

State of Wisconsin



2009 Assembly Bill 779

Date of enactment: **May 11, 2010**
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2009 WISCONSIN ACT 274

AN ACT to renumber and amend 153.85, 153.86 and 153.90; to amend 20.435 (1) (hg), 146.37 (1g), 153.01 (intro.), 153.01 (4j) (b), 153.01 (8m), 153.05 (1) (b), 153.05 (2m) (a), 153.05 (2m) (b), 153.05 (2r) (intro.), 153.05 (2s), 153.05 (3) (a), 153.05 (3) (b), 153.05 (3) (c), 153.05 (8) (a), 153.05 (8) (b), 153.05 (9) (a), 153.05 (9) (b), 153.05 (9) (c), 153.455 (4), 153.50 (3) (b) (intro.), 153.50 (3) (c), 153.50 (3) (d), 153.50 (3m), 153.50 (5) (a) 4. b., 153.50 (6) (a), 153.50 (6) (b), 153.50 (6) (c) (intro.), 153.55, 153.60 (1), 153.75 (2) (a), 153.75 (2) (c) and 895.043 (2); and to create subchapter I (title) of chapter 153 [precedes 153.01], subchapter II (title) of chapter 153 [precedes 153.80], 153.80, 153.81 and 153.82 of the statutes; relating to: designation of a corporation to receive funding for electronic health information exchange, creation of a corporation, and making an appropriation.

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

SECTION 1. 20.435 (1) (hg) of the statutes is amended to read:

20.435 (1) (hg) *General program operations; health care information.* The amounts in the schedule to fund the activities of the department of health services under ch. 153 and, to contract with the data organization under s. 153.05 (2r), and to make payments to a corporation under s. 153.81 to support health information exchange. The contract fees paid under s. 153.05 (6m) and assessments paid under s. 153.60 shall be credited to this appropriation account.

SECTION 2. 146.37 (1g) of the statutes, as affected by 2009 Wisconsin Act 113, is amended to read:

146.37 (1g) Except as provided in s. ~~153.85~~ 153.76, no person acting in good faith who participates in the review or evaluation of the services of health care providers or facilities or the charges for such services conducted in connection with any program organized and operated

to help improve the quality of health care, to avoid improper utilization of the services of health care providers or facilities or to determine the reasonable charges for such services, or who participates in the obtaining of health care information under subch. I of ch. 153, is liable for any civil damages as a result of any act or omission by such person in the course of such review or evaluation. Acts and omissions to which this subsection applies include, but are not limited to, acts or omissions by peer review committees or hospital governing bodies in censuring, reprimanding, limiting or revoking hospital staff privileges or notifying the medical examining board or podiatry affiliated credentialing board under s. 50.36 or taking any other disciplinary action against a health care provider or facility and acts or omissions by a medical director in reviewing the performance of emergency medical technicians or ambulance service providers.

SECTION 3. Subchapter I (title) of chapter 153 [precedes 153.01] of the statutes is created to read:

CHAPTER 153

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

SUBCHAPTER I
INFORMATION COLLECTION AND
DISSEMINATION

SECTION 4. 153.01 (intro.) of the statutes is amended to read:

153.01 Definitions. (intro.) In this ~~chapter~~ subchapter:

SECTION 5. 153.01 (4j) (b) of the statutes is amended to read:

153.01 (4j) (b) Receives oversight with respect to services performed by the entity under this ~~chapter~~ subchapter from the secretary of health services.

SECTION 6. 153.01 (8m) of the statutes is amended to read:

153.01 (8m) “Public health authority” means the department or a person acting under this ~~chapter~~ subchapter under a grant of authority from or contract with the department.

SECTION 7. 153.05 (1) (b) of the statutes is amended to read:

153.05 (1) (b) The entity under contract under sub. (2m) (a) shall collect from hospitals and ambulatory surgery centers the health care information required of hospitals and ambulatory surgery centers by the department under ch. 153, 2001 stats., and the rules promulgated under ch. 153, 2001 stats., including, by the date “that is 18 months after the date of the contract under sub. (2m) (a), outpatient hospital-based services. The entity shall analyze and disseminate that health care information, as adjusted for case mix and severity, in the manner required under this ~~chapter~~ subchapter, under ch. 153, 2001 stats., and under the rules promulgated under ch. 153, 2001 stats., and in language that is understandable to laypersons.

SECTION 8. 153.05 (2m) (a) of the statutes is amended to read:

153.05 (2m) (a) Notwithstanding s. 16.75 (1), (2), and (3m), by the 2nd month after July 26, 2003, the department of administration shall, from the appropriation under s. 20.505 (1) (im), contract with an entity to perform services under this ~~chapter~~ subchapter that are specified for the entity with respect to the collection, analysis, and dissemination of health care information of hospitals and ambulatory surgery centers. The department of administration may not, by this contract, require from the entity any collection, analysis, or dissemination of health care information of hospitals and ambulatory surgery centers that is in addition to that required under this ~~chapter~~ subchapter.

SECTION 9. 153.05 (2m) (b) of the statutes is amended to read:

153.05 (2m) (b) Biennially, the group specified under s. 153.01 (4j) (b) shall review the entity’s performance, including the timeliness and quality of the reports generated by the entity. If the group is dissatisfied with the entity’s performance, the group may recommend to

the department of administration that that department use a competitive request-for-proposal process to solicit offers from other organizations for performance of the services. If no organization responds to the request for proposal, the department of health services shall perform the services specified for the entity with respect to the collection, analysis, and dissemination of health care information of hospitals and ambulatory surgery centers under this ~~chapter~~ subchapter.

SECTION 10. 153.05 (2r) (intro.) of the statutes is amended to read:

153.05 (2r) (intro.) Notwithstanding s. 16.75 (1), (2), and (3m), from the appropriation account under s. 20.515 (1) (ut) the department of employee trust funds may expend up to \$150,000, and from the appropriation accounts under s. 20.435 (1) (hg) and (hi) the department of health services, in its capacity as a public health authority, may expend moneys, to contract with a data organization to perform services under this ~~chapter~~ subchapter that are specified for the data organization under sub. (1) (c) or, if s. 153.455 (4) applies, for the department of health services to perform or contract for the performance of these services. As a condition of the contract under this subsection, all of the following apply:

SECTION 11. 153.05 (2s) of the statutes is amended to read:

153.05 (2s) Annually, the department of health services and the department of employee trust funds shall jointly prepare and submit under s. 13.172 (3) to standing committees of the legislature with jurisdiction over health issues a report on the activities of the data organization under this ~~chapter~~ subchapter.

SECTION 12. 153.05 (3) (a) of the statutes is amended to read:

153.05 (3) (a) Upon request of the department for health care information relating to health care providers other than hospitals and ambulatory surgery centers and, if s. 153.455 (4) applies, for health care claims information as specified in sub. (1) (c), state agencies shall provide that information to the department for use in preparing reports under this ~~chapter~~ subchapter.

SECTION 13. 153.05 (3) (b) of the statutes is amended to read:

153.05 (3) (b) Upon request of the entity under contract under sub. (2m) (a) for health care information relating to hospitals and ambulatory surgery centers, state agencies shall provide that health care information to the entity for use in preparing reports under this ~~chapter~~ subchapter.

SECTION 14. 153.05 (3) (c) of the statutes is amended to read:

153.05 (3) (c) Upon request of the data organization under contract under sub. (2r) for health care claims information, insurers and administrators may provide the health care claims information to the data organization for use in preparing reports and developing and maintain-

ing a central data repository under this ~~chapter subchapter~~, and, if s. 153.455 (4) applies, insurers and administrators may provide the health care claims information as requested by the department.

SECTION 15. 153.05 (8) (a) of the statutes is amended to read:

153.05 (8) (a) Unless sub. (13) applies, subject to s. 153.455, the department shall collect, analyze and disseminate, in language that is understandable to laypersons, claims information and other health care information, as adjusted for case mix and severity, under the provisions of this ~~chapter subchapter~~, as determined by rules promulgated by the department, from health care providers, other than hospitals and ambulatory surgery centers, specified by rules promulgated by the department. Data from those health care providers may be obtained through sampling techniques in lieu of collection of data on all patient encounters and data collection procedures shall minimize unnecessary duplication and administrative burdens. If the department collects from health care plans data that is specific to health care providers other than hospitals and ambulatory surgery centers, the department shall attempt to avoid collecting the same data from those health care providers.

SECTION 16. 153.05 (8) (b) of the statutes is amended to read:

153.05 (8) (b) Unless sub. (13) applies, the entity under contract under sub. (2m) (a) shall collect, analyze, and disseminate, in language that is understandable to laypersons, claims information and other health care information, as adjusted for case mix and severity, under the provisions of this ~~chapter subchapter~~, from hospitals and ambulatory surgery centers. Data from hospitals and ambulatory surgery centers may be obtained through sampling techniques in lieu of collection of data on all patient encounters, and data collection procedures shall minimize unnecessary duplication and administrative burdens.

