

1999 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB133)

Received: **07/15/1999**

Received By: **kenneda**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Fiscal Bureau 6-8799**

By/Representing: **Morgan**

This file may be shown to any legislator: **NO**

Drafter: **kenneda**

May Contact:

Alt. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **RPN**

Pre Topic:

LFB:.....Morgan -

Topic:

Confidentiality of health care information; redraft of 99b1391 (SRC, #2713)

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kenneda 09/22/1999	chanaman 09/23/1999		_____			
/1			jfrantze 09/23/1999	_____	lrb_docadmin 09/23/1999	lrb_docadmin 09/23/1999	
/2	kenneda 09/23/1999	chanaman 09/23/1999	martykr 09/24/1999	_____	lrb_docadmin 09/24/1999		

FE Sent For:

<END>

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Received: 07/15/1999

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For: Legislative Reference Bureau 266-0137

By/Representing: Debora Kennedy

This file may be shown to any legislator: NO

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May Contact:

Alt. Drafters:

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/1		<i>cm</i> 9/23	jfrantze 09/23/1999		lrb_docadmin 09/23/1999	lrb_docadmin 09/23/1999	
		<i>1/2</i>	<i>km</i> 9/24	<i>ch</i> 9/24			

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/?	kenneda	cmr a/23 /1	7/6 9/23	7/6/mc 9/23			

FE Sent For:

<END>



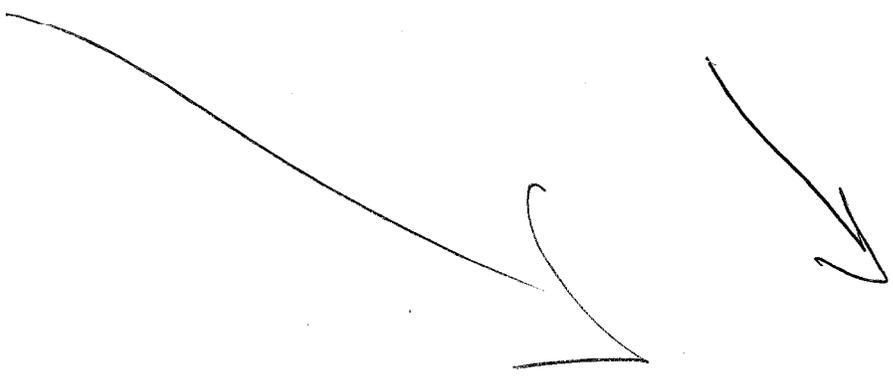
THURSDAY
 State of Wisconsin
 1999 - 2000 LEGISLATURE

LRBb17012
 DAK.....
 crm

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
 ASSEMBLY AMENDMENT ,
 TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
 TO 1999 ASSEMBLY BILL 133**

At the locations indicated, amend the substitute amendment as follows:

~~XXXXX~~



~~SDC:.....Walter #2713, Confidentiality of health care information~~
~~FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION~~
~~CAUCUS AMENDMENT~~
~~TO ASSEMBLY SUBSTITUTE AMENDMENT 1,~~
~~TO 1999 ASSEMBLY BILL 133~~

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 24, line 9: after that line insert:

3 (3) "SECTION 3g. 15.195 (6) of the statutes is amended to read:

4 15.195 (6) BOARD ON HEALTH CARE INFORMATION. There is created a board on
5 health care information which is attached to the department of health and family
6 services under s. 15.03. The board shall consist of 11 members, one of whom shall
7 be a record administrator, registered by the American Medical Record Association,
8 and; at least 2 of whom shall be employer purchasers of health care; and 5 of whom
9 shall be or represent health care providers, including one registered nurse, licensed
10 under s. 441.06, and 2 physicians, as defined in s. 448.01 (5), and 2 representatives

1 of hospitals, as defined in s. 50.33 (2). The State Medical Society of Wisconsin may
2 recommend board membership for 5 physicians, one of whom the governor shall
3 appoint. The members shall be appointed for 4-year terms.

4 **SECTION 30r.** 15.195 (9) of the statutes is created to read:

5 15.195 (9) INDEPENDENT REVIEW BOARD. There is created an independent review
6 board that is attached to the department of health and family services under s. 15.03.
7 The board may not include an employe of the department of health and family
8 services and shall consist of the commissioner of insurance or his or her designee and
9 the following members appointed for 4-year terms:

10 (a) A statistician or researcher.

11 (b) A medical ethicist of the University of Wisconsin System or the Medical
12 College of Wisconsin.

13 (c) An expert in issues relating to privacy.

14 (d) A purchaser of health care.”.

15 **2.** Page 1158, line 11: after that line insert:

16 “**SECTION 2251r.** 146.84 (3) of the statutes is amended to read:

17 146.84 (3) DISCIPLINE OF EMPLOYEES. Any person employed by the state, or any
18 political subdivision of the state who violates s. 146.82 or 146.83, except a health care
19 provider that negligently violates s. 153.50 (6) (c), may be discharged or suspended
20 without pay.”.

21 **3.** Page 1170, line 18: after that line insert:

22 “**SECTION 2280b.** 153.45 (1) (b) of the statutes is renumbered 153.45 (1) (b) 1.
23 and amended to read:

1 153.45 (1) (b) 1. ~~Public~~ For information that is submitted by hospitals or
2 ambulatory surgery centers, public use data files ~~which that~~ do not permit the
3 identification of specific patients, employers or health care providers, as defined by
4 rules promulgated by the department. The identification of ~~these groups~~ patients,
5 employers or health care providers shall be protected by all necessary means,
6 including the deletion of patient identifiers and the use of calculated variables and
7 aggregated variables.

8 **SECTION 2280c.** 153.45 (1) (b) 2. of the statutes is created to read:

9 153.45 (1) (b) 2. For information that is submitted by health care providers
10 other than hospitals or ambulatory surgery centers, public use data files that do not
11 permit the identification of specific patients, employers or health care providers, as
12 defined by rules promulgated by the department. The identification of patients,
13 employers or health care providers shall be protected by all necessary means,
14 including the deletion of patient identifiers; the use of calculated variables and
15 aggregated variables; the specification of counties as to residence, rather than zip
16 codes; the use of 5-year categories for age, rather than exact age; not releasing
17 information concerning a patient's race or ethnicity or dates of admission, discharge,
18 procedures or visits; and masking sensitive diagnoses and procedures by use of
19 larger diagnostic and procedure categories. Public use data files under this
20 subdivision may include only the following:

- 21 a. The patient's county of residence.
- 22 b. The payment source, by type.
- 23 c. The patient's age category, by 5-year intervals up to age 80 and a category
24 of 80 years or older.
- 25 d. The patient's procedure code.

- 1 e. The patient's diagnosis code.
- 2 f. Charges assessed with respect to the procedure code.
- 3 g. The name and address of the facility in which the patient's services were
4 rendered.
- 5 h. The patient's sex.
- 6 i. Information that contains the name of a health care provider that is not a
7 hospital or ambulatory surgery center, if the independent review board first reviews
8 and approves the release or if the department[✓] promulgates rules that specify
9 circumstances under which the independent review board need not review and
10 approve the release.
- 11 j. Calendar quarters of service, except if the department specifies by rule that
12 the number of data elements included in the public use data file[✓] is too small to enable
13 protection of patient confidentiality.
- 14 k. Information other than patient-identifiable data, as defined in s. 153.50 (1)
15 (b), as approved by the independent review board.

X

16 **SECTION 2280e.** 153.45 (1) (c) of the statutes is renumbered 153.45 (1) (c)
17 (intro.) and amended to read:

18 153.45 (1) (c) (intro.)[✓] Custom-designed reports containing portions of the data
19 under par. (b). Of information submitted by health care providers that are not
20 hospitals or ambulatory surgery centers, requests under this paragraph for data
21 elements other than those available for public use data files under par. (b) 2.,
22 including the patient's month and year of birth, require review and approval by the
23 independent review board before the data elements may be released. Information
24 that contains the name of a health care provider that is not a hospital or ambulatory
25 surgery center may be released only if the independent review board first reviews

1 and approves the release or if the department promulgates rules that specify
2 circumstances under which the independent review board need not review and
3 approve the release. Reports under this paragraph may include the patient's zip code
4 only if at least one of the following applies:

5 **SECTION 2280f.** 153.45 (1) (c) 1. to 4. of the statutes are created to read:

6 153.45 (1) (c) 1. Other potentially identifying data elements are not released.

7 2. Population density is sufficient to mask patient identity.

8 3. Other potentially identifying data elements are grouped to provide
9 population density sufficient to protect identity.

10 4. Multiple years of data elements are added to protect identity.

11 **SECTION 2280g.** 153.45 (6) of the statutes is created to read:

12 153.45 (6) The department may not sell or distribute data bases of information,
13 from health care providers who are not hospitals or ambulatory surgery centers, that
14 are able to be linked with public use data files, unless first approved by the
15 independent review board.

16 **SECTION 2280ge.** 153.50 (1) (a) of the statutes is renumbered 153.01 (2m).

17 **SECTION 2280gg.** 153.50 (1) (b) of the statutes is renumbered 153.50 (1) (b) 1.,
18 and 153.50 (1) (b) 1. (intro.), as renumbered, is amended to read:

19 153.50 (1) (b) 1. (intro.) "Patient-identifiable data", for information submitted
20 by hospitals and ambulatory surgery centers, means all of the following data
21 elements:

22 **SECTION 2280gm.** 153.50 (1) (b) 2. of the statutes is created to read:

23 153.50 (1) (b) 2. "Patient-identifiable data", for information submitted by
24 health care providers who are not hospitals or ambulatory surgery centers, means
25 all of the following data elements:

1 a. Data elements specified in subd. 1. a. to g., L. and m. ✓ ✓ ✓

2 b. Whether the patient's condition is related to employment, and occurrence
3 and place of an auto accident or other accident.

4 c. Date of first symptom of current illness, of current injury or of current
5 pregnancy.

6 d. First date of patient's same or similar illness, if any.

7 e. Dates that the patient has been unable to work in his or her current
8 occupation.

9 f. Dates of receipt by patient of medical service.

10 g. The patient's city, town or village.

11 **SECTION 2280h.** 153.50 (2) of the statutes is repealed. ✓

12 **SECTION 2280i.** 153.50 (3) (b) 7. of the statutes is created to read: ✓

13 153.50 (3) (b) 7. The patient's account number, after use only as verification of
14 data by the department.

15 **SECTION 2280j.** 153.50 (3) (c) of the statutes is created to read:

16 153.50 (3) (c) Develop, for use by purchasers of data under this chapter, a data
17 use agreement that specifies data use restrictions, appropriate uses of data and
18 penalties for misuse of data, and notify prospective and current purchasers of data
19 of the appropriate uses.

20 **SECTION 2280k.** 153.50 (3) (d) of the statutes is created to read:

21 153.50 (3) (d) Require that a purchaser of data under this chapter sign and have
22 notarized the data use agreement of the department specified in par. (c). ✓

23 **SECTION 2280km.** 153.50 (3m) of the statutes is created to read: ✓

24 153.50 (3m) **HEALTHCARE PROVIDER MEASURES TO ENSURE PATIENT IDENTITY**
25 **PROTECTION.** A health care provider that is not a hospital or ambulatory surgery

1 center shall, before submitting information required by the department under this
2 chapter, convert to a payer category code as specified by the department any names
3 of an insured's payer or other insured's payer.

4 **SECTION 2280kp.** 153.50 (4) (intro.) of the statutes is renumbered 153.50 (4)
5 (a) (intro.) and amended to read:

6 153.50 (4) (a) (intro.) Under Except as specified in par. (b), under the
7 procedures specified in sub. (5), release of patient-identifiable data may be made
8 only to any of the following:

9 **SECTION 2280kq.** 153.50 (4) (a) of the statutes is repealed.

