

# Privacy and Consent

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# Today's Session

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## □ Session Goal:

- To provide understanding of the HISPC Multi-State Consent Collaborative
- To garner input on consent scenarios  
Collaborative uses for identifying and resolving variations in patient consent and information disclosures



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- Where we've been as context for where we're going

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- Health Information Security and Privacy Collaborative (HISPC)
- Phase I and Phase II
  - Participants
    - National
    - State
  - Process
  - Recommendations
  - Outcome – 2007 Act 108
  - Next Steps

# Privacy and Consent

## Disclosure of Treatment Records for Mental Health, AODA, Developmental Disability Services, Wis. Stats. 51.30

<i>Current State Law</i>	<i>HIPAA</i>	<i>Act 108</i>
<p>Wis. Stats. 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. <b>Diagnostics (biometrics such as labs not psychological testing)</b></li> <li>11. <b>Symptoms</b></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” (Wis. Stats. 51.30(4)(b)8g).

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## Disclosure and Re-disclosure of General Health Care Information, Wis. Stats. 146

<i>Area</i>	<i>Current State Law</i>	<i>HIPAA</i>	<i>Act 108</i>
<b>Documentation</b>	As currently written, Wis. Stats. 146.82(2)(d), 146.83(3) require documentation of every disclosure (written, oral, etc.) for every purpose. This is an extremely burdensome standard for providers to meet and takes time away from patient care.	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) for 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 "acceptable" and part of every day business.	Deletes these sections so that documentation is no longer required.
<b>Re-disclosure</b>	Wis. Stats. 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.	HIPAA is silent on re-disclosure.	Deletes 146.82(2)(b) and replaces it with language that: <ul style="list-style-type: none"> <li>▪ Allows re-disclosure for any purpose otherwise permitted under 146.82 for covered entities.</li> <li>▪ Limits re-disclosure of health care records by non-covered entities to those made: <ul style="list-style-type: none"> <li>○ Pursuant to court order</li> <li>○ Per patient written authorization</li> <li>○ For the purpose initially received</li> </ul> </li> </ul>
<b>Disclosure to Individuals Involved in the Care or Treatment of the Patient</b>	Wis. Stats. 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.	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 (physically, financially, mentally, and 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.	Creates 146.82(4), which: <ul style="list-style-type: none"> <li>▪ Allows disclosure to family and friends "involved in the care of the patient" with informal permission from the patient.</li> <li>▪ If patient is not available, or is not cognitively or physically able to give permission, clinician may use "professional judgment."</li> </ul>

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## □ **Provider**

- Question of further limitations on who can receive information

## □ **Liability and Penalty for Unauthorized Disclosure**

- Reconsider Wisconsin statutes in this area with consideration for penalties linked to professional as well as institutional licensure

## □ **Provider Education Opportunities**

- Introduce mandatory training regarding relevant privacy regulations for all health care workforce members
- Encourage treating providers to participate in anti-stigma training

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## □ **Notification of Change**

- Delay implementation to ensure appropriate advance notification for patients and providers

## □ **Application of s. 51.30**

- Clarify various aspects of 51.30 as a whole to make clearer the circumstances under which 51.30 protections apply

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- HISPC II Next Steps
  - Conduct further analysis of Wisconsin Hospital Association's Wis. Stat. 146.82 - HIPAA Workgroup proposal
  - Pursue Other Provisions

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- HISPC Phase III -- Collaboratives
  - Office of National Coordinator funding
  - Collaboratives
    - Consent Collaborative Focus Areas
    - Participants
    - Goals
    - Timeline

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## □ Collaborative Participants

- Arkansas
- Indiana
- Maine
- Massachusetts
- Minnesota
- New Hampshire
- New York
- Oklahoma
- Rhode Island
- Utah
- Vermont
- Wisconsin



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- Overview of Use Cases
  - Treatment 1
  - Treatment 2
  - Public Health



# Group Discussion Questions

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- Feedback for Template Implementation
  - How would such a resource be useful to you in your day-to-day work?
  - How would such a resource benefit your organization?
  - What would be the best way for you to learn about this resource when it is available?
  - What would help you use such a resource when it is available?



# Next Steps

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- Share key points/themes with conference attendees
- Seek stakeholder input through “just-in-time” workgroups and meetings
- Thank you



# For More Information Please Contact:

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WI eHealth Care Quality and Patient Safety Board

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