



1997 ASSEMBLY BILL 303

April 17, 1997 - Introduced by Representative SCHNEIDER. Referred to Committee on Health.

1 **AN ACT** *to renumber* 51.30 (1) (a); *to renumber and amend* 146.82 (2) (b) and
2 146.82 (2) (d); *to amend* 146.82 (2) (a) 10., 632.725 (2) (d) and 908.03 (6m) (c)
3 3.; and *to create* 51.30 (1) (ag), 118.125 (1) (e), 146.81 (2) (i), 146.81 (6), 146.82
4 (2) (b) 2., 146.82 (2) (d) 1. and 2., 146.82 (2) (e), 146.82 (2) (f), 146.825, 252.15
5 (5) (a) 14m. and 908.03 (6m) (c) 3. a. and b. of the statutes; **relating to:** patient
6 health care records, mental health records and pupil records.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, the results of a test for the presence of the human immunodeficiency virus (HIV), antigen or nonantigenic products of HIV or an antibody to HIV may not be disclosed by any person other than the person who is the subject of the test or that person's health care agent if the person has executed a power of attorney for health care instrument.

This bill allows the following persons to disclose the results of the test to any person if the test subject is deceased:

1. A parent, guardian or legal custodian of the individual if the individual is a minor child, or the person vested with supervision of the child.
2. The guardian of the individual if the individual was adjudged incompetent.
3. The spouse of the individual, or, if no spouse survives the individual, an adult member of the individual's immediate family.
4. The personal representative of the individual.

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5. Any person authorized in writing by the individual or a health care agent designated by the individual as a principal if the individual has been found to be incapacitated.

Currently, except under certain circumstances, information from a patient's health care records may not be released to any person without the patient's informed consent. Informed consent must be in writing and include several elements, such as the patient's name and signature, the type of information to be disclosed and the purpose of the disclosure. For situations in which the health care provider is permitted to release a patient's health care records without the patient's consent, the health care provider must record the name of the person or agency to which the records were released, the date and time of the release and the identification of the records released.

Under this bill, the written consent must also include a statement that the consent applies to information entered into the patient record on or before the date on which the consent is signed or the date of the disclosure of the information. The bill provides that a health care provider may release patient health care records to an employe of the health care provider or to a person designated by the health care provider to perform a function of the health care provider without the informed consent of the patient and without having to make a record of the release. The bill also provides that the same standard that applies to the release by a health care provider of a patient's health care records without the patient's informed consent applies to a records custodian who is not a health care provider.

This bill authorizes an individual to challenge the accuracy of his or her patient health care record and request the health care provider who prepared the information to correct it. If the health care provider denies the request in whole or in part, the health care provider must provide the individual with a written explanation as to the reason for the denial and must allow the individual to insert into the individual's health care record a statement challenging the accuracy, completeness, timeliness or relevance of the pertinent information. Under the bill, the individual may appeal the decision of the health care provider to the medical examining board within 60 days of the denial. If the medical examining board determines that the requested change is appropriate, the medical examining board may require the health care provider to revise the patient's health care record and to destroy the inaccurate or incorrect information.

Currently, health care records needed for a legal proceeding are subject to subpoena only under limited circumstances. One of the circumstances is when a health care provider refuses to provide a record within 2 business days in response to a "properly authorized request" of an attorney. This bill defines what the term "properly authorized request" means, to include a statement of informed consent by the patient and the identity of the judicial or administrative proceeding where the record is needed.

Finally, this bill defines the term "record" for purposes related to health care records, mental health records and pupil records. Under the bill, a record is any material in which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved.

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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.** 51.30 (1) (a) of the statutes is renumbered 51.30 (1) (am).

2 **SECTION 2.** 51.30 (1) (ag) of the statutes is created to read:

3 51.30 (1) (ag) "Record" means any material in which written, drawn, printed,
4 spoken, visual or electromagnetic information is recorded or preserved, regardless
5 of physical form or characteristics, including handwritten, typed or printed pages,
6 charts, photographs, films, recordings, tapes, computer printouts and optical disks.

