



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2009 Assembly Bill 227

**Assembly Substitute
Amendment 1 and Senate
Amendment 1**

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Assembly Bill 227 requires the Pharmacy Examining Board (PEB) to establish by rule a program for monitoring the dispensing of specified prescription drugs. The drugs that are covered are those that are Schedule II or III prescription drugs or a drug identified by the PEB by rule as having a substantial potential for abuse. The bill lists several items that must be included in the rule promulgated by the PEB for the prescription drug monitoring program. In addition, the bill requires the Department of Regulation and Licensing (DRL) to submit a timely application for a federal grant under two enumerated federal programs to fund the establishment and operation of the prescription drug monitoring program. If DRL fails to obtain federal funding before January 1, 2015, the statute governing the prescription drug monitoring program is void.

Assembly Substitute Amendment 1 makes the following changes to the bill:

- The bill provides that the PEB rules must require a pharmacist, physician, advanced practice nurse prescriber, optometrist, or dentist authorized to dispense prescription drugs to generate an electronic record documenting each dispensing of a prescription drug and to deliver the electronic record to the PEB, except that the program may not require the generation of an electronic record when the drug is administered directly to a patient. The substitute amendment replaces the requirement to generate an “electronic record” with one that requires generation of a “record.” In addition, rather than including a list of providers that dispense prescription drugs, the substitute amendment refers to a pharmacist or practitioner. The term “practitioner” is defined in current law as a person licensed to prescribe and administer drugs in Wisconsin or licensed in another state and recognized by Wisconsin as a person authorized to prescribe and administer drugs.
- The bill requires that the PEB rules specify a format for an electronic record generated under the program. The substitute amendment replaces this with a requirement that the rules must specify a secure electronic format for delivery of a record generated under the program and must authorize the PEB to grant a pharmacist or practitioner a waiver of the specified format.

- The substitute amendment adds a requirement that the PEB rules ensure that the program complies with the state statute on confidentiality of patient health care records and federal regulations promulgated under the authority of the Health Insurance Portability and Accountability Act (HIPAA). In addition, the substitute amendment provides that records generated under the program are not subject to inspection or copying under the state's Open Records Law.
- The substitute amendment provides that a pharmacist or practitioner is immune from civil or criminal liability or professional discipline arising from the pharmacist's or practitioner's compliance in good faith with the statutes and rules related to the prescription drug monitoring program. In addition, the substitute amendment states that nothing in those statutes may be construed to require a pharmacist or practitioner to obtain, before prescribing or dispensing a prescription, information about the patient that has been collected under the program.

Senate Amendment 1 provides that the requirement for the PEB to establish the prescription drug monitoring program by rule takes effect on the day after DRL receives federal funding for the program, as described above.

Legislative History

The Assembly adopted Assembly Substitute Amendment 1 by a voice vote, and passed the bill as amended by a vote of Ayes, 89; Noes, 6.

The Senate adopted Senate Amendment 1 by a voice vote, and concurred in the bill as amended by a vote of Ayes, 31; Noes, 2.

RNS:jal