



State of Wisconsin
1997 - 1998 LEGISLATURE

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**SENATE AMENDMENT 2,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 1997 SENATE BILL 315**

January 15, 1998 – Offered by COMMITTEE ON HEALTH, HUMAN SERVICES, AGING,
CORRECTIONS, VETERANS AND MILITARY AFFAIRS.

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 5m.** 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 sanitorium,
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 **4.** Page 16, line 17: before “Section” insert “BOARD ON HEALTH CARE
22 INFORMATION.”.

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

24 **6.** Page 16, line 19: after that line insert:

