

2007 SENATE BILL 487

February 13, 2008 – Introduced by Senators ERPENBACH, DECKER, WIRCH, ROBSON, LEHMAN, VINEHOUT, LASSA, SCHULTZ, DARLING, OLSEN, RISSER, KREITLOW, JAUCH, SULLIVAN, HANSEN and KAPANKE, cosponsored by Representatives MOULTON, HIXSON, DAVIS, BENEDICT, SHERIDAN, PETERSEN, WOOD, MUSSER, OWENS, VAN ROY, BIES, BALLWEG, STRACHOTA, NEWCOMER, MOLEPSKE, NERISON, KERKMAN, A. OTT, SEIDEL, M. WILLIAMS, TURNER, SHILLING, TOWNSEND, HINES, POPE-ROBERTS, MURSAU, JORGENSEN, HINTZ, KESTELL, WIECKERT, RICHARDS, SINICKI, JESKEWITZ and A. WILLIAMS. Referred to Committee on Health, Human Services, Insurance, and Job Creation.

1 **AN ACT** *to repeal* 51.30 (4) (b) 8g. a., 51.30 (4) (b) 8g. b., 146.82 (2) (b), 146.82 (2)
2 (d) and 146.82 (3) (c); *to renumber and amend* 51.30 (4) (b) 8g. (intro.); *to*
3 *amend* 146.81 (4) and 655.275 (8); and *to create* 51.30 (4) (b) 8g. am., 146.82
4 (4) and 146.82 (5) of the statutes; **relating to:** treatment records and patient
5 health care records.

Analysis by the Legislative Reference Bureau

Under current law, certain records related to the health of a patient that are prepared by or under the supervision of a health care provider (patient health care records) are confidential and may be released only with the written consent of the patient or of a person authorized by the patient. This consent (informed consent) must detail the patient's name; the type of information to be disclosed; the types of health care providers making the disclosure; the purpose of the disclosure; the individual or entity to which disclosure may be made; the patient's signature or that of the person authorized by the patient; the date of signature; and the time period during which the consent is effective. Current law has numerous exceptions to the confidentiality requirements that permit access to patient health care records without the informed consent of the patient or of a person authorized by the patient. A health care provider must record the name of the person or agency that receives access, the date and time of the release, and the identification of the patient health care records released. However, redisclosure of information obtained under one of the exceptions is prohibited, unless authorized by a court or under an insurance

SENATE BILL 487

transaction that authorizes the disclosure of personal medical information about an individual to an insurer.

This bill eliminates current restrictions on redisclosure of a patient health care record that is obtained under one of the exceptions to the requirements of confidentiality. The bill, instead, authorizes the redisclosure of a patient health care record, if made by a covered entity (as defined in the bill) for a purpose for which a release is otherwise permitted. The bill authorizes an entity that is not a covered entity to redisclose a patient health care record only if the patient or a person authorized by the patient provides informed consent, a court of record orders the redisclosure, or the redisclosure is limited to the purpose for which the patient health care record was initially received.

The bill permits a health care provider to release, without informed consent, a portion, but not a copy, of a patient health care record, as follows:

1. If the patient or a person authorized by the patient is not incapacitated, is physically available, and agrees to the release of that portion, to anyone.
2. If the patient and the person authorized by the patient are incapacitated or not physically available or if an emergency makes it impracticable to obtain agreement from the patient or person, and if the health care provider determines that release is in the best interest of the patient, to (1) a member of the patient's immediate family, another relative, a close personal friend, or an individual identified by the patient, that portion of the patient health care record that is directly relevant to involvement by the person in the patient's care; or (2) any person, that portion of the patient health care record that is necessary to identify, locate, or notify a member of the patient's immediate family or another person concerning the patient's location, general condition, or death.

Under current law, records that are created in the course of providing services to individuals for mental illness, developmental disabilities, alcoholism, or drug dependence (treatment records) are confidential and may be released only with the informed consent of the individual. The requirements for the informed consent are similar to the informed consent requirements for patient health care records. However, the confidentiality requirements for treatment records have numerous exceptions that permit access without informed consent. One of these exceptions is for release of treatment records to a health care provider in a related health care entity, or any person acting under the supervision of the health care provider who is involved with the individual's care, if necessary for the individual's current treatment. Information that may be released under this exception is limited to the individual's name, address and date of birth; the individual's treatment provider; the date of service provided; the individual's medications, allergies, and diagnosis; and other relevant demographic information necessary for the individual's current treatment.

This bill changes the exception to the confidentiality requirements for treatment records to allow access by any health care provider or person acting under the supervision of the health care provider who is involved with an individual's care, if necessary for the individual's current treatment. The bill expands information

SENATE BILL 487

that may be released under the exception to include diagnostic test results, as defined in the bill, and symptoms.

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.** 51.30 (4) (b) 8g. (intro.) of the statutes is renumbered 51.30 (4) (b)
2 8g. bm. and amended to read:

3 51.30 (4) (b) 8g. bm. To ~~health care providers in a related health care entity, a~~
4 health care provider, or to any person acting under the supervision of ~~such a~~ the
5 health care provider who is involved with an individual's care, if necessary for the
6 current treatment of the individual. Information that may be released under this
7 subdivision is limited to the individual's name, address, and date of birth; the name
8 of the individual's ~~mental health treatment provider~~ of services for mental illness,
9 developmental disability, alcoholism, or drug dependence; the date of ~~mental health~~
10 service any of those services provided; the individual's medications, allergies, and
11 diagnosis, diagnostic test results, and symptoms; and other relevant demographic
12 information necessary for the current treatment of the individual. ~~In this~~
13 subdivision, "related health care entity" ~~means one of the following:~~

14 **SECTION 2.** 51.30 (4) (b) 8g. a. of the statutes is repealed.

15 **SECTION 3.** 51.30 (4) (b) 8g. am. of the statutes is created to read:

16 51.30 (4) (b) 8g. am. In this subdivision, "diagnostic test results" means the
17 results of clinical testing of biological parameters, but does not mean the results of
18 psychological or neuropsychological testing.

19 **SECTION 4.** 51.30 (4) (b) 8g. b. of the statutes is repealed.

20 **SECTION 5.** 146.81 (4) of the statutes is amended to read:

SENATE BILL 487

1 146.81 (4) “Patient health care records” means all records related to the health
2 of a patient prepared by or under the supervision of a health care provider, including
3 the records required under s. 146.82 (2) (d) and (3) (c), but not those records subject
4 to s. 51.30, reports collected under s. 69.186, records of tests administered under s.
5 252.15 (2) (a) 7., 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), records related to sales
6 of pseudoephedrine products, as defined in s. 961.01 (20c), that are maintained by
7 pharmacies under s. 961.235, fetal monitor tracings, as defined under s. 146.817 (1),
8 or a pupil’s physical health records maintained by a school under s. 118.125. “Patient
9 health care records” also includes health summary forms prepared under s. 302.388
10 (2).

11 **SECTION 6.** 146.82 (2) (b) of the statutes is repealed.

12 **SECTION 7.** 146.82 (2) (d) of the statutes is repealed.

13 **SECTION 8.** 146.82 (3) (c) of the statutes is repealed.

14 **SECTION 9.** 146.82 (4) of the statutes is created to read:

15 146.82 (4) RELEASE OF A PORTION OF A RECORD TO CERTAIN PERSONS. (a) In this
16 subsection:

17 1. “Immediate family” has the meaning given in s. 350.01 (8m).

18 2. “Incapacitated” has the meaning given in s. 50.94 (1) (b).

19 (b) Notwithstanding sub. (1), a health care provider may release a portion, but
20 not a copy, of a patient health care record, to the following, under the following
21 circumstances:

22 1. Any person, if the patient or a person authorized by the patient is not
23 incapacitated, is physically available, and agrees to the release of that portion.

24 2. Any of the following, as applicable, if the patient and person authorized by
25 the patient are incapacitated or are not physically available, or if an emergency

SENATE BILL 487

1 makes it impracticable to obtain an agreement from the patient or from the person
2 authorized by the patient, and if the health care provider determines, in the exercise
3 of his or her professional judgment, that release of a portion of the patient health care
4 record is in the best interest of the patient:

5 a. A member of the patient's immediate family, another relative of the patient,
6 a close personal friend of the patient, or an individual identified by the patient, that
7 portion that is directly relevant to the involvement by the member, relative, friend,
8 or individual in the patient's care.

9 b. Any person, that portion that is necessary to identify, locate, or notify a
10 member of the patient's immediate family or another person that is responsible for
11 the care of the patient concerning the patient's location, general condition, or death.

12 **SECTION 10.** 146.82 (5) of the statutes is created to read:

13 146.82 (5) REDISCLOSURE. (a) In this subsection, "covered entity" has the
14 meaning given in 45 CFR 160.103.

15 (b) Notwithstanding sub. (1) and except as provided in s. 610.70 (5), a covered
16 entity may redisclose a patient health care record it receives under this section
17 without consent by the patient or person authorized by the patient if the redisclosure
18 of the patient health care record is a release permitted under this section.

19 (c) Notwithstanding sub. (1), an entity that is not a covered entity may
20 redisclose a patient health care record it receives under this section only under one
21 of the following circumstances:

22 1. The patient or a person authorized by the patient provides informed consent
23 for the redisclosure.

24 2. A court of record orders the redisclosure.

