



2005 ASSEMBLY BILL 1094

March 6, 2006 – Introduced by Representatives STRACHOTA, HAHN and JESKEWITZ,
cosponsored by Senator ROESSLER. Referred to Committee on Public Health.

1 **AN ACT** *to renumber and amend* 51.30 (1) (a); *to amend* 51.30 (1) (b), 51.30 (4)
2 (b) 8. and 51.30 (9) (a); and *to create* 51.30 (1) (ag) and 51.30 (4) (b) 8g. of the
3 statutes; **relating to:** registration and treatment records for services for
4 mental illness, developmental disability, alcoholism, or drug dependence,
5 exceptions to confidentiality for treatment records, and a good faith exception
6 to liability for release of records by a record custodian.

Analysis by the Legislative Reference Bureau

Under current law relating to mental health, developmental disability, alcoholism, and drug dependence, “registration records” are defined to include all records of the Department of Health and Family Services (DHFS), county departments of developmental disabilities services and community programs, treatment facilities, and other persons who provide services to those entities, that identify individuals who are receiving or have received services for mental illness, developmental disability, alcoholism, or drug dependence. “Treatment records” are defined to include registration records and all other records concerning individuals receiving or who have received the services; however, treatment records do not include notes or records maintained for personal use by a treatment service provider if the notes or records are not available to others. Treatment records are confidential and privileged to the subject individual, except that they may be released without the individual’s informed consent to numerous persons and in numerous

ASSEMBLY BILL 1094

circumstances. One of these exceptions concerns release to a licensed physician who determines that the life or health of the subject is in danger and that treatment without the information in the treatment record could be injurious to the subject's health. This exception is limited to that part of the records that is necessary to meet the medical emergency. Liability for damages applies to the violation of confidentiality of registration and treatment records. The liability includes, for a violation that is not knowing and willful, damages, exemplary damages of up to \$1,000 for each violation, costs, and reasonable actual attorneys fees. However, a custodian of records, while acting in good faith, does not incur this liability for the release of registration or treatment records in accordance with the exceptions to confidentiality.

This bill changes the definition of “registration records” to include all records of DHFS, county departments, treatment facilities, and other persons providing services to these entities that are created in the course of providing services for mental illness, developmental disability, alcoholism, or drug dependence, and changes the definition of “treatment records” similarly. The bill changes the exception concerning release of treatment records to a licensed physician in a medical emergency to provide the exception to a health care provider who is otherwise unable to obtain the individual's informed consent because of the individual's condition or the nature of the medical emergency. Further, the bill creates an additional exception that applies to health care providers in a related health care entity, as defined in the bill, or to any person acting under the supervision of such a health care provider who is involved with an individual's care, if necessary for the current treatment of the individual. Lastly, the bill eliminates the good faith exception to liability for release of registration or treatment records by a record custodian.

For further information see the *state and local* 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.** 51.30 (1) (a) of the statutes is renumbered 51.30 (1) (am) and
2 amended to read:

3 51.30 **(1)** (am) “Registration records” include all the records of the department,
4 county departments under s. 51.42 or 51.437, treatment facilities, and other persons
5 providing services to the department, county departments, or treatment facilities
6 ~~which identify individuals who are receiving or who at any time have received, that~~

ASSEMBLY BILL 1094

1 are created in the course of providing services to individuals for mental illness,
2 developmental disabilities, alcoholism, or drug dependence.

3 **SECTION 2.** 51.30 (1) (ag) of the statutes is created to read:

4 51.30 (1) (ag) "Health care provider" has the meaning given in s. 146.81 (1).

5 **SECTION 3.** 51.30 (1) (b) of the statutes is amended to read:

6 51.30 (1) (b) "Treatment records" include the registration and all other records
7 concerning individuals who are receiving or who at any time have received that are
8 created in the course of providing services to individuals for mental illness,
9 developmental disabilities, alcoholism, or drug dependence ~~which~~ and that are
10 maintained by the department, by county departments under s. 51.42 or 51.437 and
11 their staffs, and by treatment facilities. ~~Such~~ Treatment records do not include notes
12 or records maintained for personal use by an individual providing treatment services
13 for the department, a county department under s. 51.42 or 51.437, or a treatment
14 facility, if such ~~the~~ notes or records are not available to others.

15 **SECTION 4.** 51.30 (4) (b) 8. of the statutes is amended to read:

16 51.30 (4) (b) 8. ~~To a licensed physician who has determined that the life or~~
17 ~~health of the individual is in danger and that treatment without the information~~
18 ~~contained in the treatment records could be injurious to the patient's health. Such~~
19 ~~disclosure~~ For treatment of the individual in a medical emergency, to a health care
20 provider who is otherwise unable to obtain the individual's informed consent because
21 of the individual's condition or the nature of the medical emergency. Disclosure
22 under this subdivision shall be limited to that part of the records necessary to meet
23 the medical emergency.

24 **SECTION 5.** 51.30 (4) (b) 8g. of the statutes is created to read:

