



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 993

**Assembly Substitute
Amendment 2 and Assembly
Amendment 1 to the Substitute
Amendment**

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Assembly Substitute Amendment 2 provides that, with certain exceptions, specified records and information relating to quality improvement activities are confidential and privileged; are not subject to discovery, subpoena, or other means of legal compulsion requiring release or permitting inspection, including compulsion by a state agency; and are not admissible as evidence in any civil, criminal, or other judicial or administrative proceeding.

The substitute amendment defines “quality improvement activity” as an evaluation, review, study, assessment, investigation, recommendation, monitoring, corrective action, adverse action, or any other action relating to various subjects, including quality of care, morbidity and mortality, qualification or competence of health care entities, cost or use of health care services, compliance with legal, ethical, or behavioral standards for a health care entity, compliance with credentialing or accreditation standards, and the accreditation, licensure, registration, certification, approval, or credentialing of a health care entity.

Under the substitute amendment, the term “health care entity” is defined broadly to include health care providers, as defined in s. 146.81 (1), Stats.; a number of other enumerated types of health care providers; any other person who is licensed, certified, approved, or registered to provide health care services, including mental health services; an individual who is enrolled in an education or training program that must be completed in order to obtain specified credentials; a person who is certified as a provider of Medical Assistance; or a parent organization, subsidiary, or affiliate of any of these persons.

The substitute amendment provides a number of exceptions to the confidentiality and privilege restrictions relating to records or information that are a part of quality improvement activities. Two exceptions that are in the substitute amendment that were not in the original bill state that: (1) the restrictions do not apply to the release to a state agency of certain records or information created apart from a quality improvement activity (shown below in the description of the amendment to the substitute amendment); and (2) any person who testifies during or participates in a quality improvement activity

may testify in any civil, criminal, or other judicial or administrative proceeding as to information within his or her knowledge, but may not testify as to information obtained solely through participation in the quality improvement activity and may not testify as to any conclusion of the quality improvement activity.

The substitute amendment provides that any person who discloses information or releases a record in violation of the confidentiality and privilege restrictions, other than through a good faith mistake, is civilly liable to any person harmed by the disclosure or release.

The substitute amendment also provides that the statute relating to confidentiality and privilege is to be liberally construed in favor of identifying records and information as confidential, privileged, and inadmissible as evidence.

The first exception to confidentiality and privilege that was summarized above, as amended by *Assembly Amendment 1 to Assembly Substitute Amendment 2*, states as follows:

(an) Subsection (3) does not apply to the release to or inspection by a state agency of records or information created apart from a quality improvement activity that are maintained by or for a health care entity for a purpose other than as specified under par. (a) if the records or information are not otherwise available. A state agency may introduce such records or information into evidence in a civil or administrative action or proceeding.

Assembly Amendment 1 to the substitute amendment also deletes language in the substitute amendment that restricts admissibility of quality improvement activity records or information in criminal proceedings. The amendment also modifies one of the exceptions to the confidentiality and privilege requirement to state as follows:

(cm) A person required by state or federal law to report records or information or make records or information accessible to a law enforcement or other governmental agency may report or make accessible records or information to which sub. (3) (a) or (b) applies to comply with the reporting or access requirement. Once a record or information is reported or made accessible under this paragraph, sub. (3) (a) and (b) no longer apply to the record or information.

Legislative History

On February 28, 2006, the Assembly Committee on Health recommended adoption of Assembly Amendment 1 to Assembly Substitute Amendment 2, adoption of Assembly Substitute Amendment 2, and passage of the bill as amended, all by votes of Ayes, 12; Noes, 0.

RNS:ksm