



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2001 Senate Bill 237**

**Senate Amendment 1**

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### **Current Law**

Current law provides for confidentiality of, and access to, patient health care records. For purposes of those statutes, the term “patient health care records” is defined to mean all records related to the health of a patient prepared by or under the supervision of a health care provider, with certain exceptions. The term “health care provider” is defined broadly and includes a pharmacist.

### **Senate Bill 237**

Senate Bill 237 expands the definition of “health care provider” for purposes of the confidentiality and access statutes related to patient health care records to include a pharmacy. In addition, the bill modifies the definition of “patient health care records” to include not just records prepared by or under the supervision of a health care provider, but also to include records owned by a health care provider.

The bill also modifies the provision in current law that allows disclosure of patient health care records if the records do not contain information, and the circumstances of the release do not provide information, that would permit the identification of the patient. The bill modifies this to state that in addition to these requirements, in the instance of a patient health care record prepared by or under the supervision of a pharmacist or owned by a pharmacy, the records released under that provision may not identify the patient’s health care provider.

Finally, the bill creates a new provision that states that any person who obtains a health care record from a pharmacy or pharmacist, under circumstances that constitute a violation of the statutes relating to confidentiality and access, in a manner that is knowing and willful is liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than \$25,000, costs, and reasonable actual attorney fees.

### **Senate Amendment 1**

Senate Amendment 1 makes the following changes:

1. The amendment modifies the provision in current law that allows release of patient health care records to the extent that the records are needed for billing, collection, or payment of claims. Under the amendment, the recipient of patient health care records under that provision may not use the information in the record to market a health care service or product to a patient or health care provider.
2. The amendment modifies the provision in the bill that states that in the instance of a patient health care record prepared by or under the supervision of a pharmacist or owned by a pharmacy and that does not identify the patient, the records released may not identify the patient's health care provider. The term "patient's health care provider" is changed to "practitioner, as defined in s. 450.01 (17), who prescribed a drug." The term "practitioner" is defined in current law as a person licensed in Wisconsin to prescribe and administer drugs or licensed in another state and recognized by Wisconsin as a person authorized to prescribe and administer drugs.
3. The amendment provides that the Department of Justice or a district attorney may bring an action in the name of the state to enforce, or to restrain by temporary or permanent injunction, violations of the provisions in current law that prohibit a person from doing any of the following: (a) requesting or obtaining confidential information under false pretenses; (b) disclosing confidential information with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm; or (c) intentionally falsifying a patient health care record, concealing or withholding a patient health care record for specified purposes, or intentionally destroying or damaging patient health care records in order to prevent or obstruct an investigation or prosecution.

### **Legislative History**

On September 9, 2001, the Senate Committee on Privacy, Electronic Commerce and Financial Institutions recommended passage of Senate Bill 237 on a vote of Ayes, 3; Noes, 2.

On October 23, 2001, the Senate adopted Senate Amendment 1 on a voice vote; and passed the bill, as amended, on a vote of Ayes, 25; Noes, 8.

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