



**ASSEMBLY AMENDMENT 1,  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1997 ASSEMBLY BILL 552**

February 5, 1998 - Offered by JOINT COMMITTEE ON INFORMATION POLICY.

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 2, line 2: after "records," insert "authorizing disclosure of personal  
3 medical information to an insurer, disclosure by an insurer of personal medical  
4 information,".

5 **2.** Page 3, line 11: after that line insert:

6 **"SECTION 5c.** 51.30 (4) (a) of the statutes is amended to read:

7 51.30 (4) (a) *Confidentiality of records.* Except as otherwise provided in this  
8 chapter and ss. 610.70 (3) and (5), 905.03 and 905.04, all treatment records shall  
9 remain confidential and are privileged to the subject individual. Such records may  
10 be released only to the persons designated in this chapter or ss. 610.70 (3) and (5),  
11 905.03 and 905.04, or to other designated persons with the informed written consent  
12 of the subject individual as provided in this section. This restriction applies to

1 elected officials and to members of boards appointed under s. 51.42 (4) (a) or 51.437  
2 (7) (a).

3 **SECTION 16m.** 146.82 (2) (b) of the statutes is amended to read:

4 146.82 (2) (b) Unless Except as provided in s. 610.70 (3) and (5), unless  
5 authorized by a court of record, the recipient of any information under par. (a) shall  
6 keep the information confidential and may not disclose identifying information  
7 about the patient whose patient health care records are released.”.

8 **3.** Page 15, line 15: after that line insert:

9 “**SECTION 56m.** 610.70 of the statutes is created to read:

10 **610.70 Disclosure of personal medical information. (1) DEFINITIONS.** In  
11 this section:

12 (a) “Health care provider” means any person licensed, registered, permitted or  
13 certified by the department of health and family services or the department of  
14 regulation and licensing to provide health care services, items or supplies in this  
15 state.

16 (b) “Individual” means a natural person who is a resident of this state. For  
17 purposes of this paragraph, a person is a state resident if his or her last-known  
18 mailing address, according to the records of an insurer or insurance support  
19 organization, was in this state.

20 (c) 1. “Insurance support organization” means any person that regularly  
21 engages in assembling or collecting personal medical information about natural  
22 persons for the primary purpose of providing the personal medical information to  
23 insurers for insurance transactions, including the collection of personal medical  
24 information from insurers and other insurance support organizations for the

1 purpose of detecting or preventing fraud, material misrepresentation or material  
2 nondisclosure in connection with insurance underwriting or insurance claim  
3 activity.

4 2. Notwithstanding subd. 1., “insurance support organization” does not include  
5 insurance agents, government institutions, insurers or health care providers.

6 (d) “Insurance transaction” means any of the following involving insurance  
7 that is primarily for personal, family or household needs:

8 1. The determination of an individual’s eligibility for an insurance coverage,  
9 benefit or payment.

10 2. The servicing of an insurance application, policy, contract or certificate.

11 (e) “Medical care institution” means a facility, as defined in s. 647.01 (4), or any  
12 hospital, nursing home, community-based residential facility, county home, county  
13 infirmary, county hospital, county mental health center, tuberculosis sanatorium,  
14 adult family home, assisted living facility, rural medical center, hospice or other place  
15 licensed, certified or approved by the department of health and family services under  
16 s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.032, 50.033, 50.034, 50.35, 50.52, 50.90, 51.04,  
17 51.08, 51.09, 58.06, 252.073 or 252.076 or a facility under s. 45.365, 51.05, 51.06 or  
18 252.10 or under ch. 233 or licensed or certified by a county department under s.  
19 50.032 or 50.033.

20 (f) 1. “Personal medical information” means information concerning an  
21 individual that satisfies all of the following:

22 a. Relates to the individual’s physical or mental health, medical history or  
23 medical treatment.

24 b. Is obtained from a health care provider, a medical care institution, the  
25 individual or the individual’s spouse, parent or legal guardian.

1           2. "Personal medical information" does not include information that is obtained  
2 from the public records of a governmental authority and that is maintained by an  
3 insurer or its representatives for the purpose of insuring title to real property located  
4 in this state.

5           **(2) DISCLOSURE AUTHORIZATION.** (a) Any form that is used in connection with  
6 an insurance transaction and that authorizes the disclosure of personal medical  
7 information about an individual to an insurer shall comply with all of the following:

8           1. All instructions and other information contained in the form are presented  
9 in plain language.

10          2. The form is dated.

11          3. The form specifies the types of persons that are authorized to disclose  
12 information about the individual.

