



## 2013 ASSEMBLY BILL 139

April 5, 2013 - Introduced by Representatives J. OTT, SEVERSON, CZAJA, JACQUE, BROOKS, STRACHOTA, MARKLEIN, A. OTT, KESTELL, MURPHY, STROEBEL, NYGREN, BIES, BALLWEG, STONE, T. LARSON, ENDSLEY and LEMAHIEU, cosponsored by Senators GROTHMAN, VUKMIR, FARROW, COWLES, TIFFANY, OLSEN, DARLING, MOULTON and LASEE. Referred to Committee on Judiciary.

1     **AN ACT** *to repeal* 448.30 (1); *to amend* 448.30 (intro.); and *to create* 448.30 (7)  
2             of the statutes; **relating to:** the duty of physicians to inform patients of  
3             treatment options.

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### *Analysis by the Legislative Reference Bureau*

Under Wisconsin's physician informed consent law, a physician who treats a patient has a duty to inform the patient about the availability of all alternate, viable medical modes of treatment and the benefits and risks of those treatments, subject to certain exceptions. A physician who fails to so inform a patient about modes of treatment may be held civilly liable for damages under tort law. The Wisconsin Supreme Court has employed a "reasonable patient standard" to determine whether a physician has fulfilled his or her duty. Under the reasonable patient standard, a physician must disclose information necessary for a reasonable person in the patient's position to make an intelligent decision with respect to the choices of treatment. The Wisconsin Supreme Court has also held that the duty to inform a patient about alternate modes of treating the patient's condition includes the duty to inform a patient about alternate modes of diagnosing the patient's condition.

This bill instead provides that any physician who treats a patient has a duty to inform the patient about the availability of reasonable alternate medical modes of treatment and the benefits and risks of those treatments, and provides that the "reasonable physician standard" is the standard for informing a patient under the physician informed consent law. The bill provides that the reasonable physician standard requires the disclosure only of information that a reasonable physician in

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the same or a similar medical specialty would know and disclose under the circumstances. The bill also provides that the physician's duty does not require the disclosure of information about alternate medical modes of treatment for conditions that the physician does not believe the patient has at the time the physician informs the patient.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 448.30 (intro.) of the statutes is amended to read:

2           **448.30   ~~Information on alternate modes of treatment~~ Informed**  
3           **consent.** (intro.) Any physician who treats a patient shall inform the patient about  
4           the availability of all reasonable alternate, ~~viable~~ medical modes of treatment and  
5           about the benefits and risks of these treatments. The reasonable physician standard  
6           is the standard for informing a patient under this section. The reasonable physician  
7           standard requires disclosure only of information that a reasonable physician in the  
8           same or a similar medical specialty would know and disclose under the  
9           circumstances. The physician's duty to inform the patient under this section does not  
10          require disclosure of:

11           **SECTION 2.** 448.30 (1) of the statutes is repealed.

12           **SECTION 3.** 448.30 (7) of the statutes is created to read:

13           **448.30 (7)** Information about alternate medical modes of treatment for  
14           conditions that the physician does not believe the patient has at the time the  
15           physician informs the patient.

16           **SECTION 4. Initial applicability.**

