



State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Kevin R. Hayden, Secretary

February 20, 2008

TO: Senate Committee on Health, Human Services, Insurance and Job Creation
FROM: Katie Plona, DHFS legislative liaison
RE: Senate Bill 487

Good morning Senator Erpenbach and committee members. I'm Katie Plona, legislative liaison for the Department of Health and Family Services. Secretary Kevin Hayden regrets that he cannot be here himself to testify.

Thank you for the opportunity to testify in favor of SB 487, and thank you for your prompt attention to this legislation. I want to thank Senator Erpenbach, as well as Representatives Moulton, Hixson, Davis and Benedict, for their leadership on SB 487. I also would like to thank Senator Vinehout and more than 60 of her colleagues for sponsoring this legislation.

I am pleased to have with me today two people invaluable to the Department's eHealth efforts. Denise Webb is the program manager for the eHealth Initiative and Beth DeLair is our eHealth legal consultant. Beth was previously the associate general counsel and director of compliance at UW Hospital and Clinics.

Overview

In recent years, discourse in the health care community about how to remove barriers to health information exchange has increased as more and more providers have the technology to share records electronically. Major studies also have estimated that medical errors in the U.S. have resulted in anywhere from 44,000 to 98,000 deaths annually.

Electronic health information exchange is imperative to the future of health care because it has the power to improve health care outcomes for patients in Wisconsin. In turn, improving the quality and safety of how health care is delivered has the power to reduce medical errors, save lives and stem the rise in health care costs.

With that goal in mind, this bill seeks to balance privacy laws with the application of technology innovations to transform the delivery of health care in Wisconsin.

Wisconsin participated in an 18-month national effort with broad stakeholder involvement to assess the security and privacy issues of health information exchange.

In November 2005, Governor Doyle created by executive order the eHealth Care Quality and Patient Safety Board and charged it with developing a five-year plan for statewide adoption of health information technology and health information exchange.

As part of this process, DHFS staff engaged privacy advocates; health information officers; clinical and hospital providers; technology experts; consumers and others in a long and involved discussion about how to maintain appropriate statutory privacy protections while breaking down barriers to electronic health information exchange.

Recommendations to change portions of Chapters 51.30 and 146 were the result of that effort and are reflected in SB 487 as five statutory changes. In December 2007, the eHealth Board approved these policy recommendations.

A portion of Chapter 51.30 deals with release of sensitive health care information, namely information about mental health, developmental disabilities and alcohol and other drug treatment. A portion of Chapter 146 deals with the disclosure of general health care information.

While SB 487 is not the only thing we need to do to foster electronic health information exchange, it is an essential first step to remove barriers. It will provide physicians and patients with more information – and more reliable information – to make important decisions about what health care treatment is best and safest. Additionally, SB 487 brings Wisconsin law into better alignment with the federal Health Insurance Portability and Accountability Act's (HIPAA) confidentiality and privacy requirements.

Chapter 51.30

I will start with a description of Chapter 51.30. Except under limited circumstances, Chapter 51.30 prohibits the disclosure of mental health, alcohol and other drug abuse (AODA) and developmental disability health care information to providers for treatment purposes unless the patient or the patient's legal representative provides written consent. This requirement is inconsistent with federal law and with other Wisconsin laws governing other types of health care information.

The goal of the 51.30 workgroup was to develop, through a broad-based stakeholder discussion, an agreed-upon set of information covered under s. 51.30 that could be exchanged amongst providers for treatment purposes without patient consent.

Under current law, only certain elements of a patient's treatment record may be released without informed written consent. This includes name; address; date of birth; date of service; diagnosis; medications; allergies; the name of a mental health provider and other relevant demographic information.

Further, these elements may only be released for the current treatment of an individual to health care providers in a "related health care entity," which generally means a clinically integrated care setting or a given health plan. For example, current law would not allow a physician from Dean Clinic to share a patient's health information with a UW physician treating the patient without the patient's written informed consent.

These limitations make the exchange of health care information difficult because, often, the patient's written consent cannot be easily obtained. Physicians need better access to clinical information to make well-informed and quick decisions about the best way to care for a patient. Additionally, Chapter 51.30 is more stringent than federal HIPAA privacy law and Wisconsin laws governing other types of health care information, which permit disclosure of health care information for treatment purposes without patient consent.

