

INSERT D-NOTE

7. I understand that the contract for the data organization is anticipated to be let around January 1, 2007; if that is done, the appropriation expenditures under ss. 20.435 (1)(hg) and (hi) and 20.515 (1)(ut), stats., authorized under this bill will begin to be made at that time, which is within the 2005-07 biennium. Note that s. 20.435 (1)(hg), stats., is a sum certain appropriation, limited to the amounts in the schedule, regardless if the contract fees and physician assessments exceed the amounts in the schedule. Section 20.515 (1)(ut), stats., is also a sum certain appropriation, from a segregated fund, and under this bill has an additional purpose. Are the amounts in the schedule for these appropriations

effected
sufficient for the changes effected under the bill,
increased
or should they be increased?

8. There appears to be a conflict between
ss. 20.515(1)(ut) and 153.05(2r). Should DETF be
authorized to expend moneys for DHFS'
performance under s. 153.455(4)?

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3240/P3dn
DAK:cs:pg

September 12, 2005

To Representative Underheim:

1. I assumed that s. 153.50 (3m), stats., is applicable to the data organization and affected it; is that assumption correct?
2. Please note that I also added the "calculated variable" language requested by the Wisconsin Hospitals Association for s. 153.50 (4) (a) 1. b., stats., to s. 153.50 (4) (a) 1. a. and c., for use by DHFS or the data organization. Okay?
3. Should insurers be added to s. 153.50 (4) (a) 2., stats., to allow them to check accuracy?
4. Should s. 153.50 (4) (b), stats., as affected by this draft, be expanded to cover insurers and administrators? Would doing so pose a problem for the data organization? If so, how would you like for me to modify it?
5. Are s. 153.50 (6) (b) and (e) (intro.), stats., amended as you wish?
6. My conversation with Susan Wood of DHFS on July 11 clarified that DHFS feels that, if the contract with the data organization ends because of dissatisfaction (and another contract is not made with another organization), DHFS should be required to do what is required under current law (i.e., collect health care information from health care providers other than hospitals and ambulatory surgery centers), plus what is required of the data organization under s. 153.05 (1) (c). This instruction has governed my amendments to numerous provisions. Please especially review s. 153.455 (3) and (4), as changed in this draft.
7. I understand that the contract for the date organization is anticipated to be let around January 1, 2007; if that is done, the appropriation expenditures under ss. 20.435 (1) (hg) and (hi) and 20.515 (1) (ut), stats., authorized under this bill will begin to be made at that time, which is within the 2005-07 biennium. Note that s. 20.435 (1) (hg), stats., is a sum certain appropriation, limited to the amounts in the schedule, regardless if the contract fees and physician assessments exceed the amounts in the schedule. Section 20.515 (1) (ut), stats., is also sum a certain appropriation, from a segregated fund, and under this bill has an additional purpose. Are the amounts in the schedule for these appropriations sufficient for the changes effected under the bill, or should they be increased?

8. There appears to be a conflict between ss. 20.515 (1) (ut) and 155.05 (2r). Should DETF be authorized to expend moneys for DHFS' performance under s. 153.455 (4)?

Debora A. Kennedy

Managing Attorney

Phone: (608) 266-0137

E-mail: debora.kennedy@legis.state.wi.us

Kennedy, Debora

From: Hough, Michelle
Sent: Monday, September 12, 2005 12:06 PM
To: Kennedy, Debora; Welsh, Diane; Nankivil Bennett, Nancy; 'Susan Wood'; Johnston, James; Stanchfield, Eric; Nelson, Helene; Sweet, Richard
Cc: Rep.Underheim
Subject: POVD draft 3240/P3 and schedule request

Attachments: 05-3240P3.pdf; 05-3240P3dn.pdf

Hello Everyone,

Attached is the latest version of the POVD draft, as well as the drafter's notes (thank you for the quick work Debora). Per our conversation on Thursday, I will be providing a copy of this draft to: ThedaCare, Dean, Wisconsin Hospital Association, Chris Queram (Alliance), Marshfield Clinic, Gunderson Lutheran and the Wisconsin Medical Society. I will indicate discretion and comments are appreciated. Without hearing any objections, I will send out LRB draft 3240/P3 first thing Wednesday morning, September 14th. We thought it would be best to distribute it after the first meeting of the Wisconsin Health Information Organization (WHIO).

Also, I am looking at possible dates for our next meeting. Please send me your availability for October 4th and 5th.

Please let me know if you have any questions or concerns.

Sincerely,

Michelle Hough
Office of Rep.Underheim
54th Assembly District
266.2254



05-3240P3.pdf (85 KB)



05-3240P3dn.pdf
(12 KB)

Kennedy, Debora

From: Hough, Michelle
Sent: Tuesday, September 13, 2005 1:06 PM
To: Nankivil Bennett, Nancy
Cc: Kranz, Jon - ETF; Kennedy, Debora
Subject: RE: POVD draft 3240/P3 and schedule request

Hi Nancy,

He can speak with Debora, I will contact her tomorrow to discuss (she shouldn't make any actual changes to the draft without first speaking to our office). If it doesn't change anything, I'm sure it will be fine. Good luck with the meeting this afternoon!

