



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-4315/1  
SWB:amn

## 2017 ASSEMBLY BILL 937

February 9, 2018 – Introduced by Representative MURPHY. Referred to Committee on Health.

1     **AN ACT** *to renumber and amend* 146.81 (5); *to amend* 102.13 (2) (b), 146.81  
2           (2) (f), 146.819 (2) (a), 146.819 (3) (a), 146.819 (3) (b), 146.82 (1), 146.82 (4) (b)  
3           1., 146.82 (4) (b) 2. (intro.), 146.82 (5) (b), 146.82 (5) (c) 1., 146.83 (1b), 146.83  
4           (1c), 146.83 (1f) (am), 146.83 (1f) (cm), 146.83 (3), 146.83 (3f) (b) 1., 2., 3., 4., 5.  
5           and 6. and 146.83 (3f) (c) 2.; and *to create* 146.81 (5) (c), 146.81 (5) (d), 146.81  
6           (5) (f), 146.81 (5) (g), 146.813, 146.83 (3f) (b) 1m. and 146.83 (3f) (b) 3m. of the  
7           statutes; **relating to:** access to and release of patient health care records.

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### *Analysis by the Legislative Reference Bureau*

This bill makes various changes to statutes regarding access to and release of patient health care records.

The bill substitutes the term “representative of the patient” for the term “person authorized by the patient” throughout the statutes related to confidentiality of and access to health care records. The bill also changes the definition such that a “representative of the patient” is any of the following: the parent or guardian or legal custodian of a patient who is a minor; the person vested with supervision of a patient who is a child under certain state laws; a person who has legal authority to act on behalf of an adult patient in making decisions related to health care; the personal representative, or special administrator, who has the authority to act on behalf of a deceased patient or a deceased patient’s estate; a health care agent

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designated by an adult patient as a principal under a power of attorney for health care instrument if the patient has been found to be incapacitated except as limited in that instrument; a temporary guardian appointed for a patient; or an individual who is treated as a personal representative under the federal privacy rule associated with the Health Insurance Portability and Accountability Act of 1996. The federal privacy rule associated with HIPAA specifies that a personal representative is a person who has authority to act on behalf of an adult or an emancipated minor in making health care decisions; a parent, guardian, or other person acting in loco parentis who has authority to act on behalf of an unemancipated minor in making health care decisions under certain circumstances specified in the rule; or an executor, administrator, or other person who has authority to act on behalf of a deceased individual or the deceased individual's estate.

Current state law allows that a patient or person authorized by the patient may, among other things, authorize release of the patient's health care records to others, inspect the patient's health care records, obtain copies of the patient's health care records for a reduced fee if the patient is eligible for Medical Assistance, and obtain copies of the patient's health care records without paying a certification fee or a retrieval fee. A representative of the patient retains that authority under this bill.

Under the bill, a health care provider is allowed to elect not to consider a person as a representative of the patient under circumstances similar to the federal privacy rule associated with HIPAA. A health care provider, in its discretion, may elect not to consider a person a representative of the patient if 1) the patient has been or may be subjected to domestic violence, abuse, or neglect by the person or 2) considering the person as a representative of the patient could endanger the patient and, in the exercise of the health care provider's professional judgment, it is not in the best interest of the patient to consider that person a representative of the patient.

This bill also changes the fees allowed for obtaining copies of health records to include fees relating to electronic records and electronic delivery of health records. Among other things, the bill establishes a maximum per page charge of \$300 per record, plus applicable taxes, for electronic copies secured from a medical provider's electronic health record and delivered via electronic mail or secure Internet portal.

Finally, the bill changes the fee structure for reproduction fees for medical records requested in worker's compensation matters, applying the same fee structure used for reproduction of medical records in other contexts in place of the special fee structure for worker's compensation matters that exists under current law.

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

- 1           **SECTION 1.** 102.13 (2) (b) of the statutes is amended to read:
- 2           102.13 (2) (b) A physician, chiropractor, podiatrist, psychologist, dentist,
- 3           physician assistant, advanced practice nurse prescriber, hospital, or health service

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1 provider shall furnish a legible, certified duplicate of the written material requested  
2 under par. (a) in paper format upon payment of the actual costs of preparing the  
3 certified duplicate, not to exceed the greater of 45 cents per page or \$7.50 per request,  
4 plus the actual costs of postage, or shall furnish a legible, certified duplicate of that  
5 material in electronic format upon payment of \$26 per request fees established under  
6 s. 146.83 (3f) (b). Any person who refuses to provide certified duplicates of written  
7 material in the person's custody that is requested under par. (a) shall be liable for  
8 reasonable and necessary costs and, notwithstanding s. 814.04 (1), reasonable  
9 attorney fees incurred in enforcing the requester's right to the duplicates under par.  
10 (a).

