

**2005 DRAFTING REQUEST**

**Assembly Amendment (AA-AB33)**

Received: 02/08/2005

Received By: dkennedy

Wanted: As time permits

Identical to LRB:

For: Sheldon Wasserman (608) 266-7671

By/Representing: Joe Hoey (aide)

This file may be shown to any legislator: NO

Drafter: dkennedy

May Contact:

Addl. Drafters:

Subject: Mental Health - detent/commit

Extra Copies:

Submit via email: YES

Requester's email: Rep.Wasserman@legis.state.wi.us

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Make disclosure subject to HIPPA privacy requirements

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**Instructions:**

Same as AA1 to 2003 AB 36 (a2287); remove last sentence of bill

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 02/09/2005	jdye 02/09/2005		_____			
/1			jfrantze 02/09/2005	_____	sbasford 02/09/2005	sbasford 02/09/2005	

FE Sent For:

<END>

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1?	dkennedy	1 2/10	2/10	2/10			

FE Sent For:

<END>

By 2/10 (THURS.)

2005-2006

2003-2004 LEGISLATURE

0115/1  
LRBa2287/1

DAK:jld:pg

D-NOTE

jld

**ASSEMBLY AMENDMENT,  
TO 2003 ASSEMBLY BILL ~~36~~ 33**

✓  
164.510 (a)(3) and

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 5: after "(c)" insert "and in accordance with 45 CFR 164.10 (b)  
3 (1) (ii) and (2)".

4 (END)

→  
# Page 2, line 13: delete "This". ✓  
# Page 2, line 14: delete lines 14 to 16. ✓

D-NOTE

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

0115  
LRBa2287/1dn  
DAK/jld:pg

February 20, 2004

3 new  
date

stays

To Representative Wasserman:

HIPAA

In general, the privacy protections in s. 51.30, stats., are at least as stringent as, or more stringent than, those of the regulations (known as the Privacy Rule, 45 CFR parts 160-164), issued under the Health Insurance Portability and Accountability Act of 1996 (~~HIPAA~~). However, for release of treatment records without the patient's informed, written consent, under the circumstances encompassed by s. 51.30 (4) (b) 13., stats., under current law and as that statute is renumbered s. 51.30 (4) (cm) and amended under the bill, the Privacy Rule is more stringent. Under 42 CFR 164.510 (Uses and disclosures requiring an opportunity for the individual to agree or to object), are the following provisions:

"164.510 (b) *Standard: uses and disclosures for involvement in the individual's care and notification purposes.*

(1) *Permitted uses and disclosures.*

(ii) A covered entity may use or disclose protected health information to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general condition, or death. Any such use or disclosure of protected health information for such notification purposes must be in accordance with paragraphs (b) (2), (3), or (4) of this section, as applicable.

(2) Uses and disclosures with the individual present. If the individual is present for, or otherwise available prior to, a use or disclosure permitted by paragraph (b) (1) of this section and has the capacity to make health care decisions, the covered entity may use or disclose the protected health information if it:

(i) Obtains the individual's agreement;

(ii) Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or

(iii) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure."

This amendment requires that disclosure of treatment records be in accordance with 45 CFR 164.10 (b) (1) (ii) and (2). "Family member" is not defined under the Privacy

5

are applicable

Rule, but it seems relatively clear that these provisions are applicable to the parent, child, sibling, or spouse and to mental health professionals, under s. 51.30 (4) (cm).

However, I'm not sure if those provisions are applicable to the law enforcement officer who is provided access under s. 51.30 (4) (b) 13., stats., in current law. It is possible that what would apply to the law enforcement officer is 45 CFR 164.510 (a) (3):

"164.510 (a) (3) *Emergency circumstances.* (i) If the opportunity to object to uses or disclosures required by paragraph (a) (2) of this section cannot practicably be provided because of the individual's incapacity or an emergency treatment circumstance, a covered health care provider may use or disclosure some or all of the protected health information permitted by paragraph (a) (1) of this section [a directory that gives name, location in the facility, general condition, and religious affiliation] for the facility's directory, if such disclosure is:

(A) Consistent with a prior expressed preference of the individual, if any, that is known to the covered health care provider; and

(B) In the individual's best interest as determined by the covered health care provider in the exercise of professional judgment.

(ii) The covered health care provider must inform the individual and provide an opportunity to object to uses or disclosures for directory purposes as required by paragraph (a) (2) of this section when it becomes practicable to do so."

Should I also include reference to 45 CFR 164.510 (a) (3) in the amendment?

period

Note also that, because the Privacy Rule requires that the patient be, in most circumstances, given an opportunity to object, the last sentence of the amendment may be unnecessary.

has been deleted

former

Please let me know if I can provide further assistance with this amendment.

After speaking with Joe Hoey, =

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: debora.kennedy@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBa0115/1dn  
DAK:jld:jf

February 9, 2005

To Representative Wasserman:

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