-Michelle

From: Nankivil Bennett, Nancy
Sent: Tuesday, September 13, 2005 12:57 PM
To: Hough, Michelle
Cc: Kranz, Jon - ETF
Subject: RE: POVD draft 3240/P3 and schedule request

Michelle---I am still planning to call you after the WHIO meeting re: any "issues" on the draft legislation plan....but in the meantime, our Budget Director has reviewed draft three and talked with Secretary Stanchfield about the "appropriation language". We may need to put through a modification (don't think it impacts anything). Should I have John Kranz contact Deborah directly with a heads up---or would you like to speak to him so you can relay the possible change to Rep Underheim first???? Just let me know.

The turn-around for feedback is going to be QUICK!! So I thought maybe we could help out by getting ours in the queue! Thanks.

Nancy Nankivil Bennett
Director of Strategic Health Policy

WI Department of Employee Trust Funds
608.264.6627 (office)
nancy.nankivilbennett@etf.state.wi.us

-----Original Message-----

From: Hough, Michelle [mailto:Michelle.Hough@legis.state.wi.us]
Sent: Monday, September 12, 2005 12:06 PM
To: Kennedy, Debora; Welsh, Diane; Nankivil Bennett, Nancy; Susan Wood; Johnston, James; Stanchfield, Eric; Nelson, Helene; Sweet, Richard
Cc: Rep.Underheim
Subject: POVD draft 3240/P3 and schedule request

Hello Everyone,

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Also, I am looking at possible dates for our next meeting. Please send me your availability for October 4th and 5th.

Please let me know if you have any questions or concerns.

Sincerely,

Michelle Hough
Office of Rep. Underheim
54th Assembly District
266.2254

<< File: 05-3240P3.pdf >> << File: 05-3240P3dn.pdf >>

9/13/05

From John Kraus

DETF

7-0908

3240/P3

① Not necess. to specify \$ amt. in 153.05 (2r)

② Change 20.515 (1)(ut) 20.515 (1)(v). SEC CONTINUING
(may need to modify lang. to refer to 10.03 (6j)
& 153.05 (2r))

③ As draft is written now, wd. need an appropriation
increase

See notes
8/10/05 mtg.

Kennedy, Debora

From: Hough, Michelle
Sent: Tuesday, October 04, 2005 11:05 AM
To: Kennedy, Debora; Welsh, Diane; Nankivil Bennett, Nancy; 'Susan Wood'; Johnston, James; Sweet, Richard; Nelson, Helene
Cc: Rep.Underheim; Stanchfield, Eric
Subject: Data feedback and meeting reminder

Attachments: WI Hospital Association Feedback.pdf; WI Med Society. POVD feedback.pdf; WHIO feedback.pdf; Dean Feedback.pdf; WPS Feedback.pdf

Hello,

Attached are the feedback letters we have received from Wisconsin Health Information Organization (WHIO), Wisconsin Medical Society, Dean Health System, WPS Health Insurance and the Wisconsin Hospital Association. Also, a reminder we will be meeting in our normal room, 225 NW at 9 a.m. on Wednesday, October 5th. Please contact me if you have any questions or concerns.

Thanks,

Michelle Hough
Office of Rep.Underheim
54th Assembly District
266.2254



WI Hospital
Association Feedba..



WI Med Society.
POVD feedback....



WHIO feedback.pdf
(49 KB)



Dean Feedback.pdf
(142 KB)



WPS Feedback.pdf
(13 KB)

Wisconsin Medical Society

Your Doctor. Your Health.

September 29, 2005

HAND DELIVERED

Representative Gregg Underheim
11 North, State Capitol
Madison, WI 53708

Dear Representative Underheim,

Thank you for sharing your Proposal for Health Care Quality Improvement: A Replacement for Physician Office Visit Data (POVD) System. The Wisconsin Medical Society (Society) has reviewed the draft legislation and appreciates the opportunity to share the following comments.

We strongly support the intent of the proposed legislation to provide transparent cost and quality information and to foster quality improvement in health care. The Society has had longstanding concerns about the ability of the first POVD system to deliver the results desired in the original legislation. With the problems of the first POVD program, as summarized by the Legislative Audit Bureau's April 2005 report (the Audit), we feel there may be an opportunity for more wholesale changes rather than trying to evolve the current system. Toward that end, it is critical to assess data collection practices, identify who is in the best position to provide the most useful data and develop a successful public-private partnership for collecting and publicly reporting health care cost and quality data.

In that spirit, we would like to work with you and the other interested parties to develop legislation to accomplish the desired end result—a public report providing transparency of cost and quality information that will foster continual improvement in health care delivery resulting in better patient outcomes in an efficient manner.

Since the original POVD legislation, there have been many quality developments at the state and national levels:

- National Quality Forum (NQF), Centers for Medicare and Medicaid Services (CMS) and the American Medical Association (AMA) will be extremely helpful in selecting measures to publicly report.
- The Wisconsin Quality Collaborative and Wisconsin Hospital Association's Checkpoint have developed public reports on Wisconsin hospital and clinics using these national measures.
- Wisconsin Health Information Organization, an existing group that we are pleased to be a founding member of, has brought the public and private sector together to accomplish much of what this proposed legislation is working toward. We believe that this public-private partnership should be given the chance work with the legislature to get the desired result with less government funds.

It is a new day and there is a tremendous opportunity to work with you to shape the new POVD system to achieve the desired ends of public reporting and continuous quality improvement. We have attached some comments on your Selected Highlights of Provisions in Draft Legislation document as a starting point for future discussions toward that end. Thank you for the opportunity to comment on your draft legislation.

