

State of Wisconsin



1995 Assembly Bill 418

Date of enactment: **March 22, 1996**

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1995 WISCONSIN ACT 169

AN ACT to *renumber* 51.62 (1) (a); to *renumber and amend* 51.30 (4) (b) 18. and 146.82 (2) (a) 9.; and to *create* 51.30 (4) (b) 18. a., 51.30 (4) (b) 18. e., 51.62 (1) (ag), 51.62 (1) (br), 146.82 (2) (a) 9. a. and 146.82 (2) (a) 9. e. of the statutes; **relating to:** permitting parents of certain minors to limit access by a protection and advocacy agency to the minor's treatment and patient health care records and making limitations on access by a protection and advocacy agency to treatment and patient health care records inapplicable in certain situations.

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

SECTION 1. 51.30 (4) (b) 18. of the statutes is renumbered 51.30 (4) (b) 18. b. and amended to read:

51.30 (4) (b) 18. b. ~~To~~ Except as provided in subd. 18. c. and d., to staff members of the protection and advocacy agency designated under s. 51.62 (2) or to staff members of the private, nonprofit corporation with which the agency has contracted under s. 51.62 (3) (a) 3., if any, for the purpose of protecting and advocating the rights of persons with developmental disabilities, as defined under s. 51.62 (1) (a) (am), or mental illness, as defined under s. 51.62 (1) (bm), except that, if,

c. If the patient, regardless of age, has a guardian appointed under s. 880.33, or if the patient is a minor with developmental disability who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 880.33, information concerning the patient that is obtainable by staff members of the agency or nonprofit corporation with which the agency has contracted is limited, except as provided in subd. 18. e., to the nature of an alleged rights violation, if any; the name, birth date and county of residence of the patient; information regarding whether the patient was voluntari-

ly admitted, involuntarily committed or protectively placed and the date and place of admission, placement or commitment; and the name, address and telephone number of ~~any~~ the guardian of the patient and the date and place of the guardian's appointment. ~~Any or, if the patient is a minor with developmental disability who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 880.33, the name, address and telephone number of the parent or guardian appointed under s. 48.831 of the patient.~~

d. Except as provided in subd. 18. e., any staff member who wishes to obtain additional information about a patient described in subd. 18. c. shall notify the patient's guardian or, if applicable, parent in writing of the request and of the guardian's or parent's right to object. The staff member shall send the notice by mail to the guardian's or, if applicable, parent's address. If the guardian or parent does not object in writing within 15 days after the notice is mailed, the staff member may obtain the additional information. If the guardian or parent objects in writing within 15 days after the notice is mailed, the staff member may not obtain the additional information.

SECTION 2. 51.30 (4) (b) 18. a. of the statutes is created to read:

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

51.30 (4) (b) 18. a. In this subdivision, "abuse" has the meaning given in s. 51.62 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the meaning given in s. 48.02 (13), except that "parent" does not include the parent of a minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11), or for whom a guardian is appointed under s. 880.33.

SECTION 3. 51.30 (4) (b) 18. e. of the statutes is created to read:

51.30 (4) (b) 18. e. The restrictions on information that is obtainable by staff members of the protection and advocacy agency or private, nonprofit corporation that are specified in subd. 18. c. and d. do not apply if the custodian of the record fails to promptly provide the name and address of the parent or guardian; if a complaint is received by the agency or nonprofit corporation about a patient, or if the agency or nonprofit corporation determines that there is probable cause to believe that the health or safety of the patient is in serious and immediate jeopardy, the agency or nonprofit corporation has made a good-faith effort to contact the parent or guardian upon receiving the name and address of the parent or guardian, the agency or nonprofit corporation has either been unable to contact the parent or guardian or has offered assistance to the parent or guardian to resolve the situation and the parent or guardian has failed or refused to act on behalf of the patient; if a complaint is received by the agency or nonprofit corporation about a patient or there is otherwise probable cause to believe that the patient has been subject to abuse or neglect by a parent or guardian; or if the patient is a minor whose custody has been transferred to a legal custodian, as defined in s. 48.02 (11) or for whom a guardian that is an agency of the state or a county has been appointed.

SECTION 4. 51.62 (1) (a) of the statutes is renumbered 51.30 (1) (am).

