



1995 ASSEMBLY BILL 418

May 30, 1995 - Introduced by Representatives VRAKAS, SCHNEIDERS, GROTHMAN, KELSO, LEHMAN, OTTE, SKINDRUD, HAHN and OWENS, cosponsored by Senators HUELSMAN, PANZER, DARLING and ROSENZWEIG. Referred to Committee on Health.

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

Analysis by the Legislative Reference Bureau

Under current state law, treatment records of an individual who is receiving or has received services for mental illness, developmental disability, alcoholism or drug dependence that are maintained by the department of health and social services, by county departments of community programs or developmental disabilities services or by treatment facilities are confidential and are privileged to the individual. Patient health care records that are prepared by or under the supervision of a health care provider are also confidential and are privileged to the patient. With certain exceptions, the treatment records or patient health care records may be released only with the informed written consent of the individual. One of the exceptions applies to staff members of the protection and advocacy agency or to staff members of a private nonprofit corporation with which the protection and advocacy agency has contracted. (A protection and advocacy agency is an entity designated by the governor to implement a system to protect and advocate the rights of persons with developmental disabilities or mental illness, as authorized by federal law.) Currently, however, if the individual for whom treatment records are sought has had a guardian appointed for him or her, information about that individual that the protection and advocacy agency, or the nonprofit corporation with which it has contracted, may obtain is limited to the nature of an alleged rights violation, if any;

the name, birth date and county of residence of the individual; information as to whether the individual was voluntarily admitted, involuntarily committed or protectively placed and the date and place of the admission, commitment or placement; and the name, address and telephone number of the guardian and the date and place of the guardian's appointment. If the protection and advocacy agency or the nonprofit corporation with which it has contracted wishes to obtain additional information, it must notify the guardian in writing and may obtain the information only if the guardian does not object within 15 days after the notice is mailed.

Current federal law, which authorizes designation of the protection and advocacy agency, permits denial of access by the agency to records of an individual if the individual, legal guardian, conservator or other legal representative of the individual authorizes the denial. However, federal law also specifies that denial of access to records of an individual with developmental disability who has a legal representative may be overridden if a complaint is received about the individual or if the health or safety of the individual is in serious and immediate jeopardy and the agency has contacted the legal representative and offered assistance and the legal representative has refused or failed to act on behalf of the individual.

This bill permits the parent or guardian of a minor who has not had a guardian appointed for him or her on grounds of incompetence to object to a request by the protection and advocacy agency, or the nonprofit corporation with which it has contracted, to have access to the minor's treatment records or patient health care records.

Further, the bill makes inapplicable a denial of access for the protection and advocacy agency to treatment or patient health care records of a developmentally disabled individual that is made by the individual's parent, guardian of the person or guardian appointed on grounds of incompetence, if a complaint is received about the individual or if there is probable cause to believe that the health or safety of the individual is in serious or immediate jeopardy; the protection and advocacy agency has contacted the parent or guardian and offered assistance; and the parent or guardian has refused or failed to act on behalf of the individual.

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

3 51.30 (4) (b) 18. a. ~~To~~ Except as provided in subd. 18. b. and c., to staff members
4 of the protection and advocacy agency designated under s. 51.62 (2) or to staff
5 members of the private, nonprofit corporation with which the agency has contracted

1 under s. 51.62 (3) (a) 3., if any, for the purpose of protecting and advocating the rights
2 of persons with developmental disabilities, as defined under s. 51.62 (1) (a), or mental
3 illness, as defined under s. 51.62 (1) (bm), ~~except that, if,~~

4 b. If the patient, regardless of age, has a guardian appointed under s. 880.33,
5 or if the patient is a minor who has a parent or has a guardian appointed under s.
6 48.831 and does not have a guardian appointed under s. 880.33, information
7 concerning the patient that is obtainable by staff members of the agency or nonprofit
8 corporation with which the agency has contracted is limited, except as provided in
9 subd. 18. d., to the nature of an alleged rights violation, if any; the name, birth date
10 and county of residence of the patient; information regarding whether the patient
11 was voluntarily admitted, involuntarily committed or protectively placed and the
12 date and place of admission, placement or commitment; and the name, address and
13 telephone number of ~~any~~ the guardian of the patient and the date and place of the
14 guardian's appointment. ~~Any or, if the patient is a minor who has a parent or has~~
15 ~~a guardian appointed under s. 48.831 and does not have a guardian appointed under~~
16 ~~s. 880.33, the name, address and telephone number of the parent or guardian~~
17 ~~appointed under s. 48.831 of the patient.~~

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

1 15 days after the notice is mailed, the staff member may not obtain the additional
2 information.

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

4 51.30 (4) (b) 18. d. The restrictions on information that is obtainable by staff
5 members of the protection and advocacy agency or private, nonprofit corporation
6 that are specified in subd. 18. b. and c. do not apply if a complaint is received by the
7 agency or nonprofit corporation about a patient with developmental disability or if
8 there is probable cause to believe that the health or safety of a patient with
9 developmental disability is in serious and immediate jeopardy and the agency or
10 nonprofit corporation has contacted the guardian or parent upon receiving the name
11 and address of the guardian or parent, the agency or nonprofit corporation has
12 offered assistance to the guardian or parent to resolve the situation and the guardian
13 or parent has failed or refused to act on behalf of the patient.

14 **SECTION 3.** 146.82 (2) (a) 9. of the statutes is renumbered 146.82 (2) (a) 9. a. and
15 amended to read:

16 146.82 (2) (a) 9. a. ~~To Except as provided in subd. 9. b. and c., to~~ staff members
17 of the protection and advocacy agency designated under s. 51.62 (2) or to staff
18 members of the private, nonprofit corporation with which the agency has contracted
19 under s. 51.62 (3) (a) 3., if any, for the purpose of protecting and advocating the rights
20 of a person with development disabilities, as defined under s. 51.62 (1) (a), who
21 resides in or who is receiving services from an inpatient health care facility, as
22 defined under s. 51.62 (1) (b), or a person with mental illness, as defined under s.
23 51.62 (1) (bm), ~~except that, if,~~

24 b. If the patient, regardless of age, has a guardian appointed under s. 880.33,
25 or if the patient is a minor who has a parent or has a guardian appointed under s.

1 48.831 and does not have a guardian appointed under s. 880.33, information
2 concerning the patient that is obtainable by staff members of the agency or nonprofit
3 corporation with which the agency has contracted is limited, except as provided in
4 subd. 9. d., to the nature of an alleged rights violation, if any; the name, birth date
5 and county of residence of the patient; information regarding whether the patient
6 was voluntarily admitted, involuntarily committed or protectively placed and the
7 date and place of admission, placement or commitment; and the name, address and
8 telephone number of any the guardian of the patient and the date and place of the
9 guardian's appointment. Any or, if the patient is a minor who has a parent or has
10 a guardian appointed under s. 48.831 and does not have a guardian appointed under
11 s. 880.33, the name, address and telephone number of the parent or guardian
12 appointed under s. 48.831 of the patient.

13 c. Except as provided in subd. 9. d., any staff member who wishes to obtain
14 additional information about a patient described in subd. 9. b. shall notify the
15 patient's guardian or, if applicable, parent in writing of the request and of the
16 guardian's or parent's right to object. The staff member shall send the notice by mail
17 to the guardian's or, if applicable, parent's address. If the guardian or parent does
18 not object in writing within 15 days after the notice is mailed, the staff member may
19 obtain the additional information. If the guardian or parent objects in writing within
20 15 days after the notice is mailed, the staff member may not obtain the additional
21 information.

22 **SECTION 4.** 146.82 (2) (a) 9. d. of the statutes is created to read:

23 146.82 (2) (a) 9. d. The restrictions on information that is obtainable by staff
24 members of the protection and advocacy agency or private, nonprofit corporation
25 that are specified in subd. 9. b. and c. do not apply if a complaint is received by the

SECTION 4

1 agency or nonprofit corporation about a patient with developmental disability or if
2 there is probable cause to believe that the health or safety of a patient with
3 developmental disability is in serious and immediate jeopardy and the agency or
4 nonprofit corporation has contacted the guardian or parent upon receiving the name
5 and address of the guardian or parent, the agency or nonprofit corporation has
6 offered assistance to the guardian or parent to resolve the situation and the guardian
7 or parent has failed or refused to act on behalf of the patient.

8 (END)