Sincerely,

A handwritten signature in cursive script that reads "Susan L. Turney".

Susan L. Turney, MD, MS, FACP, CMPE
Chief Executive Officer/EVP

**Wisconsin Medical Society Comments and Questions on
Selected Highlights of Provisions in Draft Legislation**

Public-Private Partnership

- We support a public-private partnership with involvement from key health care stakeholders, including patients, and suggest using the model that DOA used in creating the public-private partnership for the hospital data.

The Data Organization

- We support the concept that the State works with a data organization such as the Wisconsin Health Information Organization, to collect, analyze and disseminate health care information.

Scope of Data Repository

A data repository must be sufficient to produce information to:

- a) enable consumers and health care purchasers to make wise health care choices based on transparency of cost¹ and quality information and
- b) foster continual improvement in health care delivery to achieve better patient outcomes in a more efficient manner.

Patient confidentiality and HIPAA

- The Society has long supported patient confidentiality and worked toward assuring adherence to privacy and security standards.
- The private sector can produce meaningful episode of care data that is not identifiable.

Public Funding

- Spending to sustain the current POVD program in 2006 is questionable. The program has assessed physicians \$3.86 million dollars and has not produced any public reports in 5 years.
- It makes sense for funding for the public-private partnership to come from the carryover funds from the 2005 and 2006 physician assessments. The physician assessment would sunset in 2006.

Public Oversight and Project Accountability

- There should be appropriate public oversight of the development and publishing of public reporting.

Status of Physician Office Visit System and related Boards

- We agree with sunsetting the Board on Health Care Information and the associated Independent Review Board that provide direction to the POVD System in 2006.
- We question how the Governor's Board on Health Care Quality and Patient Safety relates to the proposal.

? Doesn't exist

¹ We believe the 'cost' data the WHIO will collect is the charge, retail or list price for health care; the same information collected in POVD 1. When we use the word 'cost' we are referring to that definition.

*
ok?

**Wisconsin
Health
Information
Organization**

September 29, 2005

State Rep. Gregg Underheim
Chair
Assembly Committee on Health
P.O. Box 8953
Madison, WI 53708-8953

FOUNDERS

**Blue Cross Blue Shield of
Wisconsin**

**Greater Milwaukee
Business Foundation on
Health**

Humana

The Alliance

**UnitedHealthcare of
Wisconsin**

WEA Trust

WPS Health Insurance

**Wisconsin Collaborative
for Healthcare Quality**

Dear Rep. Underheim:

This letter responds to your request for the feedback from the Wisconsin Health Information Organization, Inc. (WHIO) about the draft legislation you shared with us earlier, LRB-3240/P3.

WHIO founding members include many of the most active health insurance payors and purchasers in Wisconsin. We believe in market-based solutions and are committed to greater consistency, reliability and transparency of healthcare costs and quality data for our customers.

WHIO members coalesced around the goals of:

- Creating a public-private partnership that would develop a voluntary statewide data repository of all payer administrative claims data; and,
- Contracting with a third-party organization to regularly publish reliable data on the cost and quality of care delivered across the broad spectrum of health care providers in Wisconsin.

Why is a voluntary statewide data repository of all payer administrative claims data needed? Producing statistically valid and reliable data on healthcare costs and quality requires vast volumes of administrative claims data, all in the same form. Wisconsin has a very competitive health insurance marketplace. As such, no one company has a substantial market share, and therefore, has only a portion of the administrative claims data needed to make these measures useful and meaningful. Further complicating the issue, are the numerous differences between administrative claims data from one insurance company to the next. As the major insurance payors in Wisconsin, we recognized the value of working together to develop a market-based solution to this problem.

We believe that useful and meaningful quality, cost and value information broadly available will drive further improvements in the way we deliver, consume and pay for health care in Wisconsin.

Your draft legislation is an important first step toward that goal. We are committed to working with you and other key stakeholders to produce legislation consistent with the goals we outlined above. As one of the

largest purchasers of healthcare in Wisconsin, state government plays a vital role in helping to create and support this public-private partnership.

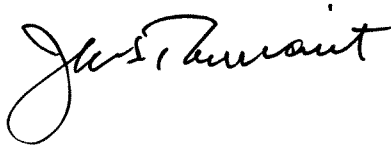
Our review of the draft raises a number of questions and concerns, as well as suggestions to make the voluntary, statewide data repository a reality. For example:

- The issues of patient confidentiality and HIPAA compliance issues must be addressed more concretely;
- The role and engagement of physicians and other providers needs more definition; and,
- The role of legislative oversight in reviewing contracts and funding needs to be defined.

I commend you for seeking feedback and input from groups and organizations potentially affected by this legislation. We believe a possible next step is the creation of an informal, yet broader working group of legislators and industry experts to review the feedback you've received to date and develop recommendations to improve upon this draft. You have my commitment to be a constructive player in the process.

I'll call you to arrange a mutually convenient time to meet. Thank you again for seeking our feedback and suggestions.

Best Wishes,



John Toussaint, M.D.
Chair
Wisconsin Health Information Organization, Inc.



October 3, 2005

The Honorable Representative Gregg Underheim
Room 11 North, State Capitol
P.O. Box 893
Madison, WI 53708

Dear Representative Underheim:

Thank you for the opportunity to share our thoughts on LRB 3240/P3, your draft proposal for health care quality improvement and a replacement for the Physician Office Visit Data (POVD) program.