SECTION 17. 153.05 (9) (a) of the statutes is amended to read:

153.05 (9) (a) Subject to s. 153.455, the department shall provide orientation and training to health care providers, other than hospitals and ambulatory surgery centers, who submit data under this ~~chapter subchapter~~, to explain the process of data collection and analysis and the procedures for data verification, comment, interpretation, and release.

SECTION 18. 153.05 (9) (b) of the statutes is amended to read:

153.05 (9) (b) The entity under contract under sub. (2m) (a) shall provide orientation and training to hospitals and ambulatory surgery centers that submit data under this ~~chapter subchapter~~, to explain the process of data collection and analysis and the procedures for data verification, comment, interpretation, and release.

SECTION 19. 153.05 (9) (c) of the statutes is amended to read:

153.05 (9) (c) Subject to s. 153.455 (1) to (3), the data organization under contract under sub. (2r) shall provide orientation and training to insurers and administrators that submit data under this ~~chapter subchapter~~, to explain the process of data collection and analysis and the procedures for data verification, comment, interpretation, and release. If s. 153.455 (4) applies, the department may perform or contract for the performance of the duties specified for the data organization under this paragraph.

SECTION 20. 153.455 (4) of the statutes is amended to read:

153.455 (4) If the contract with the data organization is terminated under sub. (3) and no organization responds to the request for proposals or a successor contract cannot be achieved, the department, in its capacity as a public health authority, shall collect health care information, including as specified under s. HFS 120.14 (1), Wis. Adm. Code, in effect on April 13, 2006, and may request health care claims information, which may be voluntarily provided by insurers or administrators, under this ~~chapter subchapter~~; shall analyze and disseminate, or contract for the performance of analysis and dissemination of, the health care information; and may analyze and disseminate, or may contract for the performance of analysis and dissemination of, the health care claims information.

SECTION 21. 153.50 (3) (b) (intro.) of the statutes is amended to read:

153.50 (3) (b) (intro.) Remove and destroy all of the following data elements on the uniform patient billing forms that are received by the department, the entity, or the data organization under the requirements of this ~~chapter subchapter~~:

SECTION 22. 153.50 (3) (c) of the statutes is amended to read:

153.50 (3) (c) Develop, for use by purchasers of data under this ~~chapter subchapter~~, a data use agreement that specifies data use restrictions, appropriate uses of data and penalties for misuse of data, and notify prospective and current purchasers of data of the appropriate uses.

SECTION 23. 153.50 (3) (d) of the statutes is amended to read:

153.50 (3) (d) Require that a purchaser of data under this ~~chapter subchapter~~ sign and have notarized the data use agreement of the department, the entity, or the data organization, as applicable.

SECTION 24. 153.50 (3m) of the statutes is amended to read:

153.50 (3m) PROVIDER, ADMINISTRATOR, OR INSURER MEASURES TO ENSURE PATIENT IDENTITY PROTECTION. A health care provider that is not a hospital or ambulatory surgery center or an insurer or an administrator shall, before submitting information required by the department, or by the data organization under contract under s.

153.05 (2r), under this ~~chapter~~ subchapter, convert to a payer category code as specified by the department or the data organization, as applicable, any names of an insured's payer or other insured's payer.

SECTION 25. 153.50 (5) (a) 4. b. of the statutes is amended to read:

153.50 (5) (a) 4. b. Any federal or state statutory requirement to uphold the patient confidentiality provisions of this ~~chapter~~ subchapter or patient confidentiality provisions that are more restrictive than those of this ~~chapter~~ subchapter; or, if the latter evidence is inapplicable, an agreement, in writing, to uphold the patient confidentiality provisions of this ~~chapter~~ subchapter.

SECTION 26. 153.50 (6) (a) of the statutes is amended to read:

153.50 (6) (a) The department or entity under contract under s. 153.05 (2m) (a) may not require a health care provider submitting health care information under this ~~chapter~~ subchapter to include the patient's name, street address or social security number.

SECTION 27. 153.50 (6) (b) of the statutes is amended to read:

153.50 (6) (b) The department may not require under this ~~chapter~~ subchapter a health care provider that is not a hospital or ambulatory surgery center to submit uniform patient billing forms.

SECTION 28. 153.50 (6) (c) (intro.) of the statutes is amended to read:

153.50 (6) (c) (intro.) A health care provider that is not a hospital or ambulatory surgery center may not submit any of the following to the department under the requirements of this ~~chapter~~ subchapter:

SECTION 29. 153.55 of the statutes is amended to read:

153.55 Protection of confidentiality. Data obtained under this ~~chapter~~ subchapter is not subject to inspection, copying or receipt under s. 19.35 (1).

