



2009 SENATE BILL 312

September 30, 2009 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Commerce, Utilities, Energy, and Rail.

1 AN ACT *to amend* 71.07 (5i) (a), 71.07 (5i) (b), 71.28 (5i) (a), 71.28 (5i) (b), 71.47
2 (5i) (a), 71.47 (5i) (b), 560.204 (2) and 560.204 (4) of the statutes; **relating to:**
3 the electronic medical records tax credit.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

For further information see the *state* 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:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Performance-Based Disease Management Programs for Large Populations. Subsequent to the committee's approval of preliminary drafts upon which this bill is based, the 2009-11 biennial budget bill (2009 Wisconsin Act 28) was enacted. This bill reconciles the provisions of the committee's bill drafts with current law affected by the biennial budget.

A state tax credit for electronic medical records (EMRs) will go into effect in 2012. The tax credit available will be equal to 50% of the amount paid by a health care provider in a tax year for information technology hardware or software that is used to maintain medical records in an electronic form. The Department of Commerce (Commerce) must

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implement a program to certify health care providers as eligible for the credit. If Commerce certifies a health care provider, Commerce must determine the amount of credits to allocate to that provider. No more than \$10 million in credits may be allocated each year.

There are currently no standards in state law pertaining to the interoperability of health care information technology. The American Recovery and Reinvestment Act of 2009 (the ARRA) provides funding to assist health care providers in adopting and using EMR systems. The ARRA contains a framework for the development of standards for certifying EMR systems as eligible for funding. One goal of implementing national standards is to facilitate interoperability of EMR systems, to enable the electronic exchange and use of health information among providers.

This bill makes the following changes to the EMR tax credit program:

(1) Specifies that tax credits may be provided only for costs related to EMR systems that are certified or are being upgraded to become certified as specified in the ARRA.

(2) Specifies that when allocating credits, Commerce must grant priority to claimants that provide health care to underserved or low-income populations and to claimants have the greatest need for financial assistance.

(3) Specifies that the credit may be claimed for amounts paid by a health care provider to a 3rd party to provide EMR services to the health care provider.

(4) Requires Commerce to establish penalties that apply to a credit recipient that commits a breach of privacy as defined in the ARRA.

The American Recovery and Reinvestment Act of 2009 defines “breach” as follows:

“(1) BREACH.--(A) IN GENERAL.--The term “breach” means the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.

(B) EXCEPTIONS.--The term “breach” does not include:

(i) any unintentional acquisition, access, or use of protected health information by an employee or individual acting under the authority of a covered entity or business associate if:

(I) such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate; and

(II) such information is not further acquired, accessed, used, or disclosed by any person; or

(ii) any inadvertent disclosure from an individual who is otherwise authorized to access protected health information at a facility operated by a covered entity or business associate to another similarly situated individual at same facility; and

(iii) any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed without authorization by any person.”.

1 **SECTION 1.** 71.07 (5i) (a) of the statutes is amended to read:

2 71.07 **(5i)** (a) *Definitions.* In this subsection, “claimant” means a person who
3 files a claim under this subsection and who is a health care provider, as defined in
4 s. 146.81 (1) (a) to (p).

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1 **SECTION 2.** 71.07 (5i) (b) of the statutes, as affected by 2009 Wisconsin Act 28,
2 is amended to read:

3 71.07 **(5i)** (b) *Filing claims.* Subject to the limitations provided in this
4 subsection, for taxable years beginning after December 31, 2011, a claimant may
5 claim as a credit against the taxes imposed under ss. 71.02 and 71.08, up to the
6 amount of those taxes, an amount equal to 50 percent of the amount the claimant
7 paid in the taxable year for information technology hardware or software that is used
8 to maintain medical records in electronic form, ~~if the claimant is a health care~~
9 ~~provider, as defined in s. 146.81 (1) (a) to (p) or 50 percent of the amount the claimant~~
10 paid in the taxable year to another person to maintain the claimant's medical records
11 in electronic form.

12 **SECTION 3.** 71.28 (5i) (a) of the statutes is amended to read:

13 71.28 **(5i)** (a) *Definitions.* In this subsection, “claimant” means a person who
14 files a claim under this subsection and who is a health care provider, as defined in
15 s. 146.81 (1) (a) to (p).

16 **SECTION 4.** 71.28 (5i) (b) of the statutes, as affected by 2009 Wisconsin Act 28,
17 is amended to read:

18 71.28 **(5i)** (b) *Filing claims.* Subject to the limitations provided in this
19 subsection, for taxable years beginning after December 31, 2011, a claimant may
20 claim as a credit against the taxes imposed under s. 71.23, up to the amount of those
21 taxes, an amount equal to 50 percent of the amount the claimant paid in the taxable
22 year for information technology hardware or software that is used to maintain
23 medical records in electronic form, ~~if the claimant is a health care provider, as defined~~
24 ~~in s. 146.81 (1) (a) to (p) or 50 percent of the amount the claimant paid in the taxable~~
25 year to another person to maintain the claimant's medical records in electronic form.

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1 **SECTION 5.** 71.47 (5i) (a) of the statutes is amended to read:

2 71.47 **(5i)** (a) *Definitions.* In this subsection, “claimant” means a person who
3 files a claim under this subsection and who is a health care provider, as defined in
4 s. 146.81 (1) (a) to (p).

5 **SECTION 6.** 71.47 (5i) (b) of the statutes, as affected by 2009 Wisconsin Act 28,
6 is amended to read:

7 71.47 **(5i)** (b) *Filing claims.* Subject to the limitations provided in this
8 subsection, for taxable years beginning after December 31, 2011, a claimant may
9 claim as a credit against the taxes imposed under s. 71.43, up to the amount of those
10 taxes, an amount equal to 50 percent of the amount the claimant paid in the taxable
11 year for information technology hardware or software that is used to maintain
12 medical records in electronic form, ~~if the claimant is a health care provider, as defined~~
13 ~~in s. 146.81 (1) (a) to (p) or 50 percent of the amount the claimant paid in the taxable~~
14 year to another person to maintain the claimant’s medical records in electronic form.

15 **SECTION 7.** 560.204 (2) of the statutes is amended to read:

16 560.204 **(2)** If the department certifies a health care provider under sub. (1),
17 the department shall determine the amount of credits to allocate to the health care
18 provider. The department may allocate credits only for costs related to electronic
19 medical records systems that are certified or are being upgraded to become certified
20 as specified under P.L. 111–5, Title VIII, section 3301 (c) (5) (A). When allocating
21 credits, the department shall grant priority to claimants that provide health care to
22 underserved or low–income populations and to claimants that have the greatest need
23 for financial assistance with the costs of implementing an electronic medical records
24 system. The total amount of electronic medical records credits allocated to health
25 care providers in any year may not exceed \$10,000,000.

