

2013 DRAFTING REQUEST

Bill

Received: **1/25/2013** Received By: **tdodge**
Wanted: **As time permits** Same as LRB: **-3396**
For: **Erik Severson (608) 267-2365** By/Representing: **AJ**
May Contact: Drafter: **tdodge**
Subject: **Health - miscellaneous** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email: **Rep.Severson@legis.wisconsin.gov**
Carbon copy (CC) to: **michael.duchek@legis.wisconsin.gov**
tamara.dodge@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Confidentiality of health and mental health records and HIPAA compliance

Instructions:

Redraft 11-3188.

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>
/?	tdodge 1/30/2013	kfollett 2/1/2013	jfrantze 2/3/2013	_____			
/1	tdodge 10/2/2013			_____	sbasford 2/3/2013		
/2	tdodge 10/8/2013	kfollett 10/2/2013	jfrantze 10/2/2013	_____	lparisi 10/2/2013		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3		jdyer 10/9/2013	jmurphy 10/9/2013	_____	srose 10/9/2013	lparisi 10/9/2013	State

FE Sent For:

at
intro.

<END>

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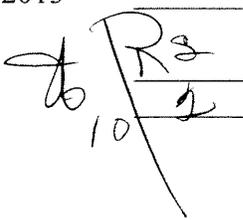
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/1		 10/2	 10/2	 R3 2	sbasford 2/3/2013		

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/?	tdodge	1/15 2/1	2/13				

FE Sent For:

<END>



In: 11/30/13 SOON

State of Wisconsin
2011 - 2012 LEGISLATURE

2013 BILL



LRB-3188/P1

TJD:jds

1364/1
KSF
RMNR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

1 AN ACT *to create* 146.816 of the statutes; **relating to:** uses and disclosures of
2 protected health information.

Insert
Analysis

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 3 SECTION 1. 146.816 of the statutes is created to read: ✓
- 4 **146.816 Uses and disclosures of protected health information.** (1) In ✓
- 5 this section:
- 6 (a) "Business associate" has the meaning given in 45 CFR 160.103. ✓
- 7 (b) "Covered entity" has the meaning given in 45 CFR 160.103. ✓
- 8 (c) "Disclosure" has the meaning given in 45 CFR 160.103 and includes ✓
- 9 redisclosures and rereleases of information.

- 1 (d) "Health care operations" has the meaning given in 45 CFR 164.501.
- 2 (e) "Payment" has the meaning given in 45 CFR 164.501.
- 3 (f) "Protected health information" has the meaning given in 45 CFR 160.103.
- 4 (g) "Treatment" has the meaning given in 45 CFR 164.501.
- 5 (h) "Use" has the meaning given in 45 CFR 160.103.

6 (2) Sections 51.30 (4) (a) and (e) and 146.82 and rules promulgated under s.
 7 51.30 (12) do not apply to a use, disclosure, or request for disclosure of protected
 8 health information by a covered entity or business associate that meets all the
 9 following criteria:

***NOTE: Please confirm that s. 51.30 (4) (a) and (e), not s. 51.30 (4) (a) to (e), do not apply to uses and disclosures under the circumstances in this draft.

- 10 (a) The covered entity or business associate makes the use, disclosure, or
 11 request for disclosure in compliance with 45 CFR 164.500 to 164.534.
- 12 (b) The covered entity or business associate makes the use, disclosure, or
 13 request for disclosure in any of the following circumstances:
 - 14 1. For purposes of treatment.
 - 15 2. For purposes of payment.
 - 16 3. For purposes of health care operations.

17 (END)

Dodge, Tamara

From: Scholz, AJ
Sent: Friday, September 27, 2013 11:52 AM
To: Dodge, Tamara
Cc: Hanus, Andrew
Subject: LRB 1364: HIPPA Harmonization

Hello Tami,

As a result of the Speaker's Task Force on Mental Health, we need to make some tweaks to the draft.

- 1) Explicitly cross reference U.S.C. 164.522 (rights to request privacy protection for protected health information) in state statute.
- 2) Direct DHS to develop a comprehensive, accessible, and comprehensible document explaining patient privacy rights. DHS should make it easily accessible online and at all applicable health facilities in the state.

Thanks for your help on this. Please let me know if you have any questions.

AJ Scholz

Office of Representative Erik Severson
608-267-2365
221 North, State Capitol

Dodge, Tamara

From: Scholz, AJ
Sent: Tuesday, October 01, 2013 11:47 AM
To: Dodge, Tamara
Subject: LRB 1364 HIPAA Compliance
Attachments: HIPAA Harmonization and Rights to Request Restrictions 092613.doc

Hey Tami,

Attached is some draft language for the changes that I had mentioned to the HIPAA compliance legislation, LRB 1364. This should clarify a little more what the intent of those tweaks are.

Thank you!

AJ Scholz

Office of Representative Erik Severson
608-267-2365
221 North, State Capitol

SECTION 1. 146.816 of the statutes is created to read:

146.816 Uses and disclosures of protected health information.

(1) In this section:

- (a) "Business associate" has the meaning given in 45 CFR 160.103.
- (b) "Covered entity" has the meaning given in 45 CFR 160.103.
- (c) "Disclosure" has the meaning given in 45 CFR 160.103 and includes redisclosures and rereleases of information.
- (d) "Health care operations" has the meaning given in 45 CFR 164.501.
- (e) "Payment" has the meaning given in 45 CFR 164.501.
- (f) "Protected health information" has the meaning given in 45 CFR 160.103.
- (g) "Treatment" has the meaning given in 45 CFR 164.501.
- (h) "Use" has the meaning given in 45 CFR 160.103.

(2) Sections 51.30 (4) (a) and (e) and 146.82 and rules promulgated under s. 51.30 (12) do not apply to a use, disclosure, or request for disclosure of protected health information by a covered entity or its business associate that meets all the following criteria:

(a) The covered entity has fulfilled its notice of privacy practices obligations under 45 CFR 461.520 to the person who is the subject of the protected health information, including the covered entity's obligations to include in plain language in the notice of privacy practices a statement of the person's rights with respect to protected health information and a brief description of how the person may exercise those rights, including the right to request restrictions on uses and disclosures of protected health information about the individual to carry out treatment, payment, or health care operations as provided by 45 CFR 164.522(a).

(ba) The covered entity or its business associate makes the use, disclosure, or request for disclosure in compliance with 45 CFR 164.500 to 164.534.

(cb) The covered entity or its business associate makes the use, disclosure, or request for disclosure in any of the following circumstances:

1. For purposes of treatment.
2. For purposes of payment.
3. For purposes of health care operations.

SECTION 2. Nonstatutory provision.

The department of health services shall make a comprehensive, accessible, and comprehensible document explaining patient health information privacy rights easily accessible on its website and that is available to all applicable health facilities in Wisconsin.

45 CFR 164.520

45 CFR 164.522(a)

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Formatted: Font: Bold



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1364/D-2
TJD:kjf,jr
RMR stays

In: 10/2/13

Due
Friday,
Oct 4
if possible

2013 BILL

Regen

1 AN ACT to create 146.816 of the statutes; relating to: uses and disclosures of
2 protected health information.

Analysis by the Legislative Reference Bureau

Under current law, patient health care records are confidential but may be released upon written consent of the patient or a person authorized by the patient. Current law also requires health care providers to release patient health care records without the consent of the patient under certain circumstances. Mental health treatment records are also confidential, under current law, but may be released under certain circumstances.

The bill defines a covered entity as a health plan, health plan clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a certain transaction, as described under federal regulations. Under this bill, a covered entity or a business associate of a covered entity that uses, discloses, or requests disclosure of protected health information in a mental health treatment record or patient health care record is exempt from certain confidentiality requirements if the use, disclosure, or request complies with certain federal regulations and is made for the purposes of treatment, payment, or health care operations, as those purposes are defined by federal regulation.

Insert Analysis

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1364/2ins
TJD:.....

1 INSERT ANALYSIS

X 76 ~~ff~~ and if the covered entity has fulfilled its notice of privacy practices obligations under federal regulations. The bill also requires the Department of Health Services to make available, to all applicable health care facilities and on its Internet site, a comprehensive and accessible document written in in commonly understood language that explains health information privacy rights.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

(END INSERT ANALYSIS)

2 INSERT 2-17

3 (a) The covered entity has fulfilled to the individual who is the subject of the
4 protected health information its notice of privacy practices obligations under 45 CFR
5 164.520, including the obligation to include in plain language in the notice of privacy
6 practices a statement of the individual's rights with respect to protected health
7 information and a brief description of how the person may exercise those rights
8 including the right to request restrictions on uses and disclosures of protected health
9 information about the individual to carry out treatment, payment, or health care
10 operations as provided in 45 CFR 164.522.

(END INSERT 2-17)

11 INSERT 2-24

12 (3) The department shall make a comprehensive and accessible document
13 written in commonly understood language that explains health information privacy
14 rights available to all applicable health care facilities in the state and on the
15 department's Internet site.

(END INSERT 2-24)

LRB-1364/2

TJD:kjf:jf

2013 - 2014 LEGISLATURE

2013 BILL

AN ACT to create 146.816 of the statutes, **relating to:** uses and disclosures of protected health information.

Analysis by the Legislative Reference Bureau

Under current law, patient health care records are confidential but may be released upon written consent of the patient or a person authorized by the patient. Current law also requires health care providers to release patient health care records without the consent of the patient under certain circumstances. Mental health treatment records are also confidential, under current law, but may be released under certain circumstances.

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BILL

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 146.816 of the statutes is created to read:

2 **146.816 Uses and disclosures of protected health information. (1)** In

3 this section:

4 (a) "Business associate" has the meaning given in 45 CFR 160.103.

5 (b) "Covered entity" has the meaning given in 45 CFR 160.103.

6 (c) "Disclosure" has the meaning given in 45 CFR 160.103 and includes
7 redisclosures and rereleases of information.

8 (d) "Health care operations" has the meaning given in 45 CFR 164.501.

9 (e) "Payment" has the meaning given in 45 CFR 164.501.

10 (f) "Protected health information" has the meaning given in 45 CFR 160.103.

11 (g) "Treatment" has the meaning given in 45 CFR 164.501.

12 (h) "Use" has the meaning given in 45 CFR 160.103.

(i) "Treatment facility" has the meaning given in s.51.01(19), Wis. Stats.

13 **(2)** Sections 51.30 (4) (a) and (e) and 146.82 and rules promulgated under s.

14 51.30 (12) do not apply to a use, disclosure, or request for disclosure of protected

15 health information by a covered entity or its business associate that meets all the

16 following criteria:

17 ~~(a) The covered entity has fulfilled to the individual who is the subject of the~~

18 ~~protected health information its notice of privacy practices obligations under 45 CFR~~

19 ~~164.520, including the obligation to include in plain language in the notice of privacy~~

20 ~~practices a statement of the individual's rights with respect to protected health~~

21 ~~information and a brief description of how the person may exercise those rights~~

1 ~~including the right to request restrictions on uses and disclosures of protected health~~
2 ~~information about the individual to carry out treatment, payment, or health care~~
3 ~~operations as provided in 45 CFR 164.522.~~

4 ~~(a) (b)~~ The covered entity or its business associate makes the use, disclosure, or
5 request for disclosure in compliance with 45 CFR 164.500 to 164.534.

6 ~~(b) (e)~~ The covered entity or its business associate makes the use, disclosure, or
7 request for disclosure in any of the following circumstances:

- 8 1. For purposes of treatment.
- 9 2. For purposes of payment.
- 10 3. For purposes of health care operations.

~~(3) The A covered entity that is a treatment facility shall comply with the has fulfilled to~~
~~the individual who is the subject of the~~
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~~164.520, including the obligation to include in plain language in the notice of privacy~~
~~practices a statement of the individual's rights with respect to protected health~~
~~information and a brief description of how the person/individual may exercise those rights~~
~~including the right to request restrictions on uses and disclosures of protected health~~
~~information about the individual to carry out treatment, payment, or health care~~
~~operations as provided in 45 CFR 164.522.~~

11 ~~(4) (3)~~ The department shall make a comprehensive and accessible document
12 written in commonly understood language that explains health information privacy
13 rights available to all applicable health care facilities in the state and on the
14 department's Internet site.

15 (END)

Please feel free to contact me with any questions or concerns.

Meantime, best wishes,

List hosted by the State Bar of Wisconsin, 5302 Eastpark Blvd., Madison, WI 53718-2101. For questions: service@wisbar.org, (800) 728-7788.
[UNSUBSCRIBE Aaron Gary](#) [MANAGE and VIEW](#) [RULES and GUIDELINES](#) [WHITELIST](#)

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[UNSUBSCRIBE Randal Brotherhood](#) [MANAGE and VIEW](#) [RULES and GUIDELINES](#) [WHITELIST](#)

Dodge, Tamara

From: Scholz, AJ
Sent: Tuesday, October 08, 2013 10:45 AM
To: Dodge, Tamara
Subject: RE: LRB 1364/2

Hello Tami,

The new version was primarily drafted to address some concerns from the /2 draft. Assume that a mental health provider begins using and disclosing mental health info under 146.816(2) upon enactment. However, in 2015, the mental health provider discovers that its current notice of privacy practices has been slightly out of compliance since 2010. We read the /2 that it appears that the non-compliance with HIPPA's notice provision could make every use and disclosure of mental health information from 2013-15 not subject to the HIPPA "safe harbor" under 146.816 (2) and this a potential violation of s. 51.30

The goal of the Task Force was not to make disclosure under the HIPAA "safe harbor" contingent on compliance with HIPPA's notice and right to request restrictions. The Task Force recommendation read "explicitly cross-reference in state statute the federal HIPAA law rights to request privacy protection for health information." I believe out changes places the HIPAA notice obligations as a standalone provision which is the most consistent with the intent of the Task Force.

In regards to moving the HIPAA notice to chpt. 51, I think it would be better to leave the provision in 146.816. First, we want to keep the HIPAA use and disclosure provisions and the notice provision as a package. I think this will be important to mental health consumers to see the provisions together in statute. Second, 146.816 applies to HIPAA covered entities, and not all mental health providers regulated by chpt. 51 as necessarily covered entities. The notice provision foremost applies to covered entities, but only a subset of covered entities that are also treatment facilities regulated by chpt. 51. Also, moving the provision to chpt. 51 could potentially invoke the penalties and remedies provided in chpt. 51. The Task Force recommendation simply to cross reference the HIPAA rights to request privacy protection, not intending to invoke any remedies or penalties for failure to meet the HIPAA notice provisions.

I hope this helps to answer your questions. Please feel free to contact me with any follow-ups.

Thanks for your help

AJ Scholz

Office of Representative Erik Severson
608-267-2365
221 North, State Capitol

From: Dodge, Tamara
Sent: Monday, October 07, 2013 5:53 PM
To: Scholz, AJ
Subject: RE: LRB 1364/2

AJ,

No need to apologize. I do have a question though. In this version, the requirement for the treatment facilities is outside of the introduction that exempts the facilities from, in this case, s. 51.30 (4) (a) and (e). What it leaves is a provision that just requires the treatment facility to follow a federal regulation, which seems like an odd provision unless the only purpose is to allow DHS to enforce the federal regulation. I'm wondering if the provision should still come under the intro but only apply to treatment facilities. This would read:

"Sections 51.30 (4) (a) and (e)...do not apply to a use, disclosure, or request for disclosure of protected health information by a covered entity or its business associate that meets all of the following criteria:
(new c) If the covered entity is a treatment facility, the covered entity complies with the notice of privacy practices obligations under...(rest of the scored language)."

If my proposed version isn't correct, then I have a couple of concerns. I'm wondering if more language should be added to s. 51.30 to address conflicts between the new provision and s. 51.30, because the facilities would be required to follow the federal regulation unless the reverse preemption of HIPAA required the application of state law. Also, if the provision isn't really related to the previous idea of the draft but is a stand-alone requirement for treatment facilities to follow the federal regulation, I'm thinking that the provision should be placed in ch. 51.

