
WI Security and Privacy Project: Phase 2
Privacy Legislation Recommendations
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Discussion Topics

- Background
- Wis. Stats. 51.30
- Wis. Stats. 146.82-146.83

Background—What did the Phase I Implementation Workgroup propose?

Modify Wisconsin Statute 51.30

- Permit exchange of specific information among providers for treatment purposes without consent

Modify Wisconsin Statute 146.82-146.83

- Treat re-disclosure like primary disclosure
- Remove documentation requirements beyond HIPAA
- Allow disclosure to family and individuals involved with care and treatment with agreement vs. consent in accordance with HIPAA

51.30—Current Statutory Requirements

■ Informed Consent Requirement

- *Treatment records* created in the course of providing services to individuals for mental illness, developmental disabilities, or AODA at a *treatment facility* require consent before disclosing in most situations

■ Exceptions to s. 51.30's informed consent requirement

- In a medical emergency (undefined)
- The following elements *in a related health care entity*:
 - Patient's name
 - Address
 - Date of birth
 - Dates of service
 - Diagnosis
 - Medications
 - Allergies
 - Other relevant demographic information
 - Name of mental health provider(s)

51.30—Process

- ❑ **DHFS staff convened a representative workgroup**
 - Charge was to:
 - ❑ Discuss and make further recommendations to changes to s. 51.30 that would allow for easier access to health care information for purposes of treatment; and
 - ❑ Serve as ambassadors to relevant colleagues and constituencies throughout decision-making process
 - Workgroup met 5 times for three hours each
 - Composition of the group included:
 - ❑ Providers and advocates of mental health, AODA, and developmental disability treatment services
 - ❑ Hospitals, Physicians, Provider systems, provider based associations
 - ❑ Data Quality Organization
 - ❑ IT Vendor

51.30—Workgroup Participants

Betsy Abramson, Elder Law Attorney/Consultant

Kathy Bretl, Deputy Director, Mendota Mental Health Institute

Ted Bunck, 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

Jay Gold, Senior Vice President, MetaStar

Dianne Greenley, 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, Executive Director, Wisconsin Association on Alcohol and Other Drug Abuse

Jennifer Ondrejka, 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, Executive Vice President and CEO/Jeremy Levin, Wisconsin Medical Society

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

Michael Witkovsky, Consulting Psychiatrist, WI Department of Health and Family Services

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

Dan Zimmerman, Policies & Contract Administrator, WI Department of Health and Family Services

51.30—Workgroup Recommendation

- Allow disclosure, without consent, of the following information in the 51.30 treatment record to *all* treating providers with a need to know:
 1. Name
 2. Address
 3. Date of Birth
 4. Name of mental health provider(s)
 5. Dates of service
 6. Diagnosis
 7. Medications
 8. Allergies
 9. Other relevant demographic information
 10. *Diagnostics (testing of biological parameters such as labs, imaging, EKGs (excluding psychological or neuropsychological testing, e.g., IQ, personality, etc.))*
 11. *Symptoms (pending confirmation that symptoms are recorded as discrete elements in many electronic medical record systems)*

51.30—Workgroup Recommendation

- Removes the “in a related health care entity” clause from current law – 51.30(4)(b)8g
- Adds “diagnostics” and “symptoms” to list of information that may be released without patient consent

51.30—Impacts of Workgroup Recommendation

- Important first step in increasing the amount and kind of information available to all treating providers who have a need to know
- Reduces some barriers to electronic exchange
- Doesn't eliminate variation in Wisconsin law

51.30—Areas Identified for Further Discussion and Action by Workgroup

- **Clarification of “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**
 - Consider mandatory training regarding relevant privacy regulations for all health care workforce members
 - Encourage treating providers to participate in anti-stigma training
- **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

Phase I Implementation Workgroup's Recommended Modifications to s. 146.82-146.83

Area.	Current Law	Proposed Change
Documentation	Document all disclosures (written, oral, etc.) with or without consent. Documentation becomes a legal part of the patient's record. *	Require limited documentation of disclosures that enable the patient to determine who has accessed his/her health information and when. (per 45 CFR 164.528)
Re-disclosure	When information is disclosed without patient consent, the recipient must keep the information confidential and may not re-disclose it. **	Add language that allows re-disclosure with patient consent or otherwise allowed by law. (per HIPAA)
Disclosure to individuals involved in the care or treatment of the patient	Patient consent is required to disclose health information to individuals involved in the care or treatment of the patient in writing or verbally.***	Rewrite to allow oral disclosure to individuals involved in the care or treatment of the patient with patient agreement. Retain requirements for patient consent to disclose any copy of a patient's medical record.
<p>* Wis. Stats. 146.82(2)(d), 146.83(3) ** Wis. Stat. 146.82(2)(b) *** Wis. Stats. 146.82 and 146.83</p>		

146.82-146.83—Stakeholder Meetings

■ Process

- ❑ DHFS staff and Privacy Consultant identified stakeholders potentially impacted by proposed changes to Wis. Stats. 146.82-146.83
- ❑ DHFS' Privacy Consultant held individual meetings with stakeholders to discuss Phase I proposed changes
- ❑ Responses were documented, reviewed, and analyzed
- ❑ Phase 2 recommendations are a “compromise” based on responses from meetings with stakeholders

146.82-146.83—Stakeholder Participants

Care Everywhere Working Group (Dean, St. Mary's, GHC, UWH, UWMF)

Wisconsin Aids Network

Domestic Abuse Advocates

Care Wisconsin (Formerly Elder Care)

Center for Patient Partnerships

Wisconsin Coalition Against Sexual Assault

Wisconsin Alzheimer's Association

WHIE

HIPAA-COW

WHIMA

WHA

WMS

WNA

Advanced Healthcare (Stakeholder in ED Linking Project)

Wisconsin Coalition on Aging (invited but not able to participate)

AARP (invited but not able to participate)

146.82-146.83—Recommendations

■ Documentation

- Delete Wis. Stats. 146.82(2)(d) and 146.83(3); comply with HIPAA

■ Re-disclosure

- Rewrite Wis. Stats. to allow full re-disclosure to individuals and organizations that meet the definition of a “covered entity” under HIPAA; limit re-disclosure for those entities that are not “covered entities” under HIPAA to re-disclosures: (a) made pursuant to written consent; (b) required per court order; and (c) for the same purposes (e.g. treatment) as the initial disclosure

■ Verbal disclosure to family and friends involved in the care

- Allow oral disclosures to family and friends involved in the care of the patient with patient consent (can be some kind of informal process); Allow a "professional judgment" standard in place if the patient is not physically or cognitively able to consent or agree/disagree

146.82-146.83—Rationale for Recommendations

■ Documentation

- No real “middle” position—either retain statutes as currently written or delete or re-write statutes so HIPAA’s provisions apply
- A re-write to mirror HIPAA does not make sense because when HIPAA changes, Wis. Stats. need to change as well
- Only three stakeholders (all representing patient advocacy positions) disagreed with the proposed change

■ Re-Disclosure—a “balancing act”

- Two stakeholders representing patient advocacy groups wanted re-disclosure limited to treatment purposes
- Stakeholders representing providers or provider associations wanted re-disclosure for any purpose otherwise permitted by law
- State had concerns about state agencies and departments that receive medical information

146.82-146.83—Rationale for Recommendations

- Verbal disclosures to family and friends involved in the care of the patient—based on proposed change from Phase 1
 - Stakeholders representing providers and provider-based associations wanted to see HIPAA’s broader provisions adopted
 - Stakeholders representing patient advocacy positions agreed with initial proposal. These stakeholders had the following concerns regarding HIPAA’s provisions:
 - Patients should consent to disclosures about themselves;
 - HIPAA’s provisions are too broad and undefined; and
 - The “professional judgment standard” under HIPAA is too subjective—clinicians would not apply it similarly, and many clinicians are perceived to not be sensitive enough to situations in which information should not be disclosed (e.g. sensitive diagnoses, domestic abuse situations etc.).

Thank you
Questions?
