i>Memo published:</i> January 14, 2014 <i>Contact:</i> Melissa Schmidt, Senior Staff Attorney (266-2298)	

2013 ASSEMBLY BILL 448

2013 Assembly Bill 448 (hereinafter, “the bill”) provides that no person may receive pharmaceutical items¹ pursuant to a drug disposal program unless the person is either authorized by the Department of Justice (DOJ); a political subdivision (county, town, village, or city); or federal law.

Drug Disposal Programs

Programs Approved by DOJ

Under the bill, DOJ may grant a person written authorization to operate a drug disposal program if all of the following conditions apply:

- The person adopts written policies and procedures that comply with the following requirements:
 - Describes in detail the manner in which the program operates, including identification of the kinds of pharmaceutical items that may be received under the program, whether the program may receive controlled substances and controlled substance analogs, whether the pharmaceutical items will be transferred by mail under the program, and the locations at which the pharmaceutical items may be transferred in person under the program.
 - Lists the name, address, telephone number, and 24-hour contact information for one or more persons in this state who are responsible for the operation of the program.

¹ The bill defines “pharmaceutical item” to include a drug; prescription drug; controlled substance or controlled substance analog; a device, as defined in s. 450.01 (6), Stats.; or a hypodermic syringe, needle, or other object used for administering a drug.

- Ensures compliance with current law related to Wisconsin's Pharmacy Examining Board and Uniform Controlled Substances Act; any current law relating to medical waste, solid waste, or hazardous waste; and with any other applicable federal or state law.
- If the drug disposal program will receive pharmaceutical items in any manner other than an in-person transfer, the person must demonstrate to DOJ's satisfaction that the transfers will comply with any federal or state law applicable to the transportation and delivery of pharmaceutical items.

The bill also provides that DOJ shall approve the policies and procedures if they do not violate the requirements of the bill or any other applicable federal or state law. If DOJ disapproves them, it shall state the reasons in writing and at any time, the person may resubmit revised policies and procedures to DOJ for its review and approval. The bill provides that any determination by DOJ is not subject to judicial review.

Programs Approved by Political Subdivisions

In order for a political subdivision to operate a drug disposal program, or grant written authorization to another person to do so, the bill requires that all of the following apply:

- The political subdivision or authorized person operates the drug disposal program only within the boundaries of the political subdivision, with one exception. A drug disposal program may operate within more than one political subdivision if DOJ authorizes the program, as described above; all of the political subdivisions within which the drug disposal program operates also authorize the program; or the program is authorized under federal law.
- The person adopts written policies and procedures that comply with the requirements listed above.
- The legal counsel for the political subdivision, or at the discretion of the political subdivision, DOJ if the legal counsel is not an employee of the political subdivision, reviews and approves of the policies and procedures for the drug disposal program and any changes to them.
- The drug disposal program receives pharmaceutical items only by means of delivery in person by a person that lawfully possesses the pharmaceutical item, unless the drug disposal program is authorized under federal law to receive it by other means or DOJ also approves the program.

The bill provides that when legal counsel, or DOJ if appropriate, reviews the policies and procedures, it must approve them in writing, if they do not violate the requirements of the bill and do not violate any other applicable federal or state law. The political subdivision must also provide DOJ with a copy of the approval and a copy of the policies and procedures, or changes thereto. Also, the bill provides that DOJ does not have to approve the programs.

Authorization to Dispose of Prescription Drugs

The bill provides that a person who lawfully possesses a prescription drug may destroy the prescription drug at a drug disposal program. The bill also provides that a person who lawfully possesses a prescription drug, or his or her guardian, trustee, or personal representative, may grant written authorization to another person for purposes of disposing of the prescription as follows:

- A competent adult may grant written authorization to his or her domestic partner, or relative by blood, marriage, or adoption within the third degree of kinship.
- A person's guardian may grant written authorization to an adult who is related to the guardian's ward by blood, marriage, or adoption within the third degree of kinship, or to a domestic partner of the ward.
- A personal representative or a trustee may grant written authorization to an adult beneficiary of the estate or trust.

To be valid, the written authorization must satisfy all of the following conditions:

- The authorization describes with reasonable specificity each prescription drug that is to be disposed of.
- The authorization is in the physical possession of the person authorized to dispose of the prescription drug and each prescription drug described in the authorization is, within 24 hours after the authorization is signed by the person granting the authorization, transferred to a drug disposal program or otherwise lawfully disposed of.
- The authorization and each prescription drug to be disposed of were obtained without consideration.

Effective Date

The bill has a delayed effective date of four months.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 (hereinafter, AA1) makes the following changes to the bill:

- Clarifies that the bill applies to household drugs by deleting references in the bill to "pharmaceutical items" and replacing it with the term "household pharmaceutical items." AA1 defines a "household pharmaceutical item" to include:
 - A drug, prescription drug, or a controlled substance or controlled substance analog if it is located in or comes from a place where the individual, a member of the individual's household, an in-home hospice service, or an adult family home serving fewer than five adult members manages the use of the drug, prescription drug, or controlled substance or controlled substance analog.
 - A device as defined in s. 450.01 (6), Stats.,² or an object used for administering a drug if the device or object is located in or comes from a place where the individual, a member

² Section 450.01 (6), Stats., defines a device as "an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, which does not achieve any of its principal intended purposes through chemical action within or on the body of a person or other animal, is not dependent upon being metabolized for the achievement of any of its principal intended purposes, and is: (a) recognized by the U.S. pharmacopoeia and national formulary or official homeopathic pharmacopoeia of the United States, or any supplement to either of them; (b) intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or other conditions in persons or other animals; or (c) intended to affect the structure or any function of the body of persons or other animals."

of the individual's household, an in-home hospice service, or an adult family home serving fewer than five adult members manages the use of the device or object.

- A "household pharmaceutical item" does not include either: (1) any item that may be contaminated with antineoplastic chemotherapy drugs, including objects used to administer drugs, gloves, and other items that have come into contact with chemotherapy drugs; or (2) any item containing elemental mercury.
- Exempts sharps collection stations that are operated in compliance with Department of Natural Resources (DNR) rules.
- Requires that each person operating a drug disposal program in this state shall, within 30 days after the drug disposal program begins operation, notify and provide all of the following information to DNR:
 - The location and hours of operation of the drug disposal program.
 - The name, address, telephone number, and 24-hour contact information for one or more persons in Wisconsin who are responsible for the operation of the program.
 - A description of the household pharmaceutical items the drug disposal program may receive.

ASSEMBLY AMENDMENT 2

Assembly Amendment 2 (hereinafter, "AA2") changes the delayed effective date from four months to July 1, 2015.

BILL HISTORY

On January 8, 2014, Representative Nygren offered AA1 and AA2. On January 9, the Assembly Committee on Criminal Justice recommended adoption of both AA1 and AA2 on votes of Ayes, 10; Noes, 0; and then voted to recommend passage of the bill as amended by a vote of Ayes, 10; Noes, 0.

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