

Wisconsin Privacy Law Fact Sheet

What is legally required to exchange health records in Wisconsin?

Health care providers in Wisconsin must follow both the federal law, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and Wisconsin law when using and releasing patient information.

SUMMARY OF FEDERAL LAW

The General Rule. HIPAA (45 CFR Parts 160 and 164) protects the privacy of “protected health information.” However, HIPAA *generally* does not require patient consent to exchange health information for:

- Treatment activities of a health care provider (*i.e.*, the provision, coordination, or management of health care by one or more health care providers or by a health care provider and a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another);
- Payment activities of a health care provider or health plan (*i.e.*, activities by a health care provider or health plan to obtain or provide reimbursement for the provision of health care; or a health plan to obtain premiums or to determine or to fulfill its responsibility for coverage and provision of benefits under the health plan); and
- Certain health care operations, as defined and authorized under HIPAA.

Examples of Exceptions (Special Protection) under Federal Law. “Psychotherapy notes,” as defined in HIPAA (45 CFR §164.501), are an exception to the general rule that patient authorization is not required for a provider to exchange health information for treatment, payment or health care operations. “Psychotherapy notes” are not considered part of a patient’s medical record under HIPAA. “Psychotherapy notes” are not the same as “progress notes” from mental health treatment, which can be exchanged without patient consent.

Federal law (42 CFR Part 2) also establishes different rules for patient records from treatment by a federally-assisted alcohol or drug abuse program. Those treatment records generally are to be disclosed only with the patient’s informed consent or when there is a medical emergency involving the patient that poses an immediate threat to the health of the patient and requires immediate medical intervention and information may be needed for the immediate medical intervention.

SUMMARY OF WISCONSIN LAW

The General Rule. Similar to HIPAA, Wisconsin law (Wis. Stat. § 146.82) requires that all patient health care records remain confidential and generally be released only with the patient’s informed consent. Similar to HIPAA, Wisconsin law recognizes that health care records *generally* may be disclosed without the patient’s informed consent:

- To a health care provider who is providing treatment to the patient (*e.g.*, rendering assistance to the patient; being consulted regarding the health of the patient; and when the life or health of the patient appears to be in danger and the information contained in the patient health care records may aid the person in rendering assistance);
- To the extent the records are needed for billing, collection or payment of claims; and
- For purposes of health care operations, as defined and authorized under HIPAA.

Examples of exceptions (Special Protection) under Wisconsin Law: Wisconsin law (Wis. Stat. § 51.30) generally requires informed written consent for the disclosure of mental health, developmental disability, and AODA “treatment records” outside of the treatment facility where an individual is receiving treatment, except in situations involving medical emergencies posing an immediate threat to the health of the patient and requiring immediate medical intervention and in certain other treatment situations.

Also, Wisconsin Law (Wis. Stat. § 252.15(3m, 5g and 5j)) generally prohibits release of the results of an HIV test conducted based on “significant exposure” to anyone other than the subject, the person who was significantly exposed and that person’s health care provider without the subject’s written authorization.

The above is only a summary of certain provisions of HIPAA and Wisconsin law. As a summary, it is incomplete by its nature and does not constitute legal advice.