



2017 SENATE BILL 567

November 20, 2017 - Introduced by Senators ERPENBACH, JOHNSON, LARSON, MILLER, RINGHAND, RISSER, VINEHOUT, WIRCH, L. TAYLOR and SHILLING, cosponsored by Representatives C. TAYLOR, ANDERSON, BERCEAU, BILLINGS, BROSTOFF, CONSIDINE, CROWLEY, FIELDS, GOYKE, HEBL, HESSELBEIN, KOLSTE, OHNSTAD, POPE, RIEMER, SARGENT, SINICKI, SPREITZER, STUCK, SUBECK, WACHS, ZAMARRIPA and ZEPNICK. Referred to Committee on Health and Human Services.

1 **AN ACT** *to create* 146.893 of the statutes; **relating to:** medically accurate
2 information.

Analysis by the Legislative Reference Bureau

This bill creates a right and obligation for a health care provider to provide medically accurate information to patients to whom the health care provider provides medical care. The bill also creates a right for a patient to receive medically accurate information from a health care provider. The bill prohibits interference or other diminishment of the rights and obligations relating to medically accurate information, and further prohibits employment retribution based upon a health care provider's exercise of the rights and obligations relating to the provision of medically accurate information.

Under the bill, the state, including any political subdivision or instrumentality of the state, may not do either of the following: 1) require any information that is not medically accurate to be included on a procedure or treatment form; or 2) prohibit a health care provider from including medically accurate information or from deleting information that in the health care provider's medical judgment is either not medically accurate or not somehow relevant to the patient's specific request for care or treatment.

Under the bill, a patient or health care provider may file a civil action for a violation related to the patient's right to accurate medical information. The bill allows the person to seek, in addition to injunctive relief and punitive damages, compensatory damages that reflect his or her actual damages or statutory damages of \$5,000 per violation.

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A statutory damages option of \$20,000 per violation is available to a health care provider who files a civil action after experiencing employment retribution for his or her provision of medical care, after being prevented from providing medically accurate information to a patient, or after being required to provide medically inaccurate information to patient.

The bill also authorizes the attorney general to commence a civil action if he or she has reasonable cause to believe that any person is violating a patient's or health care provider's rights relating to the receipt or provision of medically accurate information. Under the bill, a court may award injunctive relief and compensatory damages and an additional assessment of up to \$20,000 for the first violation and \$40,000 for each subsequent violation.

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

1 **SECTION 1.** 146.893 of the statutes is created to read:

2 **146.893 Patient rights to medically accurate information. (1)**

3 DEFINITIONS. In this section:

4 (a) "Health care provider" has the meaning given in s. 146.81 (1).

5 (b) "Medically accurate information" means information relevant to informed
6 decision making verified or supported by the weight of peer-reviewed medical
7 research conducted in compliance with accepted scientific methods; recognized as
8 medically sound and objective by leading medical organizations with relevant
9 expertise, such as the American Medical Association, the American Congress of
10 Obstetricians and Gynecologists, the American Public Health Association, the
11 American Psychological Association, the American Academy of Pediatrics, the
12 American College of Physicians, and the American Academy of Family Physicians,
13 or by government agencies such as the Center for Disease Control, the Food and Drug
14 Administration, the National Cancer Institute, and the National Institute of Health,
15 or by scientific advisory groups including the Institute of Medicine and the Advisory

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1 Committee on Immunization Practices; or recommended by or affirmed in the
2 medical practice guidelines of a nationally recognized accrediting organization.

3 (c) "Patient" has the meaning given in s. 146.81 (3).

4 (d) "Procedure or treatment form" means any information a patient receives
5 relating to giving consent to a procedure or treatment the patient may elect to
6 proceed with, whether in a brochure, a notice, a posting, an agreement, or other
7 document, provided in writing, electronically, or by video, without regard to whether
8 or not the communication requires a signature.

9 (e) "Professional medical organization" means an entity widely regarded as the
10 leading organization or association within its field serving a single profession, or a
11 specialty within a single profession, that possesses a primary standing in that
12 profession and requires of its members a significant amount of education, training,
13 or experience, or a license or certificate from a state or authorized private authority
14 to practice the profession or specialty.

15 (f) "Scientific advisory group" means, in the context of providing medically
16 accurate information to patients, a group that is recognized as an authoritative
17 scientific source by the medical profession and is comprised of knowledgeable,
18 prominent, and credible members in their field of expertise and that offers opinions
19 on health matters.

20 **(2) PATIENT RIGHTS.** (a) A patient has the right to receive medically accurate
21 information from a health care provider providing medical care, including medical
22 investigation, examination, diagnosis, stabilization, consultation, treatment,
23 procedure, and referral.

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1 (b) A health care provider has the right and obligation to provide medically
2 accurate information to patients to whom the health care provider provides medical
3 care and to make referrals for patients to other licensed health care providers.

4 (c) No person, including the state or any political subdivision of the state, may
5 interfere with or otherwise diminish the rights and obligations specified in par. (a)
6 or (b).

7 (d) Employment retribution by any person against a health care provider based
8 on the health care provider's exercise of the rights and obligations specified in pars.
9 (a) and (b), or the health care provider's provision of medical care to a patient based
10 on such rights and obligations, is prohibited.

11 (e) The state, including any political subdivision or instrumentality of the state,
12 may not do any of the following:

13 1. Require the inclusion of any content in a procedure or treatment form that
14 is not medically accurate information.

15 2. Prohibit a health care provider from adding medically accurate information
16 or from deleting information in a procedure or treatment form that, in the health care
17 provider's medical judgment, is either not medically accurate information or that
18 does not align with a patient's specific request for medical care concerning diagnosis,
19 reservations relevant to the diagnosis, the nature and purpose of the proposed
20 procedure or treatment, risks and consequences of the proposed procedure or
21 treatment, reasonable alternatives to the procedure or treatment appropriate for the
22 patient's situation, patient counseling, or prognosis if a patient elects not to proceed
23 with a proposed procedure or treatment.

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1 (f) Any person, including this state or any political subdivision or
2 instrumentality of this state, who violates this section shall be subject to the
3 remedies under sub. (3).

4 (g) Nothing in this section may be construed to alter existing professional
5 standards of care or abrogate the duty of a licensed health care provider to meet the
6 applicable standard of care.

7 **(3) REMEDIES.** (a) 1. If the attorney general has reasonable cause to believe that
8 any person is violating sub. (2), the attorney general has standing to bring and may
9 commence a civil action against any party in the name of the state in any court with
10 appropriate jurisdiction to vindicate the public interest and protect the rights of
11 citizens of the state.

12 2. For each violation specified in subd. 1., the court may award any appropriate
13 relief, including temporary, preliminary, or permanent injunctive relief and
14 compensatory damages. The court, to vindicate the public interest, may assess
15 against a party other than the state or political subdivision or instrumentality of the
16 state an additional amount not to exceed \$20,000 for the first violation and \$40,000
17 for each subsequent violation.

18 (b) 1. A patient or health care provider claiming a violation of the right and
19 obligations specified in sub. (2) and any associated claims under common law may
20 commence a civil action for relief under subd. 2.

21 2. In any action under subd. 1., the court may award appropriate relief,
22 including temporary, preliminary, or permanent injunctive relief, and compensatory
23 and punitive damages. With respect to compensatory damages, the plaintiff may
24 elect, at any time prior to the rendering of final judgment, to recover an award of
25 statutory damages in the amount of \$5,000 per violation in lieu of actual damages.