SECTION 30. 153.60 (1) of the statutes is amended to read:

153.60 (1) The department shall, by the first October 1 after the commencement of each fiscal year, estimate the total amount of expenditures under this ~~chapter~~ subchapter for the department for that fiscal year for data collection, database development and maintenance, generation of data files and standard reports, orientation and training provided under s. 153.05 (9) (a) and contracting with the data organization under s. 153.05 (2r). The department shall assess the estimated total amount for that fiscal year, less the estimated total amount to be received for purposes of administration of this ~~chapter~~ subchapter under s. 20.435 (1) (hi) during the fiscal year and the unencumbered balance of the amount received for purposes of administration of this ~~chapter~~ subchapter under s. 20.435 (1) (hi) from the prior fiscal year, to health care providers, other than hospitals and ambulatory surgery centers, who are in a class of health care pro-

viders from whom the department collects data under this ~~chapter~~ subchapter in a manner specified by the department by rule. The department shall work together with the department of regulation and licensing to develop a mechanism for collecting assessments from health care providers other than hospitals and ambulatory surgery centers. No health care provider that is not a facility may be assessed under this subsection an amount that exceeds \$75 per fiscal year. All payments of assessments shall be credited to the appropriation under s. 20.435 (1) (hg).

SECTION 31. 153.75 (2) (a) of the statutes is amended to read:

153.75 (2) (a) Exempting certain classes of health care providers that are not hospitals or ambulatory surgery centers from providing all or portions of the data required under this ~~chapter~~ subchapter.

SECTION 32. 153.75 (2) (c) of the statutes is amended to read:

153.75 (2) (c) Providing for the efficient collection, analysis and dissemination of health care information which the department may require under this ~~chapter~~ subchapter.

SECTION 33. Subchapter II (title) of chapter 153 [precedes 153.80] of the statutes is created to read:

CHAPTER 153

SUBCHAPTER II

ELECTRONIC HEALTH INFORMATION

EXCHANGE

SECTION 34. 153.80 of the statutes is created to read:

153.80 Definitions. In this subchapter:

(1) "Department" means the department of health services.

(2) "Health care provider" has the meaning given in s. 146.81 (1) and includes an ambulatory surgery center, which has the meaning given for "ambulatory surgical center" under 42 CFR 416.2.

(3) "Secretary" means the secretary of health services.

(4) "State-designated entity" means a nonprofit corporation designated by the state as eligible to apply for and receive grants under 42 USC 300jj-33 from the secretary of the U.S. department of health and human services.

SECTION 35. 153.81 of the statutes is created to read:

153.81 Requirements for designation and funding. (1) The state may designate a nonprofit corporation that is incorporated under ch. 181 as the state-designated entity only if the secretary determines that all of the following conditions are satisfied:

(a) The articles of incorporation or bylaws of the corporation state that a purpose of the corporation is to use information technology to improve health care quality and efficiency through the authorized and secure electronic exchange and use of health information.

(b) The corporation annually evaluates, analyzes, and reports to the secretary on the progress toward imple-

menting statewide health information exchange and how the health information exchange efforts are enabling meaningful use of certified electronic health record technology, as defined in 42 USC 300jj and by the U.S. department of health and human services by regulation, by health care providers.

(c) The corporation complies with the requirements to be a qualified state-designated entity under 42 USC 300jj-33 (f) (2) to (5) and to receive a grant under 42 USC 300jj-33.

(d) The governing structure and bylaws of the corporation allow it to consult and consider recommendations from all of the persons specified under 42 USC 300jj-33 (g) (1) to (10) in carrying out statewide health information exchange.

(e) The board of directors of the corporation includes all of the following persons:

1. The state health officer, as defined under s. 250.01 (9), or his or her designee.
2. The person who is appointed by the secretary to be the director of the Medical Assistance program, or his or her designee.
3. One person who is specified by the governor, or his or her designee.
4. One or more persons who represent each of the following such that the representation of the public and private health sector is balanced in the board's representation:
 - a. Health care providers.
 - b. Health insurers or health plans.
 - c. Employers who purchase or self-insure employee health care.
 - d. Health care consumers or consumer advocates.
 - e. Higher education.

(f) The corporation agrees to fulfill all of the following purposes:

1. Building substantial health information exchange capacity statewide to support all of the following:
 - a. Health care providers' meaningful use of electronic health records.
 - b. Population health improvement.
 - c. Reporting of health care performance.
2. Developing policies and recommending legislation that advance efficient statewide and interstate health information exchange and that protect consumer privacy.
3. Developing or facilitating the creation of a statewide technical infrastructure that supports statewide health information exchange and enables interoperability among users of health information.
4. Coordinating between the Medical Assistance and public health programs to enable information exchange and promote meaningful use of electronic health records.
5. Providing oversight and accountability for health information exchange to protect the public interest.
6. Increasing public awareness of and support for statewide health information exchange and fostering

agreement among health care providers and other users of health care information on an approach to statewide health information exchange.

7. Adopting standards for health information exchange in accordance with national standards, implementation protocols, and reporting requirements.

8. Prioritizing among health information exchange services according to the needs of the residents of this state.

9. Managing and sustaining funding necessary to develop and sustain statewide health information infrastructure and services.

10. Conducting or overseeing health information exchange business and technical operations, including providing technical assistance to health information organizations and other health information exchanges.

11. Developing or facilitating the creation and use of shared directories and technical services, as applicable to statewide health information exchange.

12. Creating a model, uniform statewide patient consent and authorization process to allow electronic access to, review of, or disclosure of a patient's identifiable health care information.

13. Certifying regional health information exchange networks, if any, and confirming that any regional health information exchange network meets the criteria to participate in and connect to the statewide health information exchange network.

14. Monitoring health information technology and health information exchange efforts nationally and facilitating alignment of statewide, interstate, and national health information exchange strategies.

15. Developing programs and initiatives to promote and advance health information exchange to improve the safety, quality, and efficiency of health care and to reduce waste due to redundancy and administrative costs.

(2) The department may make payments to a non-profit corporation that is incorporated under ch. 181 to support health information exchange if the secretary determines that the conditions under sub. (1) are satisfied.

SECTION 36. 153.82 of the statutes is created to read:
153.82 Creation of corporation. (1) The secretary may organize and assist in maintaining a nonstock, non-profit corporation under ch. 181 for all of the purposes specified under s. 153.81 (1) (f).

(2) If the secretary organizes a corporation under sub. (1), the secretary shall appoint all of the individuals specified under s. 153.81 (1) (e) 1. to 4. as initial directors of the board of the corporation.

(3) The assets and liabilities of the corporation under sub. (1) shall be separate from all other assets and liabilities of the state, of all political subdivisions of the state, and of the department. The state, any political subdivision of the state, and the department do not guarantee any obligation of or have any obligation to the corporation.

The state, any political subdivision of the state, and the department are not liable for any debt or liability of the corporation.

SECTION 37. 153.85 of the statutes is renumbered 153.76 and amended to read:

153.76 Civil liability. Except as provided in s. ~~153.86~~ 153.77, any person violating s. 153.50 or rules promulgated under s. 153.75 (1) (a) is liable to the patient for actual damages and costs, plus exemplary damages of up to \$1,000 for a negligent violation and up to \$5,000 for an intentional violation.

SECTION 38. 153.86 of the statutes is renumbered 153.77, and 153.77 (1) (intro.), as renumbered, is amended to read:

153.77 (1) (intro.) A health care provider that submits information to the department under this ~~chapter~~ subchapter is immune from civil liability for all of the following:

SECTION 39. 153.90 of the statutes is renumbered 153.78, and 153.78 (2), as renumbered, is amended to read:

153.78 (2) Any person who violates this ~~chapter~~ subchapter or any rule promulgated under the authority of this ~~chapter~~ subchapter, except ss. 153.45 (5), 153.50 and 153.75 (1) (a), as provided in s. ~~153.85~~ 153.76 and sub. (1), shall forfeit not more than \$100 for each violation. Each day of violation constitutes a separate offense, except that no day in the period between the date on which a request for a hearing is filed under s. 227.44 and the date of the conclusion of all administrative and judicial proceedings arising out of a decision under this section constitutes a violation.

SECTION 40. 895.043 (2) of the statutes is amended to read:

895.043 (2) SCOPE. This section does not apply to awards of double damages or treble damages, or to the award of exemplary damages under ss. 46.90 (9) (a) and (b), 51.30 (9), 51.61 (7), 55.043 (9m) (a) and (b), 103.96 (2), 134.93 (5), 146.84 (1) (b) and (bm), ~~153.85~~ 153.76, 252.14 (4), 252.15 (8) (a), 610.70 (7) (b), 943.245 (2) and (3) and 943.51 (2) and (3).
