



1999 SENATE BILL 249

October 6, 1999 – Introduced by Senator MOEN. Referred to Committee on Health, Utilities, Veterans and Military Affairs.

1 **AN ACT to repeal** 153.50 (2) and 153.50 (4) (a); **to renumber** 153.50 (1) (a), 153.50
2 (4) (b) to (e) and 153.50 (6); **to renumber and amend** 153.45 (1) (b), 153.45 (1)
3 (c), 153.50 (1) (b) and 153.50 (4) (intro.); **to amend** 15.195 (6), 146.84 (3), 153.50
4 (5) (a) (intro.), 153.50 (5) (a) 3., 153.50 (5) (a) 4. (intro.), 153.50 (5) (b) 3., 153.55,
5 153.85 and 153.90 (1); and **to create** 15.195 (9), 153.45 (1) (b) 2., 153.45 (1) (c)
6 1. to 4., 153.45 (6), 153.50 (1) (b) 2., 153.50 (3) (b) 7., 153.50 (3) (c), 153.50 (3) (d),
7 153.50 (3m), 153.50 (4) (bm), 153.50 (6) (b), (c), (d) and (e), 153.67, 153.76 and
8 153.86 of the statutes; **relating to:** patient privacy protections in collection and
9 dissemination of health care information, changing requirements for
10 membership on the board on health care information and creating an
11 independent review board, granting rule-making authority and providing a
12 penalty.

Analysis by the Legislative Reference Bureau

Under current law, the department of health and family services (DHFS) must collect, analyze and disseminate health care information, as adjusted for case mix

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and severity, in language that is understandable to lay persons, in order to provide to hospitals, health care providers, insurers, consumers, governmental agencies and others information concerning health care providers and uncompensated health care services and in order to provide information to assist in peer review for the purpose of quality assurance. Among the information collected by DHFS is that contained on uniform patient billing forms, as provided by health care providers. To ensure that the identity of health care patients is protected when information obtained by DHFS is disseminated, DHFS must, among other things, remove and destroy specified information on the uniform patient billing forms. This information includes the patient's name and street address; the insured's name, address and telephone number; any other insured's name, employer name and date of birth; the signature of the patient and the insured and other authorized signatures; and the signature of the physician.

Currently, DHFS must release data as standard reports, public use data files that do not permit specific patients, employers or health care providers to be identified and custom-designed reports. DHFS must protect the identification of these groups by all necessary means. DHFS may not release patient-identifiable data except to the patient or a person granted permission in writing by the patient; an agent of DHFS who is responsible for storage and ensuring the accuracy of the DHFS' data base; a health care provider or his or her agent, to ensure accuracy of information in the DHFS' data base; and staff of DHFS, or of an entity that is required by federal or state statute to obtain patient-identifiable data, for purposes of epidemiological investigation or to eliminate the need for duplicative data bases. ("Patient-identifiable data" is defined to mean the patient's medical record or chart number, control number, date of birth and employer's name; the dates of the patient's admission, discharge and principal procedure; the encrypted case identifier; the insured's policy number, date of birth and identification number; and the federal medicaid resubmission code and prior authorization number.) Patient-identifiable data and health care provider-identifiable data are not subject to inspection, copying or receipt under the law relating to open records.

Currently, the board on health care information consists of 11 members, including a record administrator and five health care providers; of the health care providers, one must be a licensed registered nurse and two must be physicians.

This bill creates an independent review board, attached to DHFS, that consists of five members, as specified in the bill. Rules promulgated by the independent review board must first be approved by the board on health care information.

For information submitted by health care providers other than hospitals and ambulatory surgery centers, that is the basis for custom-designed reports, the bill authorizes release only after review and approval by the independent review board or if DHFS promulgates rules that specify circumstances under which the review and approval is unnecessary. In addition, these custom-designed reports may include the patient's zip code only if other potentially identifying data elements are not released, population density is sufficient to mask patient identity, other potentially identifying data elements are grouped to provide population density sufficient to protect identity and multiple years of data elements are added to the released

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information to protect identity. Also, the bill authorizes release of the patient's year of birth; a patient's full date of birth, however, may be used only subject to rules promulgated by DHFS.