10 **SECTION 2280kr.** 153.50 (4) (b) to (e) of the statutes are renumbered 153.50 (4)
11 (a) 1. to 4.

12 **SECTION 2280ks.** 153.50 (4) (b) of the statutes is created to read:

13 153.50 (4) (b) Of information submitted by health care providers that are not
14 hospitals or ambulatory surgery centers, patient-identifiable data that contains
15 a patient's date of birth may be released under par. (a) only under circumstances as
16 specified by rule by the department.

17 **SECTION 2280ku.** 153.50 (5) (a) (intro.) of the statutes is amended to read:

18 153.50 (5) (a) (intro.) The department may not release or provide access to
19 patient-identifiable data to a person authorized under sub. (4) (a), ~~(e)~~, ~~(d)~~ or ~~(e)~~
20 unless the authorized person requests the department, in writing, to release the
21 patient-identifiable data. The request shall include all of the following:

22 **SECTION 2280kv.** 153.50 (5) (a) 3. of the statutes is amended to read:

23 153.50 (5) (a) 3. For a person who is authorized under sub. (4) (a), ~~(e)~~ or ~~(d)~~ to
24 receive or have access to patient-identifiable data, evidence, in writing, that
25 indicates that authorization.

1 **SECTION 2280kw.** 153.50 (5) (a) 4. (intro.) of the statutes is amended to read:

2 153.50 (5) (a) 4. (intro.) For an entity that is authorized under sub. (4) (e) (a)

3 4. to receive or have access to patient-identifiable data, evidence, in writing, of all
4 of the following:

5 **SECTION 2280kx.** 153.50 (5) (b) 3. of the statutes is amended to read:

6 153.50 (5) (b) 3. For a person who believes that he or she is authorized under
7 sub. (4) (a), the action provided under s. 19.37.”

8 **4.** Page 1170, line 22: after that line insert:

9 “**SECTION 2280p.** 153.50 (6) of the statutes is renumbered 153.50 (6) (a).

10 **SECTION 2280q.** 153.50 (6) (b), (c), (d) and (e) of the statutes are created to read:

11 153.50 (6) (b) The department may not require under this chapter a health care
12 provider that is a hospital or ambulatory surgery center to submit uniform patient
13 billing forms. *not*

14 (c) A health care provider that is not a hospital or ambulatory surgery center
15 may not submit any of the following to the department under the requirements of
16 this chapter:

17 1. The data elements specified under sub. (3) (b).

18 2. The patient's telephone number.

19 3. The insured's employer's name or school name.

20 4. Data regarding insureds other than the patient, other than the payer
21 category code under sub. (3m).

22 5. The patient's employer's name or school name.

23 6. The patient's relationship to the insured.

24 7. The insured's identification number.

1 8. The insured's policy or group number.

2 9. The insured's date of birth or sex.

3 10. The patient's marital, employment or student status.

4 (d) If a health care provider that is not a hospital or ambulatory surgery center
5 submits a data element that is specified in par. (c) 1. to 10., the department shall
6 immediately return this information to the health care provider or, if discovered
7 later, shall remove and destroy the information.

8 (e) A health care provider may not submit information that uses any of the
9 following as a patient account number:

10 1. The patient's social security number or any substantial portion of the
11 patient's social security number.

12 2. A number that is related to another patient identifying number.

13 **SECTION 2280r.** 153.55 of the statutes is amended to read:

14 **153.55 Protection of health care provider confidentiality.** Health care
15 ~~provider identifiable data~~ Data obtained under this chapter is not subject to
16 inspection, copying or receipt under s. 19.35 (1)."

17 **5.** Page 1172, line 14: after that line insert:

18 "**SECTION 2283g.** 153.67 of the statutes is created to read:

19 **153.67 Independent review board.** The independent review board shall
20 review any request under s. 153.45 (1) (c) for data elements other than those
21 available for public use data files under s. 153.45 (1) (b). Unless the independent
22 review board approves such a request or unless independent review board approval
23 is not required under rules of the department promulgated under s. 153.45 (1) (c)
24 (intro.), the data elements requested may not be released.

1 SECTION 2283h. 153.76 of the statutes is created to read:

2 153.76 Rule-making by the independent review board.

3 Notwithstanding s. 15.01 (1r), the independent review board may promulgate only
4 those rules that are first reviewed and approved by the board on health care
5 information.

6 SECTION 2283i. 153.85 of the statutes is amended to read:

7 153.85 Civil liability. Any Except as provided in s. 153.86, any person
8 violating s. 153.50 or rules promulgated under s. 153.75 (1) (a) is liable to the patient
9 for actual damages and costs, plus exemplary damages of up to \$1,000 for a negligent
10 violation and up to \$5,000 for an intentional violation.

11 SECTION 2283j. 153.86 of the statutes is created to read:

12 153.86 Immunity from liability. (11) (16) A health care provider that submits
13 information to the department under this chapter is immune from civil liability for
14 any act or omission of an employee, official or agent of the health care provider that
15 results in the release of a prohibited data element while submitting data to the
16 department ~~of health and family services~~. The immunity provided under this section
17 does not apply to intentional, wilful or reckless acts or omissions by health care providers

18 SECTION 2283k. 153.90 (1) of the statutes is amended to read:

19 153.90 (1) Whoever intentionally violates s. 153.45 (5) or 153.50 or rules
20 promulgated under s. 153.75 (1) (a) may be fined not more than \$10,000 \$15,000 or
21 imprisoned for not more than 9 months one year or both."

