



## 1997 ASSEMBLY BILL 469

August 12, 1997 - Introduced by Representatives R. YOUNG, NOTESTEIN, MURAT, SPRINGER and L. YOUNG, cosponsored by Senator RISSER. Referred to Committee on Health.

1     **AN ACT to renumber and amend** 51.47 (1) and 51.61 (6); **to amend** 46.10 (2m),  
2           51.13 (1) (c), 51.14 (3) (a), 51.14 (3) (f), (g) and (h) (intro.), 51.14 (4) (a) and (c),  
3           51.30 (4) (b) 20. (intro.), 51.30 (5) (a), 51.30 (5) (b) 1., 51.47 (title), 51.47 (2)  
4           (intro.), 51.47 (2) (b), 51.47 (3), 51.47 (4) and 938.505 (2) (a) (intro.) and 1.; and  
5     **to create** 51.30 (4) (b) 13m. and 51.47 (1) of the statutes; **relating to:**  
6           permitting certain minors to obtain certain mental health services without  
7           parental consent, permitting certain minors to refuse access by their parents  
8           to certain treatment records and notifying parents of the provision to minors  
9           of certain mental health services.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a physician or health care facility may provide preventive, diagnostic, assessment, evaluation or treatment services for alcohol or other drug abuse to a minor aged 12 or older without obtaining the consent of or notifying the minor's parent or guardian. Consent of a parent or guardian must be obtained, however, before performing nonemergency surgical procedures, administering certain controlled substances or admitting a minor to an inpatient treatment facility unless the admission is for a period of detoxification that is less than 72 hours. In

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addition, the physician or health care facility must notify the minor's parent or guardian as soon as practicable about any services that have been provided. Lastly, if the care-giving situation is not one for which consent of the parent or guardian is required, the physician or health care facility must obtain the minor's consent before billing a 3rd party; if the minor refuses to consent, he or she is solely liable for payment.

This bill expands the types of services that may be rendered to consenting minors aged at least 12 without obtaining parental or guardian consent to include outpatient mental health services, except that the bill requires that parental or guardian consent be obtained before administering prescription drugs to a minor as a part of the services. The bill adds an outpatient treatment program (as defined in the bill) to the kinds of treatment providers that need not obtain consent of a parent or guardian before rendering outpatient mental health or alcohol and other drug abuse services to minors aged 12 or older.

Under current law, a minor aged at least 14 has access, within certain limitations, to his or her own treatment records for services for mental illness, developmental disability, alcoholism or drug dependence. A minor under age 14 has access, within certain limitations, to these treatment records only in the presence of his or her parent, guardian, counsel or guardian ad litem or the staff member of a treatment facility. The parent, guardian or person in place of a parent of a minor has the same right of access to treatment records of the minor for services for mental illness, developmental disability or alcohol or drug dependence as does the minor himself or herself, except that a developmentally disabled minor aged 14 or older may deny this access by filing a written objection with the record custodian. However, if the parent, guardian or person in the place of a parent is directly involved in providing care to or monitoring treatment of the minor, that parent, guardian or person may, under certain conditions, obtain access to certain of the minor's treatment records.

This bill permits a minor who is not developmentally disabled and who is aged at least 14 to deny access by a parent, guardian or person in the place of a parent to the minor's treatment records by filing with the record custodian a written objection to that access. However, the parent, guardian or person in place of a parent of such minors who directly provides care to or monitors treatment for the minor may have the same access to records as is currently provided to like parents, guardians or persons in place of a parent of objecting minors who are developmentally disabled. In addition, the parent, guardian or person in the place of a parent of a minor who is permitted to object to records access and who has received certain mental health treatment or services may have access, without the minor's consent, to notice that the minor is or has been a patient of a physician, health care facility or outpatient program that provided mental health treatment or services to the minor. Lastly, the bill requires a physician, health care facility or outpatient treatment program that provides alcohol and other drug abuse or mental health treatment to minors without parental consent to notify the minor's parent or guardian of the fact that 2 sessions of outpatient treatment have been rendered and that additional treatment is proposed unless the parent, health care facility or outpatient treatment program

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determines that the notification would be seriously detrimental to the minor's well-being or is unable, after making a good-faith effort, to contact the parent or guardian and documents the determination or inability in the minor's record. The physician, health care facility or outpatient treatment program must immediately notify, however, if the physician, health care facility or outpatient program later determines that the notification would not be detrimental; in such a case, the physician, health care facility or outpatient program must inform the minor that notification will be made.