To address these limitations, SB 487 makes two key changes to allow the exchange of information physicians need and to allow the exchange of information to any health care provider who has a need to know without the patient's written consent.

First, SB 487 would remove the within a "related health care entity" requirement so important health care information can be more quickly and easily exchanged electronically with any health care provider who is involved with the patient's care and who needs the information to treat the patient. Under the bill, this exchange could occur regardless of whether the provider is part of the clinically integrated setting or health plan where the patient originally received care.

This is important because patients need health care in emergency situations or for specialty services outside of the facility from which they generally receive care. Often, patients are not available or are not easily able to provide consent for disclosure to a subsequent provider prior to seeing that provider.

With the passage of this legislation, Wisconsin law would continue to require the patient's informed written consent to disclose information other than the specific elements permitted for exchange.

Second, SB 487 would add “diagnostic test results” and “symptoms” to the list of elements that may be exchanged without patient written consent. By allowing this type of information to be shared with providers outside a related health care entity, subsequent providers can have access to information that is important to their assessment and the care of the patient presenting to them.

Physicians have indicated that they want the results from biological diagnostics easily accessible because such information is important for the safety of the patient and is a key element in providing high quality care.

Examples of biological diagnostics include lab tests, EKGs and radiology tests. Some stakeholders expressed concern that psychological or neuropsychological testing not be included in the definition of “diagnostics” because such testing is very sensitive and does not affect the assessment and delivery of clinical care. SB 487 is drafted to address this concern by defining “diagnostic test results” as results of clinical testing of biological parameters, but not the results of psychological or neuropsychological testing.

Symptoms were added because they often are used to describe conditions somewhat different from the diagnosis and can be very helpful. A diagnosis is assigned to a group of symptoms. For example, a diagnosis of flu may be based on symptoms of fever, chills and upset stomach. Sometimes patients present with symptoms, but the symptoms at a given point in time may be inconclusive, but still important for health care providers to know.

For example, a patient may tell a mental health provider that he or she is having trouble sleeping, has a loss in appetite, is agitated from time to time and has low energy. That patient has some symptoms of depression, but the symptoms may be incomplete for such a diagnosis, and the provider may decide to monitor the patient for further symptoms. When the same person visits a cardiovascular specialist, that provider would benefit from knowing about the symptoms because they apply to more than one diagnosis.

The 51.30 workgroup identified five areas for further discussion and action, including provider training on security and privacy laws, to make sure the changes in this legislation are implemented successfully. We acknowledge these concerns and understand their importance to various stakeholders. Secretary Hayden has committed the Department to work in the coming days and months with our partners on the items in question. However, with that being said, we want to emphasize that the bill before you today represents a balance and that the benefits of this legislation outweigh any potentially adverse risks.

Chapter 146

HIPAA, the federal privacy act, creates many of the same privacy protections at the national level that Wisconsin Statute 146 affords Wisconsin citizens. In some instances, however, compliance with two sets of laws creates confusion and barriers to health information exchange because certain provisions of Chapter 146 are more stringent than HIPAA.

The goal of our efforts on Chapter 146, through conversations with 14 stakeholder groups, was to better align Wisconsin law with HIPAA. More specifically, SB 487 updates Chapter 146 to improve physician relations with patients and families through more reliable communication; to provide physicians and patients with more information for decision-making; and to pave the way for inter- and intra-state electronic health information exchange. SB 487 makes three changes to Chapter 146.

First, Wisconsin law, unlike HIPAA, requires documentation of every disclosure of patient health care records.

Under HIPAA, health care providers do not have to track disclosures for purposes related to treatment (providing and coordinating care); payment (billing for services rendered), health care operations (internal business) or for any disclosure made as a result of a written authorization. HIPAA does require documentation of disclosures for state reporting purposes, such as the Wisconsin cancer registry, and HIPAA provides patients with a right to request an “accounting” of these disclosures.

This provision was identified because it is administratively burdensome, unrealistic and time-consuming and does not provide any apparent benefit to consumers.

eHealth Board member Catherine Hansen, the Director of Health Information Services at the St. Croix Regional Medical Center, said her hospital documents about 12,000 medical record releases per year. During the last five years, Catherine said patients made no inquiries about these releases. You can imagine how much more documentation occurs at even larger facilities like UW.