6. Page 1526, line 5: after that line insert

23 (12) INITIAL APPOINTMENTS OF INDEPENDENT REVIEW BOARD. Notwithstanding

24 the length of terms specified in section 15.195 (9) (intro.) of the statutes, as created

all of the following:

(12) Any act or omission of the department that results in the release of data.

nonnoted

1 by this act, the initial members of the independent review board shall be appointed
2 by the first day of the 4th month beginning after the effective date of this subsection ✓
3 for the following terms:

4 (a) The purchaser of health care, for a term expiring on May 1, 2001.

5 (b) The medical ethicist and the privacy expert, for terms expiring on May 1,
6 2003.

7 (c) The statistician or researcher, for a term expiring on May 1, 2005.” ✓

8 (END)

SOON - Inedit 9/23

1999 - 2000 LEGISLATURE

LRBb1701/2

DAK:cmh

WPO: Please switch to LFB budget draft
+ change requester to LFB
Analyst is Morgan

**ASSEMBLY AMENDMENT,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 133**

change on p. 10

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 24, line 9: after that line insert:

3 **"SECTION 30g.** 15.195 (6) of the statutes is amended to read:

4 15.195 (6) BOARD ON HEALTH CARE INFORMATION. There is created a board on

5 health care information which is attached to the department of health and family

6 services under s. 15.03. The board shall consist of 11 members, one of whom shall

7 be a record administrator, registered by the American Medical Record Association,

8 and; at least 2 of whom shall be employer purchasers of health care; and 5 of whom

9 shall be or represent health care providers, including one registered nurse, licensed

10 under s. 441.06, and 2 physicians, as defined in s. 448.01 (5), and 2 representatives

11 of hospitals, as defined in s. 50.33 (2). The State Medical Society of Wisconsin may

1 recommend board membership for 5 physicians, one of whom the governor shall
2 appoint. The members shall be appointed for 4-year terms.

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6 The board may not include an employe of the department of health and family
7 services and shall consist of the commissioner of insurance or his or her designee and
8 the following members appointed for 4-year terms:

9 (a) A statistician or researcher.

10 (b) A medical ethicist of the University of Wisconsin System or the Medical
11 College of Wisconsin.

12 (c) An expert in issues relating to privacy.

13 (d) A purchaser of health care.”.

14 **2.** Page 1158, line 11: after that line insert:

15 “**SECTION 2251r.** 146.84 (3) of the statutes is amended to read:

16 146.84 (3) DISCIPLINE OF EMPLOYEES. Any person employed by the state, or any
17 political subdivision of the state who violates s. 146.82 or 146.83, except a health care
18 provider that negligently violates s. 153.50 (6) (c), may be discharged or suspended
19 without pay.”.

20 **3.** Page 1170, line 18: after that line insert:

21 “**SECTION 2280b.** 153.45 (1) (b) of the statutes is renumbered 153.45 (1) (b) 1.
22 and amended to read:

23 153.45 (1) (b) 1. Public For information that is submitted by hospitals or
24 ambulatory surgery centers, public use data files which ~~that~~ do not permit the

1 identification of specific patients, employers or health care providers, as defined by
2 rules promulgated by the department. The identification of ~~these groups patients,~~
3 employers or health care providers shall be protected by all necessary means,
4 including the deletion of patient identifiers and the use of calculated variables and
5 aggregated variables.

6 **SECTION 2280c.** 153.45 (1) (b) 2. of the statutes is created to read:

7 153.45 (1) (b) 2. For information that is submitted by health care providers
8 other than hospitals or ambulatory surgery centers, public use data files that do not
9 permit the identification of specific patients, employers or health care providers, as
10 defined by rules promulgated by the department. The identification of patients,
11 employers or health care providers shall be protected by all necessary means,
12 including the deletion of patient identifiers; the use of calculated variables and
13 aggregated variables; the specification of counties as to residence, rather than zip
14 codes; the use of 5-year categories for age, rather than exact age; not releasing
15 information concerning a patient's race or ethnicity or dates of admission, discharge,
16 procedures or visits; and masking sensitive diagnoses and procedures by use of
17 larger diagnostic and procedure categories. Public use data files under this
18 subdivision may include only the following:

- 19 a. The patient's county of residence.
- 20 b. The payment source, by type.
- 21 c. The patient's age category, by 5-year intervals up to age 80 and a category
22 of 80 years or older.
- 23 d. The patient's procedure code.
- 24 e. The patient's diagnosis code.
- 25 f. Charges assessed with respect to the procedure code.

1 g. The name and address of the facility in which the patient's services were
2 rendered.

3 h. The patient's sex.

4 i. Information that contains the name of a health care provider that is not a
5 hospital or ambulatory surgery center, if the independent review board first reviews
6 and approves the release or if the department promulgates rules that specify
7 circumstances under which the independent review board need not review and
8 approve the release.

9 j. Calendar quarters of service, except if the department specifies by rule that
10 the number of data elements included in the public use data file is too small to enable
11 protection of patient confidentiality.

12 k. Information other than patient-identifiable data, as defined in s. 153.50 (1)
13 (b), as approved by the independent review board.

14 **SECTION 2280e.** 153.45 (1) (c) of the statutes is renumbered 153.45 (1) (c)
15 (intro.) and amended to read:

16 153.45 (1) (c) (intro.) Custom-designed reports containing portions of the data
17 under par. (b). Of information submitted by health care providers that are not
18 hospitals or ambulatory surgery centers, requests under this paragraph for data
19 elements other than those available for public use data files under par. (b) 2.,
20 including the patient's month and year of birth, require review and approval by the
21 independent review board before the data elements may be released. Information
22 that contains the name of a health care provider that is not a hospital or ambulatory
23 surgery center may be released only if the independent review board first reviews
24 and approves the release or if the department promulgates rules that specify
25 circumstances under which the independent review board need not review and

1 approve the release. Reports under this paragraph may include the patient's zip code
2 only if at least one of the following applies:

3 **SECTION 2280f.** 153.45 (1) (c) 1. to 4. of the statutes are created to read:

4 153.45 (1) (c) 1. Other potentially identifying data elements are not released.