The bill increases protections from the identification of patients, employes and health care providers in information that is submitted by health care providers other than hospitals and ambulatory surgery centers for the release as public use data files, by requiring specification of counties, rather than zip codes as to residence; requiring the use of five-year age categories rather than exact age; prohibiting release of information about a patient's race, ethnicity or dates of admission, discharge, procedures or visits; and requiring that sensitive diagnoses and procedures be masked. The bill authorizes public use data files for this information to include only the patient's county of residence, the type of payment source, the patient's age category, the patient's procedure and diagnosis code, charges assessed with respect to the procedure code, the name and address of the facility rendering service, the patient's sex, the name of the health care provider (if reviewed and approved by the independent review board or if DHFS rules authorize the release), calendar quarters of service and information other than patient-identifiable data that is approved by the independent review board.

For patient-identifiable data, which may be released only to a few specified entities, the bill differentiates between information submitted by hospitals and ambulatory surgery centers and information submitted by health care providers who are not hospitals or ambulatory surgery centers. For the latter group, the bill expands the definition of "patient-identifiable data" to include whether the patient's condition is related to employment and occurrence and place of an accident; the date of first symptom of illness, injury or pregnancy; the first date of the patient's same or similar illness; dates that the patient has been unable to work; dates of receipt of medical service; and the city, town or village of residence of the patient. With respect to release of patient-identifiable data, the bill permits the release only to the entities specified in current law, except that the bill eliminates release of the data to a patient or person granted permission by the patient. The bill prohibits an employer from requesting patient-identifiable data that is specific to an employe of the employer.

The bill excepts all data obtained by DHFS, rather than just patient-identifiable data or health care provider-identifiable data, from inspection, copying or receipt under the laws relating to open records.

The bill requires that DHFS develop, for data purchases, a data use agreement that specifies data use restrictions, appropriate uses of data and penalties for misuse, and that DHFS notify prospective and current data purchasers of the appropriate uses. Further, a purchaser of data must sign and have notarized the data use agreement.

Under the bill, DHFS may not require health care providers that are not hospitals or ambulatory surgery centers to submit uniform patient billing forms. These health care providers are prohibited from providing to DHFS certain data elements on uniform patient billing forms; a patient's telephone number; the employer's name or school name of the insured; data regarding insureds other than a payer category code; employer's name or school name of the patient; the patient's

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relationship to the insured; the insured's identification number or policy or group number; the insured's date of birth or sex; or the patient's marital, employment or student status. If this material is provided to DHFS, DHFS must immediately return it to the provider or remove and destroy it. Also, health care providers that are not hospitals or ambulatory surgery centers must convert the name of the insured's payer or other insured's payer to a DHFS payer category code before submission. All health care providers are prohibited from submitting to DHFS information that uses, as a patient account number, the patient's social security number or a number that is related to another patient identifying number. A patient's account number may be used by DHFS only for verification of data and must be destroyed after the verification.

Health care providers are, under the bill, immune from civil liability for releasing a prohibited data element when submitting data to DHFS and from an act or omission by DHFS that results in the release of data, unless the release is an intentional, wilful or reckless act or omission by the health care provider. State or local governmental health care providers are also excepted from discharge or suspension for a nonnegligent violation under laws relating to confidentiality of patient health care records.

The bill prohibits DHFS from selling or distributing databases from health care providers that are not hospitals or ambulatory surgery centers if the databases can be linked with the public use data files, without the approval of the independent review board.

The bill requires that two of the five representatives of health care providers required to be on the board on health care information be representatives of hospitals. Further, the bill requires that two of the five undesignated members of the board be employer purchasers of health care.

Lastly, the bill increases the penalty for intentional violation of certain limitations on release of health care information and protections of patient confidentiality.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 15.195 (6) of the statutes is amended to read:

2 15.195 (6) BOARD ON HEALTH CARE INFORMATION. There is created a board on
3 health care information which is attached to the department of health and family
4 services under s. 15.03. The board shall consist of 11 members, one of whom shall
5 be a record administrator, registered by the American Medical Record Association,

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1 ~~and; at least 2 of whom shall be employer purchasers of health care; and 5 of whom~~
2 ~~shall be or represent health care providers, including one registered nurse, licensed~~
3 ~~under s. 441.06, and 2 physicians, as defined in s. 448.01 (5), and 2 representatives~~
4 ~~of hospitals, as defined in s. 50.33 (2).~~ The State Medical Society of Wisconsin may
5 recommend board membership for 5 physicians, one of whom the governor shall
6 appoint. The members shall be appointed for 4-year terms.

7 **SECTION 2.** 15.195 (9) of the statutes is created to read:

8 15.195 (9) INDEPENDENT REVIEW BOARD. There is created an independent review
9 board that is attached to the department of health and family services under s. 15.03.
10 The board may not include an employe of the department of health and family
11 services and shall consist of the commissioner of insurance or his or her designee and
12 the following members appointed for 4-year terms:

13 (a) A statistician or researcher.

14 (b) A medical ethicist of the University of Wisconsin System or the Medical
15 College of Wisconsin.

16 (c) An expert in issues relating to privacy.

17 (d) A purchaser of health care.

18 **SECTION 3.** 146.84 (3) of the statutes is amended to read:

19 146.84 (3) DISCIPLINE OF EMPLOYES. Any person employed by the state, or any
20 political subdivision of the state who violates s. 146.82 or 146.83, except a health care
21 provider that negligently violates s. 153.50 (6) (c), may be discharged or suspended
22 without pay.

23 **SECTION 4.** 153.45 (1) (b) of the statutes is renumbered 153.45 (1) (b) 1. and
24 amended to read:

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1 153.45 (1) (b) 1. ~~Public~~ For information that is submitted by hospitals or
2 ambulatory surgery centers, public use data files which that do not permit the
3 identification of specific patients, employers or health care providers, as defined by
4 rules promulgated by the department. The identification of ~~these groups~~ patients,
5 employers or health care providers shall be protected by all necessary means,
6 including the deletion of patient identifiers and the use of calculated variables and
7 aggregated variables.

8 **SECTION 5.** 153.45 (1) (b) 2. of the statutes is created to read:

9 153.45 (1) (b) 2. For information that is submitted by health care providers
10 other than hospitals or ambulatory surgery centers, public use data files that do not
11 permit the identification of specific patients, employers or health care providers, as
12 defined by rules promulgated by the department. The identification of patients,
13 employers or health care providers shall be protected by all necessary means,
14 including the deletion of patient identifiers; the use of calculated variables and
15 aggregated variables; the specification of counties as to residence, rather than zip
16 codes; the use of 5-year categories for age, rather than exact age; not releasing
17 information concerning a patient's race or ethnicity or dates of admission, discharge,
18 procedures or visits; and masking sensitive diagnoses and procedures by use of
19 larger diagnostic and procedure categories. Public use data files under this
20 subdivision may include only the following:

21 a. The patient's county of residence.

22 b. The payment source, by type.

23 c. The patient's age category, by 5-year intervals up to age 80 and a category
24 of 80 years or older.

25 d. The patient's procedure code.

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- 1 e. The patient's diagnosis code.
- 2 f. Charges assessed with respect to the procedure code.
- 3 g. The name and address of the facility in which the patient's services were
4 rendered.
- 5 h. The patient's sex.
- 6 i. Information that contains the name of a health care provider that is not a
7 hospital or ambulatory surgery center, if the independent review board first reviews
8 and approves the release or if the department promulgates rules that specify
9 circumstances under which the independent review board need not review and
10 approve the release.
- 11 j. Calendar quarters of service, except if the department specifies by rule that
12 the number of data elements included in the public use data file is too small to enable
13 protection of patient confidentiality.
- 14 k. Information other than patient-identifiable data, as defined in s. 153.50 (1)
15 (b), as approved by the independent review board.

16 **SECTION 6.** 153.45 (1) (c) of the statutes is renumbered 153.45 (1) (c) (intro.) and
17 amended to read:

18 153.45 (1) (c) (intro.) Custom-designed reports containing portions of the data
19 under par. (b). Of information submitted by health care providers that are not
20 hospitals or ambulatory surgery centers, requests under this paragraph for data
21 elements other than those available for public use data files under par. (b) 2.,
22 including the patient's year of birth, require review and approval by the independent
23 review board before the data elements may be released. Information that contains
24 the name of a health care provider that is not a hospital or ambulatory surgery center
25 may be released only if the independent review board first reviews and approves the

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1 release or if the department promulgates rules that specify circumstances under
2 which the independent review board need not review and approve the release.
3 Reports under this paragraph may include the patient's zip code only if at least one
4 of the following applies:

5 **SECTION 7.** 153.45 (1) (c) 1. to 4. of the statutes are created to read:

6 153.45 (1) (c) 1. Other potentially identifying data elements are not released.

7 2. Population density is sufficient to mask patient identity.

8 3. Other potentially identifying data elements are grouped to provide
9 population density sufficient to protect identity.

10 4. Multiple years of data elements are added to protect identity.

11 **SECTION 8.** 153.45 (6) of the statutes is created to read:

12 153.45 (6) The department may not sell or distribute data bases of information,
13 from health care providers who are not hospitals or ambulatory surgery centers, that
14 are able to be linked with public use data files, unless first approved by the
15 independent review board.

16 **SECTION 9.** 153.50 (1) (a) of the statutes is renumbered 153.01 (2m).

17 **SECTION 10.** 153.50 (1) (b) of the statutes is renumbered 153.50 (1) (b) 1., and
18 153.50 (1) (b) 1. (intro.), as renumbered, is amended to read:

19 153.50 (1) (b) 1. (intro.) “Patient-identifiable data”, for information submitted
20 by hospitals and ambulatory surgery centers, means all of the following data
21 elements:

22 **SECTION 11.** 153.50 (1) (b) 2. of the statutes is created to read:

23 153.50 (1) (b) 2. “Patient-identifiable data”, for information submitted by
24 health care providers who are not hospitals or ambulatory surgery centers, means
25 all of the following data elements:

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- 1 a. Data elements specified in subd. 1. a. to g., L. and m.
- 2 b. Whether the patient's condition is related to employment, and occurrence
- 3 and place of an auto accident or other accident.
- 4 c. Date of first symptom of current illness, of current injury or of current
- 5 pregnancy.
- 6 d. First date of patient's same or similar illness, if any.
- 7 e. Dates that the patient has been unable to work in his or her current
- 8 occupation.
- 9 f. Dates of receipt by patient of medical service.
- 10 g. The patient's city, town or village.

11 **SECTION 12.** 153.50 (2) of the statutes is repealed.

12 **SECTION 13.** 153.50 (3) (b) 7. of the statutes is created to read:

13 153.50 (3) (b) 7. The patient's account number, after use only as verification of

14 data by the department.

15 **SECTION 14.** 153.50 (3) (c) of the statutes is created to read:

16 153.50 (3) (c) Develop, for use by purchasers of data under this chapter, a data

17 use agreement that specifies data use restrictions, appropriate uses of data and

18 penalties for misuse of data, and notify prospective and current purchasers of data

19 of the appropriate uses.

20 **SECTION 15.** 153.50 (3) (d) of the statutes is created to read:

21 153.50 (3) (d) Require that a purchaser of data under this chapter sign and have

22 notarized the data use agreement of the department specified in par. (c).

23 **SECTION 16.** 153.50 (3m) of the statutes is created to read:

24 153.50 (3m) HEALTH CARE PROVIDER MEASURES TO ENSURE PATIENT IDENTITY

25 PROTECTION. A health care provider that is not a hospital or ambulatory surgery

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1 center shall, before submitting information required by the department under this
2 chapter, convert to a payer category code as specified by the department any names
3 of an insured's payer or other insured's payer.

4 **SECTION 17.** 153.50 (4) (intro.) of the statutes is renumbered 153.50 (4) (am)
5 (intro.) and amended to read:

6 153.50 (4) (am) (intro.) Under Except as specified in par. (bm), under the
7 procedures specified in sub. (5), release of patient-identifiable data may be made
8 only to any of the following:

9 **SECTION 18.** 153.50 (4) (a) of the statutes is repealed.

10 **SECTION 19.** 153.50 (4) (b) to (e) of the statutes are renumbered 153.50 (4) (am)
11 1. to 4.

12 **SECTION 20.** 153.50 (4) (bm) of the statutes is created to read:

13 153.50 (4) (bm) Of information submitted by health care providers that are not
14 hospitals or ambulatory surgery centers, patient-identifiable data that contains a
15 patient's date of birth may be released under par. (am) only under circumstances as
16 specified by rule by the department.

17 **SECTION 21.** 153.50 (5) (a) (intro.) of the statutes is amended to read:

18 153.50 (5) (a) (intro.) The department may not release or provide access to
19 patient-identifiable data to a person authorized under sub. (4) ~~(a), (c), (d) or (e)~~ (am)
20 unless the authorized person requests the department, in writing, to release the
21 patient-identifiable data. The request shall include all of the following:

22 **SECTION 22.** 153.50 (5) (a) 3. of the statutes is amended to read:

23 153.50 (5) (a) 3. For a person who is authorized under sub. (4) ~~(a), (c) or (d)~~ (am)
24 to receive or have access to patient-identifiable data, evidence, in writing, that
25 indicates that authorization.

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1 **SECTION 23.** 153.50 (5) (a) 4. (intro.) of the statutes is amended to read:

2 153.50 (5) (a) 4. (intro.) For an entity that is authorized under sub. (4) (e) (am)
3 4. to receive or have access to patient-identifiable data, evidence, in writing, of all
4 of the following:

5 **SECTION 24.** 153.50 (5) (b) 3. of the statutes is amended to read:

6 153.50 (5) (b) 3. For a person who believes that he or she is authorized under
7 sub. (4) (am), the action provided under s. 19.37.

8 **SECTION 25.** 153.50 (6) of the statutes is renumbered 153.50 (6) (a).

9 **SECTION 26.** 153.50 (6) (b), (c), (d) and (e) of the statutes are created to read:

10 153.50 (6) (b) The department may not require under this chapter a health care
11 provider that is not a hospital or ambulatory surgery center to submit uniform
12 patient billing forms.

13 (c) A health care provider that is not a hospital or ambulatory surgery center
14 may not submit any of the following to the department under the requirements of
15 this chapter:

16 1. The data elements specified under sub. (3) (b).

17 2. The patient's telephone number.

18 3. The insured's employer's name or school name.

19 4. Data regarding insureds other than the patient, other than the payer
20 category code under sub. (3m).

21 5. The patient's employer's name or school name.

22 6. The patient's relationship to the insured.

23 7. The insured's identification number.

24 8. The insured's policy or group number.

25 9. The insured's date of birth or sex.

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1 10. The patient's marital, employment or student status.

2 (d) If a health care provider that is not a hospital or ambulatory surgery center
3 submits a data element that is specified in par. (c) 1. to 10., the department shall
4 immediately return this information to the health care provider or, if discovered
5 later, shall remove and destroy the information.

6 (e) A health care provider may not submit information that uses any of the
7 following as a patient account number:

8 1. The patient's social security number or any substantial portion of the
9 patient's social security number.

10 2. A number that is related to another patient identifying number.

11 **SECTION 27.** 153.55 of the statutes is amended to read:

12 **153.55 Protection of health care provider confidentiality.** ~~Health care~~
13 ~~provider-identifiable data~~ Data obtained under this chapter is not subject to
14 inspection, copying or receipt under s. 19.35 (1).

15 **SECTION 28.** 153.67 of the statutes is created to read:

16 **153.67 Independent review board.** The independent review board shall
17 review any request under s. 153.45 (1) (c) for data elements other than those
18 available for public use data files under s. 153.45 (1) (b). Unless the independent
19 review board approves such a request or unless independent review board approval
20 is not required under rules of the department promulgated under s. 153.45 (1) (c)
21 (intro.), the data elements requested may not be released.

22 **SECTION 29.** 153.76 of the statutes is created to read:

23 **153.76 Rule making by the independent review board.** Notwithstanding
24 s. 15.01 (1r), the independent review board may promulgate only those rules that are
25 first reviewed and approved by the board on health care information.

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1 **SECTION 30.** 153.85 of the statutes is amended to read:

2 **153.85 Civil liability.** ~~Any~~ Except as provided in s. 153.86, any person
3 violating s. 153.50 or rules promulgated under s. 153.75 (1) (a) is liable to the patient
4 for actual damages and costs, plus exemplary damages of up to \$1,000 for a negligent
5 violation and up to \$5,000 for an intentional violation.

6 **SECTION 31.** 153.86 of the statutes is created to read:

7 **153.86 Immunity from liability. (1)** A health care provider that submits
8 information to the department under this chapter is immune from civil liability for
9 all of the following:

10 (a) Any act or omission of an employe, official or agent of the health care
11 provider that results in the release of a prohibited data element while submitting
12 data to the department.

13 (b) Any act or omission of the department that results in the release of data.

14 **(2)** The immunity provided under this section does not apply to intentional,
15 wilful or reckless acts or omissions by an employe, official or agent of a health care
16 provider.

17 **SECTION 32.** 153.90 (1) of the statutes is amended to read:

18 **153.90 (1)** Whoever intentionally violates s. 153.45 (5) or 153.50 or rules
19 promulgated under s. 153.75 (1) (a) may be fined not more than ~~\$10,000~~ \$15,000 or
20 imprisoned for not more than ~~9 months~~ one year in the county jail or both.

21 **SECTION 33. Nonstatutory provisions.**

22 (1) INITIAL APPOINTMENTS OF INDEPENDENT REVIEW BOARD. Notwithstanding the
23 length of terms specified in section 15.195 (9) (intro.) of the statutes, as created by
24 this act, the initial members of the independent review board shall be appointed by

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1 the first day of the 4th month beginning after the effective date of this subsection for
2 the following terms:

3 (a) The purchaser of health care, for a term expiring on May 1, 2001.

4 (b) The medical ethicist and the privacy expert, for terms expiring on May 1,
5 2003.

6 (c) The statistician or researcher, for a term expiring on May 1, 2005.

7 (END)