

2003 SENATE BILL 226

August 13, 2003 – Introduced by Senators ROESSLER, SCHULTZ and RISSER, cosponsored by Representatives UNDERHEIM, ALBERS, HUNDERTMARK, GUNDERSON, J. LEHMAN and TOWNSEND. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

1 **AN ACT** *to amend* 153.45 (5) and 153.75 (1) (b); and *to create* 440.03 (9) (c) and
2 448.15 of the statutes; **relating to:** making available to the public information
3 on the education, practice, and disciplinary history of physicians, requiring
4 rules of the Department of Health and Family Services to include procedures
5 affording health care providers an opportunity to correct health care
6 information, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill requires the Medical Examining Board (board) in the Department of Regulation and Licensing (DRL) to make available to the public certain information about physicians. The bill also requires the Department of Health and Family Services (DHFS) to promulgate rules establishing procedures for correcting certain health care information about health care providers that is collected by DHFS.

Physician information

The bill requires the board to make available for dissemination to the public, in a format established by the board, specified information regarding the education, practice, medical malpractice history, disciplinary history, and criminal history of physicians licensed in this state. The information must be reported in nontechnical language that is capable of being understood by the general public. Information about medical malpractice history must be accompanied by explanatory information

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that gives context to the information. Physicians must provide any information requested by the board that the board determines is necessary to comply with the bill. In addition, physicians must be provided a reasonable time to correct factual inaccuracies that appear in the information before the information is released to the public. The bill requires the board to determine by rule whether, and to what extent, the bill's requirements apply to physicians issued temporary licenses by the board.

The bill also provides for a surcharge to physician license renewal fees that must be paid every two years. The purpose of the surcharge is to fund the costs of making information available to the public under the bill. DRL must determine the amount of the surcharge and include the surcharge in its biennial budget recommendation for changes to licensing fees.

In addition, the bill provides that information made available to the public under the bill does not qualify as an exception to the hearsay rule that otherwise applies to public records and reports. (Under the hearsay rule, an out-of-court statement is generally not admissible as evidence, unless an exception applies to the statement.) Also, the bill provides that the information made available to the public under the bill is not self-authenticated for purposes of its admissibility as evidence. In other words, the information must be authenticated before it is admissible as evidence.

DHFS corrections

Under current law, DHFS must promulgate rules that establish procedures under which health care providers are permitted to review, verify, and comment on certain health care information that DHFS collects. This bill requires such rules to also establish procedures for health care providers to correct the information, in addition to reviewing, verifying, and commenting on the information.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 153.45 (5) of the statutes is amended to read:
2 153.45 (5) The department may not release any health care information that
3 is subject to rules promulgated under s. 153.75 (1) (b) until the verification, comment
4 ~~and~~, review, and correction opportunity procedures required under those rules have
5 been complied with. Nothing in this subsection prohibits the release of health care
6 provider-specific information to the health care provider to whom the information
7 relates.

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1 **SECTION 2.** 153.75 (1) (b) of the statutes is amended to read:

2 153.75 **(1)** (b) Establishing procedures under which health care providers are
3 permitted to review, verify, and comment on, and have an opportunity to correct,
4 information and include the comments with the information.

5 **SECTION 3.** 440.03 (9) (c) of the statutes is created to read:

6 440.03 **(9)** (c) A determination of the surcharge to the renewal fee under s.
7 440.08 (2) (a) 58. necessary to fund the costs incurred by the department under s.
8 448.15. The surcharge shall be included in the recommendation under par. (b) for
9 the change to the renewal fee specified under s. 440.08 (2) (a) 58.

10 **SECTION 4.** 448.15 of the statutes is created to read:

11 **448.15 Information on physician education, practice, and disciplinary**
12 **history. (1g) DEFINITIONS.** In this section:

13 (a) “Medical Assistance Program” means the Medical Assistance Program
14 under subch. IV of ch. 49.

15 (b) “Medicare Program” means the federal Medicare Program under 42 USC
16 1395 to 1395ggg.

17 **(1r) INFORMATION AVAILABLE TO PUBLIC.** The board shall make available for
18 dissemination to the public, in a format established by the board, all of the following
19 information concerning a physician who is licensed to practice medicine and surgery
20 in this state:

21 (a) Names of medical schools attended and dates of graduation.

22 (b) Graduate medical education.

23 (c) Eligibility status for any specialty board certification, and certification by
24 any specialty board.