If you have any questions, please contact me.

Thanks,
Tami

Tamara J. Dodge

Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 267 - 7380
tamara.dodge@legis.wisconsin.gov

From: Scholz, AJ
Sent: Monday, October 07, 2013 11:21 AM
To: Dodge, Tamara
Subject: LRB 1364/2

Hey Tami,

I am really sorry but I need to get some more changes to LRB 1364/2 relating to uses and disclosures of protected health information. Please see the attached document and let me know if you have any questions.

Again, I apologize for the multiple rounds of changes on this. Thank you for all your help.

Sincerely,

AJ Scholz

Office of Representative Erik Severson
608-267-2365
221 North, State Capitol



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-13642
TJD:kjf:jf

3

In: 10/8/13

Due Thurs.
10/10 if possible

RMR L + jld

2013 BILL

X

Regen

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2 protected health information.

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The bill defines a covered entity as a health plan, health plan clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a certain transaction, as described under federal regulations. Under this bill, a covered entity or a business associate of a covered entity that uses, discloses, or requests disclosure of protected health information in a mental health treatment record or patient health care record is exempt from certain confidentiality requirements if the use, disclosure, or request complies with certain federal regulations and is made for the purposes of treatment, payment, or health care operations, as those purposes are defined by federal regulation, and if the covered entity has fulfilled its notice of privacy practices obligations under federal regulations. The bill also requires the Department of Health Services to make available, to all applicable health care facilities and on its Internet site, a comprehensive and accessible document written in commonly understood language that explains health information privacy rights.

~~entity has fulfilled its notice of privacy practices obligations under federal regulations.~~

Under the bill, a covered entity that is a mental health treatment facility must comply with the notice of privacy practices obligations under federal regulations.

BILL

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7 redisclosures and rereleases of information.

8 (d) "Health care operations" has the meaning given in 45 CFR 164.501.

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10 (f) "Protected health information" has the meaning given in 45 CFR 160.103.

11 (g) "Treatment" has the meaning given in 45 CFR 164.501.

Insert
2-11 ✓

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16 following criteria:

INSERT
3-11

17 (a) ~~The covered entity has fulfilled to the individual who is the subject of the~~
18 ~~protected health information its~~ notice of privacy practices obligations under 45 CFR

19 164.520, including the obligation to include in plain language in the notice of privacy

20 practices a statement of the individual's rights with respect to protected health

21 information and a brief description of how the person may exercise those rights

individual
of
comply with the



BILL

INSERT 3-11 CONT

1 including the right to request restrictions on uses and disclosures of protected health
2 information about the individual[✓] to carry out treatment, payment, or health care
3 operations as provided in 45 CFR 164.522.

(END of ^{Ins 3-11} moved material)

4 ^a (b) The covered entity or its business associate makes the use, disclosure, or
5 request for disclosure in compliance with 45 CFR 164.500 to 164.534.

6 ^b (c) The covered entity or its business associate makes the use, disclosure, or
7 request for disclosure in any of the following circumstances:

- 8 1. For purposes of treatment.
- 9 2. For purposes of payment.
- 10 3. For purposes of health care operations. ✓

11 ³ (4) (3) The department shall make a comprehensive and accessible document
12 written in commonly understood language that explains health information privacy
13 rights available to all applicable health care facilities in the state and on the
14 department's Internet site. ✓

15

(END)

INSERT 3-11
(Insert moved material here)
from p. 2

Insert

LRB-1364/3

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Insert 2-11

¶ (h) "Treatment facility" has the meaning given
in s. 51.01 (19).

(End Insert 2-11)

Parisi, Lori

From: Scholz, AJ
Sent: Wednesday, October 09, 2013 3:23 PM
To: LRB.Legal
Subject: Draft Review: LRB -1364/3 Topic: Confidentiality of health and mental health records and HIPAA compliance

Please Jacket LRB -1364/3 for the ASSEMBLY.