



2023 ASSEMBLY BILL 870

January 2, 2024 - Introduced by Representatives SINICKI, DRAKE, EMERSON, JACOBSON, ORTIZ-VELEZ and STUBBS, cosponsored by Senator TAYLOR. Referred to Committee on Health, Aging and Long-Term Care.

1 **AN ACT to amend** 146.81 (4); and **to create** 50.373, 146.83 (3f) (b) 3m. and 655.27
2 (1g) of the statutes; **relating to:** video recording of surgical procedures,
3 providing an exemption from emergency rule procedures, granting
4 rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill creates a requirement for hospitals, ambulatory surgical centers, or any other place where surgical procedures are performed (surgical facilities) to offer surgical patients the option to have their surgical procedures videotaped and discharge instructions recorded. Surgical facilities must provide notice of the option and all related procedures and conditions set forth in the bill. For purposes of the bill, a surgical procedure is one for which a surgical or other invasive procedure is performed upon a patient under conscious sedation, deep sedation, regional anesthesia, or general anesthesia. If a patient makes a request to have a surgical procedure recorded, the bill requires that the surgical facility, or its designee, record the surgical procedure with both audio and color video. When recording of a surgical procedure is requested, the facility must continuously record with color video and audio all activity in the surgical suite from the time preparation for the surgery begins until all activity related to the surgery, including cleanup, is complete. The bill requires that the recording must also include any preoperative communication regarding the surgical procedure between the surgical practitioner and the patient and any surgical time out, regardless of where those communications take place. If the surgical patient is incapacitated, the surgical facility is required to provide

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another authorized person with notice of the option for video recording, and that person may request that a recording be made. Similarly, if the surgical patient is a minor, the surgical facility must notify a parent, guardian, or legal custodian of the option for video recording and allow that person to make a request for a recording on behalf of the minor. A patient may also request that his or her discharge instructions be recorded. The surgical facility may determine if these instructions will be videotaped or audiotaped.

The bill also allows a physician or certain other individual who holds a valid license or other credential that allows him or her to perform surgical procedures and who is scheduled to perform a surgical patient's surgical procedure to request that a recording be made. A health care provider who provides the patient with discharge instructions may also request that those instructions, as provided, be recorded. A surgical facility must comply with these requests so long as certain conditions are met, including that the surgical patient or other person authorized to make a decision on behalf of the patient does not object. Under the bill, in certain limited emergency circumstances, surgical facilities are not required to provide the option of recording or to comply with a request for recording. If the facility is not required to comply with a request for recording of a surgical procedure due to an emergency, the facility must still provide the patient with the option to have the discharge instructions recorded.

In return for exercising the option to have a surgical procedure recorded, under the bill, the surgical patient or another person on behalf of the patient may not disclose the recording except to limited authorized individuals, unless confidentiality is waived by the health care provider or surgical practitioner that is a subject of the video recording. Video recordings of surgical procedures created under this bill are otherwise treated as patient health care records and are subject to the same protections as other patient health care records, including all criminal and civil penalties for improper disclosure or destruction. The bill specifies that, once a recording is complete, the surgical facility or its designee must preserve the recording as part of the patient's health care record and keep a separate additional copy, but delete other copies of the recording from the recording device and elsewhere. The facility must retain the separate additional copy for at least seven years after the recording was first made.

Under the bill, a surgical facility may charge a surcharge of up to \$25 for each recording of a surgical procedure. Upon request, the surgical facility must provide to the patient, person authorized by the patient, or parent, guardian, or legal custodian of the patient one copy of the recording without an additional charge. Recordings under this bill are admissible as evidence in any civil or criminal action or proceeding related to any alleged act or omission depicted in the recording. A surgical patient may also request up to two free copies of his or her discharge instructions—one for the patient, and one for another person designated by the patient.

Under the bill, a surgical patient may complete an advance request for recording, which permits an individual who is of sound mind and over the age of 18 to request video recording for future surgical procedures. The individual may

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complete an advance request for a single specific surgical procedure or set of discharge instructions, or for all future surgical procedures and discharge instructions to which provisions of the bill would apply. An advance request must be completed voluntarily, and must be in writing and signed and dated in the presence of a witness over the age of 18. The advance request may be revoked at any time.

