

2003 DRAFTING REQUEST

Bill

Received: 12/11/2003

Received By: dkennedy

Wanted: Soon

Identical to LRB:

For: John Gard (608) 266-3387

By/Representing: Ellen Nowak

This file may be shown to any legislator: NO

Drafter: dkennedy

May Contact:

Addl. Drafters:

Subject: Health - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Gard@legis.state.wi.us

Carbon copy (CC:) to: laura.rose@legis.state.wi.us
daryl.hinz@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Patient health care record HIPPA rule changes

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> |
|--------------|------------------------|-----------------------|-----------------------|----------------|-----------------------|-----------------|-----------------|
| /? | | | | | | | S&L |
| /P1 | dkennedy 12/11/2003 | kgilfoy 12/11/2003 | chaugen 12/12/2003 | | mbarman 12/12/2003 | | S&L |
| /1 | dkennedy | kgilfoy | rschluet | | Inorthro | Inorthro | |

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------|-----------------|------------------|----------------|------------------|-----------------|-----------------|
| | 01/05/2004 | 01/05/2004 | 01/05/2004 _____ | | 01/05/2004 | 01/05/2004 | |

FE Sent For:

*At
Intro.*

<END>

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| /P1 | dkennedy 12/11/2003 | kgilfoy 12/11/2003 | chaugen 12/12/2003 | | mbarman 12/12/2003 | | |

*Please jacket as
Assembly bill
NAK 01/5/04*

FE Sent For:

*11-15
kmq*

154

2003 DRAFTING REQUEST

Bill

Received: **12/11/2003**

Received By: **dkennedy**

Wanted: **Soon**

Identical to LRB:

For: **John Gard (608) 266-3387**

By/Representing: **Ellen Nowak**

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

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gard@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

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|--------------|----------------|-----------------|--------------|--------------------|------------------|-----------------|-----------------|
| /? | dkennedy | 1-12/11 KMG | CH 12-12 | GH 12-12 ADG | | | |

FE Sent For:

<END>

2003 Assembly Bill 655

Delete currently proposed Sections 161 and 162. Recreate Section 161 to read:

Section 161. 146.82(1) of the statutes is amended to read:

All patient health care records shall remain confidential. Patient health care records may be released only to the persons designated in this section or to other persons with the informed consent of the patient or of a person authorized by the patient. This subsection does not prohibit reports made in compliance with s. 146.995, 253.12 (2) or 979.01, ~~or~~ testimony authorized under s. 905.04 (4) (h) or releases made for purposes of health care operations, as defined in 45 CFR 164.501, and as authorized under 45 CFR 164 subpart E.



FRIDAY a.m.
State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3867/P1

DAK: *[Signature]*

D-NOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Sen. Cat
1 AN ACT...; relating to: making patient health care records concerning health
2 care operations inapplicable to restrictions on release without informed
3 consent.

numerous

Analysis by the Legislative Reference Bureau

Under current state law, patient health care records must remain confidential and may be released by a health care provider only with the informed consent of the patient or of a person authorized by the patient. This limitation on release does not apply to required reports concerning certain deaths, gunshot wounds, burns, and birth defects in infants or children, or to court-ordered examinations of patients prior to proceedings for guardianship or protective placement. In addition, patient health care records are required to be released without informed consent by the health care provider in numerous specified circumstances, including for patient treatment, health care provider payment, and medical records management, and for certain audits, program monitoring, accreditation, and health care services review activities by health care facility staff committees or accreditation or review organizations.

Under current federal law, patient health care information may be released without patient authorization by health care providers for, among other purposes, treatment, payment, and health care operations. "Health care operations" is defined in federal law to include quality assessment and improvement activities; credentialing or evaluating of health care practitioners and training; underwriting; medical review, legal services, and auditing; business planning and development; and business management and general administrative activities.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3867/P1dn

DAK: *king*

To Ellen Nowak:

1. Section 146.82, stats., is inartfully drafted in several ways. One change to s. 146.82 (1), stats., that could be made in this draft and that would help would be to add "release of" after "prohibit." I do not think that the inapplicability is meant to extend to confidentiality, but the statute is relatively unclear as to that point.

2. A disadvantage to the approach taken in this bill that is in addition to those I mentioned in my telephone conversation with you is this: since activities under s. 146.82 (2) (b) 1., 2., and 3., stats., are a subset of "health care operations," the bill now makes release of patient health care records for those purposes inapplicable to restriction under s. 146.82 (1), stats., but continues to require them to be released under s. 146.82 (2), stats. *that*

Debora A. Kennedy
Managing Attorney
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3867/P1dn
DAK:kmg:ch

December 12, 2003

To Ellen Nowak:

1. Section 146.82, stats., is inartfully drafted in several ways. One change to s. 146.82 (1), stats., that could be made in this draft and that would help would be to add "release of" after "prohibit." I do not think that the inapplicability is meant to extend to confidentiality, but the statute is relatively unclear as to that point.
2. A disadvantage to the approach taken in this bill that is in addition to those that I mentioned in my telephone conversation with you is this: since activities under s. 146.82 (2) (b) 1., 2., and 3., stats., are a subset of "health care operations," the bill now makes release of patient health care records for those purposes inapplicable to restriction under s. 146.82 (1), stats., but continues to require them to be released under s. 146.82 (2), stats.

Debora A. Kennedy
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TODAY
State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3867/P1 |

DAK:kmg:ca

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

no changes

- 1 AN ACT *to amend* 146.82 (1) of the statutes; **relating to:** making patient health
- 2 care records concerning health care operations inapplicable to restrictions on
- 3 release without informed consent.

Analysis by the Legislative Reference Bureau

Under current state law, patient health care records must remain confidential and may be released by a health care provider only with the informed consent of the patient or of a person authorized by the patient. This limitation on release does not apply to required reports concerning certain deaths, gunshot wounds, burns, and birth defects in infants or children, or to court-ordered examinations of patients prior to proceedings for guardianship or protective placement. In addition, patient health care records are required to be released without informed consent by the health care provider in numerous specified circumstances, including for patient treatment, health care provider payment, and medical records management, and for certain audits, program monitoring, accreditation, and health care services review activities by health care facility staff committees or accreditation or review organizations.

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