7 **SECTION 3.** 118.125 (1) (e) of the statutes is created to read:

8 118.125 (1) (e) "Record" means any material in which written, drawn, printed,
9 spoken, visual or electromagnetic information is recorded or preserved, regardless
10 of physical form or characteristics, including handwritten, typed or printed pages,
11 charts, photographs, films, recordings, tapes, computer printouts and optical disks.

12 **SECTION 4.** 146.81 (2) (i) of the statutes is created to read:

13 146.81 (2) (i) A statement that the consent applies to information entered into
14 the patient health care records on or before one of the following dates:

15 1. The date on which the consent is signed under par. (g).

16 2. The date of the disclosure to a person specified in par. (e).

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

18 146.81 (6) "Record" means any material in which written, drawn, printed,
19 spoken, visual or electromagnetic information is recorded or preserved, regardless
20 of physical form or characteristics, including handwritten, typed or printed pages,
21 charts, photographs, films, recordings, tapes, computer printouts and optical disks.

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1 **SECTION 6.** 146.82 (2) (a) 10. of the statutes is amended to read:

2 146.82 (2) (a) 10. To persons as provided under s. 655.17 (7) (b), ~~as created by~~
3 ~~1985 Wisconsin Act 29 655.465 (1),~~ if the patient files a ~~submission of controversy~~
4 ~~under s. 655.04 (1), 1983 stats., on or after July 20, 1985 and before June 14, 1986,~~
5 ~~for the purposes of s. 655.17 (7) (b), as created by 1985 Wisconsin Act 29~~ request for
6 mediation under s. 655.44 or 655.445.

7 **SECTION 7.** 146.82 (2) (b) of the statutes is renumbered 146.82 (2) (b) 1. and
8 amended to read:

9 146.82 (2) (b) 1. ~~Unless~~ Except as provided under subd. 2., or unless authorized
10 by a court of record, the recipient of any information under par. (a) shall keep the
11 information confidential and may not disclose identifying information about the
12 patient whose patient health care records are released.

13 **SECTION 8.** 146.82 (2) (b) 2. of the statutes is created to read:

14 146.82 (2) (b) 2. The recipient of any information under par. (a) shall release
15 a copy of the information to the patient who is the subject of the records, or to a person
16 authorized by the patient, if the patient or person authorized by the patient submits
17 a statement of informed consent to the recipient requesting the release. The
18 recipient may charge a reasonable fee for providing the copy of the information under
19 this subdivision.

20 **SECTION 9.** 146.82 (2) (d) of the statutes is renumbered 146.82 (2) (d) (intro.)
21 and amended to read:

22 146.82 (2) (d) (intro.) For each release of patient health care records under this
23 subsection by a health care provider, the health care provider shall record the name
24 of the person or agency to which the records were released, the date and time of the

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1 release and the identification of the records released. This paragraph does not apply
2 to the release of patient health care records to any of the following persons:

3 **SECTION 10.** 146.82 (2) (d) 1. and 2. of the statutes are created to read:

4 146.82 (2) (d) 1. An employe of the health care provider.

5 2. A person designated by the health care provider to perform a function of the
6 health care provider.

7 **SECTION 11.** 146.82 (2) (e) of the statutes is created to read:

8 146.82 (2) (e) 1. For each release of patient health care records under this
9 subsection by a records custodian who is not a health care provider, the records
10 custodian shall record the name of the person or agency to which the records were
11 released, the date and time of the release and the identification of the records
12 released. This subdivision does not apply to the release of patient health care to any
13 of the following persons:

14 a. An employe of the records custodian.

15 b. A person designated by the records custodian to perform a function of the
16 records custodian.

17 2. A records custodian shall maintain the information recorded under subd. 1.
18 for as long as the records custodian maintains the patient health care records that
19 pertain to the recorded information.

20 3. Any patient, or person authorized by the patient, may inspect the
21 information recorded under subd. 1. pertaining to that patient at any time during
22 regular business hours, upon reasonable notice.

23 **SECTION 12.** 146.82 (2) (f) of the statutes is created to read:

24 146.82 (2) (f) A health care provider may charge a reasonable fee for a copy of
25 patient health care records released under this subsection.

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1 **SECTION 13.** 146.825 of the statutes is created to read:

2 **146.825 Correction of patient health care records.** (1) A patient or a
3 person authorized by the patient may challenge the accuracy, completeness,
4 timeliness or relevance of factual information in his or her patient health care record
5 and request in writing that the health care provider who prepared the record correct
6 the challenged information.