The bill provides that a health care provider who knowingly refuses to comply with a patient request for recording is subject to a forfeiture of up to \$25,000 for each violation. A surgical facility that fails to provide a required notice of the option for recording, including information regarding the procedures, the fees, the conditions, the surgical practitioner's request option, and the advance request option, is subject to a forfeiture of up to \$25,000 for each violation. The bill also provides penalties for interference with an advance request for recording, and for unauthorized disclosure of a recording.

Under this bill, the Department of Health Services is required to promulgate rules establishing standards relating to the recording equipment and the recording. DHS may promulgate additional rules as necessary to implement and administer the provisions of the bill. The bill also allows DHS to grant limited extensions for compliance with the requirements of the bill, if a facility provides evidence of a compelling need, financial or otherwise.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

For further information see the state 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.** 50.373 of the statutes is created to read:

2 **50.373 Video recording of surgical procedures. (1) DEFINITIONS.** In this
3 section:

4 (a) "Conscious sedation" is a drug-induced depression of consciousness during
5 which a patient responds purposefully to verbal commands, either alone or
6 accompanied by light tactile stimulation.

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1 (b) "Deep sedation" is a drug-induced depression of consciousness during
2 which a patient cannot be easily aroused but responds purposefully following
3 repeated or painful stimulation.

4 (c) "Discharge instructions" means care instructions provided to a patient at
5 or near the time of a patient's exit or release from a surgical facility after a surgical
6 procedure.

7 (d) "General anesthesia" means a temporary status commonly produced by the
8 administration of certain intravenous drugs and inhaled gases that cause a patient
9 to be unconscious and unable to feel pain during a medical procedure.

10 (e) "Guardian" means the person named by the court having the duty and
11 authority of guardianship.

12 (f) "Health care provider" means a person or entity described under s. 146.81
13 (1) (a) to (p) and includes any surgical facility.

14 (g) "Incapacitated" means unable to receive and evaluate information
15 effectively or to communicate decisions to such an extent that an individual lacks the
16 capacity to manage his or her health care decisions.

17 (h) "Legal custodian" means a person, other than a parent or guardian, or an
18 agency to whom legal custody of a child has been transferred by a court, but does not
19 include a person who has only physical custody of the child.

20 (i) "Patient health care records" has the meaning given in s. 146.81 (4).

21 (j) "Regional anesthesia" means the use of local anesthetics to make a specific
22 part of the body numb to prevent pain and allow for completion of a surgical
23 procedure.

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1 (k) “Surgical facility” means a hospital, as defined in s. 50.33 (2), an ambulatory
2 surgical center, as defined in 42 CFR 416.2, or any other place where a surgical
3 procedure is performed.

4 (L) “Surgical patient” means a patient who is scheduled to undergo a surgical
5 procedure.

6 (m) “Surgical practitioner” means a physician, surgeon, or osteopath under s.
7 990.01 (28), an individual licensed to practice dentistry under ch. 447, and any other
8 individual who holds a valid license or other credential that allows him or her to
9 perform a surgical procedure.

10 (n) “Surgical procedure” means a surgical procedure for which a patient is
11 under conscious sedation, deep sedation, regional anesthesia, or general anesthesia.
12 “Surgical procedure” includes a colonoscopy or similarly invasive procedure if
13 performed under conscious sedation, deep sedation, regional anesthesia, or general
14 anesthesia.

15 (o) “Surgical time out” means a final verification of details relating to a surgery,
16 including at least confirmation of a surgical patient’s identity, surgical site, and
17 planned procedure.

18 **(2) OPTION FOR RECORDING.** (a) 1. A surgical facility shall provide to a surgical
19 patient the option to have the surgical facility or the surgical facility’s designee make
20 a video recording of the patient’s surgical procedure. For purposes of any recording
21 of a surgical procedure made under this subdivision, the surgical facility or its
22 designee shall make a continuous color video recording, including both audio and
23 video and display of the time and date. The surgical facility or its designee may not
24 interrupt the video recording within the surgical suite once started. Separate
25 interactions outside of the surgical suite, including preoperative communications

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1 and surgical time outs under subd. 2., if outside of the surgical suite, and discharge
2 instructions under subd. 3., if applicable, may be separately recorded. All areas of
3 the surgical suite, including entrances and exits, must be in view on the recording
4 and audible. The surgical facility or its designee shall begin the recording within the
5 surgical suite of a surgical procedure under this subdivision when preparation of the
6 surgical suite for that surgical patient's surgical procedure starts and continue the
7 recording through the period of the cleanup after that procedure and until all activity
8 in the surgical suite related to the procedure recorded is complete.

