



Jim Doyle, Governor
Kevin R. Hayden, Secretary

Overview of 2007 Wisconsin Act 108 to Remove Barriers to Health Information Exchange

Health information exchange (HIE) is necessary to improve the quality and safety of health care. Variations in health information privacy law create barriers to the development of HIE in Wisconsin. Act 108 is an important first step in removing certain of these barriers. It provides physicians and patients with additional and more reliable information as they make important decisions about what health care treatment is best and safe for patients. In addition, this Act better aligns Wisconsin law with federal (HIPAA) confidentiality and privacy laws.

Extensive dialogue and collaboration with a wide range of stakeholders resulted in passage of this law. Specifically, the changes to Wisconsin Statute 51.30 were developed by a workgroup convened by the Department with representation from many key advocacy and provider organizations. Changes to Wisconsin Statute 146, related to general health records, was discussed with many stakeholder groups as well. On December 4, 2007, the eHealth Care Quality and Patient Safety Board reviewed and approved proposed statutory changes. The Assembly and Senate passed legislation in early March. Governor Doyle signed the legislation on March 17th.

Current Law Wisconsin Statute 51.30 – Mental Health, Developmental Disability and AODA Treatment Records

Wisconsin Statutes 51.30 creates barriers to health information exchange because, except under limited circumstances, the patient's written consent is required to disclose information to another health care provider.

- Under current law, only certain elements (e.g. name, date of service, diagnosis, medications, etc) of a patient's treatment record may be released without informed written consent.
- Further, these elements may only be released 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 without the written informed consent of the patient.

These limitations make the exchange of health care information difficult because, often, the patient's written consent cannot be easily obtained. Physicians have expressed a need to have quick and ready access to clinical information. Also, the consent requirement under Wisconsin Statute 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.

Changes to Wisconsin Statute 51.30 – effective October 1, 2008

2007 Wisconsin Act 108 allows for the exchange of crucial information that physicians have expressed a need to receive and also allows for the exchange of information with any health care provider with a need to know by:

- Adding “diagnostic test results” and “symptoms” to the list of elements that may be exchanged without patient written consent.
- Removing the within a “related health care entity” requirement so that important health care information can be exchanged with any health care provider who is involved with the patient’s care and who needs the information to properly treat the patient, regardless of whether the provider is a part of the clinically integrated setting or health plan where the patient originally received care.

Written informed consent of the patient is still required to disclose information other than the specific elements permitted for exchange. For example, a patient’s written consent is still required to disclose an entire consultation note or discharge summary.

Current Law Wisconsin Statute 146 – Confidentiality of Patient General Health Care Records

- Wisconsin Statute 146.82 creates a barrier to electronic exchange of health care information because it prohibits re-disclosure of information received by one entity to another entity.
- Wisconsin law also creates administrative burdens by requiring documentation of *all* disclosures of health information. The Federal HIPAA laws require documentation of some, but not all disclosures.
- Wisconsin law makes sharing health information with a patient’s family, friend or other person involved in the patient’s care difficult because doing so requires the written consent of the patient, which is often difficult because the patient is not available or otherwise not capable of providing written consent.

2007 Wisconsin Act 108 Changes to Wisconsin Statute 146 – effective April 1, 2008

2007 Wisconsin Act 108 allows re-disclosure of health information in a way that benefits electronic health information exchange while retaining some limitations on re-disclosure to protect confidentiality.

Specifically, it:

- Eliminates the requirement to document all disclosures. Health care providers are still required to document the disclosures required to be tracked under federal HIPAA laws, such as disclosures related to child or elder abuse cases or public health reporting and disclosures to law enforcement and coroners.
- Allows health care providers to disclose health information to a patient’s family, friend or another person identified by the patient and involved in the patient’s care:
 - If the patient provides informal permission (rather than formal written consent) to do so.
 - If the patient is not physically available or physically or cognitively able to grant informal permission, a health care provider is permitted to use his or her professional judgment to determine whether disclosing the information is in the best interests of the patient and the patient would otherwise allow such a disclosure.