7 (2) A request properly made under sub. (1) shall be granted or denied within
8 30 days by the health care provider. If the request is denied in whole or in part, the
9 health care provider shall provide the requester with a written explanation of why
10 the request was denied.

11 (3) If a request under sub. (1) is denied in whole or in part, the requester may
12 appeal the denial to the medical examining board within 60 days of the denial. The
13 medical examining board shall notify the health care provider of the appeal and shall
14 obtain such information as is appropriate concerning the appeal. The medical
15 examining board may require the health care provider to revise the patient health
16 care record if the medical examining board determines that it is appropriate to do so.
17 The revised patient health care record shall replace the original health care record,
18 which shall be destroyed.

19 (4) A person whose request is denied under sub. (2) shall be allowed to insert
20 into the patient health care record a statement challenging the accuracy,
21 completeness, timeliness or relevance of factual information in his or her patient
22 health care record. The statement shall become a part of the record and shall be
23 released whenever the patient health care record is released.

24 **SECTION 14.** 252.15 (5) (a) 14m. of the statutes is created to read:

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1 252.15 (5) (a) 14m. If the individual is deceased, to any person by any of the
2 following:

3 a. A parent, guardian or legal custodian the individual if the individual is a
4 minor child or the person vested with supervision of the child under s. 938.183 or
5 938.34 (4d), (4h), (4m) or (4n).

6 b. The guardian of the individual if the individual was adjudged incompetent,
7 as defined in s. 880.01 (4).

8 c. The spouse of the individual, or, if no spouse survives the individual, an adult
9 member of the individual's immediate family, as defined in s. 632.895 (1) (d).

10 d. The personal representative of the individual.

11 e. Any person authorized in writing by the individual or a health care agent
12 designated by the individual as a principal under ch. 155 if the individual has been
13 found to be incapacitated under s. 155.05 (2), except as limited by the power of
14 attorney for health care instrument.

15 **SECTION 15.** 632.725 (2) (d) of the statutes is amended to read:

16 632.725 (2) (d) Establish a uniform statewide patient identification system in
17 which each individual who receives health care services in this state is assigned an
18 identification number. In establishing the identification number, the commissioner
19 shall use the highest available standards for safeguarding patient confidentiality,
20 accuracy and uniqueness. The standardized billing format established under par.
21 (a) and the standardized claim format established under par. (b) shall provide for the
22 designation of an individual's patient identification number.

23 **SECTION 16.** 908.03 (6m) (c) 3. of the statutes is renumbered 908.03 (6m) (c) 3.
24 (intro.) and amended to read:

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1 908.03 (6m) (c) 3. (intro.) If upon a properly authorized request of an attorney,
2 the health care provider refuses, fails or neglects to supply within 2 business days
3 after the request a legible certified duplicate of its records for the fees established
4 under par. (d). A properly authorized request shall include the name, address and
5 signature of the attorney who is making the request, a statement of informed consent
6 from the patient and one of the following:

7 **SECTION 17.** 908.03 (6m) (c) 3. a. and b. of the statutes are created to read:

8 908.03 (6m) (c) 3. a. If the health care provider record is needed for a judicial
9 proceeding, the name of the court, the venue, the title of the action and the file
10 number of the proceeding.

11 b. If the health care provider record is needed for a proceeding before an
12 administrative agency, the name of the administrative agency and any other
13 information that is sufficient to identify the proceeding.

14 **SECTION 18. Initial applicability.**

15 (1) The treatment of section 146.81 (2) (i) of the statutes first applies to
16 statements of informed consent signed on the effective date of this subsection.

17 (2) The treatment of section 146.825 of the statutes first applies to requests to
18 correct patient health care records made on the effective date of this subsection.

19 (3) The renumbering and amendment of section 908.03 (6m) (c) 3. of the
20 statutes and the creation of section 908.03 (6m) (c) 3. a. and b. of the statutes first
21 apply to requests for health care provider records submitted to a health care provider
22 on the effective date of this subsection.

23 **SECTION 19. Effective dates.** This act takes effect on the day after
24 publication, except as follows:

