



2013 SENATE BILL 360

October 22, 2013 - Introduced by Senators VUKMIR, CARPENTER, SHILLING, HARSDORF, HARRIS, RISSER, LEHMAN, ERPENBACH, FARROW, OLSEN, HANSEN, MOULTON, LASSA and DARLING, cosponsored by Representatives SEVERSON, PASCH, BALLWEG, DANOU, JAGLER, KOLSTE, SANFELIPPO, STEINEKE, BERCEAU, BERNARD SCHABER, BERNIER, BEWLEY, BIES, BILLINGS, BROOKS, DOYLE, HEBL, KAUFERT, KESTELL, LEMAHIEU, OHNSTAD, A. OTT, RICHARDS, RIEMER, RINGHAND, SPIROS, STRACHOTA and WACHS. Referred to Committee on Health and Human Services.

- 1 **AN ACT to create** 146.816 of the statutes; **relating to:** uses and disclosures of
2 protected health information.

Analysis by the Legislative Reference Bureau

Under current law, patient health care records are confidential but may be released upon written consent of the patient or a person authorized by the patient. Current law also requires health care providers to release patient health care records without the consent of the patient under certain circumstances. Mental health treatment records are also confidential, under current law, but may be released under certain circumstances.

The bill defines a covered entity as a health plan, health plan clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a certain transaction, as described under federal regulations. Under this bill, a covered entity or a business associate of a covered entity that uses, discloses, or requests disclosure of protected health information in a mental health treatment record or patient health care record is exempt from certain confidentiality requirements if the use, disclosure, or request complies with certain federal regulations and is made for the purposes of treatment, payment, or health care operations, as those purposes are defined by federal regulation. Under the bill, a covered entity that is a mental health treatment facility must comply with the notice of privacy practices obligations under federal regulations. The bill also requires the Department of Health Services to make available, to all applicable health care facilities and on its Internet site, a comprehensive and accessible document written in commonly understood language that explains health information privacy rights.

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For further information see the *state* 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.** 146.816 of the statutes is created to read:

2 **146.816 Uses and disclosures of protected health information.** (1) In
3 this section:

4 (a) “Business associate” has the meaning given in 45 CFR 160.103.

5 (b) “Covered entity” has the meaning given in 45 CFR 160.103.

6 (c) “Disclosure” has the meaning given in 45 CFR 160.103 and includes
7 redisclosures and rereleases of information.

8 (d) “Health care operations” has the meaning given in 45 CFR 164.501.

9 (e) “Payment” has the meaning given in 45 CFR 164.501.

10 (f) “Protected health information” has the meaning given in 45 CFR 160.103.

11 (g) “Treatment” has the meaning given in 45 CFR 164.501.

12 (h) “Treatment facility” has the meaning given in s. 51.01 (19).

13 (i) “Use” has the meaning given in 45 CFR 160.103.

14 **(2)** Sections 51.30 (4) (a) and (e) and 146.82 and rules promulgated under s.
15 51.30 (12) do not apply to a use, disclosure, or request for disclosure of protected
16 health information by a covered entity or its business associate that meets all the
17 following criteria:

18 (a) The covered entity or its business associate makes the use, disclosure, or
19 request for disclosure in compliance with 45 CFR 164.500 to 164.534.

20 (b) The covered entity or its business associate makes the use, disclosure, or
21 request for disclosure in any of the following circumstances:

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1 1. For purposes of treatment.

2 2. For purposes of payment.

3 3. For purposes of health care operations.

4 **(3)** A covered entity that is a treatment facility shall comply with the notice of
5 privacy practices obligations under 45 CFR 164.520, including the obligation to
6 include in plain language in the notice of privacy practices a statement of the
7 individual's rights with respect to protected health information and a brief
8 description of how the individual may exercise those rights including the right to
9 request restrictions on uses and disclosures of protected health information about
10 the individual to carry out treatment, payment, or health care operations as provided
11 in 45 CFR 164.522.

12 **(4)** The department shall make a comprehensive and accessible document
13 written in commonly understood language that explains health information privacy
14 rights available to all applicable health care facilities in the state and on the
15 department's Internet site.

16 (END)