11 **SECTION 2.** 146.81 (2) (f) of the statutes is amended to read:

12 146.81 (2) (f) The signature of the patient or the person ~~authorized by~~  
13 representative of the patient and, if signed by a ~~person authorized by~~ representative  
14 of the patient, the relationship of that person representative to the patient or the  
15 authority of the ~~person~~ representative.

16 **SECTION 3.** 146.81 (5) of the statutes is renumbered 146.81 (5) (intro.) and  
17 amended to read:

18 146.81 (5) (intro.) "~~Person authorized by~~ Representative of the patient" means  
19 ~~the~~ any of the following:

20 (a) ~~The parent, or guardian, or legal custodian of a minor patient, as defined~~  
21 ~~in s. 48.02 (8) and (11), the~~ of a patient who is a minor.

22 (b) ~~The person vested with supervision of the~~ a patient who is a child under s.  
23 938.183 or 938.34 (4d), (4h), (4m), or (4n), ~~the guardian of a patient adjudicated~~  
24 ~~incompetent in this state, the personal representative, spouse, or domestic partner~~

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1 ~~under ch. 770 of a deceased patient, any person authorized in writing by the patient~~  
2 ~~or a~~.

3 ~~(e) A health care agent designated by the an adult patient as a principal under~~  
4 ~~ch. 155 if the patient has been found to be incapacitated under s. 155.05 (2), except~~  
5 ~~as limited by the power of attorney for health care instrument. If no spouse or~~  
6 ~~domestic partner survives a deceased patient, “person authorized by the patient”~~  
7 ~~also means an adult member of the deceased patient’s immediate family, as defined~~  
8 ~~in s. 632.895 (1) (d). A court may appoint a temporary guardian for a patient believed~~  
9 ~~incompetent to consent to the release of records under this section as the person~~  
10 ~~authorized by the patient to decide upon the release of records, if no guardian has~~  
11 ~~been appointed for the patient.~~

12 **SECTION 4.** 146.81 (5) (c) of the statutes is created to read:

13 146.81 (5) (c) A person who has legal authority to act on behalf of an adult  
14 patient in making decisions related to health care.

15 **SECTION 5.** 146.81 (5) (d) of the statutes is created to read:

16 146.81 (5) (d) The personal representative, or special administrator, who has  
17 the authority to act on behalf of a deceased patient or a deceased patient’s estate.

18 **SECTION 6.** 146.81 (5) (f) of the statutes is created to read:

19 146.81 (5) (f) A temporary guardian appointed for a patient as described in s.  
20 146.813 (1).

21 **SECTION 7.** 146.81 (5) (g) of the statutes is created to read:

22 146.81 (5) (g) An individual who is treated as a personal representative under  
23 45 CFR 164.502 (g).

24 **SECTION 8.** 146.813 of the statutes is created to read:

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1           **146.813 Representatives of the patient. (1)** TEMPORARY GUARDIAN. A court  
2 may appoint a temporary guardian for a patient who is believed to be incompetent  
3 to consent to the release of records under s. 146.82 as the representative of the  
4 patient for the purpose of deciding upon the release of records, if no guardian has  
5 been appointed for the patient.

6           **(2)** EXCEPTION TO REPRESENTATIVES OF THE PATIENT. Notwithstanding s. 146.81  
7 (5), a health care provider, in its discretion, may elect not to consider a person who  
8 would otherwise be a representative of the patient by definition as a representative  
9 of the patient if the health care provider believes any of the following circumstances  
10 exist:

11           (a) The patient has been or may be subjected to domestic violence, abuse, or  
12 neglect by the person who meets the definition under s. 146.81 (5).

13           (b) Considering the person who meets the definition under s. 146.81 (5) as a  
14 representative of the patient could endanger the patient and, in the exercise of the  
15 health care provider's professional judgment, it is not in the best interest of the  
16 patient to consider that person a representative of the patient.