9 2. Any procedure recording made under this subsection shall include a
10 recording, conforming to the standards described in subd. 1., of any preoperative
11 communication regarding the surgical procedure between the surgical practitioner
12 and the surgical patient and any surgical time out, regardless of where the
13 preoperative communication or surgical time out takes place.

14 3. A surgical facility shall also provide to a surgical patient the option to have
15 his or her discharge instructions, as given by the patient's surgical practitioner or
16 other health care provider, recorded. If a patient chooses to have his or her discharge
17 instructions recorded, the recording may be audio only or videotaped, including
18 audio, at the option of the surgical facility.

19 (b) 1. A surgical facility shall notify a surgical patient of the option to have a
20 recording made under par. (a) and of the procedures, the fees, the conditions, the
21 surgical practitioner's request option, and the advance request option.

22 2. If the surgical patient is a minor child, the surgical facility shall notify the
23 minor child's parent, guardian, or legal custodian of the option to have a recording
24 made under par. (a) and of the procedures, the fees, the conditions, the surgical
25 practitioner's request option, and the advance request option.

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1 3. If a surgical patient is incapacitated, a surgical facility shall notify a person
2 authorized by the patient under s. 146.81 (5), if available, or, if not, a relative of the
3 patient of the option and information under subd. 1. and allow that person to make
4 a decision regarding whether to have a recording made under par. (a).

5 (c) A surgical practitioner who is scheduled to participate in a surgical patient's
6 surgical procedure may request that the procedure be video recorded under the
7 procedures described in this subsection. The surgical facility shall comply with the
8 surgical practitioner's request if all of the following are true:

9 1. The requesting surgical practitioner has informed the surgical patient or, if
10 the patient is a minor, a parent, guardian, or legal custodian, of the surgical
11 practitioner's request for video recording and the reason the surgical practitioner
12 has requested that recording. If the patient is incapacitated, the requesting surgical
13 practitioner shall inform a person authorized by the patient under s. 146.81 (5), if
14 available, or, if not, a relative of the patient.

15 2. The surgical patient or other person informed under subd. 1. does not object
16 to the video recording.

17 (d) A patient's surgical practitioner or other health care provider who will
18 administer a patient's discharge instructions may request that the patient's
19 discharge instructions, as given by the surgical practitioner or other health care
20 provider, be recorded under the procedures described in this subsection. The surgical
21 facility shall comply with the surgical practitioner's or other health care provider's
22 request if all of the following are true:

23 1. The requesting surgical practitioner or other health care provider has
24 informed the patient or, if applicable, a parent, guardian, legal custodian, person
25 authorized by the patient under s. 146.81 (5), or relative of the patient of the surgical

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1 practitioner's or health care provider's request for recording and the reason the
2 surgical practitioner or other health care provider has requested that recording.

3 2. The surgical patient or, if applicable, the parent, guardian, legal custodian,
4 person authorized by the patient under s. 146.81 (5), or relative of the patient does
5 not object to the recording.

6 (e) 1. Except as otherwise provided under this subsection, no surgical patient
7 or person on behalf of a surgical patient may disclose, unless the surgical practitioner
8 or other health care provider that is a subject of the recording waives confidentiality,
9 the content of a recording created under this section except to health care providers
10 providing care to the surgical patient, to immediate family members or a person
11 authorized by the patient under s. 146.81 (5), or to an attorney or an attorney's staff
12 for the purpose of obtaining legal advice. If legal action relating to the surgical
13 procedure is taken, the surgical patient or an attorney for the surgical patient may
14 disclose the recording to additional individuals if necessary for the case, but the
15 recording shall be filed under seal if permitted by the court. In all other respects,
16 recordings under this section shall be treated as patient health care records.

17 2. Notwithstanding the restrictions on disclosure under this paragraph, a
18 surgical patient or a person on behalf of a surgical patient may disclose a recording
19 of the surgical patient's discharge instructions made under this section to one or
20 more persons designated by the surgical patient to assist the surgical patient with
21 postsurgical care, and one person designated by the surgical patient may receive a
22 free copy of the recording of the surgical patient's discharge instructions as set forth
23 under sub. (10).

