

# Wisconsin Amends Laws on Exchanging Mental Health, Developmental Disability and AODA Treatment Records

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Practice Area: Health Law & Health Information Privacy and Security

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Effective October 1, 2008, Wis. Stat. § 51.30 expands the types of providers who may receive certain information from mental health, developmental disability, alcoholism and drug dependency treatment records without a patient's informed written consent. In addition, the statute narrowly expands the type of treatment record information which may be disclosed. In general, § 51.30 prohibits the disclosure of treatment record information without the patient's (or guardian's) informed consent, absent an exception. These changes ease the disclosure of information relevant for patient care to providers with a need for the information.

Treatment records are the registration and all other records that are created in the course of providing services to individuals for mental illness, developmental disabilities, alcoholism or drug dependency, and that are maintained by the Wisconsin Department of Health and Family Services ("DHFS"), certain county departments and their staffs, and by treatment facilities ("Treatment Records"). Beginning October 1, § 51.30 permits the disclosure of certain Treatment Record information to a health care provider or person acting under the supervision of a health care provider, if the provider requiring the disclosure is involved with the individual's care and the disclosure is necessary for the individual's current treatment. Prior to the October 1, 2008 effective date, this Treatment Record information could only be disclosed without written consent to a provider in a "related health care entity" for treatment purposes. Essentially, this meant that only a provider requesting such records within a clinically integrated setting or an organized health care system could obtain Treatment Record information readily without the patient's consent.

The Treatment Record information that may be disclosed remains limited in scope but, effective October 1, 2008, is expanded to include diagnostic test results and symptoms in addition to the following previously permitted types of information:

1. the individual's name, address, and date of birth;
2. the name of the individual's treatment provider;
3. the date of the services provided;
4. the individual's medications, allergies, and diagnosis; and
5. other relevant demographic information necessary for the current treatment of the individual.

Diagnostic test results include clinical testing of biological parameters, but do not include psychological or neuropsychological testing.

The October 1 changes better align Wisconsin law with the less restrictive federal privacy law (the Health Insurance Portability and Accountability Act of 1996 "HIPAA") and other less restrictive Wisconsin law.<sup>1</sup> Even after the October 1 changes, the Wisconsin Administrative Code, Chapter HFS 92.03 still prohibits re-release of any Treatment Record information by a recipient unless an exception is met. The DHFS has stated its intent to revise the HFS 92 regulation in light of the recent changes, the use of electronic health records, and HIPAA.<sup>2</sup> We will notify you as changes are made to the Wisconsin Administrative Code, but caution that re-release of Treatment Record information, even for treatment purposes, is not yet permitted by law.

<sup>1</sup> See DHFS Overview of 2007 Wisconsin Act 108

<sup>2</sup> See DHFS, Office of Legal Counsel, Administrative Rules Statement of Scope For Proposed Rules, EXS-261 (10/05).

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