13          4. The form specifies the nature of the information that is authorized to be  
14 disclosed.

15          5. The form names the insurer, and identifies by generic reference  
16 representatives of the insurer, to whom the information is authorized to be disclosed.

17          6. The form specifies the purposes for which the information is being obtained.

18          7. Subject to par. (b), the form specifies the length of time for which the  
19 authorization remains valid.

20          8. The form advises that the individual, or an authorized representative of the  
21 individual, is entitled to receive a copy of the completed authorization form.

22          (b) 1. For an authorization under this subsection that will be used for the  
23 purpose of obtaining information in connection with an insurance policy application,  
24 an insurance policy reinstatement or a request for a change in policy benefits, the

1 length of time specified in par. (a) 7. may not exceed 30 months from the date on which  
2 the authorization is signed.

3 2. For an authorization under this subsection that will be used for the purpose  
4 of obtaining information in connection with a claim for benefits under an insurance  
5 policy, the length of time specified in par. (a) 7. may not exceed the policy term or the  
6 pendency of a claim for benefits under the policy, whichever is longer.

7 **(3) ACCESS TO RECORDED PERSONAL MEDICAL INFORMATION.** (a) If, after proper  
8 identification, an individual or an authorized representative of an individual  
9 submits a written request to an insurer for access to recorded personal medical  
10 information that concerns the individual and that is in the insurer's possession,  
11 within 30 business days after receiving the request the insurer shall do all of the  
12 following:

13 1. Inform the individual or authorized representative of the nature and  
14 substance of the recorded personal medical information in writing, by telephone or  
15 by any other means of communication at the discretion of the insurer.

16 2. At the option of the individual or authorized representative, permit the  
17 individual or authorized representative to inspect and copy the recorded personal  
18 medical information, in person and during the insurer's normal business hours, or  
19 provide by mail to the individual or authorized representative a copy of the recorded  
20 personal medical information. If the recorded personal medical information is in  
21 coded form, the insurer shall provide to the individual or authorized representative  
22 an accurate written translation in plain language.

23 3. Disclose to the individual or authorized representative the identities, if  
24 recorded, of any persons to whom the insurer has disclosed the recorded personal  
25 medical information within 2 years prior to the request. If the identities are not

1 recorded, the insurer shall disclose to the individual or authorized representative the  
2 names of any insurance agents, insurance support organizations or other entities to  
3 whom such information is normally disclosed.

4 4. Provide to the individual or authorized representative a summary of the  
5 procedures by which the individual or authorized representative may request the  
6 correction, amendment or deletion of any recorded personal medical information in  
7 the possession of the insurer.

8 (b) Notwithstanding par. (a), an insurer may, in the insurer's discretion,  
9 provide a copy of any recorded personal medical information requested by an  
10 individual or authorized representative under par. (a) to a health care provider who  
11 is designated by the individual or authorized representative and who is licensed,  
12 registered, permitted or certified to provide health care services with respect to the  
13 condition to which the information relates. If the insurer chooses to provide the  
14 information to the designated health care provider under this paragraph, the insurer  
15 shall notify the individual or authorized representative, at the time of disclosure,  
16 that the information has been provided to the health care provider.

17 (c) An insurer is required to comply with par. (a) or (b) only if the individual or  
18 authorized representative provides a reasonable description of the information that  
19 is the subject of the request and if the information is reasonably easy to locate and  
20 retrieve by the insurer.

21 (d) If an insurer receives personal medical information from a health care  
22 provider or a medical care institution with instructions restricting disclosure of the  
23 information under s. 51.30 (4) (d) 1. to the individual to whom the information  
24 relates, the insurer may not disclose the personal medical information to the

1 individual under this subsection, but shall disclose to the individual the identity of  
2 the health care provider or a medical care institution that provided the information.

3 (e) Any copy of recorded personal medical information provided under par. (a)  
4 or (b) shall include the identity of the source of the information if the source is a  
5 health care provider or a medical care institution.

6 (f) An insurer may charge the individual a reasonable fee to cover the costs  
7 incurred in providing a copy of recorded personal medical information under par. (a)  
8 or (b).

9 (g) The requirements for an insurer under this subsection may be satisfied by  
10 another insurer, an insurance agent, an insurance support organization or any other  
11 entity authorized by the insurer to act on its behalf.

12 (h) The requirements under this subsection do not apply to information  
13 concerning an individual that relates to, and that is collected in connection with or  
14 in reasonable anticipation of, a claim or civil or criminal proceeding involving the  
15 individual.