At Dean Health System, we have been leaders in the drive for quality improvement through the use of valid data collection and analysis. We are proud of our commitment to providing the highest level of care and our dual commitment to developing accurate benchmarks analyzed and monitored in collaboration with other providers, purchasers and patients.

We are pleased your proposal recognizes the need for a new focus in health care quality improvement rather than a mandated, government-run bureaucracy of limited utility. Nevertheless, the POVD program served a useful purpose: it has helped bring the provider community into the 21st century regarding quality measurement and improvement. The broad question of whether or not to collect and analyze health care data has been answered. We must now move forward and measure the right data and report it in the right way, as required by our clinicians and demanded by our patients and consumers.

Your proposal is a positive step towards these goals. It recognizes that government may have a role in the process, but will not be the central focus. Like the privatization of hospital data through the Wisconsin Hospital Association Information Center (WHAIC), your proposal focuses on a private entity, with appropriate oversight from state government. This private-public partnership would bring key health care purchasers to the table working together: Purchasers, providers, insurers and others building a data collection and reporting mechanism in which we will all have ownership.

While conceptually we are supportive of a new model for health care quality improvement and concur with the clear need for replacing the POVD program, we have a few concerns with LRB 3240/P3 which are outlined below. I believe they will echo those of other stakeholders. We also believe all of these concerns can be resolved to the satisfaction of all interested parties.

First, the draft establishes a procedure for a new entity to contract with the state to collect and report quality improvement data and administrative claims data. However, the draft provides a very one-sided "out" for the state: if the Secretaries of the Departments of Health and Family Services (DHFS) and Employee Trust Funds (DETF) conclude the arrangement is unsatisfactory, the DHFS Secretary will collect and report the data. In other words, the POVD program could be revived through a simple administrative edict. Moreover, the "new" POVD would have no formal rule-making requirements or structure, thus potentially providing it with more authority than under current law. This is patently imbalanced. What good would the contract with the state be if the Secretaries can essentially void it

*
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②

under vague conditions and recreate POVd, all while both Secretaries sit on the board of directors of the nonprofit organization created under this proposal? This may be resolved with a more balanced relationship between the state and the contracted entity, as well as proper legislative oversight.

Second, the proposal does not outline all of the data to be collected and how it will be analyzed and reported. Perhaps this is to be determined through the new entity's contract with the state. Whatever the case, the state has been unable to determine what data is valuable (and what data is not) and what can be reasonably collected and measured. This has appropriately been addressed by clinicians through the Wisconsin Collaborative for Health Care Quality. This concern is amplified given our first concern discussed above: the state is holding all of the cards. Additionally, the proposal includes language discussing a "Calculated variable", which "means a data element that is computed or derived using another data source." What is another data source (or sources)? We believe this problem can be addressed through a collaborative effort with all of the stakeholders participating and an improved understanding of what this language really means. 3 4

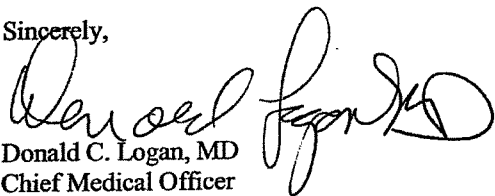
Finally, we are concerned the per-physician fee currently mandated by law will be "frozen", both in the current amount and in perpetuity. The Legislative Audit Bureau concluded that some funds collected for the POVd program were inappropriately allocated. Additionally, it is clear from DHFS staff comments at previous meetings of the Board on Health Information that the \$70 fee has not been determined by the costs of the program as statutorily proscribed. Rather, it has been determined by the needs of the department. Simultaneously, Dean and other health care organizations have invested hundreds of thousands of dollars to collect and analyze quality improvement data. As a founding member of the Wisconsin Collaborative on Health Care quality, we have demonstrated our commitment to this cause, both in organizational philosophy and financial and staff resources. If privatization is truly to occur, the fee must be based on real costs and then sunset in the future as the private-public model successfully evolves. Alternatively, fee exemptions may be considered as incentives for organizations to participate in this new process. 5

While these concerns are real, they do not detract from the hard work of building such a proposal. All of these concerns can be resolved. In the end, I believe all of us involved in the so-called "data wars" through the years want the same thing: a sound, collaborative system of data collection, analysis and reporting that drives quality improvement and consumer knowledge.

Thank you again for the opportunity to comment on this proposal. We look forward to continuing our efforts to make valid and valuable quality improvement data collection, analysis and reporting a reality in Wisconsin. Please contact me (608-250-1033) if you would like additional information or to discuss further.

Sincerely,

Donald C. Logan, MD
Chief Medical Officer



WPS Health Insurance Feedback (sent via email)

Michelle,

Thank you for finding the time for us to meet with Gregg this afternoon.

Our primary concern with LRB-3240/P3 is that it appears to create a mandatory reporting of health care claims information by insurers and administrators, to the Department of Health and Family Services, if the data organization is unable to meet their contracted requirements/duties under the drafted legislation. As you are aware insurers and administrators are not currently required to submit health care claims data to the Department of Health and Family Services, only health care providers other than hospitals and ambulatory surgery centers are subject to this requirement. It appears that the drafted legislation also attempts to mirror some of the requirements currently applicable to hospitals and ambulatory surgery centers when submitting information to the contracted entity defined in current Wisconsin Statute 153.01(4j).