SECTION 5. 51.62 (1) (ag) of the statutes is created to read:

51.62 (1) (ag) "Abuse" means any of the following:

(a) An act, omission or course of conduct by another that is inflicted intentionally or recklessly on an individual with developmental disability or mental illness and that does at least one of the following:

1. Results in bodily harm or great bodily harm to the individual.
2. Intimidates, humiliates, threatens, frightens or otherwise harasses the individual.

(b) The forcible administration of medication to an individual with developmental disability or mental illness, with the knowledge that no lawful authority exists for the forcible administration.

(c) An act to an individual with developmental disability or mental illness that constitutes first degree, 2nd degree, 3rd degree or 4th degree sexual assault as specified under s. 940.225.

SECTION 6. 51.62 (1) (br) of the statutes is created to read:

51.62 (1) (br) "Neglect" means an act, omission or course of conduct that, because of the failure to provide adequate food, shelter, clothing, medical care or dental care, creates a significant danger to the physical or mental health of an individual with developmental disability or mental illness.

SECTION 7. 146.82 (2) (a) 9. of the statutes is renumbered 146.82 (2) (a) 9. b. and amended to read:

146.82 (2) (a) 9. b. ~~To~~ Except as provided in subd. 9. c. and d., to staff members of the protection and advocacy agency designated under s. 51.62 (2) or to staff members of the private, nonprofit corporation with which the agency has contracted under s. 51.62 (3) (a) 3., if any, for the purpose of protecting and advocating the rights of a person with development disabilities, as defined under s. 51.62 (1) (~~a~~) (am), who resides in or who is receiving services from an inpatient health care facility, as defined under s. 51.62 (1) (b), or a person with mental illness, as defined under s. 51.62 (1) (bm), ~~except that, if,~~

c. If the patient, regardless of age, has a guardian appointed under s. 880.33, or if the patient is a minor with developmental disability, as defined in s. 51.01 (5) (a), who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 880.33, information concerning the patient that is obtainable by staff members of the agency or nonprofit corporation with which the agency has contracted is limited, except as provided in subd. 9. e., to the nature of an alleged rights violation, if any; the name, birth date and county of residence of the patient; information regarding whether the patient was voluntarily admitted, involuntarily committed or protectively placed and the date and place of admission, placement or commitment; and the name, address and telephone number of any the guardian of the patient and the date and place of the guardian's appointment. Any or, if the patient is a minor with developmental disability who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 880.33, the name, address and telephone number of the parent or guardian appointed under s. 48.831 of the patient.

d. Except as provided in subd. 9. e., any staff member who wishes to obtain additional information about a patient described in subd. 9. c. shall notify the patient's guardian or, if applicable, parent in writing of the request and of the guardian's or parent's right to object. The staff member shall send the notice by mail to the guardian's or, if applicable, parent's address. If the guardian or parent does not object in writing within 15 days after the notice is mailed, the staff member may obtain the additional information. If the guardian or parent objects in writing within 15 days after the notice is mailed, the staff member may not obtain the additional information.

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SECTION 8. 146.82 (2) (a) 9. a. of the statutes is created to read:

146.82 (2) (a) 9. a. In this subdivision, “abuse” has the meaning given in s. 51.62 (1) (ag); “neglect” has the meaning given in s. 51.62 (1) (br); and “parent” has the meaning given in s. 48.02 (13), except that “parent” does not include the parent of a minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11), or for whom a guardian is appointed under s. 880.33.

SECTION 9. 146.82 (2) (a) 9. e. of the statutes is created to read:

146.82 (2) (a) 9. e. The restrictions on information that is obtainable by staff members of the protection and advocacy agency or private, nonprofit corporation that are specified in subd. 9. c. and d. do not apply if the custodian of the record fails to promptly provide the name and address of the parent or guardian; if a complaint is received by the agency or nonprofit corporation about a pa-

tient, or if the agency or nonprofit corporation determines that there is probable cause to believe that the health or safety of the patient is in serious and immediate jeopardy, the agency or nonprofit corporation has made a good-faith effort to contact the parent or guardian upon receiving the name and address of the parent or guardian, the agency or nonprofit corporation has either been unable to contact the parent or guardian or has offered assistance to the parent or guardian to resolve the situation and the parent or guardian has failed or refused to act on behalf of the patient; if a complaint is received by the agency or nonprofit corporation about a patient or there is otherwise probable cause to believe that the patient has been subject to abuse or neglect by a parent or guardian; or if the patient is a minor whose custody has been transferred to a legal custodian, as defined in s. 48.02 (11) or for whom a guardian that is an agency of the state or a county has been appointed.