16 **(4) CORRECTION, AMENDMENT OR DELETION OF RECORDED PERSONAL MEDICAL**  
17 **INFORMATION.** (a) Within 30 business days after receiving a written request from an  
18 individual to correct, amend or delete any recorded personal medical information  
19 that is in the insurer's possession, an insurer shall do either of the following:

- 20 1. Comply with the request.
- 21 2. Notify the individual of all of the following:
- 22 a. That the insurer refuses to comply with the request.
- 23 b. The reasons for the refusal.
- 24 c. That the individual has a right to file a statement as provided in par. (c).

1 (b) An insurer that complies with a request under par. (a) shall notify the  
2 individual of that compliance in writing and furnish the correction, amendment or  
3 fact of deletion to all of the following:

4 1. Any person who may have received, within the preceding 2 years, the  
5 recorded personal medical information concerning the individual and who is  
6 specifically designated by the individual.

7 2. Any insurance support organization for which insurers are the primary  
8 source of personal medical information and to which the insurer, within the  
9 preceding 7 years, has systematically provided recorded personal medical  
10 information. This subdivision does not apply to an insurance support organization  
11 that does not maintain recorded personal medical information concerning the  
12 individual.

13 3. Any insurance support organization that furnished to the insurer the  
14 personal medical information that has been corrected, amended or deleted.

15 (c) If an insurer refuses to comply with a request under par. (a) 1., the individual  
16 making the request may file with the insurer, an insurance agent or an insurance  
17 support organization any of the following:

18 1. A concise statement setting forth the information that the individual  
19 believes to be correct, relevant or fair.

20 2. A concise statement setting forth the reasons why the individual disagrees  
21 with the insurer's refusal to correct, amend or delete the recorded personal medical  
22 information.

23 (d) If the individual files a statement under par. (c), the insurer shall do all of  
24 the following:



1           1. File any statement filed by the individual under par. (c) with the recorded  
2           personal medical information that is the subject of the request under par. (a) in such  
3           a manner that any person reviewing the recorded personal medical information will  
4           be aware of and have access to the statement.

5           2. In any subsequent disclosure by the insurer of the recorded personal medical  
6           information, clearly identify any matter in dispute and provide any statement filed  
7           by the individual under par. (c) that relates to the recorded personal medical  
8           information along with the information.

9           3. Furnish any statement filed by the individual under par. (c) to any person  
10          to whom the insurer would have been required to furnish a correction, amendment  
11          or fact of deletion under par. (b).

12          (e) The requirements under this subsection do not apply to information  
13          concerning an individual that relates to, and that is collected in connection with or  
14          in reasonable anticipation of, a claim or civil or criminal proceeding involving the  
15          individual.

16          **(5) DISCLOSURE OF PERSONAL MEDICAL INFORMATION BY INSURERS.** Any disclosure  
17          by an insurer of personal medical information concerning an individual shall be  
18          consistent with the individual's signed disclosure authorization form, unless the  
19          disclosure satisfies any of the following:

20          (a) Is otherwise authorized by the individual, or by a person who is authorized  
21          to consent on behalf of an individual who lacks the capacity to consent.

22          (b) Is reasonably related to the protection of the insurer's interests in the  
23          assessment of causation, fault or liability or in the detection or prevention of criminal  
24          activity, fraud, material misrepresentation or material nondisclosure.

1           (c) Is made to an insurance regulatory authority or in response to an  
2 administrative or judicial order, including a search warrant or subpoena, that is  
3 valid on its face.

4           (d) Is otherwise permitted by law.

5           (e) Is made for purposes of pursuing a contribution or subrogation claim.

6           (f) Is made to a professional peer review organization, bill review organization,  
7 health care provider or medical consultant or reviewer for the purpose of reviewing  
8 the services, fees, treatment or conduct of a medical care institution or health care  
9 provider.

10          (g) Is made to a medical care institution or health care provider for any of the  
11 following purposes:

12           1. Verifying insurance coverage or benefits.

13           2. Conducting an operations or services audit to verify the individuals treated  
14 by the health care provider or at the medical care institution.

15          (h) Is made to a network plan that is offered by an insurer in order to make  
16 arrangements for coordinated health care in which personal medical information  
17 concerning an individual is available for providing treatment, making payment for  
18 health care under the plan and undertaking such plan operations as are necessary  
19 to fulfill the contract for provision of coordinated health care.

20          (i) Is made to a group policyholder for the purpose of reporting claims  
21 experience or conducting an audit of the insurer's operations or services. Disclosure  
22 may be made under this paragraph only if the disclosure is reasonably necessary for  
23 the group policyholder to conduct the review or audit.

