



2003 ASSEMBLY BILL 961

March 11, 2004 - Introduced by Representatives SCHNEIDER, GRONEMUS, AINSWORTH and HINES, cosponsored by Senator CARPENTER. Referred to Committee on Rules.

1 **AN ACT to repeal** 146.819 (1) (c); **to renumber** 146.819 (1) (b); **to renumber and**
2 **amend** 146.819 (1) (intro.) and 146.819 (1) (a); **to amend** 146.81 (intro.),
3 146.819 (title), 146.819 (2) (intro.), 146.819 (3) (intro.) and 146.819 (4) (intro.);
4 and **to create** 146.819 (1g), 146.819 (1m) (am), 146.819 (2m) and 146.819 (5) of
5 the statutes; **relating to:** the transfer of patient health care records from one
6 health care provider to another and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a health care provider, other than a community-based residential facility, hospital, hospice, home health agency, or local health department, who ceases practice or business as a health care provider or the personal representative of a deceased health care provider who practiced independently must do one of the following with respect to the patient health care records in his or her possession:

1. Provide for the maintenance of the health care records by a person who states, in writing, that they will be maintained under confidentiality and access requirements of current law.
2. Delete or destroy the health care records.

The health care provider or personal representative must send written notice to each patient whose patient health care records are to be maintained and must publish a class three newspaper notice that specifies where and by whom the records

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will be maintained. If the patient health care records are to be deleted or destroyed, the health care provider or personal representative must provide 35 days' notice to the patient before the deletion or destruction and must publish a class three newspaper notice.

This bill requires that, if a health care provider who ceases practice or the personal representative of an independently practicing deceased health care provider intends to transfer to another health care provider the patient health care records in the possession of the provider or personal representative, the health care provider or personal representative must do all of the following:

1. Provide written notice, to each patient or person authorized by the patient, of where and to whom the records will be transferred.
2. Publish a class three newspaper notice specifying where and to whom the patient health care records will be transferred.

Under the bill, the health care provider or personal representative may not transfer a patient health care record to another health care provider unless 15 days have elapsed since the patient was provided notice by mail of the transfer and newspaper notice was published and unless, within that time, the patient has failed to indicate his or her desires with respect to the records. If the patient requests his or her patient health care records, the health care provider or personal representative must transmit them to the patient. The requirements apply to a health care provider that includes a pharmacy, community-based residential facility, hospital, hospice, home health agency, and local health department. A violation of the prohibition is, under the bill, subject to a fine of not more than \$10,000 for each occurrence.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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.** 146.81 (intro.) of the statutes is amended to read:

2 **146.81 Health care records; definitions.** (intro.) In ss. 146.81 to 146.817
3 and 146.82 to 146.84:

4 **SECTION 2.** 146.819 (title) of the statutes is amended to read:

5 **146.819 (title) Preservation or, destruction, or transfer of patient**
6 **health care records.**

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1 **SECTION 3.** 146.819 (1) (intro.) of the statutes is renumbered 146.819 (1m)
2 (intro.) and amended to read:

3 146.819 (**1m**) (intro.) Except as provided in sub. (4), any health care provider
4 who ceases practice or business as a health care provider or the personal
5 representative of a deceased health care provider who was an independent
6 practitioner shall do ~~one~~ any of the following for all patient health care records in the
7 possession of the health care provider when the health care provider ceased business
8 or practice or died:

9 **SECTION 4.** 146.819 (1) (a) of the statutes is renumbered 146.819 (1m) (a) and
10 amended to read:

11 146.819 (**1m**) (a) Provide for the maintenance of the patient health care records
12 by a person, other than a health care provider under par. (am), who states, in writing,
13 that the records will be maintained in compliance with ss. 146.81 to 146.835.

14 **SECTION 5.** 146.819 (1) (b) of the statutes is renumbered 146.819 (1m) (b).

15 **SECTION 6.** 146.819 (1) (c) of the statutes is repealed.

16 **SECTION 7.** 146.819 (1g) of the statutes is created to read:

17 146.819 (**1g**) Except as provided in sub. (4), in this section, “health care
18 provider” has the meaning given in s. 146.81 (1) and includes all of the following:

19 (a) A home health agency licensed under s. 50.49 (4).

20 (b) A local health department, as defined in s. 250.01 (4).

21 (c) A pharmacy licensed under s. 450.06 (2).

22 **SECTION 8.** 146.819 (1m) (am) of the statutes is created to read:

23 146.819 (**1m**) (am) Provide for the transfer of the patient health care records
24 to another health care provider who states, in writing, that the records will be
25 maintained in compliance with ss. 146.81 to 146.835.

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

2 146.819 (2) (intro.) If the health care provider or personal representative
3 provides for the maintenance of any of the patient health care records under sub. (1)
4 (1m), the health care provider or personal representative shall also do at least one
5 of the following:

6 **SECTION 10.** 146.819 (2m) of the statutes is created to read:

7 146.819 (2m) (a) If the health care provider or personal representative provides
8 under sub. (1) for the transfer of any patient health care records, the health care
9 provider or personal representative shall also do all of the following:

10 1. Provide written notice, by 1st class mail, to each patient or person authorized
11 by the patient whose patient health care records will be transferred, at the
12 last-known address of the patient or person, describing where and to whom the
13 records shall be transferred.

14 2. Publish, under ch. 985, a class 3 notice in a newspaper that is published in
15 the county in which the health care provider's or decedent's health care practice was
16 located, specifying where and to whom the patient health care records will be
17 transferred.

18 (b) No health care provider or personal representative to whom par. (a) applies
19 may transfer a patient health care record to another health care provider unless 15
20 days have elapsed since provision of notice under par. (a) 1. and publication of a
21 notice under par. (a) 2. and unless the patient or person authorized by the patient has
22 failed to indicate his or her desires with respect to disposition of the records. The
23 health care provider or personal representative shall transmit the patient health
24 care records to the patient or person authorized by the patient if, before the 15 days
25 have elapsed, the patient or person requests that this be done.

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

2 146.819 (3) (intro.) If the health care provider or personal representative
3 provides for the deletion or destruction of any of the patient health care records under
4 sub. ~~(1)~~ (1m), the health care provider or personal representative shall also do at least
5 one of the following:

6 **SECTION 12.** 146.819 (4) (intro.) of the statutes is amended to read:

7 146.819 (4) (intro.) ~~This section does~~ Subsections (1m) (a) and (b), (2), and (3)
8 do not apply to a health care provider that is any of the following:

9 **SECTION 13.** 146.819 (5) of the statutes is created to read:

10 146.819 (5) Whoever violates sub. (2m) (b) may be fined not more than \$10,000
11 for each occurrence.

12

(END)