Additionally, since Wisconsin law regarding documentation of disclosures of patient health information differs from federal law, compliance with both laws is challenging. SB 487 improves Chapter 146's consistency with HIPAA.

Second, Chapter 146 allows health care providers to receive patient health care information without the patient's consent for any purpose related to providing care to the patient other than what is covered under Chapter 51.30. But, it prohibits a health care provider who has received patient health care information from an outside institution from disclosing that same information to a subsequent health care provider.

This prohibition has a significant impact on electronic exchange based on how eHealth systems are configured and how exchange is likely to occur between different exchange models.

For example, under current law, Meriter Hospital could receive health information from UW for a patient and incorporate that information into the Meriter record. Then, if St. Mary's Hospital requests information from Meriter about that same patient, Meriter can only release its "own" information about that patient to St. Mary's and cannot release the UW information. In other words, if a patient's information is originally from UW and is appropriately released to Meriter, Meriter cannot under current law share the information with St. Mary's.

SB 487 removes the prohibition on re-disclosure and allows for re-disclosure for treatment purposes and under other limited circumstances prescribed under current law.

Third, Wisconsin law makes sharing health information with a patient's family, friend or other person involved in the patient's care difficult because it requires the patient's written consent. As mentioned earlier, written consent is often difficult to obtain because the patient is not available or otherwise not capable of providing written consent.

In contrast, HIPAA recognizes that one or more individuals may be "involved in the care of the patient" and creates provisions that make it easier for a health care provider to disclose health care information about that patient appropriate to the level of involvement the individual has with the patient's care.

Right now, when a spouse accompanies a patient to the emergency room, she understandably wants to know what has happened to the patient and what the prognosis and treatment plan are. Similarly, an adult child might be responsible for coordinating care for an elderly parent and may need to know clinic visit dates and times, laboratory tests and results and the need for medications.

To address this situation, SB 487 allows health care providers to disclose health information to a patient's family, friend or another person the patient identifies as being involved in the patient's care under two conditions. The first is if the patient provides informal permission, rather than formal written consent. The second is if the patient is not physically available or physically or cognitively able to grant informal permission, a health care provider would be permitted to use his or her professional judgment to determine whether disclosing the information is in the best interest of the patient and the patient would otherwise allow the disclosure. These changes better align Wisconsin law with federal law.

Under the proposed change, informed consent would still be required for a health care provider to release copies of health care records to family and friends involved in the patient's care.

Thank you again for the opportunity to testify in favor of SB 487 and share with the committee the reasons why we believe this legislation is essential to allowing electronic health information exchange. We are happy to answer any questions committee members may have.

Attachments:

1. Chart on Chapter 51.30 comparing current law, HIPAA and SB 487
2. Chart on Chapter 146 comparing current law, HIPAA and SB 487
3. Chapter 51.30 workgroup items for further discussion and action
4. eHealth Board membership
5. Chapter 51.30 workgroup membership
6. Organizations interviewed on Chapter 146
7. DHFS SB 487 fiscal note

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

<i>Current State Law</i>	<i>HIPAA</i>	<i>SB487</i>
<p>Wisconsin Statutes Section 51.30 requires informed consent before disclosure of treatment records created in the course of providing services to individuals for mental illness, developmental disabilities, or AODA at a treatment facility –</p> <p>Except:</p> <p>* in a medical emergency (undefined);</p> <p>* the following elements in a related health care entity:¹</p> <ol style="list-style-type: none"> 1. Patient’s name 2. Address 3. Date of birth 4. Date of service(s) 5. Diagnosis 6. Medications 7. Allergies 8. Other relevant demographic information 9. Name of mental health provider(s) 	<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 all treating providers with a need to know:</p> <ol style="list-style-type: none"> 1. Patient’s name 2. Address 3. Date of birth 4. Date of service(s) 5. Diagnosis 6. Medications 7. Allergies 8. Other relevant demographic information 9. Name of mental health provider(s) 10. Diagnostics (biometrics such as labs not psychological testing) 11. Symptoms

¹ “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).

Disclosure and Re-disclosure of General Health Care Information, Wisconsin Statute 146

Area	Current State Law	HIPAA	SB487
Documentation	As currently written, Wisconsin Statutes Sections 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.	Rewrite Wisconsin Statutes Section 146 to mirror 45 CFR 164.528 so as to require limited documentation of disclosures.
Re-disclosure	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.	HIPAA is silent on re-disclosure.	Delete Wisconsin Statutes Section 146.82(2)(b), and replace it with language that allows disclosure and re-disclosure of general health information without patient consent.
Disclosure to Individuals Involved in the Care or Treatment of the Patient	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.	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.	Rewrite statute to allow oral disclosure of general health information to individuals involved in the care or treatment of the patient with patient agreement (not formal consent). Retain requirements for patient consent to disclose any copy of a patient's medical record.

Chapter 51.30 workgroup items for further discussion and action

(1) **Clarification of ‘Provider.’** The workgroup did not reach consensus on whether to statutorily limit which providers may receive 51.30 records for treatment purposes without patient consent.

Some members proposed limiting the types of health care providers that could receive 51.30 records without patient consent to those providers that directly interact with a given patient. Others raised concerns that such a limitation would not be feasible in an electronic exchange environment.

Additional discussion is needed in this area with consideration of: (a) Appropriate sanctions for unauthorized access and disclosure; (b) Regular access audits that are not complaint driven; and (c) Relevant requirements under HIPAA.

(2) **Liability and Penalty for Unauthorized Disclosure.** Wisconsin statutes related to liability and penalty for unauthorized disclosure should be reconsidered in conjunction with the proposed change to s. 51.30. Many workgroup members suggested that this discussion include consideration of penalties/sanctions for inappropriate access and/or disclosure linked to professional licensure (e.g. MD, RN) and as well as institutional licensure.

(3) **Provider Education.** The Workgroup identified the following two related yet separate concerns that could be addressed by enhanced provider training: (a) misunderstandings and misperceptions of applicable privacy laws and regulations on the part of many providers; and (b) the perception that a mental illness diagnosis, rather than presenting symptoms, indicate treatments on the part of many mental health consumers. The workgroup reached consensus on the following:

- Training on all privacy and security standards should be mandated. The training should emphasize Wisconsin law and its interface with federal laws and what can and cannot be shared and when it should include numerous easy-to-understand examples and be available at little or not cost.
- Treating providers should be encouraged to participate in anti-stigma training presented in collaboration with a variety of relevant stakeholders. This training should be developed collaboratively and in accordance with existing evidence-based models.

(4) **Notification.** The workgroup suggested that implementation of this proposed change should be delayed to ensure appropriate advance notification of the public and providers, but did not propose duration of such a delay. Some members suggested that the annual informing of patient rights and a DHFS memo should be considered as possible mechanisms for notification.

(5) **Clarification of s. 51.30.** The workgroup noted that various terms and conditions in 51.30 are not clearly defined, leading to variations in interpretation and application of the law. Thus, in conjunction with the changes currently recommended, the group suggested reconsidering and possibly amending statute 51.30 to better clarify the conditions and types of information intended to be protected by the statute. Clarification efforts should include an assessment of cross-referenced statutes.

Wisconsin

e H e a l t h C a r e Q u a l i t y a n d P a t i e n t S a f e t y B o a r d

Chair: Kevin Hayden, Secretary, Department of Health and Family Services

Betsy Abramson, Elder Law Attorney and Consultant

Christopher Alban, MD, Clinical Informaticist, Epic Systems Corporation

Bevan Baker, Commissioner of Health, City of Milwaukee Health Department

Edward Barthell, MD, Executive Vice President, CIO, Infinity Healthcare

Gary Bezucha, FACHE, CEO, North Central Health Care

Patricia Flatley Brennan, Professor of Nursing and Industrial Engineering, School of Nursing and College of Engineering

Catherine Hansen, Director, Health Information Services, St. Croix Regional Medical Center

Ravi Kalla, CEO and President, Symphony Corporation

Don Layden, Executive Vice President, Corporate Development, Metavante Corporation

Michael L. Morgan, Secretary, Department of Administration

Lois Murphy, IT Specialist, Veterans Administration

Candice Owley, RN, President, Wisconsin Federation of Nurses and Health Professionals

Debra Rislow, CIO and Director of Information Systems, Gundersen Lutheran

Peg Smelser, Chief Operating Officer, Wisconsin Education Association Trust

Lon Sprecher, President, Dean Health Insurance

Justin Starren, MD, PhD, Director, Biomedical Informatics Research Center, Marshfield Clinic Research Foundation

David Stella, Secretary, Department of Employee Trust Funds

John Toussaint, MD, President and CEO, ThedaCare

Hugh Zettel, Director, Government and Industry Relations, GE Healthcare Technologies

Chapter 51.30 workgroup membership:

Betsy Abramson, Elder Law Attorney/Consultant

Kathy Bretl, Deputy Director, Mendota Mental Health Institute

Ted Buncck, Director, Central WI Center for the Developmentally Disabled

Mike DeMares, Clinical Manager, Waukesha County Department of Health and Human Services

Sue Gadacz, Women's AODA Treatment Coordinator, WI Department of Health and Family Services (DHFS),
Bureau of Mental Health & Substance Abuse Services (BMHSAS)

Jay Gold, Senior Vice President, MetaStar

Dianne Greenley (Kit Kerschensteiner), Supervising Attorney, Disability Rights Wisconsin

Shel Gross, Director of Public Policy, Mental Health America of Wisconsin

Carla Jones, Senior Staff Attorney/Privacy Officer, Marshfield Clinic

Lowell Keppel, President-elect, Wisconsin Academy of Family Physicians (WAFP)

Susan Manning, Independent Health Care Consultant

Jeff Marcus, Medical Director, Central WI Center for the Developmentally Disabled

Gloria Marquardt, Privacy Officer, WI Department of Corrections

Kate Nesheim, Agency Coordinator, Wisconsin Association on Alcohol and Other Drug Abuse

Jennifer Ondrejka (Gerald Born), Executive Director, Wisconsin Council on Developmental Disabilities

Kim Pemble, CIO and Vice President, Synergy Health

Teresa Smithrud, Director, HIM/Privacy Officer, Mercy Health System

Matthew Stanford, Associate Counsel, Wisconsin Hospital Association

Susan Turney (Jeremy Levin), Executive Vice President/CEO, Wisconsin Medical Society

Carol Weishar, Director of Medical Information and Transcription, Advanced Healthcare

Michael Witkovsky, Consulting Psychiatrist, DHFS, BMHSAS

Hugh Zettel, Director, Government and Industry Relations, GE HealthCare Technologies

Dan Zimmerman, Policies & Contract Administrator, DHFS, BMHSAS

Attachment 6

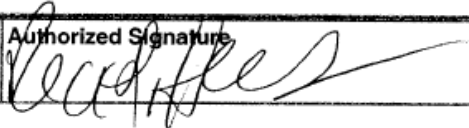
The following is a list of Stakeholders who provided comments on proposed changes to WI Stat. 146.82-146.83:

1. Wisconsin Hospital Association
2. Dane County Health Care Providers Considering Piloting “Care Everywhere,” including
 - a. Meriter
 - b. St. Mary’s
 - c. Dean
 - d. UW-Madison
 - e. UWHC
 - f. UWMF
 - g. GHC
3. AIDS Network
4. Wisconsin Medical Society
5. Advanced Healthcare (Stakeholder in ED Linking Project)
6. Center for Patient Partnerships
7. Care Wisconsin (Formerly Elder Care of Wisconsin)
8. HIPAA COW
9. AHIMA
10. Wisconsin Alzheimer’s Association
11. Wisconsin Nurses Association
12. WHIE
13. Domestic Abuse Advocates
14. Wisconsin Coalition Against Sexual Assault

Wisconsin Department of Administration
 Division of Executive Budget and Finance

Fiscal Estimate - 2007 Session

Original Updated Corrected Supplemental

LRB Number 07-4043/1	Introduction Number SB-487
Description Treatment records and patient health care records	
Fiscal Effect	
State:	
<input checked="" type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs	
Local:	
<input checked="" type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue 5. Types of Local Government Units Affected <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
Fund Sources Affected	
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	
Affected Ch. 20 Appropriations	
Agency/Prepared By DHFS/ Donna Moore (608) 266-8156	Authorized Signature 
	Date 2/14/2008

Fiscal Estimate Narratives
DHFS 2/14/2008

LRB Number	07-4043/1	Introduction Number	SB-487	Estimate Type	Original
Description Treatment records and patient health care records					

Assumptions Used in Arriving at Fiscal Estimate

This bill makes certain changes to current law regarding the release or redisclosure of patient health records.

There will be no fiscal effect on the Department as a result of this bill. This bill is also not expected to have a fiscal effect on county human services or social services departments.

Long-Range Fiscal Implications