



1999 ASSEMBLY BILL 481

September 20, 1999 - Introduced by Representatives HUNDERTMARK, JENSEN, SKINDRUD, LADWIG, PETTIS, KESTELL, HAHN, STASKUNAS, GUNDERSON, AINSWORTH, PORTER, ALBERS, STONE and KEDZIE, cosponsored by Senator DARLING. Referred to Committee on Children and Families.

1 **AN ACT to amend** 48.78 (2) (ag), 48.78 (2) (aj), 51.30 (5) (b) 1., 118.126 (1) (c),
2 118.126 (2), 146.83 (1) (intro.), 252.15 (5) (a) 15. and 938.78 (2) (ag); and **to**
3 **create** 118.126 (3) of the statutes; **relating to:** access by a parent to records
4 relating to the parent's child.

Analysis by the Legislative Reference Bureau

Under current law, a social services agency, for example the department of health and family services, the department of corrections or a county department of human services or social services, may not make available for inspection or disclose the contents of any record kept or information received about a child in its care or legal custody, except under certain exceptions. One of those exceptions *permits* a social services agency to make available for inspection or to disclose the contents of a record concerning a child to the parent, guardian or legal custodian of the child on the request of the parent, guardian or legal custodian, unless the social services agency determines that inspection of the record by the parent, guardian or legal custodian would result in imminent danger to anyone. This bill *requires* a social services agency to make available for inspection or to disclose the contents of a record concerning a child to the parent, guardian or legal custodian of the child on the request of the parent, guardian or legal custodian, unless the agency petitions the court assigned to exercise jurisdiction under the children's code and the juvenile justice code (juvenile court) for an order prohibiting the agency from making available for inspection or disclosing the contents of the record to the parent, guardian or legal custodian and the juvenile court, after a hearing and an inspection

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of the record, determines that inspection of the record by the parent, guardian or legal custodian would result in imminent danger to anyone.

Under current law, with certain exceptions, any school psychologist, counselor, social worker or nurse, and any teacher or administrator designated by the school board who engages in alcohol or drug abuse program activities, must keep confidential information received from a pupil that the pupil or another pupil is using or experiencing problems resulting from the use of alcohol or other drugs. This bill provides that any such information received about a pupil must be disclosed to the parent or guardian of that pupil upon the request of the parent or guardian, unless the school board petitions the juvenile court for an order prohibiting disclosure of the information and the juvenile court, after a hearing and an inspection of the information, determines that disclosure of the information to the parent or guardian would result in imminent danger to anyone.

Currently, the parent, guardian or person in place of a parent of a developmentally disabled minor has access at all times to the minor's court or treatment records for mental illness, developmental disability, alcoholism or drug dependence unless the minor is 14 or older and files a written objection to the access. Parents, guardians and persons in the place of parents of other minors have the same rights of access to the court and treatment records of the minors as do the minors themselves. This bill requires access by a parent, guardian or person in the place of a parent of *any* minor to the minor's court or treatment records at all times.

Currently, contents of patient health care records may be released only with the informed consent of the patient or of a person authorized by the patient or, without informed consent, to specified persons. A "person authorized by a patient" includes the parent, guardian or legal custodian of a minor patient. Thus, a parent of a minor patient may provide informed consent for release of the minor's patient health care records to himself or herself. A patient or other person may inspect and receive a copy of a patient's health care record by submitting a statement of informed consent. This bill clarifies that the informed consent for inspection and receipt of a patient's health care record may be that of the patient or of a person authorized by the patient.

Currently, only the parent or guardian of a minor under age 14 may have access, without the informed consent of the minor, to the results of a test for the presence of HIV (human immunodeficiency virus, the virus that causes AIDS). This bill permits the parent, guardian or person in the place of the parent of any minor to have access, without informed consent, to any results of the minor's test for the presence of HIV.

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.** 48.78 (2) (ag) of the statutes is amended to read:

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1 48.78 (2) (ag) Paragraph (a) does not prohibit an agency from making available
2 for inspection or disclosing the contents of a record, upon the request of the parent,
3 guardian or legal custodian of the child who is the subject of the record or upon the
4 request of the child, if 14 years of age or over, to the parent, guardian, legal custodian
5 or child. Upon request of a parent, guardian or legal custodian of a child who is the
6 subject of a record, an agency shall make available for inspection or disclose the
7 contents of the record to the parent, guardian or legal custodian, unless the agency
8 petitions the court for an order prohibiting the agency from making available for
9 inspection or disclosing the contents of the record to the parent, guardian or legal
10 custodian and the court, after a hearing and an inspection of the record, determines
11 that inspection of the record by the parent, guardian or legal custodian would result
12 in imminent danger to anyone. Upon request of a child who is the subject of a record
13 and who is 14 years of age or over, an agency may make available for inspection or
14 disclose the contents of the record to the child, unless the agency determines that
15 inspection of those records the record by the child, parent, guardian or legal
16 custodian would result in imminent danger to anyone.

17 **SECTION 2.** 48.78 (2) (aj) of the statutes is amended to read:

18 48.78 (2) (aj) Paragraph (a) does not prohibit an agency from making available
19 for inspection or disclosing the contents of a record, upon the request of a parent,
20 guardian or legal custodian of a child expectant mother of an unborn child who is the
21 subject of the record, upon the request of an expectant mother of an unborn child who
22 is the subject of the record, if 14 years of age or over, or upon the request of an unborn
23 child by the unborn child's guardian ad litem to the parent, guardian, legal
24 custodian, expectant mother or unborn child by the unborn child's guardian ad litem.
25 Upon request of a parent, guardian or legal custodian of a child expectant mother of

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1 an unborn child who is the subject of a record, an agency shall make available for
2 inspection or disclose the contents of the record to the parent, guardian or legal
3 custodian, unless the agency petitions the court for an order prohibiting the agency
4 from making available for inspection or disclosing the contents of the record to the
5 parent, guardian or legal custodian and the court, after a hearing and an inspection
6 of the record, determines that inspection of the record by the parent, guardian or
7 legal custodian would result in imminent danger to anyone. Upon request of an
8 expectant mother of an unborn child who is the subject of a record and who is 14 years
9 of age or over or upon request of an unborn child by the unborn child's guardian ad
10 litem, an agency may make available for inspection or disclose the contents of the
11 record to the expectant mother or unborn child by the unborn child's guardian ad
12 litem, unless the agency determines that inspection of those records by the parent,
13 guardian, legal custodian, expectant mother or unborn child by the unborn child's
14 guardian ad litem would result in imminent danger to anyone.

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

16 51.30 (5) (b) 1. The guardian of an individual who is adjudged incompetent
17 under ch. 880 shall have access to the individual's court and treatment records at all
18 times. The parent, guardian or person in the place of a parent of a developmentally
19 disabled minor shall have access to the minor's court and treatment records at all
20 times ~~except in the case of a minor aged 14 or older who files a written objection to~~
21 ~~such access with the custodian of the records. The parent, guardian or person in the~~
22 ~~place of a parent of other minors shall have the same rights of access as provided to~~
23 ~~subject individuals under this section.~~

24 **SECTION 4.** 118.126 (1) (c) of the statutes is amended to read:

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1 118.126 (1) (c) The information is required to be reported under sub. (3) or s.
2 48.981.

3 **SECTION 5.** 118.126 (2) of the statutes is amended to read:

4 118.126 (2) A school psychologist, counselor, social worker or nurse, or any
5 teacher or administrator designated by the school board who engages in alcohol or
6 drug abuse program activities, who in good faith discloses or fails to disclose
7 information under sub. (1) is immune from civil liability for such acts or omissions.
8 This subsection does not apply to information required to be reported under sub. (3)
9 or s. 48.981.

10 **SECTION 6.** 118.126 (3) of the statutes is created to read:

11 118.126 (3) Any information received about a pupil under sub. (1) shall be
12 disclosed to the parent or guardian of that pupil upon the request of the parent or
13 guardian, unless the school board petitions the court assigned to exercise jurisdiction
14 under chs. 48 and 938 for an order prohibiting disclosure of the information and the
15 court, after a hearing and an inspection of the information, determines that
16 disclosure of the information to the parent or guardian would result in imminent
17 danger to anyone.

18 **SECTION 7.** 146.83 (1) (intro.) of the statutes is amended to read:

19 146.83 (1) (intro.) Except as provided in s. 51.30 or 146.82 (2), any patient or
20 other person may, upon submitting a statement of informed consent of the patient
21 or a person authorized by the patient:

22 **SECTION 8.** 252.15 (5) (a) 15. of the statutes is amended to read:

23 252.15 (5) (a) 15. To anyone who provides consent for the testing under sub. (2)
24 (a) 4. b. and, for any other minor, to the parent, guardian or person in the place of a
25 parent of the minor, except that disclosure may be made under this subdivision only

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1 during a period in which the test subject is adjudicated incompetent under ch. 880,
2 is under 14 18 years of age or is unable to communicate due to a medical condition.

3 **SECTION 9.** 938.78 (2) (ag) of the statutes is amended to read:

4 938.78 (2) (ag) Paragraph (a) does not prohibit an agency from making
5 available for inspection or disclosing the contents of a record, upon the request of the
6 parent, guardian or legal custodian of the juvenile who is the subject of the record
7 or upon the request of the juvenile, if 14 years of age or over, to the parent, guardian,
8 legal custodian or juvenile. Upon request of a parent, guardian or legal custodian
9 of a juvenile who is the subject of a record, an agency shall make available for
10 inspection or disclose the contents of the record to the parent, guardian or legal
11 custodian, unless the agency petitions the court for an order prohibiting the agency
12 from making available for inspection or disclosing the contents of the record to the
13 parent, guardian or legal custodian and the court, after a hearing and an inspection
14 of the record, determines that inspection of the record by the parent, guardian or
15 legal custodian would result in imminent danger to anyone. Upon request of a
16 juvenile who is the subject of a record and who is 14 years of age or over, an agency
17 may make available for inspection or disclose the contents of the record to the
18 juvenile, unless the agency finds that inspection of those records the record by the
19 juvenile, parent, guardian or legal custodian would result in imminent danger to
20 anyone.

21 **SECTION 10. Initial applicability.**

22 (1) The treatment of section 118.126 (1) (c), (2) and (3) of the statutes first
23 applies to information received under section 118.126 (1) of the statutes on the
24 effective date of this subsection.

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(END)