



2013 ASSEMBLY BILL 692

January 31, 2014 - Introduced by Representative CZAJA, cosponsored by Senators GROTHMAN, LASEE and TIFFANY. Referred to Committee on Judiciary.

1 **AN ACT to renumber and amend** 448.695 (1); and **to create** 446.02 (11), 446.08,
2 447.02 (2) (f), 447.40, 448.695 (1) (b), 448.697 and 449.25 of the statutes;
3 **relating to:** a duty of podiatrists, chiropractors, dentists, and optometrists to
4 inform patients of treatment options and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under Wisconsin's physician informed consent law, a physician who treats a patient has a duty to inform the patient about treatment options. A physician who fails to so inform a patient about modes of treatment may be held civilly liable for damages under tort law. This common law duty, as it relates to physicians, has been codified as a statutory duty.

In the case *Hannemann v. Boyson*, 2005 WI 94, the Wisconsin Supreme Court wrote that this duty to inform a patient about treatment options was not necessarily limited to physicians, and the court held in *Hannemann* that a chiropractor had such a duty to inform a patient. The duty, as it relates to chiropractors or any other types of health care professionals other than physicians, has not previously been codified as a statutory duty.

2013 Wisconsin Act 111 modified the codified duty of physicians to inform a patient about treatment options in a number of ways, including: 1) providing that the "reasonable physician standard," as defined in the act, is the standard for informing a patient and 2) providing that the physician's duty does not require the disclosure of information about alternate medical modes of treatment for any

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condition the physician has not included in his or her diagnosis at the time the physician informs the patient.

This bill codifies into the statutes a similar duty to inform a patient about treatment options with respect to the following types of health care professionals: 1) chiropractors; 2) dentists; 3) podiatrists; and 4) optometrists.

Specifically, the bill provides that any chiropractor, dentist, podiatrist, or optometrist who treats a patient must inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments. The bill provides that the reasonable chiropractor, dentist, podiatrist, or optometrist standard, whichever is applicable, is the standard for informing a patient under that duty. The bill provides that this standard requires disclosure only of information that a reasonable chiropractor, dentist, podiatrist, or optometrist would know and disclose under the circumstances. The bill provides that a chiropractor's, dentist's, podiatrist's, or optometrist's duty to so inform the patient does not require disclosure of any of the following:

1) Detailed technical information that in all probability a patient would not understand.

2) Risks apparent or known to the patient.

3) Extremely remote possibilities that might falsely or detrimentally alarm the patient.

4) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.

5) Information in cases where the patient is incapable of consenting.

6) Information about alternate modes of treatment for any condition the chiropractor, dentist, podiatrist, or optometrist has not included in his or her diagnosis at the time the chiropractor, dentist, podiatrist, or optometrist informs the patient.

Also under current law, the Medical Examining Board must promulgate rules implementing the physician's duty to inform a patient about treatment options, as codified into the statutes. This bill similarly requires the Chiropractic Examining Board, the Dentistry Examining Board, the Podiatry Affiliated Credentialing Board, and the Optometry Examining Board to promulgate rules implementing the chiropractor's, dentist's, podiatrist's, and optometrist's duties to inform a patient about treatment options, as those duties are codified into the statutes by the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 446.02 (11) of the statutes is created to read:

2 446.02 (11) The examining board shall promulgate rules implementing s.

3 446.08.

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1 **SECTION 2.** 446.08 of the statutes is created to read:

2 **446.08 Informed consent.** Any chiropractor who treats a patient shall inform
3 the patient about the availability of reasonable alternate modes of treatment and
4 about the benefits and risks of these treatments. The reasonable chiropractor
5 standard is the standard for informing a patient under this section. The reasonable
6 chiropractor standard requires disclosure only of information that a reasonable
7 chiropractor would know and disclose under the circumstances. The chiropractor's
8 duty to inform the patient under this section does not require disclosure of any of the
9 following:

10 (1) Detailed technical information that in all probability a patient would not
11 understand.

12 (2) Risks apparent or known to the patient.

13 (3) Extremely remote possibilities that might falsely or detrimentally alarm
14 the patient.

15 (4) Information in emergencies where failure to provide treatment would be
16 more harmful to the patient than treatment.

17 (5) Information in cases where the patient is incapable of consenting.

18 (6) Information about alternate modes of treatment for any condition the
19 chiropractor has not included in his or her diagnosis at the time the chiropractor
20 informs the patient.