17           **SECTION 9.** 146.819 (2) (a) of the statutes is amended to read:

18           146.819 **(2)** (a) Provide written notice, by 1st class mail, to each patient or  
19 ~~person authorized by~~ representative of the patient whose records will be maintained,  
20 at the last-known address of the patient or ~~person~~ representative, describing where  
21 and by whom the records shall be maintained.

22           **SECTION 10.** 146.819 (3) (a) of the statutes is amended to read:

23           146.819 **(3)** (a) Provide notice to each patient or ~~person authorized by~~  
24 representative of the patient whose records will be deleted or destroyed, that the  
25 records pertaining to the patient will be deleted or destroyed. The notice shall be

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1 provided at least 35 days prior to deleting or destroying the records, shall be in  
2 writing and shall be sent, by 1st class mail, to the last-known address of the patient  
3 to whom the records pertain or the last-known address of the ~~person authorized by~~  
4 representative of the patient. The notice shall inform the patient or ~~person~~  
5 ~~authorized by~~ representative of the patient of the date on which the records will be  
6 deleted or destroyed, unless the patient or ~~person~~ representative retrieves them  
7 before that date, and the location where, and the dates and times when, the records  
8 may be retrieved by the patient or ~~person~~ representative.

9 **SECTION 11.** 146.819 (3) (b) of the statutes is amended to read:

10 146.819 (3) (b) Publish, under ch. 985, a class 3 notice in a newspaper that is  
11 published in the county in which the health care provider's or decedent's health care  
12 practice was located, specifying the date on which the records will be deleted or  
13 destroyed, unless the patient or ~~person authorized by~~ representative of the patient  
14 retrieves them before that date, and the location where, and the dates and times  
15 when, the records may be retrieved by the patient or ~~person~~ representative.

16 **SECTION 12.** 146.82 (1) of the statutes is amended to read:

17 146.82 (1) CONFIDENTIALITY. All patient health care records shall remain  
18 confidential. Patient health care records may be released only to the persons  
19 designated in this section or to other persons with the informed consent of the patient  
20 or of a ~~person authorized by~~ representative of the patient. This subsection does not  
21 prohibit reports made in compliance with s. 253.12 (2), 255.40, or 979.01; records  
22 generated and disclosed to the controlled substances board pursuant to s. 961.385;  
23 testimony authorized under s. 905.04 (4) (h); or releases made for purposes of health  
24 care operations, as defined in 45 CFR 164.501, and as authorized under 45 CFR 164,  
25 subpart E.

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1           **SECTION 13.** 146.82 (4) (b) 1. of the statutes is amended to read:

2           146.82 (4) (b) 1. Any person, if the patient or a ~~person authorized by~~  
3           representative of the patient is not incapacitated, is physically available, and agrees  
4           to the release of that portion.

5           **SECTION 14.** 146.82 (4) (b) 2. (intro.) of the statutes is amended to read:

6           146.82 (4) (b) 2. (intro.) Any of the following, as applicable, if the patient and  
7           ~~person authorized by~~ representative of the patient are incapacitated or are not  
8           physically available, or if an emergency makes it impracticable to obtain an  
9           agreement from the patient or from the ~~person authorized by~~ representative of the  
10          patient, and if the health care provider determines, in the exercise of his or her  
11          professional judgment, that release of a portion of the patient health care record is  
12          in the best interest of the patient:

13          **SECTION 15.** 146.82 (5) (b) of the statutes is amended to read:

14          146.82 (5) (b) Notwithstanding sub. (1) and except as provided in s. 610.70 (5),  
15          a covered entity may redisclose a patient health care record it receives under this  
16          section without consent by the patient or ~~person authorized by~~ representative of the  
17          patient if the redisclosure of the patient health care record is a release permitted  
18          under this section.

19          **SECTION 16.** 146.82 (5) (c) 1. of the statutes is amended to read:

20          146.82 (5) (c) 1. The patient or a ~~person authorized by~~ representative of the  
21          patient provides informed consent for the redisclosure.

22          **SECTION 17.** 146.83 (1b) of the statutes is amended to read:

23          146.83 (1b) Notwithstanding s. 146.81 (5), in this section, a "~~person authorized~~  
24          by representative of the patient" includes an attorney appointed to represent the

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1 patient under s. 977.08 if that attorney has written informed consent from the  
2 patient to view and obtain copies of the records.