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

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

1           **SECTION 1.** 46.10 (2m) of the statutes is amended to read:

2           46.10 **(2m)** The liability specified in sub. (2) shall not apply to tuberculosis  
3 patients receiving care, maintenance, services and supplies under ss. 58.06 and  
4 252.07 to 252.10, to persons 18 and older receiving care, maintenance, services and  
5 supplies provided by prisons named in s. 302.01 or to parents of a minor who receives  
6 ~~care for alcohol or other drug abuse or mental health services~~ under s. 51.47 (4) (1m)  
7 without consent of the minor's parent or guardian.

8           **SECTION 2.** 51.13 (1) (c) of the statutes is amended to read:

9           51.13 **(1)** (c) If a minor 14 years of age or older wishes to be admitted to an  
10 approved inpatient treatment facility but a parent with legal custody or the guardian  
11 refuses to execute the application for admission or cannot be ~~found~~ contacted, or if  
12 there is no parent with legal custody, the minor or a person acting on the minor's  
13 behalf may petition the court assigned to exercise jurisdiction under chs. 48 and 938  
14 in the county of residence of the parent or guardian for approval of the admission.  
15 A copy of the petition and a notice of hearing shall be served upon the parent or  
16 guardian at his or her last-known address. If, after hearing, the court determines  
17 that the parent or guardian's consent is unreasonably withheld or that the parent

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1 or guardian cannot be ~~found~~ contacted or that there is no parent with legal custody,  
2 and that the admission is proper under the standards prescribed in sub. (4) (d), it  
3 shall approve the minor's admission without the parent or guardian's consent. The  
4 court may, at the minor's request, temporarily approve the admission pending  
5 hearing on the petition. If a hearing is held under this subsection, no review or  
6 hearing under sub. (4) is required.

7 **SECTION 3.** 51.14 (3) (a) of the statutes is amended to read:

8 51.14 (3) (a) Either a minor ~~14~~ under 12 years of age or ~~older or his or her~~ the  
9 parent or guardian of a minor aged at least 12 may petition the mental health review  
10 officer in the county in which the parent or guardian has residence for a review of a  
11 refusal of either the minor or ~~his or her~~ the parent or guardian to provide the  
12 informed consent for outpatient mental health treatment for the minor as required  
13 under s. 51.61 (6).

14 **SECTION 4.** 51.14 (3) (f), (g) and (h) (intro.) of the statutes are amended to read:

15 51.14 (3) (f) If prior to a hearing under par. (g) either the minor under age 12  
16 or ~~his or her~~ the parent or guardian of the minor aged at least 12 requests and the  
17 mental health review officer determines that the best interests of the minor would  
18 be served, a petition may be filed for court review under sub. (4) without further  
19 review under this subsection.

20 (g) Within 21 days after the filing of a petition under this subsection, the mental  
21 health review officer shall hold a hearing on the refusal of the minor or the ~~minor's~~  
22 parent or guardian to provide informed consent for outpatient treatment. The  
23 mental health review officer shall provide notice of the date, time and place of the  
24 hearing to the minor under age 12 and ~~the minor's~~ his or her parent or guardian or

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1 to the minor aged at least 12 and his or her parent or guardian at least 96 hours prior  
2 to the hearing.