21 **SECTION 3.** 447.02 (2) (f) of the statutes is created to read:

22 447.02 (2) (f) Provisions implementing s. 447.40.

23 **SECTION 4.** 447.40 of the statutes is created to read:

24 **447.40 Informed consent.** Any dentist who treats a patient shall inform the
25 patient about the availability of reasonable alternate modes of treatment and about

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1 the benefits and risks of these treatments. The reasonable dentist standard is the
2 standard for informing a patient under this section. The reasonable dentist standard
3 requires disclosure only of information that a reasonable dentist would know and
4 disclose under the circumstances. The dentist's duty to inform the patient under this
5 section does not require disclosure of any of the following:

6 (1) Detailed technical information that in all probability a patient would not
7 understand.

8 (2) Risks apparent or known to the patient.

9 (3) Extremely remote possibilities that might falsely or detrimentally alarm
10 the patient.

11 (4) Information in emergencies where failure to provide treatment would be
12 more harmful to the patient than treatment.

13 (5) Information in cases where the patient is incapable of consenting.

14 (6) Information about alternate modes of treatment for any condition the
15 dentist has not included in his or her diagnosis at the time the dentist informs the
16 patient.

17 **SECTION 5.** 448.695 (1) of the statutes is renumbered 448.695 (1) (intro.) and
18 amended to read:

19 448.695 (1) (intro.) The affiliated credentialing board shall promulgate all of
20 the following rules defining:

21 (a) Rules defining the acts or attempted acts of commission or omission that
22 constitute unprofessional conduct under s. 448.60 (5).

23 **SECTION 6.** 448.695 (1) (b) of the statutes is created to read:

24 448.695 (1) (b) Rules implementing s. 448.697.

25 **SECTION 7.** 448.697 of the statutes is created to read:

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1 **448.697 Informed consent.** Any podiatrist who treats a patient shall inform
2 the patient about the availability of reasonable alternate modes of treatment and
3 about the benefits and risks of these treatments. The reasonable podiatrist standard
4 is the standard for informing a patient under this section. The reasonable podiatrist
5 standard requires disclosure only of information that a reasonable podiatrist would
6 know and disclose under the circumstances. The podiatrist's duty to inform the
7 patient under this section does not require disclosure of any of the following:

8 (1) Detailed technical information that in all probability a patient would not
9 understand.

10 (2) Risks apparent or known to the patient.

11 (3) Extremely remote possibilities that might falsely or detrimentally alarm
12 the patient.

13 (4) Information in emergencies where failure to provide treatment would be
14 more harmful to the patient than treatment.

15 (5) Information in cases where the patient is incapable of consenting.

16 (6) Information about alternate modes of treatment for any condition the
17 podiatrist has not included in his or her diagnosis at the time the podiatrist informs
18 the patient.

19 **SECTION 8.** 449.25 of the statutes is created to read:

20 **449.25 Informed consent. (1)** Any optometrist who treats a patient shall
21 inform the patient about the availability of reasonable alternate modes of treatment
22 and about the benefits and risks of these treatments. The reasonable optometrist
23 standard is the standard for informing a patient under this section. The reasonable
24 optometrist standard requires disclosure only of information that a reasonable
25 optometrist would know and disclose under the circumstances. The optometrist's

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1 duty to inform the patient under this section does not require disclosure of any of the
2 following:

3 (a) Detailed technical information that in all probability a patient would not
4 understand.

5 (b) Risks apparent or known to the patient.

6 (c) Extremely remote possibilities that might falsely or detrimentally alarm the
7 patient.

8 (d) Information in emergencies where failure to provide treatment would be
9 more harmful to the patient than treatment.

10 (e) Information in cases where the patient is incapable of consenting.

11 (f) Information about alternate modes of treatment for any condition the
12 optometrist has not included in his or her diagnosis at the time the optometrist
13 informs the patient.

14 **(2)** The examining board shall promulgate rules implementing sub. (1).

15 **SECTION 9. Initial applicability.**

16 (1) The treatment of section 446.08 of the statutes first applies to a chiropractor
17 required to inform a patient about modes of treatment on the effective date of this
18 subsection.

19 (2) The treatment of section 447.40 of the statutes first applies to a dentist
20 required to inform a patient about modes of treatment on the effective date of this
21 subsection.

22 (3) The treatment of section 448.697 of the statutes first applies to a podiatrist
23 required to inform a patient about modes of treatment on the effective date of this
24 subsection.

