



**STATE OF WISCONSIN
JOINT LEGISLATIVE COUNCIL**

REPORT NO. 2 TO THE 1999 LEGISLATURE

LEGISLATION ON CONFIDENTIALITY OF PATIENT RECORDS

1999 ASSEMBLY BILL 427, Relating to Defining "Record" for Purposes of Patient Health Care and Mental Health Confidentiality Statutes

1999 ASSEMBLY BILL 428, Relating to Penalties and Damages for Violations of Confidentiality Laws for Patient Health Care Records, Mental Health Court and Treatment Records, Human Immunodeficiency Virus Test Results and Insurer Personal Medical Information

Legislative Council Staff
August 17, 1999

One East Main Street, Suite 401
Madison, Wisconsin

RL 99-2

JOINT LEGISLATIVE COUNCIL
REPORT NO. 2 TO THE 1999 LEGISLATURE*

LEGISLATION ON CONFIDENTIALITY OF PATIENT RECORDS

CONTENTS

	<u>Page</u>
<u>PART I:</u> KEY PROVISIONS OF LEGISLATION; COMMITTEE AND JOINT LEGISLATIVE COUNCIL VOTES	3
A. 1999 Assembly Bill 427	3
B. 1999 Assembly Bill 428	3
<u>PART II:</u> COMMITTEE ACTIVITY	5
A. Assignment	5
B. Summary of Meetings	5
C. Staff Materials and Other Materials	7
<u>PART III:</u> BACKGROUND; DESCRIPTION OF BILLS	9
A. 1999 Assembly Bill 427	9
B. 1999 Assembly Bill 428	10
<u>APPENDIX 1:</u> LIST OF JOINT LEGISLATIVE COUNCIL MEMBERS	13
<u>APPENDIX 2:</u> LIST OF COMMITTEE MEMBERS	15
<u>APPENDIX 3:</u> LETTERS REGARDING NONSTATUTORY RECOMMENDATIONS OF THE COMMITTEE	17
<u>APPENDIX 4:</u> COMMITTEE MATERIALS	25

* This Report was prepared by Richard Sweet and Ronald Sklansky, Senior Staff Attorneys, Legislative Council Staff.

PART I

KEY PROVISIONS OF LEGISLATION; COMMITTEE
AND JOINT LEGISLATIVE COUNCIL VOTES

A. 1999 ASSEMBLY BILL 427, RELATING TO DEFINING "RECORD" FOR PURPOSES
OF PATIENT HEALTH CARE AND MENTAL HEALTH CONFIDENTIALITY STATUTES

• Definition of Record

Defines the term "record" for purposes of statutes that relate to mental health records and patient health care records. The term is defined to mean ". . . any material on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics."

• Votes

At its February 25, 1999 meeting, the Special Committee on Telemedicine Issues voted to recommend WLCS: 0032/1 by a vote of Ayes, 15 (Reps. Urban, Huber, Lasee, Meyer, Schneider, Seratti and Wieckert; Sen. Panzer; and Public Members Logan, Mielke, Pla, Rocheleau, Schwartzer, Trubek and Wickman); Noes, 0; and Absent, 6 (Sen. Shibilski; and Public Members Dankle, Dentice, Gorski, Knox and Steiner).

At its May 26, 1999 meeting, the Joint Legislative Council voted to introduce 1999 Assembly Bill 427 (WLCS: 0032/1) by a vote of Ayes, 14 (Sens. Risser, Erpenbach, Grobschmidt, Robson and Rosenzweig; and Reps. Kelso, Bock, Foti, Freese, Jensen, Krug, Schneider, Seratti and Stone); Noes, 0; and Absent, 8 (Sens. Burke, Chvala, Cowles, Ellis, George and Zien; and Reps. Gard and Huber).

B. 1999 ASSEMBLY BILL 428, RELATING TO PENALTIES AND DAMAGES FOR
VIOLATIONS OF CONFIDENTIALITY LAWS FOR PATIENT HEALTH CARE
RECORDS, MENTAL HEALTH COURT AND TREATMENT RECORDS, HUMAN
IMMUNODEFICIENCY VIRUS TEST RESULTS AND INSURER PERSONAL MEDICAL
INFORMATION

Modifies statutory provisions that provide penalties and damages for violations of statutes that relate to mental health records, general health care records, human immunodeficiency virus (HIV) test results and medical information held by insurers. The bill increases certain penalties and damages under those provisions and makes the penalties more uniform across the various statutes.

- Votes

At its February 25, 1999 meeting, the Special Committee on Telemedicine Issues voted to recommend WLCS: 0052/2 by a vote of Ayes, 15 (Reps. Urban, Huber, Lasee, Meyer, Schneider, Seratti and Wieckert; Sen. Panzer; and Public Members Logan, Mielke, Pla, Rocheleau, Schwartz, Trubek and Wickman); Noes, 0; and Absent, 6 (Sen. Shibilski; and Public Members Dankle, Dentice, Gorski, Knox and Steiner).

At its May 26, 1999 meeting, the Joint Legislative Council voted to introduce 1999 Assembly Bill 428 (WLCS: 0052/2) by a vote of Ayes, 14 (Sens. Risser, Erpenbach, Grobschmidt, Robson and Rosenzweig; and Reps. Kelso, Bock, Foti, Freese, Jensen, Krug, Schneider, Seratti and Stone); Noes, 0; and Absent, 8 (Sens. Burke, Chvala, Cowles, Ellis, George and Zien; and Reps. Gard and Huber).

PART II

COMMITTEE ACTIVITY

A. ASSIGNMENT

The Joint Legislative Council established the Special Committee and appointed the chairperson by a June 24, 1998 mail ballot. The Special Committee was directed to study issues arising from the electronic transfer of medical information for purposes of medical diagnosis, treatment, consultation and education between health care providers and institutions and other persons in separate locations, in order to provide technologically advanced medical services and to enhance access to otherwise unavailable medical care in rural and underserved areas. Issues to be considered by the Special Committee included regulation of providers (i.e., licensure and discipline), privacy, liability, reimbursement and patient access to enhanced medical services.

The membership of the Special Committee, appointed by a September 4, 1998 mail ballot, consisted of two Senators, seven Representatives and 12 Public Members. A list of the Committee membership is set forth in **Appendix 2**.

B. SUMMARY OF MEETINGS

The Special Committee held five meetings at the State Capitol in Madison on the following dates:

October 15, 1998
November 19, 1998
December 17, 1998

January 21, 1999
February 25, 1999

In addition, on December 17, 1998, the Special Committee received a demonstration of telemedicine techniques at the University Hospital and Clinics (University Hospital) prior to its afternoon meeting in the State Capitol.

At the October 15, 1998 meeting, the Special Committee reviewed a Staff Brief and other materials containing information on state laws and practices related to telemedicine. The Special Committee also received testimony from Wayne Austin (Department of Regulation and Licensing (DRL)), Sharon Zunker (Department of Corrections), Peter Farrow (Office of the Commissioner of Insurance) and Dr. Richard Carr (Division of Health Care Financing, Department of Health and Family Services). The speakers described the regulation and practice of telemedicine in Wisconsin.

At the November 19, 1998 meeting, the Special Committee received testimony from Dr. Gary Wendt (Department of Radiology, University of Wisconsin (UW) Medical School), Dr. Armond Start (Department of Family Medicine, UW Medical School), Carole Doeppers (American Civil Liberties Union of Wisconsin), Thomas Neumann (DRL) and Jody McCann

(Department of Administration (DOA)). Dr. Wendt and Dr. Start discussed the use of telemedicine procedures both at the UW Medical School and through the delivery of medical care at Wisconsin correctional institutions. Ms. Doeppers discussed privacy concerns that are inherent in the provision of medical services through telecommunications devices. Mr. Neumann described the Interstate Nurse Licensure Compact and how Wisconsin nursing practice would be affected if Wisconsin adopts the Compact. Mr. McMann described BadgerNet, a state-implemented telecommunications system that is intended to lower the costs of high-speed telephone, video and data transfer, increase the availability of the high-speed network to remote locations in Wisconsin, shorten the term length of state voice and network contracts, and improve the availability of high-speed video and data connections for Wisconsin educational institutions.

At the December 17, 1998 meeting, the Special Committee received a demonstration of telemedicine techniques at the University Hospital and Clinics. Making use of a mock patient, the doctors at the University Hospital and Waupan Correctional Institution examined an inmate and discussed his physical condition. The Special Committee also received a demonstration involving a video link between the University Hospital and the Gunderson Lutheran/La Crosse Clinic. The physicians conducted a tumor board. At the afternoon session of its meeting, the Special Committee received testimony from Gary Evenson, Public Service Commission (PSC), regarding the Universal Service Fund program and the amount of funding available under the program for telemedicine services. Finally, the members of the Special Committee discussed a series of issues to address at future meetings.

At the January 21, 1999 meeting, the Special Committee received testimony from Phil Hodapp, DOA, regarding Internet security and electronic signature issues. The Special Committee also considered a summary of recommendations offered for Committee discussion and examined issues such as licensure of an individual providing medical services through telecommunications, the care of patients receiving services through telecommunications and privacy of medical records. The Special Committee also reviewed ongoing regulation of prescriptions over the Internet, health insurance coverage for telemedicine services and expenditures from the PSC's Universal Service Fund.

At the February 25, 1999 meeting, the Special Committee approved letters to the Medical Examining Board (MEB) and other health-related licensing boards in DRL to encourage the review and revision of current licensing procedures and standards of conduct in accordance with the burgeoning practice of telemedicine. Another letter was approved to the MEB, Pharmacy Examining Board, Department of Agriculture, Trade and Consumer Protection and Department of Justice requesting these agencies to ensure that certain medication is not prescribed to Wisconsin residents over the Internet. Finally, the Special Committee approved a letter to the Joint Committee on Finance that requested an allocation of \$500,000 to fund telecommunications equipment purchases for underserved nonprofit clinics. (The Joint Committee on Finance subsequently approved a motion to include \$500,000 per year in the 1999-2001 Biennial Budget Bill to provide assistance to nonprofit medical clinics and public health agencies to purchase telecommunications equipment.) Copies of the three letters are included in **Appendix 3**.