This would be a new requirement for insurers. We want this to be a voluntary claims data collection regardless of whether it is completed by the data organization or the Department of Health and Family Services.

Attending this afternoon's meeting will be:

Jim Riordan - CEO
Jo Musser - Senior Vice President
Kathryn Ambelang - Senior Regulatory Specialist
Christine Russell - Corporate Vice President

Look forward to seeing you this afternoon.

Christine

Christine A. Russell
Vice President, Government Relations
WPS Health Insurance
1717 W. Broadway
Madison, WI 53708-8190

(608) 221-7162
(608) 444-5042 (cell)
(608) 221-7109 (fax)

WISCONSIN HOSPITAL ASSOCIATION, INC.

September 30, 2005



TO: Interested Parties
FROM: Stephen F. Brenton, President
RE: Comments on Data Warehouse bill

Overview

Wisconsin Hospital Association (WHA) staff have reviewed the third draft (LRB 3240/P3) of the Data Warehouse bill and have several observations, questions, and comments.

First, it is important to understand why legislation is needed and then whether this legislation meets that need. It appears that the legislation is needed for a number of reasons:

- To replace the POVD program with a viable program and then sunset the POVD mandate.
- To enable the Warehouse to receive financial support from the State.
- To address issues created by HIPAA.

In light of the goals (which we support) of the legislation, it is important to note that WHA's review was based on the following global principles:

- What is the authority of DHFS as it relates to the Warehouse and any other aspect of health information, collection, aggregation, and dissemination?
- What is the oversight role of the Legislature?
- What is the intended/unintended impact of the Warehouse (and other aspects of the legislation) on the WHA-IC and its statutory and contractual obligations?

WHA has been and will continue to be a leading advocate for transparency in health care. Consumers will increasingly demand cost and quality information to ensure that health care dollars are spent effectively and efficiently. That said, it is crucial that the systems created to enable this consumerism are themselves reliable, efficient, and effective. Our hope is that the product of any new program approaches the completeness, timeliness, and accuracy of the hospital and ASC data collected and produced by the WHA-IC at no cost to the state taxpayers and at no direct cost (assessments) to hospitals and ASCs. WHA's comments follow:

What is the authority of DHFS and ETF as it relates to the Warehouse and any other aspect of health information, collection, aggregation, and dissemination?

- DHFS and ETF would unilaterally define the new program through the contract. The statute is silent concerning what data is to be collected, the analyses and reports that would be produced

? This is DHFS'

(except for a consumer guide, which is itself undefined), the timelines for collecting and reporting the data, certain patient privacy standards, or how the data can or must be shared. Presumably, the contract between DHFS and ETF and the organization would specify these provisions. Presumably, DHFS and ETF would determine whether these would be mandatory standards or goals.

- DHFS and ETF would unilaterally determine whether the data collection program should be re-bureaucratized at some future date. As drafted, DHFS and ETF could unilaterally determine whether the organization is in compliance with the contract and unilaterally determine whether there is insufficient statewide participation in the program. Any negative finding by DHFS and ETF could eliminate the private portion of the touted public/private partnership.
- If ETF and DHFS terminate the contract, DHFS would have a mandate to collect and report claims and provider data. The program would be defined and performed solely by DHFS with no oversight by the Legislature or opportunity to comment by the groups impacted by the program. This would be POV'd redux!
- If DHFS decides to take back the program, DHFS could mandate new data collection without a statute change. In addition to the new mandate on insurers and administrators specified in the bill, providers that currently do not report data could be required to report data to DHFS without DHFS needing additional statutory authority or rulemaking. This authority would include the authority to assess providers for the cost of the new DHFS mandated program.
- In addition to providing little statutory specificity, the bill would exempt ETF and DHFS from rulemaking requirements, meaning that *legislators, insurers, consumer advocates, and providers* would not have the means to comment on or object to the design of the program, including the data that would be collected, the timelines and format for reporting, and the analyses and reports that would be generated. This exemption exists whether the entity is performing the services or whether DHFS is performing those services.
- Penalties provisions would be subject to determinations by DHFS rather than standards defined in the statute or rules.

Absent statutory and regulatory guidelines, WHA believes that people who have an interest in the Warehouse, including consumers, purchasers, insurers, providers, and the contracted organization, should have input in defining the program, not just DHFS and ETF. The interested groups could be included in the process in several ways: by better defining the program in the statute; by subjecting the program to rulemaking; or by requiring some other process that could include all parties that have an interest in the program.

What is the oversight role of the Legislature?

- The Legislature would have NO oversight role via either statutory specificity or the rulemaking process. Currently, the physician office data collection program is defined primarily through rules. Also currently, if DHFS were to collect data from other provider categories, those programs would need to be defined through rules. The Data Warehouse and the collection of claims and health care information would be defined through the contract between ETF and DHFS and the organization absent legislative oversight.

The Legislature's oversight role could be accomplished by requiring specific program standards and design issues to be addressed through the rulemaking process. *At a minimum, there should be some kind of contract review and Legislative affirmation if there is a new future data mandate.*

What is the intended and/or unintended impact of the Warehouse (and other aspects of the legislation) on the WHA-IC and its statutory and contractual obligation?