24 3. Notwithstanding subds. 1. and 2. and sub. (10), a surgical facility or surgical
25 practitioner may, if authorization is granted under sub. (3), use a copy of a recording

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1 created under this section for teaching or research purposes outside the network of
2 the surgical facility and if the surgical patient's personal identifying information is
3 redacted or if the surgical patient or other person authorized to request or consent
4 to a recording under this section on behalf of the patient expressly consents, in
5 writing, to the use and disclosure. Notwithstanding any other provision of this
6 section, a surgical facility or surgical practitioner may, if not for teaching or research
7 purposes outside of the network of the surgical facility, be permitted to use a
8 recording made under this subsection without informed written confirmation under
9 sub. (3) if the disclosure is otherwise permitted under s. 146.82 or 146.83.

10 **(3) WRITTEN CONFIRMATION.** Before proceeding with a recording under sub. (2),
11 a surgical facility shall obtain from the surgical patient or other person authorized
12 to request or consent to a recording under sub. (2) on behalf of the patient,
13 confirmation, in writing, authorizing the recording of the surgical patient's surgical
14 procedure. If a surgical facility or surgical practitioner intends to use a recording as
15 described under sub. (2) (e) 3., the surgical facility shall provide written notice of that
16 proposed use to the surgical patient or other person authorized to request or consent
17 to a recording under sub. (2) on behalf of the patient, and obtain written
18 authorization of that use of the recording.

19 **(4) EQUIPMENT AND TECHNICAL ASSISTANCE.** A surgical facility shall have
20 available appropriate recording equipment and technical assistance as determined
21 by the department in rules promulgated under sub. (8) to comply with a request for
22 a recording of a surgical patient's surgical procedure or discharge instructions.

23 **(5) MINORS.** If a surgical patient is a minor child, a parent, guardian, or legal
24 custodian may request that a recording be made of the minor child's surgical
25 procedure or discharge instructions under sub. (2) (a).

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1 **(6) EXCEPTION FOR EMERGENCIES.** (a) Notwithstanding sub. (2), a surgical
2 facility is not required to provide the option of a video recording of a surgical
3 procedure or comply with a request for video recording under this section if the
4 surgical practitioner determines in the exercise of his or her professional judgment
5 that either of the following is true:

6 1. Immediate surgery is necessary to avert death.

7 2. Other circumstances exist such that video recording would cause a delay that
8 would create a serious risk of substantial and irreversible impairment of one or more
9 of the surgical patient's bodily functions.

10 (b) The surgical practitioner or other health care provider at the surgical
11 facility shall inform the surgical patient or, if applicable, other persons as described
12 under sub. (2) (b) of the medical indications supporting the surgical practitioner's
13 reasonable medical judgment that an emergency condition under par. (a) exists.

14 (c) If a surgical practitioner determines under par. (a) that an emergency exists
15 such that the surgical facility is not required to comply with a request for video
16 recording of a surgical procedure, the surgical facility shall provide the surgical
17 patient or, if applicable, other person under sub. (2) (b), with the option to have the
18 patient's discharge instructions recorded as provided under sub. (2) (a) 3.

19 **(7) EXTENSIONS FOR FACILITY COMPLIANCE.** The department may in its discretion
20 grant a surgical facility one or more 6-month extensions of the deadline for the
21 facility to comply with the requirements of this section, but may not grant more than
22 a total of 6 extensions. In order to qualify for an extension, a surgical facility shall
23 provide the department with evidence of a compelling need, financial or otherwise,
24 for additional time for compliance.

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1 **(8) RULES.** (a) The department shall promulgate rules establishing standards
2 for video recording of surgical procedures, recording of discharge instructions, and
3 the use of recording equipment in surgery and discharge settings to ensure such
4 recordings are professional and of sufficient quality to accurately portray what takes
5 place when discharge instructions are given or during a surgical procedure,
6 including who enters and leaves and a view of the patient without requiring close-up
7 views of the patient or the surgical procedure itself.

8 (b) In addition to the rules required under par. (a), the department may
9 promulgate rules, as necessary, to implement and administer this section, including
10 rules that address any of the following:

11 1. Establishing criteria and procedures for providing notice and the option for
12 recording under sub. (2).

13 2. Implementing the requirements regarding preservation and destruction of
14 recordings under sub. (9).

