

**Disclosure of Treatment Records for Mental Health, AODA, Developmental Disability Services, Wisconsin Statute 51.30**

<i>Current State Law</i>	<i>HIPAA</i>	<i>Recommended Change</i>
<p>Wisconsin Statutes Section 51.30 requires informed consent before disclosure of <b>treatment records</b> created in the course of providing services to individuals for mental illness, developmental disabilities, or AODA at a <b>treatment facility</b> –</p> <p>Except:</p> <p>* in a medical emergency (undefined);</p> <p>* the following elements in a <b>related health care entity</b>:<sup>1</sup></p> <ol style="list-style-type: none"> <li>1. Patient’s name</li> <li>2. Address</li> <li>3. Date of birth</li> <li>4. Date of service(s)</li> <li>5. Diagnosis</li> <li>6. Medications</li> <li>7. Allergies</li> <li>8. Other relevant demographic information</li> <li>9. Name of mental health provider(s)</li> </ol>	<p>Does not require consent except for psychotherapy notes.</p>	<p>Allow disclosure, without consent, of the following information in the 51.30 treatment record to <b>all</b> treating providers with a need to know:</p> <ol style="list-style-type: none"> <li>1. Patient’s name</li> <li>2. Address</li> <li>3. Date of birth</li> <li>4. Date of service(s)</li> <li>5. Diagnosis</li> <li>6. Medications</li> <li>7. Allergies</li> <li>8. Other relevant demographic information</li> <li>9. Name of mental health provider(s)</li> <li>10. Diagnostics (biometrics such as labs not psychological testing)</li> <li>11. Symptoms (pending confirmation of notation as discrete elements)</li> </ol>

<sup>1</sup> “related health care entity means one of the following:

- a. An entity that is within a clinically integrated care setting in which individuals typically receive health care from more than one health care provider.
- b. An organized system of health care in which the health care providers hold themselves out to the public as participating in joint arrangement and jointly participate in activities” (s.51.30(4)(b)8g).

For example, a Marshfield Clinic Psychiatric treatment center can share mental health information with a Marshfield Clinic Internal Medicine Department provider. However, a Marshfield Clinic Psychiatric treatment center cannot share mental health information with a UW Internal Medicine Department provider.

**Disclosure of General Health Information, Wisconsin Statute 146**

<i>Current State Law</i>	<i>HIPAA</i>	<i>Recommended Change</i>
<b>Area: Documentation</b>		
<p>Wisconsin Statutes section 146.82(2)(d), 146.83(3) requires documentation of all disclosures (written, oral, etc.) with or without consent. Documentation becomes a legal part of the patient's record.</p> <p>As currently written, Wisconsin law requires documentation of every disclosure for every purpose, including oral disclosures. This is a burdensome standard to try and meet, and takes away from patient care.</p>	<p>HIPAA requires documentation of disclosure for any purpose except the following: (1) treatment (providing and coordinating care), (2) payment (billing for services rendered), (3) health care operations (internal business) purposes, or (4) any disclosure made pursuant to a written consent. Examples of disclosures that would have to be documented include, but are not limited to disclosures made that are required or permitted by law (e.g. mandatory child and elder and adult-at-risk-abuse, and public health reporting), disclosures to law enforcement and coroners, and disclosures for research activities. In essence, HIPAA requires documentation of disclosures outside what a patient would likely consider to be part of every day business.</p>	<p>Delete this statutory provision. HIPAA's documentation provisions (the "Accounting of Disclosures") would prevail via pre-emption.</p>
<b>Area: Re-disclosure</b>		
<p>Wisconsin Statutes section 146.82(2)(b) requires that when information is disclosed without patient consent, the recipient must keep the information confidential and may not re-disclose it.</p>	<p>HIPAA is silent on re-disclosure.</p>	<p>Rewrite this provision as follows:</p> <p>(1) Covered entities, as defined by HIPAA (cite HIPAA), may re-disclose the health information it receives pursuant to this section without patient consent if the purpose for the re-disclosure is otherwise permitted by this section.</p> <p>(2) Individuals and organizations that do not meet the definition of covered entity as defined by HIPAA (cite HIPAA), may only re-disclose the patient health information it receives pursuant to this section provided:</p> <ul style="list-style-type: none"> <li>(a) the patient or their legally authorized representatives provides written consent to do so;</li> <li>(b) a court order requires re-disclosure; or</li> <li>(c) the re-disclosure is limited to the purpose for which the information was initially obtained.</li> </ul>

**Disclosure of General Health Information, Wisconsin Statute 146**

<i>Current State Law</i>	<i>HIPAA</i>	<i>Recommended Change</i>
<b>Area: Disclosure to Individuals Involved in the Care or Treatment of the Patient</b>		
<p>Wisconsin Statutes section 146.82 and 146.83 require patient consent to provide written or oral disclosure of health information to individuals involved in the care or treatment of the patient.</p>	<p>HIPAA allows covered entities such as health care providers to disclose health information to family and friends "involved in the care of the patient." Involved in the care of the patient is defined in HIPAA, but is broadly construed to apply to anyone that might be helping to support a patient through their medical care (physical, financial, mental, spiritual). When patient health care information is being disclosed to family and/or friends, HIPAA requires that either the patient agrees or has the right to object to the disclosure, or that the health care provider uses his or her professional judgment and determines that the patient would not object to the disclosure or that the disclosure is in the patient's best interest (a subjective standard). The amount of information disclosed is limited to that person's involvement in the care of the patient.</p>	<p>Allow oral disclosures to family and friends involved in the care of the patient with patient consent (can be some kind of informal process).</p> <p>Allow a "professional judgment" standard in place if the patient is not physically or cognitively able to do so.</p> <p>Provide some definition to "involved in the care of the patient."</p> <p>Maintain the current requirement for patient consent to release copies of medical records to family or friends involved in the care of the patient.</p>