- The language from draft 1 (WHA never saw draft 2) specifically excluded the hospital and ASC data from the Warehouse. That provision is gone in draft 3 and raises concerns about the WHA-IC contract to collect hospital data. *
- The Warehouse's data compilations and reports would be subsidized with state dollars through ongoing physician assessments and funds from DHFS and ETF, unlike the WHA-IC reports and data compilations, which must be sustained via data sales. Potential hospital data sales from a state subsidized competitor to the WHA-IC is a troublesome (although perhaps unintended) scenario. 3
- The WHA contract was designed to ensure that the hospital data program, designed with input from the Legislature and interested groups, continued but became more accountable, efficient, and comprehensive (outpatient data). To level the playing field beyond the subsidy, the existing hospital and ASC data collection program statute would need to be reopened to reconsider the value and appropriateness of certain mandated reports and administrative requirements.

We readily acknowledge that it is *not* the intention of supporters of this initiative to use collected hospital data to compete with WHA-IC data sales. However, we need safeguards that provide assurances that this does not happen.

One potential legislative "fix" for this issue would be to allow the Warehouse to collect, aggregate, and use hospital data *only* for purposes associated with creating episodes of care measures and other measures that rely on hospital data as a component of larger data sets. Another potential "fix" would be to prohibit the sale of hospital-related data. *

Conclusion

WHA appreciates the opportunity to comment on this proposal. We look forward to working with supporters to improve legislative oversight and level the field among data collection programs with the shared goal of advancing health care transparency in Wisconsin. Our experience has conclusively shown that data collection can be successfully privatized. We look forward to sharing our perspective as the debate progresses.

10/5/05 Mtg. re 3240/P3

DAK, Rep Lindheimer, Michelle Hough, Dick Sweet,
Helene Nelson, Nancy Bennett, Susan Wood, Dianne Welsh
Jim Johnston

Dianne:

✓ ① ERISA - Steve Hurley (ETF) feels not a
problem, bec. is not affecting benefits or
scope, just getting info (153.05(3)(c))
✓ Dick Sweet will also research

✓ ② HN: Getting rid of POVD: 2 mo. after K w/ WH10
Suspend rules, while K is in effect
(see 10/27 e-mail from D. Welsh)

✓ ③ HN: Jt Fin. to have passive review of K
betw/ DHS, DEF + WH10 approval
[Wait to include this in later version.]*

✓ ④ 153.60(1) Physician assessment fee:
Argument: Audit makes DHS able to set fee amt.
HN: Fee based on cost
GU: Take out \$75 and say any increase over \$75
is subj. to passive review by JFC * approval

✓ ⑤ John Kranz' concerns:
Change approp.
Keep \$150,000: 153.05(2r)

✓ ⑥ HIPAA - Dianne will review + get back to me

⑦ 153.50(6) - HN + DW will look at get
back to me —

⑧ p. 6, l. 3 - ~~shall~~ → may
 If K falls through, DHS may collect from
 insurers

⑨ DAK asked J. Johnston to look at 20.435 (i)(hg) +
 (hi), in light of D-Note # 7 - he will get back to
 me
 10/25/05 From J. Johnston: no increase needed

⑩ D. Note

✓ # 1 - ok

✓ # 2 - ok

✓ # 3 - ok

✓ # 4 - No

✓ # 5 - delete 153.50 (b)(b), (c) + (d) from draft;
 Keep 153.50 (b)(e) (intro.) as amended

✓ # 6 - see ⑧ above

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3240/P3dn
DAK:cs:pg

September 12, 2005

To Representative Underheim:

ok 1. I assumed that s. 153.50 (3m), stats., is applicable to the data organization and affected it; is that assumption correct?

ok 2. Please note that I also added the "calculated variable" language requested by the Wisconsin Hospitals Association for s. 153.50 (4) (a) 1. b., stats., to s. 153.50 (4) (a) 1. a. and c., for use by DHFS or the data organization. Okay?

ok 3. Should insurers be added to s. 153.50 (4) (a) 2., stats., to allow them to check accuracy?

X 4. Should s. 153.50 (4) (b), stats., as affected by this draft, be expanded to cover insurers and administrators? Would doing so pose a problem for the data organization? If so, how would you like for me to modify it?

5. Are s. 153.50 (6) (b) ^{*(old)*} and (e) (intro.), stats., amended as you wish? *Keep*

Delete from bill 6. My conversation with Susan Wood of DHFS on July 11 clarified that DHFS feels that, if the contract with the data organization ends because of dissatisfaction (and another contract is not made with another organization), DHFS should be required to do what is required under current law (i.e., collect health care information from health care providers other than hospitals and ambulatory surgery centers), plus what is required of the data organization under s. 153.05 (1) (c). This instruction has governed my amendments to numerous provisions. Please especially review s. 153.455 (3) and (4), as changed in this draft.

7. I understand that the contract for the date organization is anticipated to be let around January 1, 2007; if that is done, the appropriation expenditures under ss. 20.435 (1) (hg) and (hi) and 20.515 (1) (ut), stats., authorized under this bill will begin to be made at that time, which is within the 2005-07 biennium. Note that s. 20.435 (1) (hg), stats., is a sum certain appropriation, limited to the amounts in the schedule, regardless if the contract fees and physician assessments exceed the amounts in the schedule. Section 20.515 (1) (ut), stats., is also sum a certain appropriation, from a segregated fund, and under this bill has an additional purpose. Are the amounts in the schedule for these appropriations sufficient for the changes effected under the bill, or should they be increased?

8. There appears to be a conflict between ss. 20.515 (1) (ut) and 15³5.05 (2r). Should DETF be authorized to expend moneys for DHFS' performance under s. 153.455 (4)?

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

Kennedy, Debora

From: Sweet, Richard
Sent: Wednesday, October 05, 2005 11:47 AM
To: Hough, Michelle; Kennedy, Debora; Welsh, Diane; Nankivil Bennett, Nancy; 'Susan Wood'; Johnston, James; Nelson, Helene; Rep.Underheim; Stanchfield, Eric
Subject: ERISA memo
Attachments: memo1 hci.pdf

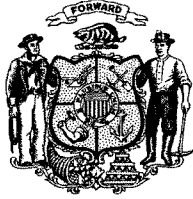
Here's a copy of the ERISA memo I did about 9 years ago for the Leg. Council data committee. Maybe we can discuss it when we meet next week.



memo1 hci.pdf (18
KB)

Dick Sweet

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HEALTH CARE INFORMATION
MEMO NO. 1
December 16, 1996

TO: MEMBERS OF THE SPECIAL COMMITTEE ON HEALTH CARE
INFORMATION

FROM: Richard Sweet, Senior Staff Attorney

SUBJECT: Federal Preemption of State Data Collection From Self-Insured Health Plans

This Memo is written in response to a question asked at the November 20, 1996 meeting of the Special Committee as to whether the Federal Employee Retirement Income Security Act (ERISA) would preempt a state law that required submission of health care data by a self-insured plan governed by ERISA.

ERISA provides, in 29 U.S.C. s. 1144 (a), that it "shall supersede any and all State laws insofar as they may now or hereafter **relate to** any employee benefit plan" (emphasis added) covered by ERISA, such as a self-insured health plan. While ERISA's "savings clause" states that ERISA is not to be construed to exempt or relieve any person from a state law that regulates insurance, banking or securities, its "deemer clause" states that an employee benefit plan is not to be deemed to be an insurance company or other insurer, bank, trust company or investment company for purposes of those state laws. [29 U.S.C. s. 1144 (b) (2) (A) and (B).] ERISA's preemption does not apply to governmental self-insured plans and states may therefore regulate them.

Since the enactment of ERISA in 1974, there have been numerous court decisions on the extent of this federal preemption and the meaning of the words "relate to." Courts have held that ERISA preempts a number of state laws that relate to employee benefit plans but have upheld certain state laws, over a challenge based on ERISA preemption, because those laws were held by the court not to be related to employee benefit plans.

An example of the latter type of case is *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Company*, 115 S. Ct. 1671 (1995). In the *Travelers* case, the U.S. Supreme Court was dealing with an ERISA preemption challenge to a New York law that imposed a surcharge on hospital patients, some of whom had bills paid for under employee benefit plans. In upholding the New York law, the Court cited an earlier decision that held that "[p]reemption does not occur . . . if the state law has only a tenuous, remote, or peripheral

connection with covered plans, as is the case with many laws of general applicability.” The Court held that the New York law did not bear “. . . the requisite ‘connection with’ ERISA plans to trigger pre-emption.” However, the Court went on to state that it was not holding that ERISA preempts only direct regulation of ERISA plans.

In Wisconsin, application of a number of state laws to ERISA employe benefit plans has been held to be preempted under ERISA. These include the state laws that relate to continuation and conversion of health insurance and establishment of the Health Insurance Risk-Sharing Plan (HIRSP) [*General Split Corporation v. Mitchell*, 523 F. Supp. 427 (E.D. Wis. 1981)] and the state law prohibiting employers from setting a mandatory retirement age [*Waukesha Engine Division v. Department of Industry, Labor and Human Relations*, 619 F. Supp. 1310 (W.D. Wis. 1985)]. However, the Wisconsin law that imposes assessments on insurers to fund HIRSP was held by a federal court not to be preempted with respect to insurers that sell stop-loss coverage to self-insured ERISA plans. This decision, which came after the *Travelers* decision discussed above, stated as follows:

Because the HIRSP assessments imposed by Wisconsin on health insurance carriers do not interfere with the provisions or administration of ERISA plans, the assessments do not “relate to” such plans in a manner significant enough to implicate the preemption clause of the statute. [*Safeco Life Insurance Company v. Musser*, 65 F.3d 647 (7th Cir. 1995).]

In addition, the Wisconsin Attorney General has concluded that ch. 633, Stats., which sets forth state requirements for administrators of employe benefit plans, does not apply to self-insured plans because of ERISA preemption. [80 Op. Att’y. Gen. 290 (1992).]

It is likely that any state law that would require submission of data to a state entity by self-insured ERISA plans would be found by a court to “relate to” those plans. Such a law would therefore be preempted by ERISA.

RNS:kja:ksm:rjl

Kennedy, Debora

From: Sweet, Richard
Sent: Friday, October 21, 2005 9:00 AM
To: Kennedy, Debora
Cc: Hough, Michelle
Subject: FW: POV D

Debora,

The changes to the POV D draft (in addition to the changes from the earlier meeting) are shown below.

Thanks.

Dick

-----Original Message-----

From: Welsh, Diane
Sent: Thursday, October 20, 2005 5:07 PM
To: Sweet, Richard
Cc: Hough, Michelle
Subject: Re: POV D

Looks good to me.

Thanks for handling, Dick.