15 3. Establishing standards, procedures, and forms for advance requests for
16 recording under sub. (12).

17 4. Implementing the forfeiture procedures under sub. (14).

18 **(9) PRESERVATION AND DESTRUCTION.** (a) After the video recording of a surgical
19 procedure under this section is complete, the surgical facility shall promptly do all
20 of the following:

21 1. Preserve the recording as part of the surgical patient's health care record,
22 which may include a copy in the patient's health care record and any electronic
23 backup of health care records kept in the normal course of business.

24 2. Preserve a separate additional electronic copy of the recording.

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1 3. Except as provided under subds. 1. and 2., delete copies of the recording from
2 the recording device or any other electronic device, including any memory card or
3 flash drive.

4 (b) The surgical facility shall preserve the copy of the recording in the surgical
5 patient's health care record, including any backup copy, as it would other records in
6 the patient's health care record as required by law. The surgical facility or its
7 designee shall retain the additional copy required under par. (a) 2. for at least 7 years
8 after the recording was first made.

9 **(10) FEES.** A surgical facility may charge a surcharge of up to \$25 for each
10 recording made of a surgical procedure or discharge instructions to offset the costs
11 of creating and providing a recording. The surgical facility shall provide, upon
12 request by the surgical patient, a person authorized by the surgical patient under s.
13 146.81 (5), or a parent, guardian, or legal custodian of a minor surgical patient, one
14 copy of each recording made under sub. (2) (a) 1. for which a request is made without
15 additional charge. The surgical facility shall provide to the surgical patient, upon
16 request by the surgical patient, one free copy of the discharge instructions for the
17 surgical patient and up to one additional free copy of the discharge instructions for
18 another person designated by the surgical patient. The surgical facility may charge
19 fees as described under s. 146.83 (3f) (b) 3m. for additional copies of the recordings.

20 **(11) ADMISSIBILITY OF RECORDING.** For purposes of admissibility in a civil or
21 criminal action or proceeding, a recording created under this section is a patient
22 health care record under s. 146.81 and shall be treated as a health care record under
23 ss. 908.03 (6m) and 909.02 (11). If certified by an appropriate record custodian,
24 recordings under this section shall be admissible as evidence in any civil or criminal
25 action or proceeding related to any alleged act or omission depicted in the recording.

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1 **(12)** ADVANCE REQUESTS FOR RECORDING. (a) *Definition.* In this subsection,
2 “principal” means an individual who executes an advance request for surgical
3 procedure recording instrument.

4 (b) *Advance requests for recording.* 1. An individual who is of sound mind and
5 has attained age 18 may voluntarily execute an advance request for surgical
6 procedure recording instrument. An individual for whom an adjudication of
7 incompetence and appointment of a guardian of the individual is in effect in this state
8 is presumed not to be of sound mind for purposes of this subsection and for executing
9 an advance request for surgical procedure recording instrument.

10 2. The desires of a principal who is not incapacitated supersede the effect of his
11 or her advance request for surgical procedure recording instrument at all times.

12 3. The department shall prepare and provide copies of an advance request for
13 surgical procedure recording instrument and accompanying information for
14 distribution in quantities to health care professionals, hospitals and other surgical
15 facilities, county clerks, and local bar associations and individually to private
16 persons. The department shall determine the form of the request form and
17 accompanying instructions. The department shall include on the form an option for
18 requesting the recording of a specific, single surgical procedure, an option for
19 requesting the recording of discharge instructions after a surgical procedure, an
20 option for requesting the recording of all future surgical procedures under this
21 section, and an option for requesting the recording of discharge instructions after all
22 future surgical procedures under this section. The department shall also include on
23 the form a statement to the effect that a principal who exercises the option for
24 recording agrees that, unless the surgical practitioner involved waives
25 confidentiality, a recording created under this section is confidential and the

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1 principal or a person on behalf of the principal may disclose it only to health care
2 providers providing care to the principal, to immediate family members or a person
3 authorized by the patient under s. 146.81 (5), or to an attorney or an attorney's staff
4 for the purpose of obtaining legal advice, and if legal action relating to the surgical
5 procedure is taken, the principal or an attorney on behalf of the principal may
6 disclose the recording to additional individuals if necessary for the case, but it must
7 be filed under seal if permitted by the court. The form shall also include a statement
8 that the principal or a person on behalf of a principal may disclose the principal's
9 discharge instructions to one or more persons designated by the principal to assist
10 with postsurgical care, and a statement that a surgical facility or surgical
11 practitioner may, if express authorization is granted by the principal in writing, use
12 a copy of a recording for teaching or research purposes outside of the network of the
13 surgical facility if the principal's personal identifying information is redacted or if
14 the principal or other person authorized on behalf of the principal expressly
15 consents, in writing, to the use and disclosure.

16 (c) *Advance request for recording; execution.* A valid advance request for
17 surgical procedure recording instrument shall be all of the following:

18 1. In writing.

19 2. Dated and signed by the principal or by an individual who has attained age
20 18 at the express direction and in the presence of the principal.

21 3. Signed in the presence of a witness who is an individual who has attained
22 age 18.

23 4. Voluntarily executed.

24 (d) *Revocation.* A principal may revoke his or her advance request for surgical
25 procedure recording instrument at any time by doing any of the following:

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1 1. Canceling, defacing, obliterating, burning, tearing, or otherwise destroying
2 the advance request for surgical procedure recording instrument or directing
3 another in the presence of the principal to so destroy the advance request for surgical
4 procedure recording instrument.

5 2. Executing a statement, in writing, that is signed and dated by the principal,
6 expressing the principal's intent to revoke the advance request for surgical procedure
7 recording instrument.

8 3. Verbally expressing the desire to revoke the advance request for surgical
9 procedure recording instrument in the presence of a witness.

10 4. Executing a subsequent advance request for surgical procedure recording
11 instrument that replaces an existing advance request for surgical procedure
12 recording instrument.

13 **(13) PENALTIES.** (a) Except as provided under sub. (6), a surgical practitioner
14 or other health care provider who knowingly refuses to comply with a surgical
15 patient's request to have his or her surgical procedure or discharge instructions
16 recorded may be subject to a forfeiture of not more than \$25,000 for each violation.

17 (b) Except as provided under sub. (6), a surgical facility that fails to provide a
18 notice required under sub. (2) (b) may be subject to a forfeiture of not more than
19 \$25,000 for each violation.

20 (c) 1. Any person who negligently interferes with or violates a surgical patient's
21 advance request for surgical procedure recording instrument created under sub. (12)
22 without the consent of the principal shall be subject to a fine of at least \$500 but not
23 more than \$1,000.

24 2. Any person who intentionally interferes with or violates a surgical patient's
25 advance request for surgical procedure recording instrument created under sub.

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1 (12), including intentionally concealing, canceling, defacing, obliterating, damaging,
2 or destroying the instrument without the consent of the principal may be fined not
3 more than \$5,000.

4 (d) 1. For purposes of this paragraph, “disclosure” means to effect the provision
5 of access to, or the release, transfer, or divulging in any manner of, information
6 outside those persons or entities authorized under in this section.

7 2. Except as otherwise authorized under this section, if a surgical practitioner
8 or other health care provider discloses a recording made under this section, the
9 standards and penalties for violations relating to patient health care records
10 described under s. 146.84 shall apply.

11 3. A surgical patient, or another person on behalf of a surgical patient, who
12 intentionally discloses a recording made under this section in violation of sub. (2) (e)
13 may be fined not more than \$3,000 per violation. If a person affirmatively discloses
14 a recording made under this section on a social media platform, that disclosure shall
15 constitute a single violation, regardless of whether the disclosure is subsequently
16 redisclosed by other social media participants. Each subsequent disclosure on a
17 separate platform shall be considered a separate violation.

18 4. Whoever threatens, with intent to extort money or any pecuniary advantage
19 whatsoever, or with intent to compel the person so threatened to do any act against
20 the person’s will, to disseminate or to communicate to anyone, or, except as otherwise
21 authorized under this section, does disseminate or communicate to anyone,
22 information related to a recording under this section is guilty of a Class I felony. For
23 the purpose of this subdivision, “information” has the meaning given in s. 943.31.

24 **(14) FORFEITURE PROCEDURE.** (a) The department may directly assess
25 forfeitures provided for under sub. (13). If the department determines that a

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1 forfeiture should be assessed for a particular violation, the department shall send a
2 notice of assessment to the violator. The notice shall specify the amount of the
3 forfeiture assessed and the violation and the statute or rule alleged to have been
4 violated, and shall inform the violator of the right to a hearing under par. (b).