1 (j) Is made for purposes of enabling business decisions to be made regarding  
2 the purchase, transfer, merger, reinsurance or sale of all or part of an insurance  
3 business.

4 (k) Is made for purposes of actuarial or research studies or for accreditation or  
5 auditing. With respect to a disclosure made under this paragraph, any materials  
6 that allow for the identification of an individual must be returned to the insurer or  
7 destroyed as soon as reasonably practicable, and no individual may be identified in  
8 any actuarial, research, accreditation or auditing report.

9 (L) Is made to the insurer's legal representative for purposes of claims review  
10 or legal advice or defense.

11 **(6) IMMUNITY.** (a) A person is not liable to any person for any of the following:

- 12 1. Disclosing personal medical information in accordance with this section.  
13 2. Furnishing personal medical information to an insurer or insurance support  
14 organization in accordance with this section.

15 (b) Paragraph (a) does not apply to the disclosure or furnishing of false  
16 information with malice or intent to injure any person.

17 **(7) OBTAINING INFORMATION UNDER FALSE PRETENSES.** Any person who knowingly  
18 and wilfully obtains information about an individual from an insurer or insurance  
19 support organization under false pretenses may be fined not more than \$10,000 or  
20 imprisoned for not more than one year in the county jail or both.

21 **SECTION 56s.** 895.505 of the statutes is created to read:

22 **895.505 Storage and disposal of records containing personal**  
23 **information. (1) DEFINITIONS.** In this section:

1 (a) "Business" means an organization or enterprise, whether or not operated  
2 for profit, including a sole proprietorship, partnership, firm, business trust, joint  
3 venture, syndicate, corporation, limited liability company or association.

4 (b) "Destruction" means, with respect to a record, permanently rendering the  
5 personal information contained in the record incapable of being read.

6 (c) "Disposal" means, with respect to a record, ceasing to have control over  
7 access to the record.

8 (d) "Personal information" means personally identifiable data about the  
9 medical or financial condition of a state resident that is not generally considered to  
10 be public knowledge, including the individual's social security number.

11 (e) "Personally identifiable" means capable of being associated with a  
12 particular individual through one or more identifiers or other information or  
13 circumstances.

14 (f) "Record" means any material on which written, drawn, printed, spoken,  
15 visual or electromagnetic information is recorded or preserved, regardless of  
16 physical form or characteristics.

17 **(2) STORAGE OF RECORDS CONTAINING PERSONAL INFORMATION.** Prior to the  
18 disposal of a record under sub. (3), a business shall take all actions that it reasonably  
19 believes to be necessary to prevent unauthorized persons from obtaining access to  
20 personal information contained in the record.

21 **(3) DISPOSAL OF RECORDS CONTAINING PERSONAL INFORMATION.** A business may not  
22 dispose of a record containing personal information unless it does at least one of the  
23 following:

24 (a) Prior to the disposal of the record, the business shreds, erases or otherwise  
25 modifies the record to make the personal information unreadable.

1 (b) The business takes actions that it reasonably believes will ensure that no  
2 unauthorized person will have access to the personal information contained in the  
3 record for the period between the record's disposal and the record's destruction.

4 (4) CAUSE OF ACTION. Notwithstanding s. 814.04 (1), a business that violates  
5 sub. (2) or (3) is liable to any person damaged by the violation for the amount of  
6 damages and for reasonable attorney fees.”.

7 4. Page 16, line 17: before “Section” insert “BOARD ON HEALTH CARE  
8 INFORMATION.”.

9 5. Page 16, line 19: delete “act” and substitute “subsection”.

10 6. Page 16, line 19: after that line insert:

11 “(2) DISCLOSURE BY INSURERS OF PERSONAL MEDICAL INFORMATION. If a contract  
12 that is affected by section 610.70 of the statutes, as created by this act, that is in effect  
13 on the first day of the 13th month beginning after publication and that was not issued  
14 or renewed after the effective date of this subsection contains terms or provisions  
15 that are inconsistent with the requirements under section 610.70 of the statutes, as  
16 created by this act, the treatment of sections 51.30 (4) (a), 146.82 (2) (b) and 610.70  
17 of the statutes first applies to that contract upon renewal.

18 **SECTION 61m. Effective dates.** This act takes effect on the day after  
19 publication, except as follows:

20 (1) The treatment of sections 51.30 (4) (a), 146.82 (2) (b) and 610.70 of the  
21 statutes takes effect on the first day of the 13th month beginning after publication.

22 (2) The treatment of section 895.505 of the statutes takes effect on the first day  
23 of the 4th month beginning after publication.”.

24 (END)