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Details:

(FORM UPDATED: 07/12/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2005-06
(session year)

Assembly
(Assembly, Senate or Joint)

Committee on ... Public Health
(AC-PH)

COMMITTEE NOTICES ...

- *Committee Reports* ... CR
- *Executive Sessions* ... ES
- *Public Hearings* ... PH
- *Record of Comm. Proceedings* ... RCP

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- *Appointments* ... Appt
- *Clearinghouse Rules* ... CRule
- *Hearing Records* ... bills and resolutions
  (ab = Assembly Bill) (ar = Assembly Resolution) (ajr = Assembly Joint Resolution)
  (sb = Senate Bill) (sr = Senate Resolution) (sjr = Senate Joint Resolution)
- *Miscellaneous* ... Misc

From: Rep.Strachota

Sent: Wednesday, March 01, 2006 4:19 PM

To: *Legislative Assembly Democrats; *Legislative Assembly Republicans; *Legislative Senate Democrats; *Legislative Senate Republicans

Subject: Strachota/Roessler Co-spons-LRB 4699/1 & 3558/5 re: electronic medical records relating to mental health

To: Legislative Colleagues

From: Rep. Strachota and Sen. Roessler

RE: Co-sponsor LRB 4699/1 & 3958/5 re: electronic medical records relating to mental health

DEADLINE: **Friday, March 3rd at 10 am.**

Current state statutes and administrative rules related to behavioral health and patient privacy prohibit WI hospitals from including patients' behavioral health records in their general medical records. The provision in Ch. 51.30 limiting who may access mental health records for treatment purposes without the patient's consent has not been substantively revised since its inception in 1975. The manner in which health care is delivered has changed dramatically in those 30+ years. This limitation has a negative impact on patient safety and quality of care. In addition, it hinders the implementation of hospitals' electronic medical record computerization projects.

LRB 4699/1 and 3558/5 amends Ch 51.30 and HFS 92.01 so Wisconsin's behavioral health privacy statutes are more aligned with HIPAA (federal law). HIPAA permits hospitals to include patients' behavioral health records related to treatment, diagnoses and medications in their general medical records. Psychotherapy notes would continue to be be excluded under the proposal. Several states have already adopted language similar to LRB 4699/1 and 3558/5.

If you wish to be added as a co-sponsor, please reply to this email or call Representative Strachota's (4-8486) office by **Friday, March 3rd at 10 am**. Co-sponsors will be signed on to both LRBs.

<<05-39585.pdf>>

05-39585.pdf

FORWARD

3000 West Montana Street T (414) 647-3000
P.O. Box 343910
www.AuroraHealthCare.org
Milwaukee, WI 53234-3910

March 6, 2006

Re: LRB 3958 - Behavioral Health Medical Records (AB 1044)

Dear Chairperson and Members, Assembly Public Health Committee:

On behalf of Aurora Health Care, I am writing to request your support for LRB 3958 related to behavioral health medical records. This legislation will improve patient safety and quality of care by allowing a patient's mental health information to be used and disclosed among health care providers as needed to treat their patients.

Aurora Health Care is a leader in implementing electronic prescribing and electronic medical records. We have first-hand experience with the immense quality and safety benefits provided to patients by clinical information systems. All patients should have access to these benefits, including mental health patients.

The practice of keeping mental health information separate is clearly detrimental to patient safety. As we implement various information technologies, we have become even more aware of the importance of making information available to physicians and other clinicians who are providing care to the patient. This represents a better way to deliver health care, and state law should be amended to allow us to make these benefits available to all of our patients.

I request your support for LRB 3958 which allows physicians and other caregivers to access mental health treatment records for treatment purposes without a patient's written consent. This information will be appropriately safeguarded in our electronic systems – as is currently done for more than 3.5 million patients with other medical conditions. Health care providers must have ready access to valuable medical information where and when it is needed, in order to ensure patient safety, quality of care, and cost containment.

Thank you for your consideration.

Sincerely,

Nick W. Turkal, M.D.
Senior Vice President and Metro Region President

AB 1094

Corporate Office
3000 West Montana Street
P.O. Box 343910
Milwaukee, WI 53234-3910

T (414) 647-6322
www.AuroraHealthCare.org

March 1, 2006

Dear Committee Chairperson and Members, Assembly Public Health Committee:

We are the physician leaders of Aurora Medical Group. We are writing to support LRB 3958 that would allow use and disclosure of mental health treatment records for treatment purposes without the patient's written consent.

Aurora Medical Group has been on the leading edge of improving quality of care and patient safety by implementing electronic prescribing and an electronic health record. We have first-hand experience with realizing the immense benefits of these clinical information systems. We also have first-hand experience with excluding a certain population of our patients – those treated by our mental health professionals - from benefiting from these systems.

We recognize the practice of locking away mental health information has been in place for years. While this was certainly detrimental even in the paper environment, our awareness of the impact of treating patients without adequate information has increased over time. As we have implemented various information technologies, we have become even more aware of the importance of making information available to physicians and other clinicians who are providing care to the patient. This represents a better way to deliver health care, and the law must allow us to make these benefits available to all of our patients.

We urge you to support LRB 3958, which would allow mental health information to be used and disclosed amongst health care providers as needed to treat the patient. This information will be appropriately safeguarded in our electronic systems – as is currently done for more than 3.5 million patients with other medical conditions. Health care providers must have ready access to valuable medical information where and when it is needed, in order to ensure patient safety, quality of care, and cost containment.

Thank you for your consideration.

Sincerely,

Jeffrey W. Bailet, M.D.
President
Aurora Medical Group

Eliot J. Huxley, M.D.
Chairman
Aurora Medical Group

Aurora Medical Group

AB 1094

February 1, 2006

Dear Committee Chairperson and Members, Assembly Public Health Committee:

As a practicing psychiatrist, I am very dismayed by Wisconsin state law which continues to separate behavioral health records from the rest of the medical records. Presently, mental health records are not allowed as part of an electronic medical record. I perform many inpatient and outpatient psychiatric consultations in the Aurora Health System. While I can get a paper copy of this through requests to medical records, as the law currently stands, none of this information is accessible urgently or after hours when it would most likely be needed.

This restriction is a disservice to my patients and the health care system. These evaluations are typically about signs and symptoms of mental disease, medical disease with relevance to the mental state, medications, adverse drug reactions, family history and so forth. They typically contain nothing that would be considered psychotherapy and are no more sensitive in nature than any other medical record.

It is my understanding that the law has continued to find a distinction between the general record in behavioral health clinics and psychotherapy notes. I believe psychotherapy notes are protected from discovery in all but extraordinary cases and must be kept separately from the behavioral health record. In my opinion, the law should continue to provide a special status for this type of document as it may contain extremely personal information such as thoughts, fears, fantasies etc. These have no place in an electronic database accessible to the general medical community.

However, by restricting access to all mental health records, important information about mental status and the impact of medical illness and medications on that status are not available to emergency physicians, covering physicians or even the patients' own MD if they are at a different site from where the paper record resides.

I urge you to consider drafting legislation that would allow psychiatric evaluations, consultations, and pharmacotherapy records to be included in properly constructed and safeguarded electronic medical databases. This would allow authorized medical personnel rapid access to valuable medical information concerning the brain and the mind just like the rest of the body.

I would welcome the opportunity to discuss these concerns with you or your staff. Feel free to contact me at Aurora BayCare Medical Center at (920) 288 8000 during business hours.

Sincerely,

Peter M. Fischer MD

Aurora Behavioral
Health Services

Administrative Offices
1220 Dewey Avenue
Wauwatosa, WI 53213

T (414) 454-6470
F (414) 454-6450
www.AuroraHealthCare.org

AB 1094

Dear Committee Chairperson and Members, Assembly Public Health Committee:

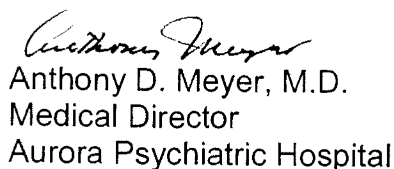
We are psychiatrists practicing in the state of Wisconsin. We are writing to support changes to Wisconsin §51.30 that would allow use and disclosure of mental health treatment records for treatment purposes without the patient's written consent. This would allow us to include our patients' information in Aurora Health Care's electronic medical record system. The potential benefits to our patients include improved quality of care and patient safety because the patient's entire medication profile, allergy history, and other vital information would be available to any clinician providing care to our patients. As it currently stands, access to any records governed by §51.30 are restricted to use within the mental health treatment facility. Thus information is hidden away that may be vital to a primary care provider as a new prescription or is written for the patient or as other care is ordered and provided.

We believe HIPAA provided a needed protection by requiring written authorization for use and disclosure of any information that qualifies as a psychotherapy note. The information contained in these notes truly are only useful to the therapist and the patient, and do not need to be disclosed without authorization for treatment purposes, nor should they be included in centralized electronic health record systems. That is not the case, however, for the remainder of mental health information. Documentation about signs and symptoms of mental disease, medical disease with relevance to the mental state, medications, adverse drug reactions, family history, etc. are vital to the provision of appropriate, high quality, and cost-effective care.

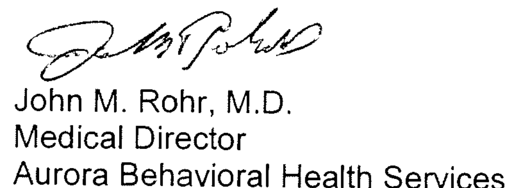
We urge you to support legislation that would allow psychiatric evaluations, consultations, and pharmacotherapy records to be used and disclosed amongst health care providers without patient authorization. These records need to be included in properly safeguarded electronic health record systems, so that providers will have ready access to valuable medical information where and when it is needed.

Thank you for your consideration.

Sincerely,



Anthony D. Meyer, M.D.
Medical Director
Aurora Psychiatric Hospital



John M. Rohr, M.D.
Medical Director
Aurora Behavioral Health Services

Aurora Health Care

Care Management Administration
12500 West Bluemound Road
Suite 301
Elm Grove, WI 53122

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www.AuroraHealthCare.org

AB 1094

March 1, 2006

Dear Committee Chairperson and Members, Assembly Public Health Committee:

I am the Patient Safety Officer at Aurora Health Care. I am writing to support LRB 3958 that would allow use and disclosure of mental health treatment records for treatment purposes without the patient's written consent.

Aurora Health Care has been on the leading edge of improving quality of care and patient safety by implementing electronic prescribing and an electronic health record. Excluding a certain population of our patients, those treated by our mental health professionals could significantly impact their health and safety.

I recognize the practice of locking away mental health information has been in place for years. The impact of treating patients without adequate information has significant safety implications. The importance of making information available to physicians and other clinicians who are providing care to the patient is a better way to deliver health care, and the law must allow us to make these benefits available to all of our patients.

I urge you to support LRB 3958, which would allow mental health information to be used and disclosed amongst health care providers as needed to treat the patient. This information will be appropriately safeguarded in our electronic systems, as is currently done for more than 3.5 million patients with other medical conditions. Health care providers must have ready access to valuable medical information where and when it is needed in order to ensure patient safety, quality of care, and cost containment.

Thank you for your consideration.

Sincerely,

Kathryn K Leonhardt MD

Kathy Leonhardt, MD, MPH
Patient Safety Officer
Medical Director, Care Management
Aurora Health Care

KL/sjg

FORWARD
PLURIBUS UNUM

Aurora Health Care

Memo

Date: March 8, 2006

To: Committee Chair and Members
Assembly Committee on Public Health

From: Nancy Vogt, Chief Privacy Officer, Aurora Health Care

Re: AB 1094

Good morning. My name is Nancy Vogt and I am the Chief Privacy Officer at Aurora Health Care. I would like to thank the Committee Chair and members for allowing me this opportunity to testify on behalf of Aurora regarding AB 1094. This legislation is so very important to Wisconsin residents who are receiving care for mental illness since it impacts patient safety and quality of care.

As you may know, Aurora Health Care is Wisconsin's largest non-profit health care system. Established in 1984, Aurora has sites in more than 80 communities throughout eastern Wisconsin, including 13 hospitals, 100 clinics and 120 community pharmacies. 3,400 physicians are affiliated with Aurora, including more than 650 doctors who make up Aurora Medical Group. In recent years, Aurora has become a nationally recognized leader in efforts to improve the quality of health care.

One of our hospitals, Aurora Psychiatric Hospital, is fully dedicated to providing mental health services. In addition, three community hospitals and multiple physician clinics include mental health treatment facilities certified by Wisconsin's Department of Health and Family Services. We have extensive experience with providing mental health services. We also have more than 10 years experience with implementing electronic health records, and clinical information systems that offer decision support to physicians and other care givers.

I would like to start by sharing a real-life Aurora story with you. A patient was brought in unconscious to one of our emergency departments. We were able to identify the patient via his bracelet, although the bracelet did not include his physician's name or medications he was on. In the old days, obtaining any history on this patient would have been impossible, since we wouldn't even know whom to call. This episode of care, however, took place after we had implemented our electronic record system. The patient had a common name, and we knew no other identifiers. While the physician ordered a CAT scan and other tests, and while a bed was prepared in the ICU, a nurse in the E.D. queried the EMTs regarding the location where the patient had been picked up. The nurse was able to locate the patient's record, and very quickly identified that the

patient had been treated at another emergency department for toxicity due to a medication prescribed for the patient's mental illness. The patient had a repeated history of taking too much of this medication. Testing for this particular medication is not part of the routine drug overdose panel. Once the physician, however, learned of this history, he ordered the necessary test and was able to quickly diagnose the cause of the patient's comatose condition. Therapy was immediately instituted, the patient regained consciousness, and there was no longer a need for the ICU bed.

This episode may have had a very different outcome if the patient had not been seen in an emergency room in the past. The mental health provider who prescribed this medication would not have been allowed by Wisconsin statute 51.30 to include this information in Aurora's electronic record system. Since this electronic system serves all Aurora facilities from a centralized database, including mental health information constitutes a disclosure outside of the treatment facility. Such a disclosure is currently prohibited in Wisconsin unless there is written informed consent from the patient.

Now I would like you to imagine that you are sitting in your physician's exam room. You are currently taking 3 medications, and the physician is writing a prescription for a fourth medication. For your physician to keep up with the current pace of medical literature, he would need to read 30 articles per day, 365 days per year. There are as many as 10,000 medications on the market, and these typically have one or more components that may interfere or interact with components in other medications. Finally, you may be allergic to one or more of those medication components. How confident are you when your physician is writing your new prescription that he will know or learn about all these potential interactions, with either your allergies and/or your other medications? Considering a CDC survey demonstrated that the average duration of a physician visit is 19.3 minutes, do you believe your physician will have enough time to do all this research? Oh yes – and then there is the possibility that the pharmacist will not fill your prescription accurately because your physician's handwriting is illegible.

The good news is that health care providers have already implemented or are in the process of implementing electronic health record and clinical information systems that provide ready assistance to the physician and other clinicians. As in the case of the comatose emergency department, information is now available that we otherwise would not have even known existed. In other words, we couldn't have even requested it. In the case of the fourth medication being prescribed, the computer system includes a medication reference database that will automatically check for potential interactions, and will check against the patient's known allergies, before the physician has completed the prescription. The prescription is sent directly by the computer to the pharmacy, and illegibility is no longer an issue. The physician also has ready access to published medical evidence regarding best practices.

Now for the bad news. Wisconsin health care providers are constrained from fully using information when providing treatment to our mental health patients. Wisconsin statute 51.30 currently limits access to mental health information to only those working within the walls of the treatment facility where the information originated, unless written informed consent is obtained from the patient. The federal HIPAA Privacy Rule, on the

other hand, allows such disclosures for treatment purposes without consent, as does WI statute 146.82, which governs general medical records.

This means that WI 51.30 prevents health care organizations comprised of multiple related entities from including mental health records in our electronic health record systems. Doing so would constitute a disclosure outside the walls of the treatment facility. This leaves our mental health patients out in the cold when it comes to benefiting from these new technologies.

In my position as privacy officer, I act in the role of patient advocate. I am responsible for ensuring that my organization complies with all state and federal laws protecting the privacy of patient information and guaranteeing patient rights as regards that information.

One of the biggest challenges of my role is to ensure our privacy policies and practices achieve an appropriate and reasonable balance between the need for clinicians to access information and our obligation and commitment to protect the privacy of that information. Our patient's best interests are at the heart of these decisions. Our laws also need to ensure this appropriate balance between safe, high quality care and privacy.

Patients are mobile, and health care is complex. Limiting the use of this information to only within the treatment facility walls does not make sense in the current health care environment, and it jeopardizes patient safety and the quality of health care provided to our patients. It is clear to us that this creates an unsafe and substandard level of care for a subset of our patients – namely those receiving mental health services.

Aurora Health Care has demonstrated a tremendous commitment to integrating services for our patients, so that we treat the patient as a whole rather than a disconnected subset of anatomical parts or body systems. Integrating our patients' information is key to integrating their care. We have discovered a better way of achieving high quality and safe care. All of our patients deserve to benefit from these advances.

You may wonder, why not just obtain the patient's written consent? We thoroughly evaluated this option, and determined relying upon patient consent is not feasible. For one, the patient has the right to revoke consent. The electronic health record is our legal business record, and should a patient revoke consent, we could not delete information and still maintain the legal integrity of the health record. In addition, when a patient refuses to consent, we are forced to maintain two record-keeping systems. This is costly and prone to error.

We all certainly recognize the societal challenges of the stigma associated with mental illness. It's important to also recognize that many other medical conditions carry stigma as well–sexually transmitted diseases, AIDS, neurological disorders, infertility and impotence to name a few. Health care providers appropriately manage these conditions in their electronic health record systems today, and I contend the same would be true if we included mental health information. In fact, we already do manage the majority of

mental health information in our electronic systems, because it is generated by primary care physicians outside of mental health treatment facilities. We have proven our ability to protect privacy while sharing this information with those with a need to know.

The federal HIPAA Privacy Rule has resulted in increased awareness of and commitment to privacy, and has resulted in the development of formal privacy programs in health care organizations. The state of privacy is far better today than it was when WI statute 51.30 was enacted. At Aurora, we have trained nearly 25,000 employees regarding patient privacy – even the painters and housekeeping staff. We have instituted strict policies and have enforced them. We take privacy very seriously, as do other health care organizations throughout Wisconsin.

We are well aware of the risks if we fail to adequately protect patient information. We realize that our patients must trust us to safeguard their information, so that they will provide information to us that is so critical to their care. While this is enough reason for us to take privacy seriously, we also face lawsuits, civil fines and criminal penalties up to $250,000 and 10 years in prison under federal law, and additional penalties under state law, should we be found willfully negligent in protecting the privacy of health information.

State laws need to balance privacy with the benefits of access and availability, and should not be so prescriptive as to place our patients at risk. AB 1094 moves us in that direction, as it will allow us to include medications, allergies, and diagnosis in our systems.

I'd also like to mention that I have letters supporting this legislation from multiple Aurora physician leaders. Drs. Meyer and Rohr are practicing psychiatrists, and are physician leaders at the Aurora Psychiatric Hospital in Wauwatosa. Dr. Fischer is a psychiatrist employed by Aurora Medical Group and works in a multi-specialty clinic in Green Bay. Drs. Huxley and Bailett are the physician leaders of Aurora Medical Group, which is comprised of more than 650 physicians who practice in primary care, mental health, and other specialties. Dr. Kathy Leonhardt leads Aurora's Patient Safety Program. Dr. Nick Turkal is senior clinical vice president. All these physicians feel very strongly that this bill is in the best interest of their patients, as do many others. The letters urge you to support the bill. A copy of each of them has been distributed to Committee members.

AB 1094 amends WI 51.30 to allow for the use and disclosure of mental health information between related health care entities. It also more broadly allows disclosures between unrelated entities in emergency circumstances by allowing disclosures to be made to providers other than licensed physicians. On behalf of Aurora, I urge you to support this bill, because it is so important to the patients that we are so privileged to serve. AB 1094 will further improve both the safety and quality of care delivered to our patients.

Thank you for your time. I would be happy to answer any questions that the Committee may have.

FORWARD
E PLURIBUS UNUM

WISCONSIN HOSPITAL ASSOCIATION, INC.

March 8, 2006

TO: Members of the Assembly Committee on Public Health

FROM: Jodi Bloch, Vice President-Government Affairs

SUBJECT: Support for AB 1094

The Wisconsin Hospital Association supports AB 1094, which makes changes to Wisconsin statutes that will enable providers in Wisconsin to better treat mental health patients through the use of electronic medical record (EMR) technology. WHA would like to thank Rep. Strachota and Sen. Roessler their staff members Sara Buschman and Jennifer Stegall for their work on this legislation.

Wisconsin hospital and health systems, particularly Aurora, Affinity and ThedaCare are in different stages of development and implementation of integrated medical record technology. The hospitals that are approaching the more advanced stages of electronic medical record integration are experiencing difficulties when it comes to treatment of mental health records. As the advancement of EMR technology occurs, more and more providers will experience the problem of having to continue to separate mental health records out from the rest of a mental health patient's record even though the use of the EMR advances and benefits not only treatment, but also patient privacy, which is of particular importance to both mental health providers and their patients.

Over the course of the last few months, representatives from Aurora, Affinity, ThedaCare, the Wisconsin Medical Society and WHA have been meeting with the mental health advocates along with representatives from Rep. Strachota and her staff along with Sens. Roessler and Darling's offices to discuss the problem that providers are experiencing in trying to treat these patients who are being treated by a mental/behavioral health specialist, but may also need treatment in a primary care or ER setting. Because state law requires that when a mental health specialist is treating a mental health patient, his/her record must be kept separately from the regular medical record unless consent is given, while no such requirement exists if the patient receives mental health treatment by their primary care provider. Because these records cannot be shared if seen by a mental health specialist, challenges are posed to the providers in trying to treat the whole patient and integrating EMR technology into the hospital/hospital system.

AB 1094 will allow the disclosure of allergies, diagnosis, medications and registration records. It will continue to exclude the inclusion of psychotherapy notes as prohibited by HIPAA. Under current state law, if a primary care doctor provides a patient's mental health treatment, the information may be disclosed to any health care provider for treatment purposes without the patient's consent. The American Psychology Association estimates that 65%-85% of all mental health treatment is provided by primary care doctors. But, if a psychiatrist or other mental health specialist provides the patient's treatment, the information may not be disclosed outside the facility where the information was created. This bill will only impact between 15% -35% of the treatment provided to mental health patients.

APA Monitor Online, 30:4, April 1999 (extracted from the Blueprint Report – Facing Fear Together: Mental Health and Primary Care in a Time of Terrorism, May 2003.

In the course of these meetings, we examined how the laws in other states handle mental health records. Thirteen states that we examined did not limit accessibility to mental health records by excluding types of

information for treatment purposes with the exception of psychotherapy notes, which again are also excluded under HIPAA. Minnesota state law limits disclosure within related health care entities. AB 1094 is modeled after Minnesota law.

WHA is well aware of the mental health advocates concern for patient privacy. The stigma attached to mental illness is still a very real issue in our culture. In our discussions with the advocates regarding this bill, they mentioned how patients that were receiving treatment for non-mental health illnesses were treated differently when their physicians or other caregivers found out they had been diagnosed previously with a mental illness.

The way to change this unfortunate behavior is to educate physicians and other caregivers regarding mental illness and provide them with sensitivity training. WHA is very willing to sit down with the advocates and the WI Medical Society to discuss ideas to address this issue. Preventing physicians from having access to a patient's mental health records, though, is clearly not the solution. Providers should not be put in the position of having to sacrifice patient safety for patient privacy.

Some of the advocates have suggested that providers should obtain written consent before including additional information in a patient's medical record. Our members have examined this option and as they will testify that this is simply not a feasible solution. First and foremost, patients have the right to revoke consent. As hospitals implement electronic medical record projects, the electronic record is the provider's legal business record. Providers cannot delete information from the record if a patient later revokes their consent while still maintaining its legal integrity.

The U.S. Surgeon General's 1999 Report on Mental Health reached three main conclusions:

* Mental health is fundamental to an individual's health.
* Mental health care should flow within the mainstream of health are.
* The destructive split between mental and physical health care should be mended.

WHA and the providers here testifying in support agree with those conclusions and believe that allowing the sharing of certain information in a mental health record will go along way toward not only doing away with the stigma of mental illness, but also and most importantly, toward advancing the treatment of the whole patient and not just in part. Health care organizations in the state of Wisconsin are trying to integrate services to improve quality and patient safety. Integrating clinical information is a critical component of these efforts, and thus AB 1094 is necessary to these efforts.

FORWARD

PAT STRACHOTA

STATE REPRESENTATIVE

Remarks of Representative Pat Strachota
Testifying before the Assembly Committee on
Public Health
Assembly Bill 1094

March 8, 2006

Chairperson Hines and members of the Committee, I thank you for hearing Assembly Bill 1094 today, regarding treatment records for mental health.

Current state statutes and administrative rules related to behavioral health and patient privacy prohibit Wisconsin hospitals from including patients' behavioral health records in their general medical records. The provision in Chapter 51.30 of the WI Statutes limiting who may access mental health records for treatment purposes without the patient's consent has not been substantively revised since its inception in 1975.

Health care delivery has changed dramatically in those 30+ years and this limitation has a negative impact on patient safety and quality of care and makes it nearly impossible for health care providers to utilize technology to create electronic medical records.

Treating patients without knowledge of their existing diagnoses, medications, allergies, and other information that would affect their current medical treatment places the patient at risk for quality of care and safety.

Assembly Bill 1094 amends Chapter 51.30 and HFS 92.01 so Wisconsin's behavioral health privacy statutes are more aligned with HIPAA (federal law). HIPAA permits hospitals to include patients' behavioral health records related to treatment, diagnoses and medications in their general medical records. Psychotherapy notes would continue to be excluded under the proposal.

Capitol: Post Office Box 8953 • Madison, Wisconsin 53708-8953
(608) 264-8486 • Fax: (608) 282-3658 • Toll-Free: (888) 534-0058 • Rep.Strachota@legis.state.wi.us
District: 639 Ridge Road • West Bend, Wisconsin 53095 • (262) 338-3790

Currently, approximately 70% of the patients seeking mental health services do so through their primary health care provider and their mental health records are already integrated. This bill would only impact the 30% who seek mental health services from a mental health provider.

The bill also puts into place several safeguards that are the result of a series of meetings held with the stakeholders in this issue. We have crafted the language so that the records can only be shared within a related health entity and we have removed the good faith exception from liability for release of registration or treatment records by a record custodian. Also, in the interest of patient safety in an emergency situation where consent cannot be obtained, AB 1094 also expands who may have access to the medical records in a medical emergency. The amendment to AB 1094 further defines what information is to be included in the medical record and is the result of a compromise crafted after the Senate held a hearing on the companion bill on Monday.

AB 1094 is the result of several meetings with both health care providers and mental health advocates. I have worked hard to provide the advocates with the safeguards they have requested and have modeled this bill after language used in several other states. I am confident that this bill will allow our health care entities to move into an electronic record keeping era while protecting patient safety. Several other states already have similar language on their books, and it is time for Wisconsin to follow suit.

FORWARD

March 8, 2006

Re: Assembly Bill 1094 and Senate Bill 650
An Act to Amend 51.30

Dear Chair and Members of the Assembly Public Health Committee:

Hello – my name is Ric Compton and I am the Director of Behavioral Health for Affinity Health Systems in Appleton, Wisconsin. I am here today to speak in support of changes to Wisconsin Statute Chapter 51.30 in Assembly Bill 1094 and Senate Bill 650. These changes are critical to provide safe and high quality mental health care to all patients by providing needed medical information to providers.

The Affinity Health System in the Fox Valley is an integrated health system consisting of over 200 physicians in primary and specialty care, 3 hospitals, a long-term care center, and a health plan. The Affinity Behavioral Health System includes 2 adult psychiatric inpatient units, a child and adolescent unit, nurses, therapists, Psychologists, and Psychiatrists. The 6 Affinity Psychiatrists in 2005 provided over 19,000 patient visits. However, the 19,000 psychiatric visits represent only a small fraction of patients who receive psychiatric care in the Affinity Health System. In fact, it is estimated that over 70% of all "antidepressants" are prescribed by Primary Care Physicians and not Psychiatrists in healthcare today. Moreover, a large percentage of mental health care in Wisconsin is provided by Primary Care Physicians, Pediatricians, and Internists. The lack of Psychiatric providers in Wisconsin, and particularly Child and Adolescent Psychiatrists, requires that Primary Care Physicians provide a large percentage of the care for people seeking mental health services.

Under current Wisconsin Statute, the Affinity Health System cannot use the "electronic health record" – Wellinx to provide medication information to the patient's primary care providers. The Wellinx system allows Doctors to enter patient prescription information and to receive information about patients' medication interactions and other information. The current restriction places patients at significant risk by not providing current and critical information about their treatment to their primary care providers. Although, current law provides for this information to be shared among providers in cases of life threatening emergencies without informed consent;

the current law does not adequately address the safety of patients in the current age of polymedications and multiple drug interactions. Patients who are on multiple medications prescribed by their Psychiatrist, and are also being treated by their Primary Care Physician, without the knowledge of all prescribed medications, are not receiving the best possible or safest healthcare.

The current law in Wisconsin prevents some mental health patients from receiving the benefit of the "electronic health record" by placing restrictions on information depending on which doctor's door you walked through for your care. Primary Care Physicians can use and share the electronic health record. The patients who receive care from a Psychiatrist cannot have their medication records shared with the patient's Primary Care Providers through the electronic health record because of current system limitations and law. Unfortunately, electronic health information systems are not currently able to allow some in and some out. The electronic medical record cannot parse out mental health treatment from the rest of a patient's medical record.

Finally, I support the rights of all patients to confidentiality. Ultimately, this protection comes down to providers acting with integrity in both our current "paper driven" and proposed "electronic health record" systems. Moreover, all patients are protected by Federal HIPAA legislation and will still have that protection with the proposed changes to Chapter 51.30. In fact, the electronic system allows for improved tracking of medical information and those who may be viewing it. Confidentiality is an important right. However, this right should not come at the cost of patient safety and quality of care.

Thank you for your consideration:

Ric Compton, MPH
Director Affinity Behavioral Health

FORWARD

March 8, 2006

Re: Assembly Bill 1094 – Behavioral Health Records
Senate Bill 650

Dear Chair and Members of the Assembly Public Health Committee:

Communication in Medical Practice

Ongoing advancements in medical genetics have consistently demonstrated that psychiatric illness must be considered a biologic disease process just as any other medical illness. Psychiatry is a medical specialty just as endocrinology or cardiology. In addition, many psychiatric disease processes are chronic in nature and predispose people to co morbid illnesses that require lifelong coordination of medical intervention. Medicine has become increasingly specialized as more and more expertise is required to apply the tremendous gains in knowledge and research to the benefit of the patient. A comprehensive approach to patient care involves the exchange and support of all of these areas of expertise working together to use each individual area of expertise in a complimentary manner to promote the health and wellbeing of each patient.

The nature of a patient's illness is not what is important when applying the concept of confidentiality. It does not matter if the patient has had a myocardial infarct, a sexually transmitted disease, a spontaneous abortion, or an episode of mania. Every physician has an ethical responsibility to promote and maintain the confidentiality of all patient information; however, this should not prohibit an endocrinologist from providing expertise and support to a primary care physician that may be following a patient with diabetes and likely has more contact with that patient due to the nature of medical practice trends. This is also true of the primary care physician and the psychiatrist or the cardiologist and the psychiatrist. It is well established that there is a higher mortality rate when myocardial infarction or coronary artery bypass surgery is complicated by uncontrolled diabetes mellitus. It is the responsibility of the cardiologist and the endocrinologist to work together to provide the patient with the best plan of care to promote optimum health and quality of life by addressing both of these health issues in a coordinated manner. It is also been established that there is a higher mortality rate and morbidity rate when myocardial infarction or coronary artery bypass surgery is complicated by uncontrolled depression or anxiety. It is the responsibility of the cardiologist and the psychiatrist to work together to coordinate a plan of care that will address both of these issues to promote optimum health and quality of life just as with myocardial infarct and diabetes. This cannot be accomplished when information exchange between cardiology and psychiatry is limited. In fact, this block on coordination of care may actually cause this patient harm and potential death.

Another example is the young woman with bipolar disorder that decides to become pregnant. She may be taking depakote, a common bipolar medication that is extremely teratogenic to the unborn fetus. If there is not access to this information through a comprehensive medical record, the OB/GYN physician may not be made aware of this and again, harm may be allowed to occur to the unborn child. By the time the patient follows up with the psychiatrist, she may be 3 to 4 months into her pregnancy. This would be less likely to happen if this patient was taking depakote for a seizure disorder through her neurologist because this would be information that is part of the accessible medical record. Limited access to this type of important information is just plain poor and dangerous medical practice.

My medical training took place in Minnesota at the Mayo Clinic. A component of the mission of the Mayo Clinic is to receive a comprehensive medical evaluation. Psychiatry is frequently asked to provide an assessment as part of the comprehensive medical evaluation just as endocrinology, neurology, and many other medical specialties. The entire medical record is accessible through the mayo clinic electronic medical record. This includes all appointments, medications prescribed, orders that have been requested, laboratory evaluations, and all medical tests. Everything is included in the medical record, including therapy assessments, and this allows all physicians working with this patient to have access to the comprehensive care provided for each patient. It also promotes communication between physicians and decreases repetitive testing and evaluations. It is not uncommon for the pediatric neurologist or the pediatric surgeon to contact the child psychiatrist or vice versa for review of what would be most helpful to a patient. I have to say that I was quite surprised and concerned when I discovered that this flow of information does not take place here in Wisconsin.

This raises particular concerns for the child and adolescent patient and, in my opinion, raises some significant safety concerns for our children.

The surgeon general reports, "The burden of suffering by children with mental health needs and their families has created a health crisis in this country. Growing numbers of children are suffering needlessly because their emotional, behavioral, and developmental needs are not being met by the very institutions and systems that were created to take care of them".

According to the strategic work force plan of the American Academy of Child and Adolescent Psychiatry developed in 2002, there are approximately 6500 child and adolescent psychiatrists in the US and over 15 million children and adolescents who are in need of the special expertise a child and adolescent psychiatrist can give. The National Center for Health Work Force Information and Analysis of the Bureau of Health Professionals created models showing that the demand for child and adolescent services will increase by 100% between 1995 and 2020; however, the projected increase in Child and Adolescent Psychiatrists is only 30%, with only about 300 Child and Adolescent Psychiatrists completing training each year. There is also a severe lack of inpatient facilities available for crisis care of children.

Why are these findings and projections important? Well, with the shortage of child and adolescent psychiatrists nationwide, pediatricians and other primary care physicians are being required to play a critical role in providing mental health care to these children and adolescents, with primary care providers identifying about 19% of the behavioral and emotional disorders seen in children. These physicians need to be able to communicate with psychiatry and be aware of the care that is being provided to these high risk children so that they can be cognizant of safety issues such as suicide and medication/therapy compliance and adjustments. As a child psychiatrist with a calendar that is already booked out into July and August, I need to be able to feel confident and comfortable that these other physicians can communicate freely with me and assist with the care of these children. In fact, I know that recognizing, caring for, and meeting the needs of these children is of great concern for primary care physicians. This was pointed out by attendees to a medical psychiatry review course presented by the mayo clinic last year. I was privileged to present the child psychiatry section of this Mayo Clinic CME course this year and was quite surprised at the intensity of interest these clinicians demonstrated and the impact this is having on primary care.

In summary, medicine is medicine whether we are referring to primary care, cardiology, surgery, psychiatry, or any other medical specialty. A physician, regardless of their area of practice, is required to ethically uphold patient confidentiality whether this involves a surgical procedure, an acute illness, a chronic illness, testing, psychiatric illness, or any other medical information. Competent medical care cannot be delivered and safe decisions cannot be put into place for each patient without comprehensive knowledge of the medical history and ongoing care of each patient. With increasing specialization in medicine, more physicians are involved in a patient's medical care, requiring ongoing communication and exchange of areas of expertise to promote continuity and planning for optimum outcome and quality of life. And finally, with the shortage of psychiatrists, and child and adolescent psychiatrists in particular, the need to work closely and coordinate care with primary care physicians has become more and more important to meet the needs of increasing numbers people experiencing psychiatric illness. My contact with primary care physicians and those in other specialty areas of medicine has shown me that these physicians are ready to learn and address the psychiatric illness needs of their patients as part of the total person, as long as there is support available for psychiatric expertise when needed and open communication and information exchange becomes the "standard" as in other areas of medical practice.

Thank you for your consideration:

Deborah Scuglik, MD
Child and Adolescent Psychiatrist
Medical Director Child and Adolescent Psychiatric Unit
Affinity Behavioral Health

FORWARD

Testimony Regarding Assembly Bill 1094
Language Changes in Chapter 51.30
National Alliance on Mental Illness, Wisconsin

The National Alliance on Mental Illness, Wisconsin (NAMI Wisconsin) requests that the Assembly Health Committee take no action on Assembly Bill 1094 at this time. The issues surrounding the release of information from the mental health information record are complex and some of the issues require more thoughtful deliberation.

The meetings facilitated by Representative Strachota and her staff and the proponents of the legislation, consumer advocates and other interested parties during the past six weeks has been helpful in initiating discussion that assisted the parties in identifying issues that needed further discussion and resolution. Representative Strachota's efforts are greatly appreciated.

During the past several days there has been an urgent effort by both the proponents of the legislation and the advocacy groups to resolve some of the remaining issues. An amendment to AB1094 was developed after discussion. The amendment contains one area of concern that was not discussed prior to the amendment being written and there has not been sufficient time to discuss the concern with NAMI Wisconsin's consumer constituents since the amendment was offered. The concern is that the amendment allows a list of all physician visits and the dates of those visits to be accessed through the registration record. I was told that the information is primarily for billing purposes, but is available to anyone who accesses the registration record for treatment purposes.

As I am sure you know, stigma related to mental illness still abounds in both the public and the medical communities. Unfortunately, that stigma often presents itself in healthcare offices, clinics and emergency departments when consumers present themselves for treatment unrelated to their mental illness. The frequency of patient visits for mental health treatment can be interpreted both positively and negatively depending on the health care professional's perception of mental illness.

Certainly there need to be changes that accommodate the advances in technology, but we must be sure that the technological accommodations we make are balanced carefully with the consumer's right to unbiased assessment of the signs and symptoms of a medical or surgical event unrelated to their mental illness.

NAMI Wisconsin asks that the Assembly Health Committee take no action on Assembly Bill 1094 or the current amendment to the bill. NAMI Wisconsin is willing to support an amendment that does not include a list of mental health service visits and their dates (visit encounters). It seems that the concern under discussion is a fiscal issue and not a patient care issue. It is our belief that the

"visit encounter" issue can be deferred to the continuing discussions that NAMI Wisconsin has agreed to participate in with the proponents of this legislation.

In closing, I would like to share a brief story about my son's encounter with the stigma of mental illness when he suffered a knee injury after a fall from his mountain bike during a race. David is both intelligent and articulate and recovered so that it would not be obvious to anyone that did not know him that he has a mental illness. He went to an emergency department after the fall from his bike complaining of severe knee pain. His knee was moderately edematous. He listed all of his medications. The physician asked why several of his medications were prescribed. David replied that he had bi-polar illness. The attitude of the physician changed immediately and he was sent home without pain medication. His pain and edema continued. A second physician examined him and was no more helpful. Again the revelation that David had a mental illness made an immediate change in the physician's attitude. It was a third physician that listened and appropriately diagnosed and treated David for a torn meniscus. These events occurred in Madison, Wisconsin.

Thank you for the opportunity of providing written testimony to the Assembly Health Committee.

Nancy Phythyon, B.A., R.N.
President, Board of Directors
NAMI Wisconsin

FORWARD

ASSEMBLY AMENDMENT ,

TO 2005 ASSEMBLY BILL 1094

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 4, line 4: after "individual." insert "Information that may be released
3 under this subdivision is limited to the individual's name, address, and date of birth;
4 the name of the individual's mental health treatment provider; the date of mental
5 health service provided; the individual's medications, allergies, and diagnosis; and
6 other relevant demographic information necessary for the current treatment of the
7 individual.".

8 **(END)**

This is the amen. that was distributed during Senate cmte

FORWARD

AB 1094

Aurora Health Care
2005 Legislative Proposal

LRB 3958 - Patient Privacy & Behavioral Health

Issue: Current state statutes and administrative rules related to behavioral health and patient privacy prohibit WI hospitals from including patients' behavioral health records in their general medical records. This limitation has an impact on patient safety and hinders the implementation of hospitals' electronic medical record computerization projects.

Proposal: Amend Ch 51.30 and HFS 92.01 to align state law with federal HIPAA law. HIPAA permits hospitals to include patients' behavioral health records related to treatment and diagnoses in their general medical records. Under the proposal, physicians' psychotherapy notes would be kept separate and confidential.

FORWARD

Psychotherapy Notes vs Medical Record

	Medical Record/Protected Health Information	Psychotherapy Note
Content/Definition	The health care provider's legal record that substantiates healthcare services provided to the patient. The medical record serves as a method of communication among healthcare providers caring for a patient and provides supporting documentation for reimbursement of services provided to a patient. Contents of a behavioral health medical record include: • Medication prescription and monitoring • Counseling session start and stop times • Modalities and frequencies of treatment furnished • Results of clinical tests • Brief summary of: ❑ Diagnosis ❑ Functional status ❑ Treatment plan ❑ Symptoms ❑ Prognosis ❑ Progress to date	Detailed notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session. By HIPAA definition, such notes are: • Used only by the therapist who wrote them; • Are **maintained separately from the medical record**; • Are not involved in the documentation necessary for health care treatment, payment, or operations; and • Exclude the content listed in the column to the left.
Use and Disclosure: Treatment, Payment, Health Care Operations	Broad allowances for a covered entity to use and disclose information for its own treatment, payment, and health care operations purposes. Additional allowances for a covered entity to disclose information to another covered entity for the other entity's treatment, payment, and health care operations.	Allowances for treatment, payment, and health care operations limited to: • Use by the originator of the notes for treatment; • Use or disclosure by the covered entity for its own training programs in which students, trainees, or practitioners in mental health learn, under supervision, to practice or improve their skills in group, joint, family, or individual counseling; and • Use or disclosure by health care provider/organization to defend itself in a legal action or other proceeding brought by the individual.

Use and Disclosure: Other	• When required by law (including when needed by a coroner or medical examiner) • For health oversight activities • To avert a serious threat to health or safety • To HHS for purposes of HIPAA enforcement • For public health purposes • To communicate products and services • For fundraising • To funeral directors • To family/friends involved in patient's care and payment • For disaster relief efforts • To organ, eye, tissue donation agencies • Limited other purposes	• When required by law (including when needed by a coroner or medical examiner) • For health oversight activities of the originator of the psychotherapy notes • To avert a serious threat to health or safety • To HHS for purposes of HIPAA enforcement • ALL OTHER USES/DISCLOSURES REQUIRE THE PATIENT'S WRITTEN AUTHORIZATION

California:

5328 ...Information and records shall be disclosed only in any of the following cases:
(a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his or her guardian or conservator shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.

Colorado:

27-10-120 1) Except as provided in subsection (2) of this section, all information obtained and records prepared in the course of providing any services under this article to individuals under any provision of this article shall be confidential and privileged matter. Such information and records may be disclosed only:

(a) In communications between qualified professional personnel in the provision of services or appropriate referrals;

Texas

611.02 CONFIDENTIALITY OF INFORMATION AND PROHIBITION AGAINST DISCLOSURE.
(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.
(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.
(c) This section applies regardless of when the patient received services from a professional.

611.004 AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION OTHER THAN IN JUDICIAL OR ADMINISTRATIVE PROCEEDING. (a) A professional may disclose confidential information only:
(7) to other professionals and personnel under the professionals' direction who participate in the diagnosis, evaluation, or treatment of the patient;

Michigan

330.1748 (7) Information may be disclosed in the discretion of the holder of the record under 1 or more of the following circumstances:

c) To a provider of mental or other health services or a public agency, if there is a compelling need for disclosure based upon a substantial probability of harm to the recipient or other individuals.

Minnesota

144.335 Access to health records.

Subdivision 1. Definitions. For the purposes of this section, the following terms have the meanings given them:

(a) "Patient" means a natural person who has received health care services from a provider for treatment or examination of a medical, psychiatric, or mental condition, the surviving spouse and parents of a deceased patient, or a person the patient appoints in writing as a representative, including a health care agent acting pursuant to chapter 145C, unless the authority of the agent has been limited by the principal in the principal's health care directive. Except for minors who have received health care services pursuant to sections 144.341 to 144.347, in the case of a minor, patient includes a parent or guardian, or a person acting as a parent or guardian in the absence of a parent or guardian.

Subd. 3a. Patient consent to release of records; liability.

(a) A provider, or a person who receives health records from a provider, may not release a patient's health records to a person without a signed and dated consent from the patient or the patient's legally authorized representative authorizing the release, unless the release is specifically authorized by law. Except as provided in paragraph (c) or (d), a consent is valid for one year or for a lesser period specified in the consent or for a different period provided by law.

(b) This subdivision does not prohibit the release of health records:

(1) for a medical emergency when the provider is unable to obtain the patient's consent due to the patient's condition or the nature of the medical emergency; or
(2) to other providers within related health care entities when necessary for the current treatment of the patient.

Indiana

IC 16-39-2-6 Disclosure without patient's consent; interpretation of records;immunities
Sec. 6. (a) Without the consent of the patient, the patient's mental health record may only be disclosed as follows:
(1) To individuals who meet the following conditions:
(A) Are employed by:
(i) the provider at the same facility or agency;
(ii) a managed care provider (as defined in IC 12-7-2-127(b)); or
(iii) a health care provider or mental health care provider, if the mental health records are needed to provide health care or mental health services to the patient.

Alaska
Chapter 47.30. MENTAL HEALTH
Sec. 47.30.845 Confidential records.
Information and records obtained in the course of a screening investigation, evaluation, examination, or treatment are confidential and are not public records, except as the requirements of a hearing under AS 47.30.660 - 47.30.915 may necessitate a different procedure. Information and records may be copied and disclosed under regulations established by the department only to:

(1) a physician or a provider of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient;

Missouri

630.140. 1. Information and records compiled, obtained, prepared or maintained by the residential facility, day program operated, funded or licensed by the department or otherwise, specialized service, or by any mental health facility or mental health program in which people may be civilly detained pursuant to chapter 632, RSMo, in the course of providing services to either voluntary or involuntary patients, residents or clients shall be confidential.

3. The facilities or services may disclose information and records under any of the following:

(1) As authorized by the patient, resident or client; (2) To persons or agencies responsible for providing health care services to such patients, residents or clients...

Pennsylvania

§ 7111. Confidentiality of Records.

(a) All documents concerning persons in treatment shall be kept confidential and, without the person's written consent, may not be released or their contents disclosed to anyone except:

1. those engaged in providing treatment for the person;
2. the county administrator, pursuant to section 110 [§ 7110 of this title];
3. a court in the course of legal proceedings authorized by this act; and
4. pursuant to Federal rules, statutes and regulations governing disclosure of patient information where treatment is undertaken in a Federal agency.

Alabama

Section 22-56-10 No reduction or expansion of rights beyond rights guaranteed other persons.

Provided that nothing in this chapter shall reduce or expand the rights of mental health consumers in Alabama beyond the rights guaranteed to any other person under the statutes or Constitution of the United States and Alabama statutes or Constitution of Alabama of 1901.
[Note: According to Georgetown Health Privacy Project's analysis, there is no general statute restricting the disclosure of confidential information. This seems accurate, as I was unable to find such a statute via Alabama's legislative website.]

Arizona

Chapter 5 – Mental Health Services.
36-509. Confidential records
A. A health care entity must keep records and information contained in records confidential and not as public records, except as provided in this section. Records and information contained in records may only be disclosed to:
1. Physicians and providers of health, mental health or social and welfare services involved in caring for, treating or rehabilitating the patient.
2. Individuals to whom the patient or the patient's health care decision maker has given authorization to have information disclosed...

Arkansas

Per the Georgetown Privacy Project's analysis, there is no general statute restricting health care providers from disclosing health information, and no statute specific to mental health records. This appears to be accurate; I was unable to locate any statutes via the website search tool.

Louisiana

Per the Georgetown Privacy Project's analysis, there is no general statute restricting health care providers from disclosing health information. The mental health statute grants the same rights and privileges to mental health patients as exist for all others. I was unable to find a statute requiring consent for disclosure of medical records.