3 **SECTION 18.** 146.83 (1c) of the statutes is amended to read:

4 146.83 (1c) Except as provided in s. 51.30 or 146.82 (2), any patient or person  
5 authorized by representative of the patient may, upon submitting a statement of  
6 informed consent, inspect the health care records of a health care provider pertaining  
7 to that patient at any time during regular business hours, upon reasonable notice.

8 **SECTION 19.** 146.83 (1f) (am) of the statutes is amended to read:

9 146.83 (1f) (am) If a patient or ~~person authorized by~~ representative of the  
10 patient requests copies of the patient's health care records under this section for use  
11 in appealing a denial of social security disability insurance, under 42 USC 401 to 433,  
12 or supplemental security income, under 42 USC 1381 to 1385, the health care  
13 provider may charge the patient or ~~person authorized by~~ representative of the  
14 patient no more than the amount that the federal social security administration  
15 reimburses the department for copies of patient health care records.

16 **SECTION 20.** 146.83 (1f) (cm) of the statutes is amended to read:

17 146.83 (1f) (cm) Except as provided in sub. (1g), a health care provider may not  
18 charge a patient or a ~~person authorized by~~ representative of the patient more than  
19 25 percent of the applicable fee under sub. (3f) for providing one set of copies of a  
20 patient's health care records under this section if the patient is eligible for medical  
21 assistance, as defined in s. 49.43 (8). A health care provider may require that a  
22 patient or ~~person authorized by~~ representative of the patient provide proof that the  
23 patient is eligible for medical assistance before providing copies under this  
24 paragraph at a reduced charge. A health care provider may charge 100 percent of



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1 the applicable fee under sub. (3f) for providing a 2nd or additional set of copies of  
2 patient health care records for a patient who is eligible for medical assistance.

3 **SECTION 21.** 146.83 (3) of the statutes is amended to read:

4 146.83 (3) The health care provider shall note the time and date of each request  
5 by a patient or ~~person authorized by~~ representative of the patient to inspect the  
6 patient's health care records, the name of the inspecting person, the time and date  
7 of inspection and identify the records released for inspection.

8 **SECTION 22.** 146.83 (3f) (b) 1., 2., 3., 4., 5. and 6. of the statutes are amended  
9 to read:

10 146.83 (3f) (b) 1. For paper copies: ~~\$1~~ or copies provided via portable electronic  
11 data storage device, \$1.10 per page for the first 25 pages; ~~75~~ 82 cents per page for  
12 pages 26 to 50; ~~50~~ 54 cents per page for pages 51 to 100; and ~~30~~ 32 cents per page for  
13 pages 101 and above.

14 2. For copies of records generated from microfiche or microfilm copies, ~~\$1.50~~  
15 \$1.62 per page, regardless of the delivery method.

16 3. For a print of an X-ray, ~~\$10~~ \$10.84 per image.

17 4. If the requester is not the patient or a ~~person authorized by~~ representative  
18 of the patient, for certification of copies, a single ~~\$8~~ \$8.69 charge.

19 5. If the requester is not the patient or a ~~person authorized by~~ representative  
20 of the patient, a single retrieval fee of ~~\$20~~ \$21.73 for all copies requested.

21 6. Actual shipping costs, an electronic delivery fee, and any applicable taxes.

22 **SECTION 23.** 146.83 (3f) (b) 1m. of the statutes is created to read:

23 146.83 (3f) (b) 1m. For an electronic copy secured from a medical provider's  
24 electronic health record and delivered via electronic mail or secure Internet portal,

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1 the fees as provided under this paragraph, but the per page fees under subd. 1. may  
2 not exceed \$300 per record, plus any applicable taxes.

3 **SECTION 24.** 146.83 (3f) (b) 3m. of the statutes is created to read:

4 146.83 **(3f)** (b) 3m. For a digital copy of an X-ray, MRI, or other image set not  
5 stored on paper, \$30.00 per study.

6 **SECTION 25.** 146.83 (3f) (c) 2. of the statutes is amended to read:

7 146.83 **(3f)** (c) 2. On each July 1, beginning on July 1, ~~2012~~ 2018, the  
8 department shall adjust the dollar amounts specified under par. (b) by the  
9 percentage difference between the consumer price index for the 12-month period  
10 ending on December 31 of the preceding year and the consumer price index for the  
11 12-month period ending on December 31 of the year before the preceding year. The  
12 department shall notify the legislative reference bureau of the adjusted amounts and  
13 the legislative reference bureau shall publish the adjusted amounts in the Wisconsin  
14 Administrative Register.

15 (END)