>>> "Sweet, Richard" <Richard.Sweet@legis.state.wi.us> 10/17/05 01:49PM

>>>

Diane,

15 CFR 164.501 §. 689

I've come up with a few places in the draft to add "public health authority" language, per the HIPAA regs:

no; unnecessary
X Page 3, line 7: after "contract" insert "in its capacity as a public health authority".

X Page 4, line 17: after "following" insert "~~in the interest of public health~~". *As a pub health authority*

✓ Page 6, line 10: after "services" insert "in its capacity as a public health authority".

✓ Page 14, line 2: after "department" insert "in its capacity as a public health authority".

Also, related to another drafting change, on page 17, line 11, after "164" insert "and ss. 51.30, 146.82, 252.15, and other applicable state statutes on confidentiality of data".

no; unnecessary
If this looks okay, I'll forward it to Debora.

Thanks.

Dick Sweet
Richard Sweet
Senior Staff Attorney
Wisconsin Legislative Council
(608)266-2982
richard.sweet@legis.state.wi.us

Kennedy, Debora

To: Hough, Michelle
Subject: RE: POVVD

Thanks, Michelle.

From: Hough, Michelle
Sent: Monday, October 17, 2005 1:17 PM
To: Kennedy, Debora
Cc: Sweet, Richard
Subject: POVVD

Hi Debora,

I hope you had a relaxing vacation. Last week our POVVD group met with attorneys from ETF and OCI regarding HIPAA and ERISA requirements in regards to our bill draft. Dick Sweet is going to update you on the changes that came out of this meeting. So, the changes we made in the last meeting you attended and the changes Dick will relay to you should be what we are looking for in our next draft. Please let me know if you have any questions.

Thanks for all of your help.

Sincerely,

Michelle Hough
Office of Rep. Underheim
54th Assembly District
266.2254

Kennedy, Debora

From: Hough, Michelle
Sent: Tuesday, October 18, 2005 3:09 PM
To: Kennedy, Debora
Subject: RE: POVD Draft P4

Sounds great- thanks!

-Michelle

From: Kennedy, Debora
Sent: Tuesday, October 18, 2005 3:08 PM
To: Hough, Michelle
Subject: RE: POVD Draft P4

I've not yet received the material from Dick Sweet, so it's difficult to say--I'm not sure if the changes are extensive or not. Would you like for me to let you know when I've heard from Dick and have had time to evaluate?

From: Hough, Michelle
Sent: Tuesday, October 18, 2005 3:00 PM
To: Kennedy, Debora
Subject: POVD Draft P4

Hi Debora,

Are you able to give me an estimate of when you might have the next draft finished? We have been meeting with different groups who are inquiring.

As always, thank you for all your hard work!

-Michelle

Kennedy, Debora

From: Kennedy, Debora
Sent: Friday, October 21, 2005 4:03 PM
To: Johnston, James
Cc: Hough, Michelle
Subject: POVD bill (05-3240/P3)

According to my notes from the October 5 meeting, you were going to look at ss. 20.435 (1) (hg) and (hi), in light of Drafter's Note No. 7, and get back to me; have you any comments?

Debora A. Kennedy
Managing Attorney
Legislative Reference Bureau
(608) 266-0137
debora.kennedy@legis.state.wi.us

From J. Johnston: these approps are ok; do not need to be increased

Kennedy, Debora

From: Welsh, Diane
Sent: Thursday, October 27, 2005 12:59 PM
To: Kennedy, Debora
Subject: [Possible Spam] suspending rules

The suspension will apply to ALL health care providers (not just physicians).

Diane

Kennedy, Debora

From: Welsh, Diane
Sent: Wednesday, November 02, 2005 3:49 PM
To: Kennedy, Debora; Hough, Michelle; Nankivil Bennett, Nancy
Cc: Wood, Susan
Subject: [Possible Spam] RE: 153.50(6)

In light of this, I propose that we do not amend the list of what cannot be shared.

Diane

>>> Nankivil Bennett, Nancy 11/02/05 03:30PM >>>
Diane---so sorry for the delay in response on this. I was able to talk with several of our data work group members and the sense was that WHIO cannot provide feedback on this issue at this point in time. The reason being that WHIO has not yet finalized the list of data elements that will be submitted/contained in the warehouse. As an update (and to understand where we are at in the process), the WHIO Data Sharing/Use Agreement is out in the field with the WHIO Founders. We are looking to gain conceptual agreement on the content of the document. The Agreement went out without the list of data elements (which will be an attachment and key to final sign-off) but needs to be determined concurrent with the vendor selection process. (yes, this is a complicated and somewhat entangled process). The suggestion is to leave this part of the draft legislation as is for now, yet earmark it as an area for review and alignment prior to finalizing the bill language. Does that make sense to you??

I left a similar message with Deborah Kennedy and spoke with Michelle as well.

Call with any questions or need for clarification! Thanks all!

-----Original Message-----

From: Welsh, Diane
Sent: Thursday, October 27, 2005 11:16 AM
To: Nankivil Bennett, Nancy
Subject: 153.50(6)
Importance: High

Hi Nancy:

I just rec'd another call from Debora Kennedy trying to find out what language we want or want changed in this section.

Because I do not know exactly what WHIO intends to collect from insurers, I do not know if any of the current/proposed language gets in the way of doing so.

She is waiting for an answer to this before releasing another draft.

Can you please let Debora & me know?

Thanks.

Diane