25 (d) Number of years in practice or year first admitted to practice.

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- 1 (e) Location of primary practice setting.
- 2 (f) Identification of any translating services that may be available at the
3 primary practice location.
- 4 (g) Names of hospitals where the physician has staff privileges.
- 5 (h) Indication of whether the physician participates in the Medical Assistance
6 Program and in the Medicare Program.
- 7 (i) Education appointments and indication whether the licensee has had a
8 responsibility for graduate medical education within the preceding 10 years.
- 9 (j) A description of any felony conviction within the preceding 10 years.
- 10 (k) A description of any final board disciplinary action taken within the
11 preceding 10 years.
- 12 (L) A description of any final disciplinary action taken by a licensing board of
13 another jurisdiction reported to the board within the preceding 10 years.
- 14 (m) A description of any Medical Assistance Program decertification or
15 suspension within the preceding 10 years that is required to be reported to the board
16 under s. 49.45 (2) (a) 12r.
- 17 (n) A description of any loss or reduction of hospital staff privileges or
18 resignation from hospital staff within the preceding 10 years that is required to be
19 reported to the board under s. 50.36 (3) (b) and (c).
- 20 (o) Subject to sub. (4) (e), a description of any disciplinary action taken by a
21 limited service health organization, preferred provider plan, or managed care plan
22 within the preceding 10 years that is required to be reported to the board under s.
23 609.17.

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1 (p) Subject to sub. (4) (e), a description of any action taken by an insurer against
2 a physician within the preceding 10 years that is required to be reported to the board
3 under s. 632.715.

4 (q) A description of any exclusion from participation in the Medicare Program
5 and federally approved or funded state health care programs within the preceding
6 10 years that is required to be reported to the board under 42 CFR 1001.2005.

7 (r) A description of any medical malpractice claims paid by the patients
8 compensation fund or other insurer within the preceding 10 years that is required
9 to be reported to the board under s. 655.26.

10 (s) A description of any amount of settlement or award to a claimant in a
11 medical malpractice action within the preceding 10 years that is required to be
12 reported to the board under s. 655.45.

13 (t) Any other information required by the board by rule.

14 **(2)** AGENCY COOPERATION AND COORDINATION. The department of regulation and
15 licensing and the department of health and family services shall cooperate with the
16 board in implementing this section. The board, department of regulation and
17 licensing, and department of health and family services shall avoid to the extent
18 practicable duplication in the collection and dissemination of the information
19 required under this section and shall coordinate the sharing of information and
20 resources in a manner that permits the board to carry out its duties under this section
21 efficiently and effectively.

22 **(3)** LINK TO STATE MEDICAL SOCIETY WEB SITE. The board shall include on any
23 Web site that it develops to disseminate information under this section, in place of
24 providing the information through the board's own Web page, a link to the physician
25 directory located on the Web site of the State Medical Society.

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1 **(4) REQUIREMENTS RELATED TO REPORTED INFORMATION.** (a) The information
2 reported under this section shall be reported in nontechnical language that is
3 capable of being understood by the general public.

4 (b) Dispositions of paid medical malpractice claims shall be reported in a
5 minimum of 3 graduated categories, indicating the level of significance of the amount
6 of the award or settlement.

7 (c) Information concerning paid medical malpractice claims shall be given
8 context by comparing the physician's medical malpractice judgment awards and
9 settlements to the experience of other physicians in the same specialty.

10 (d) Information concerning medical malpractice settlements shall include the
11 following statement: "Settlement of a claim may occur for a variety of reasons that
12 do not necessarily reflect negatively on the professional competence or conduct of the
13 physician. A payment in settlement of a medical malpractice action or claim should
14 not be construed as creating a presumption that medical malpractice has occurred."

15 (e) If the board determines that an action that otherwise is required to be
16 described and made available to the public under sub. (1r) (o) or (p) is the result of
17 a business or economic decision by the person taking the action and does not involve
18 conduct by the physician that appears to relate to possible unprofessional conduct
19 or negligence in treatment, the board may omit that action from the information
20 made available to the public.

21 (f) The board may include any other explanations of the information made
22 available to the public that the board considers desirable.

23 **(5) DUTY TO PROVIDE AN OPPORTUNITY TO CORRECT AND DELETE INFORMATION.** (a)
24 A physician shall provide any information requested by the board that the board
25 determines is necessary to comply with this section.