With respect to proposed legislation, the Special Committee approved WLCS: 0032/1 to create a more expansive definition of the term "record" in statutes dealing with confidentiality of

health care records. The Special Committee also approved WLCS: 0052/2 to increase and make uniform civil and criminal penalties for disclosure of protected health care records. Finally, the Special Committee discussed a number of variations regarding licensure and proposed three bill drafts to be considered by the members through a mail ballot. By a mail ballot dated March 29, 1999, the Special Committee approved WLCS: 0081/1, relating to creating a nonresident physician license. (The first two drafts were introduced by the Joint Legislative Council at its May 26, 1999 meeting. WLCS: 0081/1 was held over for a subsequent meeting of the Joint Legislative Council.)

C. STAFF MATERIALS AND OTHER MATERIALS

Appendix 4 lists all of the materials received by the Special Committee on Telemedicine Issues. In addition to these listed materials, Legislative Council Staff prepared several bill drafts for the Special Committee and a summary of each of the Special Committee meetings. The following document, prepared by the Legislative Council Staff, may be of particular interest to persons interested in the work of the Committee:

- Staff Brief 98-7, *Wisconsin Laws and Other Information Relating to Telemedicine* (October 8, 1998).

PART III

BACKGROUND: DESCRIPTION OF BILLS

This Part of the Report provides background information on, and a description of, the bills recommended by the Special Committee on Telemedicine Issues, as introduced by the Joint Legislative Council.

A. 1999 ASSEMBLY BILL 427, RELATING TO DEFINING "RECORD" FOR PURPOSES OF PATIENT HEALTH CARE AND MENTAL HEALTH CONFIDENTIALITY STATUTES

1. Background

Current Wisconsin law contains provisions that relate to access to, and confidentiality of, mental health records. [s. 51.30, Stats.] In addition, current law contains provisions that relate to access to, and confidentiality of, general patient health care records. [ss. 146.81 to 146.84, Stats.] These statutes use the term "record," but do not specify the format of the records that are covered by the statutes. The Special Committee felt that it was important that these statutes be clarified to specify that they apply to more than just paper records, and therefore cover such formats as videotapes, audio cassette tapes and computerized records. The intent of the definition in the bill is to ensure that the confidentiality laws cover all formats for patient records.

2. Description of the Bill

Assembly Bill 427 creates a definition of "record" for purposes of the statutes that relate to mental health records and general patient health care records. Under the bill, the term "record" is defined as ". . . any material on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics." This definition is based on language currently contained in the state's Open Records Law.

B. ASSEMBLY BILL 428, RELATING TO PENALTIES AND DAMAGES FOR VIOLATIONS OF CONFIDENTIALITY LAWS FOR PATIENT HEALTH CARE RECORDS, MENTAL HEALTH COURT AND TREATMENT RECORDS, HUMAN IMMUNODEFICIENCY VIRUS TEST RESULTS AND INSURER PERSONAL MEDICAL INFORMATION

1. Background

The Special Committee discussed the importance of confidentiality of health care records, both in general and in the specific area of telemedicine. The Committee reviewed statutes that provide penalties and damages for violations of statutes that relate to mental health records, general patient health care records, HIV test results and medical information held by

insurers. The Committee determined that penalties and damages should be increased and made more uniform across the various statutes that deal with confidentiality. This bill modifies those statutes.

2. Description of the Bill

a. Mental Health Records

Current s. 51.30, Stats., provides for confidentiality of, and access to, mental health records. Current sub. (9) provides that a person violating the statutes is liable to any person damaged by a result of the violation for such damages as may be proved, together with exemplary damages of not less than \$200 for each violation and such costs and reasonable actual attorney fees as may be incurred. The custodian incurs no liability for release of records in accordance with the statute while acting in good faith. In addition, if the violator acted in a manner that is knowing and wilful, the violator is liable for exemplary damages of not less than \$1,000 for each violation. Assembly Bill 428 modifies the provision that allows for exemplary damages of not less than \$200 to provide instead for exemplary damages of not more than \$10,000. In addition, the provision that allows for exemplary damages of not less than \$1,000 for knowing and wilful violations is modified to state that the exemplary damages may not be more than \$25,000.

Current sub. (10) provides criminal penalties for a person who: (1) requests or obtains confidential information under false pretenses; (2) discloses confidential information with the knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm; or (3) violates the provision regarding intentionally falsifying a record, concealing or withholding a record or intentionally destroying or damaging records. The current penalty for a person who does so is a fine of not more than \$1,000, imprisonment for not more than six months, or both. This bill modifies the penalties to be a fine of not more than \$25,000, imprisonment for not more than nine months, or both. The bill also creates a new provision that states that whoever negligently discloses confidential information is subject to a forfeiture of not more than \$1,000.

b. Patient Health Care Records

Current ss. 146.81 to 146.84, Stats., set forth general provisions related to confidentiality of, and access to, patient health care records. Current s. 146.84, Stats., relates to damages and penalties for violations of those statutes. Current sub. (1) (b) provides that any person who violates the statutes in a manner that is knowing and wilful is liable to the person injured as a result of the violation for actual damages and exemplary damages of \$1,000. This bill modifies the statutory provision to state that the person is liable for actual damages, exemplary damages of not more than \$25,000 and costs and reasonable actual attorney fees. The bill also creates a new provision that states that any person who negligently violates those statutes is liable for actual damages, exemplary damages of not more than \$10,000 and costs and reasonable attorney fees.

Current sub. (2) provides criminal penalties for a person who: (1) requests or obtains confidential information under false pretenses; (2) discloses confidential information with the knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm; or (3) violates the provision regarding intentionally falsifying a patient health care record, concealing or withholding a patient health care record or intentionally destroying or damaging health care records. The current penalty for a person who does so is a fine of not more than \$1,000, imprisonment for not more than six months, or both. The bill modifies the penalties to be a fine of not more than \$25,000, imprisonment for not more than nine months, or both. The bill also creates a new provision that states that whoever negligently discloses confidential information is subject to a forfeiture of not more than \$1,000.

c. HIV Test Results

Current s. 252.15, Stats., sets forth provisions regarding informed consent for HIV tests and confidentiality of, and access to, test results. Current sub. (8) states that whoever violates those provisions is liable to the subject of the test 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. The bill modifies the statutory provision to state that the person is liable to the test subject for actual damages, costs and reasonable actual attorney fees, plus exemplary damages of up to \$10,000 for a negligent violation and up to \$25,000 for an intentional violation.

Current sub. (9) states that whoever intentionally discloses HIV test results in violation of the statutes and thereby causes bodily harm or psychological harm to the test subject may be fined not more than \$10,000, imprisoned for not more than nine months, or both. This bill modifies the amount of the fine to be not more than \$25,000. In addition, the bill provides that whoever negligently discloses the results of an HIV test in violation of the statute is subject to a forfeiture of not more than \$1,000. The bill also creates a provision, similar to provisions in current law regarding mental health records and general patient health care records, that states that an employe of the state or a political subdivision of the state who violates s. 252.15, Stats., may be discharged or suspended without pay.

d. Insurer Records

Current s. 610.70, Stats., relates to disclosure of personal medical information by insurers. Current sub. (7) states that any person who knowingly and wilfully obtains information about an individual from an insurer or insurance support organization under false pretenses may be fined not more than \$10,000, imprisoned for not more than one year in the county jail, or both. This bill modifies the penalty to provide that such a person may not be fined more than \$25,000, imprisoned for not more than nine months, or both. In addition, the bill creates a provision that states that such a person is liable to the individual for actual damages, exemplary damages of not more than \$25,000 and costs and reasonable actual attorney fees.

JOINT LEGISLATIVE COUNCIL

s. 13.81, Stats.

OFFICERS

Cochairperson

FRED A. RISSER
Senate President
5008 Risser Road
Madison 53705-1365

Cochairperson

CAROL KELSO
Assembly Representative
416 East Le Capitaine Circle
Green Bay 54302-5153

SENATORS

BRIAN BURKE
2029 North 51st Street
Milwaukee 53208-1747

GARY R. GEORGE
1100 West Wells St., #1711
Milwaukee 53233-2326

CHARLES J. CHVALA
1 Coach House Drive
Madison 53714-2718

RICHARD GROBSCHMIDT
912 Lake Drive
South Milwaukee 53172-1736

ROBERT L. COWLES
300 W. Saint Joseph St., #23
Green Bay 54301-2048

JUDITH ROBSON
2411 East Ridge Road
Beloit 53511-3922

MICHAEL G. ELLIS
1752 County Road GG
Neenah 54956-9730

PEGGY ROSENZWEIG
6236 Upper Parkway North
Wauwatosa 53213-2430

JON ERPENBACH
2385 Branch Street
Middleton 53562-2808

DAVID ZIEN
1716 63rd Street
Eau Claire 54703-6857

REPRESENTATIVES

PETER BOCK
4710 West Bluemound Road
Milwaukee 53208-3648

SCOTT R. JENSEN
850 South Springdale Road
Waukesha 53186-1402

STEVEN FOTI
1117 Dickens Drive
Oconomowoc 53066-4316

SHIRLEY KRUG
6105 West Hope Avenue
Milwaukee 53216-1226

STEPHEN J. FREESE
310 East North Street
Dodgeville 53533-1200

MARLIN D. SCHNEIDER
3820 Southbrook Lane
Wisconsin Rapids 54494-7548

JOHN GARD
481 Aubin St., PO Box 119
Peshtigo 54157-0119

LORRAINE M. SERATTI
HC-2, Box 558
Florence 54121-9620

GREGORY HUBER
406 South 9th Avenue
Wausau 54401-4541

JEFF STONE
7424 West Forest Home Ave.
Greenfield 53220-3358

David J. Stute, Director, Legislative Council Staff
1 East Main Street, Suite 401, P.O. Box 2536, Madison, Wisconsin 53701-2536

**TELEMEDICINE ISSUES,
SPECIAL COMMITTEE ON**

Chairperson

FRANK URBAN
Representative
3645 Emberwood Drive
Brookfield 53005-2388

OFFICERS

Secretary
GREGORY HUBER
Representative
406 South 9th Avenue
Wausau 54401-4541

Vice Chairperson

MARY PANZER
Senator
635 Tamarack Drive West
West Bend 53095-3653

FRANK LASEE
1735 Keehan Lane
Bellevue 54311-6401

MARK MEYER
920 South 16th Street
LaCrosse 54601-4903

REPRESENTATIVES

MARLIN D. SCHNEIDER
3820 Southbrook Lane
Wisconsin Rapids 54494-7548

LORRAINE SERATTI
HC-2 Box 558
Florence 54121-9620

STEVE WIECKERT
3038 North Ballard
Appleton 54911-8710

SENATOR

KEVIN SHIBILSKI
457 West Scenic Circle Drive
Stevens Point 54481-8957

PUBLIC MEMBERS

STEVEN K. DANKLE, M.D.
Chair, State Medical Society
Governmental Affairs Comm.
2801 W. Kinnickinnic River
Pkwy., Suite 345
Milwaukee 53215-3678

M. ANGELA DENTICE
Attorney, Cannon & Dunphy, S.C.
P.O. Box 1750
Brookfield 53008-1750

CARLA GORSKI
Health Information Specialist
Rural WI Health Cooperative
724 Water Street
Sauk City 53583-1449

MERRITT KNOX
Dean, College of Nursing
UW-Oshkosh
800 Algoma Blvd.
Oshkosh 54901-8660

DONALD LOGAN, M.D.
Medical Director
Dean Health System
1313 Fish Hatchery Road
Madison 53715-1993

JOHN MIELKE, M.D.
Cardiologist; Director of Medical-
Comm. Rel., United Health of WI
820 East Grant Street
Appleton 54911-3490

FREDERIC PLA
Marketing Manager, Digital Detector
Technologies, GE Medical Systems
P.O. Box 414 W320
Milwaukee 53201-0414

JOHN ROCHELEAU
Team Leader, Telehealth
Bellin Health System
744 South Webster Avenue
Green Bay 54305-2300

DAN SCHWARTZER
Regional Director
Associates for Health Care
2810 Crossroads Dr., Ste. 3100
Madison 53704-7945

GARITH STEINER
Administrator, Vernon
Memorial Hospital
507 South Main Street
Viroqua 54665-2096

LOUISE TRUBEK
UW-Madison Law School
975 Bascom Mall
Madison 53706-1301

MICHAEL WICKMAN
President, Information
Management Corporation
1030 Ontario Road
Green Bay 54308-8408

STUDY ASSIGNMENT: The Committee is directed to study issues arising from the electronic transfer of medical information for purposes of medical diagnosis, treatment, consultation and education between health care providers and institutions and other persons in separate locations, in order to provide technologically advanced medical services and to enhance access to otherwise unavailable medical care in rural and underserved areas. Issues to be considered by the Special Committee include regulation of providers (i.e., licensure and discipline), privacy, liability, reimbursement and patient access to enhanced medical services. The Special Committee shall report its recommendations to the Joint Legislative Council by May 1, 1999. [Based on a May 7, 1998 letter from Reps. Frank Urban, Scott Jensen, Gregg Underheim, Sheldon Wasserman, Robert Goetsch, David Cullen, Frank Lasee, Doris Hanson, Mark Meyer and James Baumgart.]

Established and Chairperson appointed by a June 24, 1998 mail ballot; members appointed by a September 4, 1998 mail ballot.

21 MEMBERS: 2 Senators; 7 Representatives; and 12 Public Members.

LEGISLATIVE COUNCIL STAFF: Richard Sweet, Senior Staff Attorney; Ron Sklansky, Senior Staff Attorney; Dan Schmidt, Analyst; and Tracey Uselman, Administrative Staff.

**LETTERS REGARDING NONSTATUTORY
RECOMMENDATIONS OF THE COMMITTEE**

State of Wisconsin
JOINT LEGISLATIVE COUNCIL

Special Committee on
Telemedicine Issues
Representative Urban
Chairperson



Committee Staff:
One East Main Street, Suite 401
P.O. Box 2536
Madison, WI 53701-2536
Telephone: (608) 266-1304
Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

March 9, 1999

Mr. Timothy Burns, Chairperson
Board of Nursing

Dr. Terry Freitag, Chairperson
Chiropractic Examining Board

Dr. Mark Curran, Chairperson
Dentistry Examining Board

Ms. Susan Kasik-Miller, Chairperson
Dieticians Affiliated Credentialing Board

Dr. Glenn Hoberg, Chairperson
Medical Examining Board

Dr. John Carns, Vice Chairperson
Optometry Examining Board

Mr. Daniel Luce, Chairperson
Pharmacy Examining Board

Mr. Michael Edwards, Chairperson
Physical Therapists Affiliated Credentialing Board

Dr. Stephen Seaman, Chairperson
Psychology Examining Board

Dr. Lisa Garcia Reinicke, Chairperson
Podiatrists Affiliated Credentialing Board

Dr. Gerard Kupperman, Chairperson
Hearing and Speech Examining Board

Mr. Douglas Knight, Chairperson
Joint Board of Social Workers, Marriage and
Family Therapists and Professional Counselors

Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Dear Chairpersons:

This letter is written on behalf of the Joint Legislative Council's Special Committee on Telemedicine Issues. The Committee is directed to study issues arising from the electronic transfer of medical information for purposes of medical diagnosis, treatment, consultation and education between health care providers and institutions and other persons in separate locations, in order to provide technologically advanced medical services and to enhance access to otherwise unavailable medical care in rural and underserved areas. The Committee is considering

such issues as regulation of providers, privacy, liability, reimbursement and patient access to enhanced medical services.

In light of the burgeoning practice of telemedicine in Wisconsin and throughout the United States, the Committee requests that your board review and revise current licensing procedures and standards of conduct in accordance with the current practice of telemedicine. It is of particular concern to the Committee that patients receiving health care services through a telecommunication device or devices not be left unattended or under the care of an individual who is not able to provide immediate medical attention, if necessary. It is also important to the Committee that the development of technical standards, which will ensure the privacy and security of medical data and the quality of transmissions, are established in compliance with currently accepted standards in the health care fields.

In addition to a review of current procedures relative to telemedicine, the Committee urges your board to continue to monitor the progress of telemedicine in an effort to provide periodic upgrading of procedural and technical standards for this rapidly developing field. I would appreciate a response indicating how your board intends to address these issues associated with the practice of telemedicine.

Thank you for your consideration and assistance.

Sincerely,

Representative Frank Urban, Chairperson
Special Committee on Telemedicine
Issues

FU:tl;wu

State of Wisconsin
JOINT LEGISLATIVE COUNCIL

Special Committee on
Telemedicine Issues
Representative Urban
Chairperson



Committee Staff:
One East Main Street, Suite 401
P.O. Box 2536
Madison, WI 53701-2536
Telephone: (608) 266-1304
Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

March 19, 1999

Honorable James E. Doyle,
Attorney General
Room 114 East
State Capitol
Madison, WI 53702

Mr. Ben Brancel, Secretary
Department of Agriculture, Trade and
Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911

Dr. Glenn Hoberg
Chairperson
Medical Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Mr. Daniel Luce, Chairperson
Pharmacy Examining Board
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Dear Attorney General Doyle, Secretary Brancel, Dr. Hoberg and Mr. Luce:

This letter is written on behalf of the Joint Legislative Council's Special Committee on Telemedicine Issues. The Committee is directed to study issues arising from the electronic transfer of medical information for purposes of medical diagnosis, treatment, consultation and education between health care providers and institutions and other persons in separate locations, in order to provide technologically advanced medical services and to enhance access to otherwise unavailable medical care in rural and underserved areas. The Committee is considering such issues as regulation of providers, privacy, liability, reimbursement and patient access to enhanced medical services.

The concern that the Committee would like to bring to your attention is the use of the Internet to prescribe and sell medication, particularly Viagra, to persons who do not already have a prescription for the medication and who do not establish a legitimate physician/patient or other provider/patient relationship with the operator of the Internet website. One such website is operated by WorldWideMedicine, Inc., with the address of "<http://www.worldwidemedicine.com>". The site offers an online consultation, described as follows:

There is a fee of \$85 for this online consultation. An area at the bottom of the form in **Part 1** is provided so that you may enter

your credit card information. Your medical history and patient profile will be reviewed by one of our physicians. These doctors are members of the WorldWide Physicians Association. If required, we will direct you to a member in your area/state/country.

The website does not indicate that there is any direct contact required between the physician and the patient, either in person or by telephone or other means. This is of concern to the Committee and we would appreciate your agencies working together to investigate whether any Wisconsin laws have been violated regarding unauthorized practice of medicine, unauthorized practice of pharmacy or consumer protection.

There is an additional notation on the WorldWide Medicine website that states as follows:

We are unable to fill prescriptions for anyone living in Nevada, Wyoming or Connecticut at this time.

If you ascertain any violation of Wisconsin law by operation of this website or prescribing Viagra, we request that you contact the operators of the website and direct them to also include the State of Wisconsin in the notation.

The Committee also requests that you determine whether there are other websites that operate in a similar fashion and that may have violated one or more Wisconsin laws. If there are such websites, we would like you to attempt to bring them into compliance with Wisconsin law. In addition, the Committee requests that you monitor the Internet on a continuous basis to determine whether there are any websites operating in violation of Wisconsin laws that relate to unauthorized practice of medicine, unauthorized practice of pharmacy or consumer protection.

Please note that the Committee is not raising any concerns with regard to patients in Wisconsin who have a prescription and purchase their medication from out-of-state pharmacies. Rather, the Committee is concerned about patients in Wisconsin who do not have a prescription and obtain a prescription through the Internet without the establishment of a legitimate relationship between the patient and a person authorized to prescribe medication.

Thank you for your consideration and assistance and I look forward to receiving your response to the recommendations in this letter.

Sincerely,

Representative Frank Urban, Chairperson
Special Committee on Telemedicine Issues

FU:tl;wu

State of Wisconsin
JOINT LEGISLATIVE COUNCIL

**Special Committee on
Telemedicine Issues**
*Representative Urban
Chairperson*



Committee Staff:
One East Main Street, Suite 401
P.O. Box 2536
Madison, WI 53701-2536
Telephone: (608) 266-1304
Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

April 19, 1999

Senator Brian Burke, Cochairperson
Joint Finance Committee
Room 316 South
State Capitol
Madison, WI 53701

Representative John Gard, Cochairperson
Joint Finance Committee
Room 315 North
State Capitol
Madison, WI 53701

Dear Cochairpersons Burke and Gard:

This letter is written on behalf of the Joint Legislative Council's Special Committee on Telemedicine Issues. The Committee is directed to study issues arising from the electronic transfer of medical information for purposes of medical diagnosis, treatment, consultation and education between health care providers and institutions and other persons in separate locations, in order to provide technologically advanced medical services and to enhance access to otherwise unavailable medical care in rural and underserved areas. The Committee is considering such issues as regulation of providers, privacy, liability, reimbursement and patient access to enhanced medical services.

At its meeting on December 17, 1998, the Committee received testimony from Mr. Gary Evenson, of the Public Service Commission, regarding the Universal Service Fund program. Mr. Evenson stated that the purpose of the Universal Service Fund, in part, is to promote affordable access to telecommunications. However, he indicated that while there is an \$8 million annual appropriation of program revenue for the Universal Service Fund, the Public Service Commission has not expended nearly the amount appropriated. For example, Mr. Evenson stated that with respect to the Institutional Discount Program, \$750,000 at most will be spent in the next three years. According to Mr. Evenson, this may be due to a lack of awareness of the programs and its benefits.

In view of the unexpended balance in the Universal Service Fund and the relative obscurity in which the program operates, the Committee urges the Public Service Commission to actively promote the Universal Service Fund program and to seek out applicants who wish to improve the services that telemedicine can provide. The Universal Service Fund should be

actively promoted to achieve the results intended by the Legislature when it enacted amendments to ch. 196, Stats., affecting the telecommunications industry. In addition, it appears that the lack of interest in the Universal Service Fund funding and the Institutional Discount Program specifically, has induced the Governor to eliminate the Institutional Discount Program in its entirety.

The Committee on Telemedicine Issues believes that Universal Service Fund moneys should continue to be used to further the goals of advancing health care through telecommunications. The Committee proposes that the Joint Committee on Finance add a section to ch. 196, Stats., creating a program to provide telecommunications equipment discounts for nonprofit clinics and public health agencies. We further recommend that the Committee provide \$500,000 in each fiscal year of the 1999-2001 biennium to fund this program.

If maintaining \$500,000 for this is not a viable alternative, the Committee requests that the Joint Committee on Finance increase Universal Service Fund assessments to telecommunications providers by \$500,000 to provide funds for this program.

Thank you for your consideration and assistance.

Sincerely,

Representative Frank Urban
Chairperson, Special Committee on
Telemedicine Issues

FU:tlu;ksm

cc: Governor Tommy Thompson
Mark Bugher, Secretary, Department of Administration
Robert Lang, Legislative Fiscal Bureau
Gary Evenson, Assistant Administrator,
Telecommunications Division, Public Service
Commission

APPENDIX 4

COMMITTEE MATERIALS

Staff Materials

1. Staff Brief 98-7, *Wisconsin Laws and Other Information Relating to Telemedicine* (October 8, 1998).
2. Memo No. 1, *Federal Legislation Relating to Privacy of Medical Information* (December 14, 1998).
3. Memo No. 2, *Summary of Recommendations Offered for Committee Discussion* (January 14, 1999).
4. Memo No. 3, *Attached State Statutes Related to Confidentiality of Health Care Records* (February 10, 1999).
5. Memo No. 4, *Description of Drafts Submitted for Mail Ballot* (March 29, 1999).
6. Letter, from Representative Frank Urban, Chairperson, to various examining boards in the Department of Regulation and Licensing (DRL) (March 9, 1999).
7. Letter, from Representative Frank Urban, Chairperson, to Attorney General James E. Doyle; Secretary Ben Brancel, Department of Agriculture, Trade and Consumer Protection; Dr. Glenn Hoberg, Chairperson, Medical Examining Board; and Daniel Luce, Chairperson, Pharmacy Examining Board (March 19, 1999).
8. Letter, from Representative Frank Urban, Chairperson, to Senator Brian Burke and Representative John Gard, Cochairpersons, Joint Committee on Finance (April 19, 1999).

Other Materials

1. 1997 Assembly Bill 855, relating to licensing requirements for nonresident physician consultants (undated).
2. *A Model Act to Regulate the Practice of Medicine Across State Lines: An Introduction and Rationale*, by the Ad Hoc Committee on Telemedicine, Federation Bulletin (1996).
3. Gobis, Linda, *An Overview of State Laws and Approaches to Minimize Licensure Barriers* (undated).
4. "Telemedicine: Promising Tool or Pandora's Box?," *WMJ* (January 1998).
5. Testimony submitted by Wayne R. Austin, DRL (October 15, 1998).
6. Testimony submitted by Richard Carr, Chief Medical Officer, Division of Health Care Financing, Department of Health and Family Services (DHFS) (October 15, 1998).

7. Testimony submitted by Peter Farrow, Assistant Deputy Commissioner of Insurance (October 15, 1998).
8. *Overview of Telemedicine Project in DOC*, submitted by Department of Corrections (DOC) (undated).
9. *Use of Telemedicine Technology in Correctional Facilities*, National Commission on Correctional Health Care, submitted by the DOC (undated).
10. "A Cyber Revolt in Health Care," *Business Week* (October 19, 1998).
11. *WiscRisk*, a quarterly publication of the State of Wisconsin Patients Compensation Fund (Fall 1998).
12. *Recommendations for Telemedicine Practices*, Physicians Insurance Association of America (1998).
13. Letter and attached statements from David A. Goodman, M.D., Medical Director, Concentra Medical Centers (October 5, 1998).
14. Four items submitted by Tom Neumann, Wisconsin Board of Nursing, and Immediate Past President of the National Council of State Boards of Nursing:
 - a. *Interstate Compact on Nurse Licensure, Questions and Answers*, National Council of State Boards of Nursing (May 1998).
 - b. *Boards of Nursing Adopt Revolutionary Change for Nursing: Mutual Recognition Model of Nursing Regulation*, National Council of State Boards of Nursing (August 25, 1997).
 - c. *Why is National Council Considering Mutual Recognition as a New Model for Nurse Licensure?*, National Council of State Boards of Nursing, (January 1998).
 - d. *Utah is First to Adopt Into Law the Concept of Mutual Recognition for Nursing Regulation*, National Council of State Boards of Nursing (April 3, 1998).
15. Carrington, Catherine, "Keeping Data Safe: New HIPAA Regs Hit Hard," *Telehealth Magazine* (October 1998).
16. "ACR Standard for Teleradiology," *American College of Radiology* (1998).
17. Correspondence Memorandum, from Marlene Cummings, Secretary, DRL (November 13, 1998) and attached report, *Telehealth Conference Report*, DRL (December 1998).
18. Slides submitted by Gary Wendt, M.D., Director of Radiology Information Systems, Department of Radiology, University of Wisconsin-Madison (undated).

19. Overheads submitted by Jody McCann, Department of Administration, DOA (November 19, 1998).
20. *Nurse Licensure Compact, Articles I-XI* (November 6, 1998).
21. *Telemedicine Consultation--A Win-Win Situation, Pilot Project Linking UWHC and the Medical Clinic at the Waupun Correctional Institution* (undated).
22. *Telemedicine System Enhances Inmate Healthcare While Saving Money and Increasing Public Safety* (undated).
23. Letter, from Carole M. Doeppers, Director, Wisconsin Data Privacy Project, American Civil Liberties Union of Wisconsin (November 18, 1998).
24. Agenda, UW Health Telemedicine Demonstration (December 17, 1998).
25. Letter, from Carl Eisenberg and Scott Novogoratz, Advanced Healthcare, S.C., Support Services Center (undated).
26. Handout, submitted by Gary A. Evenson, Public Service Commission (undated).
27. Draft Statement on Telemedicine, prepared by the Center for Public Representation (December 1998).
28. Recommendations submitted by Merritt Knox (January 6, 1999).
29. Recommendations submitted by Representative Mark Meyer (January 6, 1999).
30. Recommendations submitted by John Rocheleau (January 7, 1999).
31. Recommendations submitted by Dr. Steven Dankle (January 10, 1999).
32. Recommendations submitted by M. Angela Dentice (January 11, 1999).
33. Recommendations submitted by Frederic Pla, Ph.D. (January 21, 1999).
34. Map of Wisconsin health professional loan assistance program practice areas, Wisconsin Office of Rural Health (April 1998).
35. Slide presentation submitted by Phil Hodapp, DOA (January 21, 1999).
36. Memorandum, from Representative Mark Meyer (January 28, 1999).
37. Material relating to telemedicine issues, including statutes, pending legislation, licensure and confidentiality, collected by Barbara K. Boyer of Michael, Best and Friedrich (undated).
38. Federal Register, *Security and Electronic Signature Standards; Proposed Rule*, Part III, Department of Health and Human Services (August 12, 1998).

39. Memorandum, to Chief Executive Officers and Chief Information Officers of all National Banks, General Managers of Federal Branches and Agencies, Deputy Comptrollers, Department and Division Heads, and Examining Personnel, from Emory W. Rushton, Office of the Comptroller of Currency (August 24, 1998).

40. Memorandum, from Peter Farrow, Assistant Deputy Commissioner, Office of the Commissioner of Insurance (February 25, 1999).

41. Memorandum, from Frederic G. Pla, Ph.D. (February 25, 1999).

42. Executive Budget 1999-2001, Tommy G. Thompson, Governor (undated).

43. Chapter 448, Stats., Medical Practices (undated).