



2019 ASSEMBLY BILL 1028

March 26, 2020 - Introduced by Representatives C. TAYLOR, EMERSON, NEUBAUER, SARGENT, SPREITZER, ANDERSON, SINICKI, HINTZ, SUBECK, CONSIDINE, OHNSTAD, ZAMARRIPA and CROWLEY, cosponsored by Senators ERPENBACH, JOHNSON, WIRCH, SMITH, RINGHAND, L. TAYLOR, LARSON, SHILLING, RISSER, BEWLEY and MILLER. Referred to Committee on Rules.

AUTHORS SUBJECT TO CHANGE

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 any person, including the state or any subdivision of the state, from interfering with or otherwise diminishing the rights described under the bill related to medically accurate information and from requiring in a procedure or treatment form information that is not medically accurate. The bill 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, 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.

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

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accurate information to a patient, or after being required to provide medically inaccurate information to patient.

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) “Leading professional medical organization” means an entity widely
6 regarded as the leading organization or association within its field serving a single
7 profession, or a specialty within a single profession, that possesses a primary
8 standing in that profession and requires of its members a significant amount of
9 education, training, or experience, or a license or certificate from a state or
10 authorized private authority to practice the profession or specialty.

11 (c) “Medically accurate information” means information relevant to informed
12 decision making verified or supported by the weight of peer-reviewed medical
13 research conducted in compliance with accepted scientific methods; recognized as
14 medically sound and objective by leading professional medical organizations with
15 relevant expertise, such as the American Medical Association, the American
16 Congress of Obstetricians and Gynecologists, the American Public Health
17 Association, the American Psychological Association, the American Academy of
18 Pediatrics, the American College of Physicians, and the American Academy of
19 Family Physicians, or by government agencies such as the Centers for Disease
20 Control and Prevention, the Food and Drug Administration, the National Cancer
21 Institute, and the National Institutes of Health, or by scientific advisory groups

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1 including the Institute of Medicine and the Advisory Committee on Immunization
2 Practices; or recommended by or affirmed in the medical practice guidelines of a
3 nationally recognized accrediting organization.

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

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

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

15 **(2) RIGHTS AND OBLIGATIONS.** (a) A patient has the right to receive medically
16 accurate information from a health care provider providing medical care, including
17 medical investigation, examination, diagnosis, stabilization, consultation,
18 treatment, procedure, and referral.

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

22 (c) No person, including the state or any political subdivision of the state, may
23 interfere with or otherwise diminish the rights and obligations specified in par. (a)
24 or (b) or require in a procedure or treatment form information that is not medically
25 accurate.

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

5 (e) Any person, including this state or any political subdivision or
6 instrumentality of this state, who violates this section shall be subject to the
7 remedies under sub. (3).

8 (f) Nothing in this section may be construed to alter existing professional
9 standards of care or abrogate the duty of a licensed health care provider to meet the
10 applicable standard of care.

11 **(3) REMEDIES.** (a) 1. A patient or health care provider claiming a violation of
12 the right and obligations specified in sub. (2) and any associated claims under
13 common law may commence a civil action for relief under subd. 2.

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

19 (b) 1. A health care provider claiming a violation of sub. (2) (d) may commence
20 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; back pay or
23 reinstatement or other privileges; and compensatory and punitive damages. With
24 respect to compensatory damages, the plaintiff may elect, at any time before the

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1 rendering of final judgment, to recover an award of statutory damages in the amount
2 of \$20,000 per violation, in lieu of actual damages.

3 (END)