3 (h) (intro.) If following the hearing under par. (g) and after taking into  
4 consideration the recommendations, if any, of the county department under s. 51.42  
5 or 51.437 made under par. (e), the mental health review officer finds all of the  
6 following, he or she shall issue a written order that, notwithstanding the written,  
7 informed consent requirement of s. 51.61 (6), the written, informed consent of the  
8 minor aged at least 12, if the minor is refusing to provide consent, or the written,  
9 informed consent of the ~~minor's~~ parent or guardian of a minor under age 12, if the  
10 parent or guardian is refusing to provide consent, is not required for outpatient  
11 mental health treatment for the minor:

12 **SECTION 5.** 51.14 (4) (a) and (c) of the statutes are amended to read:

13 51.14 (4) (a) Within 21 days after the issuance of the order by the mental health  
14 review officer under sub. (3) or if the requirements of sub. (3) (f) are satisfied, the  
15 minor under age 12 or his or her parent or guardian or the minor aged at least 12 or  
16 his or her parent or guardian may petition a court assigned to exercise jurisdiction  
17 under ch. 48 in the county of residence of the minor's parent or guardian for a review  
18 of the refusal of either the minor aged at least 12 or ~~his or her~~ the parent or guardian  
19 of a minor under age 12 to provide the informed consent for outpatient mental health  
20 treatment required under s. 51.61 (6).

21 (c) If a notation of a minor's refusal to provide informed consent to outpatient  
22 mental health treatment appears on the petition, the court shall, at least 7 days prior  
23 to the time scheduled for the hearing, appoint counsel to represent the minor if the  
24 minor is unrepresented. ~~If the~~ a minor's parent or guardian has refused to provide  
25 informed consent and the minor is unrepresented, the court shall appoint counsel to

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1 represent the minor, if requested by the minor or determined by the court to be in the  
2 best interests of the minor.

3 **SECTION 6.** 51.30 (4) (b) 13m. of the statutes is created to read:

4 51.30 (4) (b) 13m. To the parent, guardian or person in the place of a parent of  
5 a minor who is receiving or has received mental health preventive, diagnostic,  
6 assessment, evaluation or treatment services without parental or guardian consent  
7 under s. 51.47 (1m). Information released under this subdivision is limited to that  
8 which is required to be provided under s. 51.47 (3).

9 **SECTION 7.** 51.30 (4) (b) 20. (intro.) of the statutes is amended to read:

10 51.30 (4) (b) 20. (intro.) Except with respect to the treatment records of a  
11 subject individual who is receiving or has received services for alcoholism or drug  
12 dependence, to the spouse, parent, guardian, person in the place of a parent, adult  
13 child or sibling of a subject individual, if the spouse, parent, guardian, person in the  
14 place of a parent, adult child or sibling is directly involved in providing care to or  
15 monitoring the treatment of the subject individual and if the involvement is verified  
16 by the subject individual's physician, psychologist or by a person other than the  
17 spouse, parent, guardian, person in the place of a parent, adult child or sibling who  
18 is responsible for providing treatment to the subject individual, in order to assist in  
19 the provision of care or monitoring of treatment. Except in an emergency as  
20 determined by the person verifying the involvement of the spouse, parent, guardian,  
21 person in the place of a parent, adult child or sibling, the request for treatment  
22 records under this subdivision shall be in writing, by the requester. Unless the  
23 subject individual has been adjudged incompetent under ch. 880, the person  
24 verifying the involvement of the spouse, parent, guardian, person in the place of a  
25 parent, adult child or sibling shall notify the subject individual about the release of

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1 his or her treatment records under this subdivision. Treatment records released  
2 under this subdivision are limited to the following:

3 **SECTION 8.** 51.30 (5) (a) of the statutes is amended to read:

4 51.30 (5) (a) *Consent for release of information.* The parent, guardian, or person  
5 in the place of a parent of a minor under age 14 or the guardian of an adult adjudged  
6 incompetent under ch. 880 may consent to the release of confidential information in  
7 court or treatment records. A minor who is aged 14 or more may consent to the  
8 release of confidential information in court or treatment records without the consent  
9 of the minor's parent, guardian or person in the place of a parent. Consent under this  
10 paragraph must conform to the requirements of sub. (2).

11 **SECTION 9.** 51.30 (5) (b) 1. of the statutes is amended to read:

12 51.30 (5) (b) 1. The guardian of an individual who is adjudged incompetent  
13 under ch. 880 shall have access to the individual's court and treatment records at all  
14 times. The parent, guardian or person in the place of a parent of a developmentally  
15 disabled minor shall have access to the minor's court and treatment records at all  
16 times except in the case of a developmentally disabled minor aged 14 or older who  
17 files a written objection to such the access with the custodian of the records. The  
18 parent, guardian or person in the place of a parent of ~~other minors~~ a minor who is  
19 not developmentally disabled shall have the same rights of access as provided to a  
20 subject ~~individuals~~ individual under this section unless the minor, if aged 14 or older,  
21 files a written objection to the access with the custodian of the records. If a minor  
22 files an objection under this subdivision, the parent, guardian or person in the place  
23 of a parent may obtain access only as specified under sub. (4) (b) 13m. and 20.

24 **SECTION 10.** 51.47 (title) of the statutes is amended to read:

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1           **51.47** (title) **Alcohol and other drug abuse treatment and mental health**  
2 **services for minors.**

3           **SECTION 11.** 51.47 (1) of the statutes is renumbered 51.47 (1m) and amended  
4 to read:

5           51.47 **(1m)** Except as provided in subs. (2) and (3), any physician or health care  
6 facility or outpatient treatment program licensed, approved or certified by the state  
7 for the provision of health or mental health services may render outpatient alcohol  
8 and other drug abuse or mental health preventive, diagnostic, assessment,  
9 evaluation or treatment services ~~for the abuse of alcohol or other drugs to a~~ an  
10 informed, consenting minor aged 12 years of age or over older who is in need of the  
11 services without obtaining the consent of or notifying the minor's parent or guardian,  
12 but shall render those services on an inpatient basis under the consent and  
13 notification requirements under s. 51.13. Unless consent of the minor's parent or  
14 guardian is required under sub. (2) or s. 51.13, the physician or health care facility  
15 or outpatient treatment program shall obtain the minor's consent prior to billing a  
16 3rd party for outpatient services under this section. If the minor does not consent  
17 to billing a 3rd party, the minor shall be solely responsible for paying for the  
18 outpatient services, which the department shall bill to the minor under s. 46.03 (18)  
19 (b).

20           **SECTION 12.** 51.47 (1) of the statutes is created to read:

21           51.47 **(1)** In this section, "outpatient treatment program" means any publicly  
22 or privately operated program providing treatment on an outpatient basis to persons  
23 for alcohol abuse, other drug dependency, mental illness or developmental disability.

24           **SECTION 13.** 51.47 (2) (intro.) of the statutes is amended to read:



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1           51.47 (2) (intro.) The physician or, health care facility or outpatient treatment  
2           program shall obtain the consent of the minor's parent or guardian in each of the  
3           following circumstances:

4           **SECTION 14.** 51.47 (2) (b) of the statutes is amended to read:

5           51.47 (2) (b) Before administering any prescription drugs or controlled  
6           substances to the minor, except to detoxify the minor under par. (c).

7           **SECTION 15.** 51.47 (3) of the statutes is amended to read:

8           51.47 (3) The Except as provided in s. 51.30 (4) (c) and before providing a 3rd  
9           session of outpatient treatment to a minor under this section, the physician or, health  
10          care facility or outpatient treatment program shall notify the minor's parent or  
11          guardian of any services the fact that 2 sessions of outpatient treatment have been  
12          rendered under this section as soon as practicable and that additional treatment is  
13          proposed to be rendered, unless the physician, health care facility or outpatient  
14          treatment program determines that notification would be seriously detrimental to  
15          the minor's well-being or, after making a good-faith effort, is unable to contact the  
16          parent or guardian and documents this determination or inability in the minor's  
17          treatment records. If the physician, health care facility or outpatient treatment  
18          program later determines that notification would not be seriously detrimental to the  
19          minor's well-being, the physician, health care facility or outpatient treatment  
20          program shall immediately notify the parent or guardian that services have been  
21          rendered under this section. Before notifying the parent or guardian, the physician,  
22          health care facility or outpatient treatment program shall inform the minor that  
23          notification will be given to the parent or guardian.