5 (b) A violator may contest an assessment of a forfeiture by sending, within 30
6 days after receipt of notice under par. (a), a written request for a hearing under s.
7 227.44 to the division of hearings and appeals created under s. 15.103 (1). The
8 administrator of the division may designate a hearing examiner to preside over the
9 case and recommend a decision to the administrator under s. 227.46. The decision
10 of the administrator of the division shall be the final administrative decision. The
11 division shall commence the hearing within 60 days after receipt of the request for
12 a hearing and shall issue a final decision within 30 days after the close of the hearing.
13 Proceedings before the division are governed by ch. 227. In any petition for judicial
14 review of a decision by the division, the party, other than the petitioner, who was in
15 the proceeding before the division shall be the named respondent.

16 (c) All forfeitures shall be paid to the department within 30 days after receipt
17 of notice of assessment or, if the forfeiture is contested under par. (b), within 30 days
18 after receipt of the final decision after exhaustion of administrative review, unless
19 the final decision is appealed and the order is stayed by court order. The department
20 shall remit all forfeitures paid to the secretary of administration for deposit in the
21 injured patients and families compensation fund under s. 655.27.

22 (d) The attorney general may bring an action in the name of the state to collect
23 any forfeiture imposed under sub. (13) if the forfeiture has not been paid following
24 the exhaustion of all administrative and judicial reviews. The only issue to be
25 contested in any such action shall be whether the forfeiture has been paid.

ASSEMBLY BILL 870**SECTION 2**

1 **SECTION 2.** 146.81 (4) of the statutes is amended to read:

2 146.81 (4) “Patient health care records” means all records related to the health
3 of a patient prepared by or under the supervision of a health care provider; all
4 recordings under s. 50.373 related to a surgical patient; and all records made by an
5 ambulance service provider, as defined in s. 256.01 (3), an emergency medical
6 services practitioner, as defined in s. 256.01 (5), or an emergency medical responder,
7 as defined in s. 256.01 (4p), in administering emergency care procedures to and
8 handling and transporting sick, disabled, or injured individuals. “Patient health
9 care records” includes billing statements and invoices for treatment or services
10 provided by a health care provider and includes health summary forms prepared
11 under s. 302.388 (2). “Patient health care records” does not include those records
12 subject to s. 51.30, reports collected under s. 69.186, records of tests administered
13 under s. 252.15 (5g) or (5j), 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), records
14 related to sales of pseudoephedrine products, as defined in s. 961.01 (20c), that are
15 maintained by pharmacies under s. 961.235, fetal monitor tracings, as defined under
16 s. 146.817 (1), or a pupil’s physical health records maintained by a school under s.
17 118.125.

18 **SECTION 3.** 146.83 (3f) (b) 3m. of the statutes is created to read:

19 146.83 (3f) (b) 3m. Except as provided in s. 50.373, for a copy of a recording of
20 a surgical procedure or discharge instructions, \$25 per copy.

21 **SECTION 4.** 655.27 (1g) of the statutes is created to read:

22 655.27 (1g) DEPOSIT OF FORFEITURES. Forfeitures paid under s. 50.373 (13) shall
23 be deposited in the fund under sub. (1).

24 **SECTION 5. Nonstatutory provisions.**

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1 (1) EMERGENCY RULES. Using the procedure under s. 227.24, the department of
2 health services shall promulgate the rules required under s. 50.373 for the period
3 before the effective date of the permanent rules promulgated under s. 50.373 but not
4 to exceed the period authorized under s. 227.24 (1) (c), subject to extension under s.
5 227.24 (2). Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department of health
6 services is not required to provide evidence that promulgating a rule under this
7 subsection as an emergency rule is necessary for the preservation of the public peace,
8 health, safety, or welfare and is not required to provide a finding of emergency for a
9 rule promulgated under this subsection. Notwithstanding s. 227.24 (1) (e) 1d., the
10 department of health services is not required to prepare a statement of the scope of
11 the rules promulgated under this subsection. Notwithstanding s. 227.24 (1) (e) 1g.,
12 the department of health services is not required to present the rules promulgated
13 under this subsection to the governor for approval.

14 **SECTION 6. Effective dates.** This act takes effect on the first day of the 13th
15 month beginning after publication, except as follows:

16 (1) SECTION 5 (1) of this act takes effect on the day after publication.

17 (END)