5 2. Population density is sufficient to mask patient identity.

6 3. Other potentially identifying data elements are grouped to provide
7 population density sufficient to protect identity.

8 4. Multiple years of data elements are added to protect identity.

9 **SECTION 2280g.** 153.45 (6) of the statutes is created to read:

10 153.45 (6) The department may not sell or distribute data bases of information,
11 from health care providers who are not hospitals or ambulatory surgery centers, that
12 are able to be linked with public use data files, unless first approved by the
13 independent review board.

14 **SECTION 2280ge.** 153.50 (1) (a) of the statutes is renumbered 153.01 (2m).

15 **SECTION 2280gg.** 153.50 (1) (b) of the statutes is renumbered 153.50 (1) (b) 1.,
16 and 153.50 (1) (b) 1. (intro.), as renumbered, is amended to read:

17 153.50 (1) (b) 1. (intro.) "Patient-identifiable data", for information submitted
18 by hospitals and ambulatory surgery centers, means all of the following data
19 elements:

20 **SECTION 2280gm.** 153.50 (1) (b) 2. of the statutes is created to read:

21 153.50 (1) (b) 2. "Patient-identifiable data", for information submitted by
22 health care providers who are not hospitals or ambulatory surgery centers, means
23 all of the following data elements:

24 a. Data elements specified in subd. 1. a. to g., L. and m.

1 b. Whether the patient's condition is related to employment, and occurrence
2 and place of an auto accident or other accident.

3 c. Date of first symptom of current illness, of current injury or of current
4 pregnancy.

5 d. First date of patient's same or similar illness, if any.

6 e. Dates that the patient has been unable to work in his or her current
7 occupation.

8 f. Dates of receipt by patient of medical service.

9 g. The patient's city, town or village.

10 **SECTION 2280h.** 153.50 (2) of the statutes is repealed.

11 **SECTION 2280i.** 153.50 (3) (b) 7. of the statutes is created to read:

12 153.50 (3) (b) 7. The patient's account number, after use only as verification of
13 data by the department.

14 **SECTION 2280j.** 153.50 (3) (c) of the statutes is created to read:

15 153.50 (3) (c) Develop, for use by purchasers of data under this chapter, a data
16 use agreement that specifies data use restrictions, appropriate uses of data and
17 penalties for misuse of data, and notify prospective and current purchasers of data
18 of the appropriate uses.

19 **SECTION 2280k.** 153.50 (3) (d) of the statutes is created to read:

20 153.50 (3) (d) Require that a purchaser of data under this chapter sign and have
21 notarized the data use agreement of the department specified in par. (c).

22 **SECTION 2280km.** 153.50 (3m) of the statutes is created to read:

23 153.50 (3m) ^AHEALTHCARE PROVIDER MEASURES TO ENSURE PATIENT IDENTITY
24 PROTECTION. A health care provider that is not a hospital or ambulatory surgery
25 center shall, before submitting information required by the department under this

1 chapter, convert to a payer category code as specified by the department any names
2 of an insured's payer or other insured's payer.

3 **SECTION 2280kp.** 153.50 (4) (intro.) of the statutes is renumbered 153.50 (4)
4 (a) (intro.) and amended to read:

5 153.50 (4) (a) (intro.) Under Except as specified in par. (b), under the
6 procedures specified in sub. (5), release of patient-identifiable data may be made
7 only to any of the following:

8 **SECTION 2280kq.** 153.50 (4) (a) of the statutes is repealed.

9 **SECTION 2280kr.** 153.50 (4) (b) to (e) of the statutes are renumbered 153.50 (4)
10 (a) 1. to 4.

11 **SECTION 2280ks.** 153.50 (4) (b) of the statutes is created to read:

12 153.50 (4) (b) Of information submitted by health care providers that are not
13 hospitals or ambulatory surgery centers, patient-identifiable data that contain a
14 patient's date of birth may be released under par. (a) only under circumstances as
15 specified by rule by the department.

16 **SECTION 2280ku.** 153.50 (5) (a) (intro.) of the statutes is amended to read:

17 153.50 (5) (a) (intro.) The department may not release or provide access to
18 patient-identifiable data to a person authorized under sub. (4) (a), ~~(e)~~, ~~(d)~~ or ~~(e)~~
19 unless the authorized person requests the department, in writing, to release the
20 patient-identifiable data. The request shall include all of the following:

21 **SECTION 2280kv.** 153.50 (5) (a) 3. of the statutes is amended to read:

22 153.50 (5) (a) 3. For a person who is authorized under sub. (4) (a), ~~(e)~~ or ~~(d)~~ to
23 receive or have access to patient-identifiable data, evidence, in writing, that
24 indicates that authorization.

25 **SECTION 2280kw.** 153.50 (5) (a) 4. (intro.) of the statutes is amended to read:

1 153.50 (5) (a) 4. (intro.) For an entity that is authorized under sub. (4) (e) (a)
2 4. to receive or have access to patient-identifiable data, evidence, in writing, of all
3 of the following:

4 **SECTION 2280kx.** 153.50 (5) (b) 3. of the statutes is amended to read:

5 153.50 (5) (b) 3. For a person who believes that he or she is authorized under
6 sub. (4) (a), the action provided under s. 19.37.”.

7 **4.** Page 1170, line 22: after that line insert:

8 **“SECTION 2280p.** 153.50 (6) of the statutes is renumbered 153.50 (6) (a).

9 **SECTION 2280q.** 153.50 (6) (b), (c), (d) and (e) of the statutes are created to read:

10 153.50 (6) (b) The department may not require under this chapter a health care
11 provider that is not a hospital or ambulatory surgery center to submit uniform
12 patient billing forms.

13 (c) A health care provider that is not a hospital or ambulatory surgery center
14 may not submit any of the following to the department under the requirements of
15 this chapter:

- 16 1. The data elements specified under sub. (3) (b).
- 17 2. The patient’s telephone number.
- 18 3. The insured’s employer’s name or school name.
- 19 4. Data regarding insureds other than the patient, other than the payer
20 category code under sub. (3m).
- 21 5. The patient’s employer’s name or school name.
- 22 6. The patient’s relationship to the insured.
- 23 7. The insured’s identification number.
- 24 8. The insured’s policy or group number.

1 9. The insured's date of birth or sex.

2 10. The patient's marital, employment or student status.

3 (d) If a health care provider that is not a hospital or ambulatory surgery center
4 submits a data element that is specified in par. (c) 1. to 10., the department shall
5 immediately return this information to the health care provider or, if discovered
6 later, shall remove and destroy the information.

7 (e) A health care provider may not submit information that uses any of the
8 following as a patient account number:

9 1. The patient's social security number or any substantial portion of the
10 patient's social security number.

11 2. A number that is related to another patient identifying number.

12 **SECTION 2280r.** 153.55 of the statutes is amended to read:

13 **153.55 Protection of health care provider confidentiality.** ~~Health care~~
14 ~~provider identifiable data~~ Data obtained under this chapter is not subject to
15 inspection, copying or receipt under s. 19.35 (1).”.

16 **5.** Page 1172, line 14: after that line insert:

17 **“SECTION 2283g.** 153.67 of the statutes is created to read:

18 **153.67 Independent review board.** The independent review board shall
19 review any request under s. 153.45 (1) (c) for data elements other than those
20 available for public use data files under s. 153.45 (1) (b). Unless the independent
21 review board approves such a request or unless independent review board approval
22 is not required under rules of the department promulgated under s. 153.45 (1) (c)
23 (intro.), the data elements requested may not be released.

24 **SECTION 2283h.** 153.76 of the statutes is created to read:

153.76 Rule-making by the independent review board.

Notwithstanding s. 15.01 (1r), the independent review board may promulgate only those rules that are first reviewed and approved by the board on health care information.

SECTION 2283i. 153.85 of the statutes is amended to read:

153.85 Civil liability. Any Except as provided in s. 153.86, any person violating s. 153.50 or rules promulgated under s. 153.75 (1) (a) is liable to the patient for actual damages and costs, plus exemplary damages of up to \$1,000 for a negligent violation and up to \$5,000 for an intentional violation.

SECTION 2283j. 153.86 of the statutes is created to read:

153.86 Immunity from liability. (1) A health care provider that submits information to the department under this chapter is immune from civil liability for all of the following:

(a) Any act or omission of an employe, official or agent of the health care provider that results in the release of a prohibited data element while submitting data to the department.

(b) Any act or omission of the department that results in the release of data.

(2) The immunity provided under this section does not apply to intentional, wilful or reckless acts or omissions by health care providers.

SECTION 2283k. 153.90 (1) of the statutes is amended to read:

153.90 (1) Whoever intentionally violates s. 153.45 (5) or 153.50 or rules promulgated under s. 153.75 (1) (a) may be fined not more than ~~\$10,000~~ \$15,000 or imprisoned for not more than ~~9 months~~ one year or both.”

6. Page 1526, line 5: after that line insert:

*in the county
jail*



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb1701/2
DAK:cmh:km

LFB:.....Morgan - Confidentiality of health care information; redraft of
99b1391 (SRC, #2713)

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 24, line 9: after that line insert:

3 **“SECTION 30g.** 15.195 (6) of the statutes is amended to read:

4 15.195 (6) BOARD ON HEALTH CARE INFORMATION. There is created a board on
5 health care information which is attached to the department of health and family
6 services under s. 15.03. The board shall consist of 11 members, one of whom shall
7 be a record administrator, registered by the American Medical Record Association,
8 and; at least 2 of whom shall be employer purchasers of health care; and 5 of whom
9 shall be or represent health care providers, including one registered nurse, licensed
10 under s. 441.06, and 2 physicians, as defined in s. 448.01 (5), and 2 representatives

1 of hospitals, as defined in s. 50.33 (2). The State Medical Society of Wisconsin may
2 recommend board membership for 5 physicians, one of whom the governor shall
3 appoint. The members shall be appointed for 4–year terms.

4 **SECTION 30r.** 15.195 (9) of the statutes is created to read:

5 15.195 (9) INDEPENDENT REVIEW BOARD. There is created an independent review
6 board that is attached to the department of health and family services under s. 15.03.
7 The board may not include an employe of the department of health and family
8 services and shall consist of the commissioner of insurance or his or her designee and
9 the following members appointed for 4–year terms:

10 (a) A statistician or researcher.

11 (b) A medical ethicist of the University of Wisconsin System or the Medical
12 College of Wisconsin.

13 (c) An expert in issues relating to privacy.

14 (d) A purchaser of health care.”

15 **2.** Page 1158, line 11: after that line insert:

16 **“SECTION 2251r.** 146.84 (3) of the statutes is amended to read:

17 146.84 (3) DISCIPLINE OF EMPLOYEES. Any person employed by the state, or any
18 political subdivision of the state who violates s. 146.82 or 146.83, except a health care
19 provider that negligently violates s. 153.50 (6) (c), may be discharged or suspended
20 without pay.”.

21 **3.** Page 1170, line 18: after that line insert:

22 **“SECTION 2280b.** 153.45 (1) (b) of the statutes is renumbered 153.45 (1) (b) 1.
23 and amended to read:

1 153.45 (1) (b) 1. Public For information that is submitted by hospitals or
2 ambulatory surgery centers, public use data files which that do not permit the
3 identification of specific patients, employers or health care providers, as defined by
4 rules promulgated by the department. The identification of ~~these groups~~ patients,
5 employers or health care providers shall be protected by all necessary means,
6 including the deletion of patient identifiers and the use of calculated variables and
7 aggregated variables.

8 **SECTION 2280c.** 153.45 (1) (b) 2. of the statutes is created to read:

9 153.45 (1) (b) 2. For information that is submitted by health care providers
10 other than hospitals or ambulatory surgery centers, public use data files that do not
11 permit the identification of specific patients, employers or health care providers, as
12 defined by rules promulgated by the department. The identification of patients,
13 employers or health care providers shall be protected by all necessary means,
14 including the deletion of patient identifiers; the use of calculated variables and
15 aggregated variables; the specification of counties as to residence, rather than zip
16 codes; the use of 5-year categories for age, rather than exact age; not releasing
17 information concerning a patient's race or ethnicity or dates of admission, discharge,
18 procedures or visits; and masking sensitive diagnoses and procedures by use of
19 larger diagnostic and procedure categories. Public use data files under this
20 subdivision may include only the following:

- 21 a. The patient's county of residence.
- 22 b. The payment source, by type.
- 23 c. The patient's age category, by 5-year intervals up to age 80 and a category
24 of 80 years or older.
- 25 d. The patient's procedure code.

- 1 e. The patient's diagnosis code.
- 2 f. Charges assessed with respect to the procedure code.
- 3 g. The name and address of the facility in which the patient's services were
4 rendered.
- 5 h. The patient's sex.
- 6 i. Information that contains the name of a health care provider that is not a
7 hospital or ambulatory surgery center, if the independent review board first reviews
8 and approves the release or if the department promulgates rules that specify
9 circumstances under which the independent review board need not review and
10 approve the release.
- 11 j. Calendar quarters of service, except if the department specifies by rule that
12 the number of data elements included in the public use data file is too small to enable
13 protection of patient confidentiality.
- 14 k. Information other than patient-identifiable data, as defined in s. 153.50 (1)
15 (b), as approved by the independent review board.

16 **SECTION 2280e.** 153.45 (1) (c) of the statutes is renumbered 153.45 (1) (c)
17 (intro.) and amended to read:

18 153.45 (1) (c) (intro.) Custom-designed reports containing portions of the data
19 under par. (b). Of information submitted by health care providers that are not
20 hospitals or ambulatory surgery centers, requests under this paragraph for data
21 elements other than those available for public use data files under par. (b) 2.,
22 including the patient's month and year of birth, require review and approval by the
23 independent review board before the data elements may be released. Information
24 that contains the name of a health care provider that is not a hospital or ambulatory
25 surgery center may be released only if the independent review board first reviews

1 and approves the release or if the department promulgates rules that specify
2 circumstances under which the independent review board need not review and
3 approve the release. Reports under this paragraph may include the patient's zip code
4 only if at least one of the following applies:

5 **SECTION 2280f.** 153.45 (1) (c) 1. to 4. of the statutes are created to read:

6 153.45 (1) (c) 1. Other potentially identifying data elements are not released.

7 2. Population density is sufficient to mask patient identity.

8 3. Other potentially identifying data elements are grouped to provide
9 population density sufficient to protect identity.

10 4. Multiple years of data elements are added to protect identity.

11 **SECTION 2280g.** 153.45 (6) of the statutes is created to read:

12 153.45 (6) The department may not sell or distribute data bases of information,
13 from health care providers who are not hospitals or ambulatory surgery centers, that
14 are able to be linked with public use data files, unless first approved by the
15 independent review board.

16 **SECTION 2280ge.** 153.50 (1) (a) of the statutes is renumbered 153.01 (2m).

17 **SECTION 2280gg.** 153.50 (1) (b) of the statutes is renumbered 153.50 (1) (b) 1.,
18 and 153.50 (1) (b) 1. (intro.), as renumbered, is amended to read:

19 153.50 (1) (b) 1. (intro.) “Patient-identifiable data”, for information submitted
20 by hospitals and ambulatory surgery centers, means all of the following data
21 elements:

22 **SECTION 2280gm.** 153.50 (1) (b) 2. of the statutes is created to read:

23 153.50 (1) (b) 2. “Patient-identifiable data”, for information submitted by
24 health care providers who are not hospitals or ambulatory surgery centers, means
25 all of the following data elements:

- 1 a. Data elements specified in subd. 1. a. to g., L. and m.
- 2 b. Whether the patient's condition is related to employment, and occurrence
- 3 and place of an auto accident or other accident.
- 4 c. Date of first symptom of current illness, of current injury or of current
- 5 pregnancy.
- 6 d. First date of patient's same or similar illness, if any.
- 7 e. Dates that the patient has been unable to work in his or her current
- 8 occupation.
- 9 f. Dates of receipt by patient of medical service.
- 10 g. The patient's city, town or village.

11 **SECTION 2280h.** 153.50 (2) of the statutes is repealed.

12 **SECTION 2280i.** 153.50 (3) (b) 7. of the statutes is created to read:

13 153.50 (3) (b) 7. The patient's account number, after use only as verification of

14 data by the department.

15 **SECTION 2280j.** 153.50 (3) (c) of the statutes is created to read:

16 153.50 (3) (c) Develop, for use by purchasers of data under this chapter, a data

17 use agreement that specifies data use restrictions, appropriate uses of data and

18 penalties for misuse of data, and notify prospective and current purchasers of data

19 of the appropriate uses.

20 **SECTION 2280k.** 153.50 (3) (d) of the statutes is created to read:

21 153.50 (3) (d) Require that a purchaser of data under this chapter sign and have

22 notarized the data use agreement of the department specified in par. (c).

23 **SECTION 2280km.** 153.50 (3m) of the statutes is created to read:

24 153.50 (3m) HEALTH CARE PROVIDER MEASURES TO ENSURE PATIENT IDENTITY

25 PROTECTION. A health care provider that is not a hospital or ambulatory surgery

1 center shall, before submitting information required by the department under this
2 chapter, convert to a payer category code as specified by the department any names
3 of an insured's payer or other insured's payer.

4 **SECTION 2280kp.** 153.50 (4) (intro.) of the statutes is renumbered 153.50 (4)
5 (a) (intro.) and amended to read:

6 153.50 (4) (a) (intro.) Under Except as specified in par. (b), under the
7 procedures specified in sub. (5), release of patient-identifiable data may be made
8 only to any of the following:

9 **SECTION 2280kq.** 153.50 (4) (a) of the statutes is repealed.

10 **SECTION 2280kr.** 153.50 (4) (b) to (e) of the statutes are renumbered 153.50 (4)
11 (a) 1. to 4.

12 **SECTION 2280ks.** 153.50 (4) (b) of the statutes is created to read:

13 153.50 (4) (b) Of information submitted by health care providers that are not
14 hospitals or ambulatory surgery centers, patient-identifiable data that contain a
15 patient's date of birth may be released under par. (a) only under circumstances as
16 specified by rule by the department.

17 **SECTION 2280ku.** 153.50 (5) (a) (intro.) of the statutes is amended to read:

18 153.50 (5) (a) (intro.) The department may not release or provide access to
19 patient-identifiable data to a person authorized under sub. (4) (a), ~~(e), (d) or (e)~~
20 unless the authorized person requests the department, in writing, to release the
21 patient-identifiable data. The request shall include all of the following:

22 **SECTION 2280kv.** 153.50 (5) (a) 3. of the statutes is amended to read:

23 153.50 (5) (a) 3. For a person who is authorized under sub. (4) (a), ~~(e) or (d)~~ to
24 receive or have access to patient-identifiable data, evidence, in writing, that
25 indicates that authorization.

1 **SECTION 2280kw.** 153.50 (5) (a) 4. (intro.) of the statutes is amended to read:
2 153.50 (5) (a) 4. (intro.) For an entity that is authorized under sub. (4) ~~(e)~~ (a)
3 4. to receive or have access to patient–identifiable data, evidence, in writing, of all
4 of the following:

5 **SECTION 2280kx.** 153.50 (5) (b) 3. of the statutes is amended to read:
6 153.50 (5) (b) 3. For a person who believes that he or she is authorized under
7 sub. (4) (a), the action provided under s. 19.37.”

8 **4.** Page 1170, line 22: after that line insert:

9 “**SECTION 2280p.** 153.50 (6) of the statutes is renumbered 153.50 (6) (a).

10 **SECTION 2280q.** 153.50 (6) (b), (c), (d) and (e) of the statutes are created to read:
11 153.50 (6) (b) The department may not require under this chapter a health care
12 provider that is not a hospital or ambulatory surgery center to submit uniform
13 patient billing forms.

14 (c) A health care provider that is not a hospital or ambulatory surgery center
15 may not submit any of the following to the department under the requirements of
16 this chapter:

- 17 1. The data elements specified under sub. (3) (b).
- 18 2. The patient’s telephone number.
- 19 3. The insured’s employer’s name or school name.
- 20 4. Data regarding insureds other than the patient, other than the payer
21 category code under sub. (3m).
- 22 5. The patient’s employer’s name or school name.
- 23 6. The patient’s relationship to the insured.
- 24 7. The insured’s identification number.

1 8. The insured's policy or group number.

2 9. The insured's date of birth or sex.

3 10. The patient's marital, employment or student status.

4 (d) If a health care provider that is not a hospital or ambulatory surgery center
5 submits a data element that is specified in par. (c) 1. to 10., the department shall
6 immediately return this information to the health care provider or, if discovered
7 later, shall remove and destroy the information.

8 (e) A health care provider may not submit information that uses any of the
9 following as a patient account number:

10 1. The patient's social security number or any substantial portion of the
11 patient's social security number.

12 2. A number that is related to another patient identifying number.

13 **SECTION 2280r.** 153.55 of the statutes is amended to read:

14 **153.55 Protection of health care provider confidentiality.** ~~Health care~~
15 ~~provider-identifiable data~~ Data obtained under this chapter is not subject to
16 inspection, copying or receipt under s. 19.35 (1).".

17 **5.** Page 1172, line 14: after that line insert:

18 **"SECTION 2283g.** 153.67 of the statutes is created to read:

19 **153.67 Independent review board.** The independent review board shall
20 review any request under s. 153.45 (1) (c) for data elements other than those
21 available for public use data files under s. 153.45 (1) (b). Unless the independent
22 review board approves such a request or unless independent review board approval
23 is not required under rules of the department promulgated under s. 153.45 (1) (c)
24 (intro.), the data elements requested may not be released.

1 **SECTION 2283h.** 153.76 of the statutes is created to read:

2 **153.76 Rule-making by the independent review board.**

3 Notwithstanding s. 15.01 (1r), the independent review board may promulgate only
4 those rules that are first reviewed and approved by the board on health care
5 information.

6 **SECTION 2283i.** 153.85 of the statutes is amended to read:

7 **153.85 Civil liability.** Any Except as provided in s. 153.86, any person
8 violating s. 153.50 or rules promulgated under s. 153.75 (1) (a) is liable to the patient
9 for actual damages and costs, plus exemplary damages of up to \$1,000 for a negligent
10 violation and up to \$5,000 for an intentional violation.

11 **SECTION 2283j.** 153.86 of the statutes is created to read:

12 **153.86 Immunity from liability.** (1) A health care provider that submits
13 information to the department under this chapter is immune from civil liability for
14 all of the following:

15 (a) Any act or omission of an employe, official or agent of the health care
16 provider that results in the release of a prohibited data element while submitting
17 data to the department.

18 (b) Any act or omission of the department that results in the release of data.

19 (2) The immunity provided under this section does not apply to intentional,
20 wilful or reckless acts or omissions by health care providers.

21 **SECTION 2283k.** 153.90 (1) of the statutes is amended to read:

22 **153.90 (1)** Whoever intentionally violates s. 153.45 (5) or 153.50 or rules
23 promulgated under s. 153.75 (1) (a) may be fined not more than ~~\$10,000~~ \$15,000 or
24 imprisoned for not more than ~~9 months~~ one year in the county jail or both.”.