24          **SECTION 16.** 51.47 (4) of the statutes is amended to read:

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1           51.47 (4) No physician or health care facility rendering or outpatient  
2 treatment program that renders services under sub. (1) (1m) is liable solely because  
3 of the lack of consent or notification of the minor's parent or guardian.

4           **SECTION 17.** 51.61 (6) of the statutes is renumbered 51.61 (6) (intro.) and  
5 amended to read:

6           51.61 (6) (intro.) Subject to the rights of patients provided under this chapter,  
7 the department, county departments under s. 51.42 or 51.437 and any agency  
8 providing services under an agreement with the department or those county  
9 departments have the right to use customary and usual treatment techniques and  
10 procedures in a reasonable and appropriate manner in the treatment of patients who  
11 are receiving services under the mental health system, for the purpose of  
12 ameliorating the conditions for which the patients were admitted to the system. The  
13 written, informed consent of any patient shall first be obtained, unless the person  
14 has been found not competent to refuse medication and treatment under s. ~~51.61 sub.~~  
15 (1) (g). In the case of a minor, the following written, informed consent of the parent  
16 ~~or guardian is required. Except as provided under an order issued under s. 51.14 (3)~~  
17 ~~(h) or (4) (g), if the minor is 14 years of age or older, the written, informed consent~~  
18 ~~of the minor and the minor's parent or guardian is required. A refusal of either a~~  
19 ~~minor 14 years of age or older or the minor's parent or guardian to provide written,~~  
20 ~~informed consent for outpatient mental health treatment is reviewable under s.~~  
21 ~~51.14.;~~

22           (a) For a minor under 12 years of age, consent of the parent or guardian is  
23 required under s. 51.13 for inpatient mental health treatment, as specified under s.  
24 51.47 (2) and, except as provided under an order issued under s. 51.14 (3) (h) or (4)  
25 (g), for outpatient mental health treatment.

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1           (b) For a minor aged at least 12 but less than 14, consent of the parent or  
2           guardian is required under s. 51.13 for inpatient mental health treatment and as  
3           specified under s. 51.47 (2), but the minor may solely consent to outpatient mental  
4           health treatment under s. 51.47 (1m), except as provided under an order issued  
5           under s. 51.14 (3) (h) or (4) (g).

6           (c) For a minor aged at least 14, consent of the minor and his or her parent or  
7           guardian is required under s. 51.13 for inpatient mental health treatment and as  
8           specified under s. 51.47 (2), but the minor may solely consent to outpatient mental  
9           health treatment under s. 51.47 (1m), except as provided under an order issued  
10           under s. 51.14 (3) (h) or (4) (g).

11           **SECTION 18.** 938.505 (2) (a) (intro.) and 1. of the statutes are amended to read:

12           938.505 (2) (a) (intro.) If a juvenile 14 years of age or over who is under the  
13 supervision of the department or a county department as described in sub. (1) and  
14 who is not residing in his or her home wishes to be administered psychotropic  
15 medication but a parent with legal custody or the guardian refuses to consent to the  
16 administration of psychotropic medication or cannot be found contacted, or if there  
17 is no parent with legal custody, the department or county department acting on the  
18 juvenile's behalf may petition the court assigned to exercise jurisdiction under this  
19 chapter and ch. 48 in the county in which the juvenile is located for permission to  
20 administer psychotropic medication to the juvenile. A copy of the petition and a  
21 notice of hearing shall be served upon the parent or guardian at his or her  
22 last-known address. If, after hearing, the court determines all of the following, the  
23 court shall grant permission for the department or county department to administer  
24 psychotropic medication to the juvenile without the parent's or guardian's consent:

