

**HIPAA Collaborative of Wisconsin
Chapter 146
HIPAA Privacy Standards Matrix**

The workgroup consulted with the Wisconsin Department of Health and Family Services and the analysis has been reviewed by the Department in February 2003.

Edits to 146 analysis dated 2/25/03

146.82(2)(a)1----the citation is 146.38 NOT 146.83

146.82(2)(a)2----the HIPAA citations have been edited to reflect August 2002 version.

146.82(2)(a)6----entire language of citation is entered

146.82(2)(a)9a-e---entire language of citation is entered

146.82(2)(d)----entire language of HIPAA citation entered

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
146.81(1) cont.	<p>(hg) A social worker, marriage and family therapist or professional counselor certified under ch. 457.</p> <p>(hm) A speech-language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.</p> <p>(hp) A massage therapist or bodyworker issued a license of registration under subch. XI of ch. 440.</p> <p>(i) A partnership of any providers specified under pars. (a) to (hp).</p> <p>(j) A corporation or limited liability company of any providers specified under pars. (a) to (hp) that provides health care services.</p> <p>(k) An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.</p> <p>(L) A hospice licensed under subch. IV of ch. 50.</p> <p>(m) An inpatient health care facility, as defined in s. 50.135 (1).</p> <p>(n) A community-based residential facility, as defined in s. 50.01 (1g).</p> <p>(p) A rural medical center, as defined in s. 50.50 (11).</p>	<p>164.501</p> <p>164.501</p>	<p>biologicals which cannot, as determined in accordance with regulations, be self-administered) incident to physicians' services rendered to outpatients and partial hospitalization services incident to such services; (C) diagnostic services which are—</p> <p>(i) furnished to an as an outpatient by a hospital or by others under arrangements with them made by a hospital, and (ii) ordinarily furnished by such hospital (or by others under such arrangements) to its outpatients for the purpose of diagnostic study;</p> <p><i>Direct treatment relationship</i> means a <i>treatment</i> relationship between an <i>individual</i> and a health care provider that is not an <i>indirect treatment relationship</i>.</p> <p><i>Indirect treatment relationship</i> means a relationship between an <i>individual</i> and a health care provider in which: (1) The health care provider delivers health care to the <i>individual</i> based on the orders of another health care provider; and (2) The health care provider typically provides services or products, or reports the diagnosis or results associated with the health care, directly to another health care provider, who provides the services or products or reports to the <i>individual</i>.</p>	<p>There is no distinction in state law between direct and indirect health care provider.</p>
146.81(2)	<p>(2) "Informed consent" means written consent to the disclosure of information from patient health care records to an <i>individual</i>, agency or organization that includes all of the following:</p> <p>(a) The name of the patient whose record is being disclosed.</p> <p>(b) The type of information to be disclosed.</p>	164.508(a)(1)	<p>(a) Standard: Authorizations for <i>uses</i> and disclosures. (1) Authorization required: General rule. Except as otherwise permitted or required by this subchapter, a covered entity may not <i>use</i> or disclose PHI without an authorization that is valid under this section. When a covered entity obtains or receives a valid authorization for its <i>use</i> or disclosure of PHI, such <i>use</i> or disclosure must be consistent with such authorization.</p>	<p>Follow Both. The HIPAA authorization and the 146.81 authorization are similar. They are not in conflict. Follow both to assure compliance.</p> <p>The HIPAA authorization is more specific and would preempt state requirements for an informed consent when a HIPAA authorization is</p>

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146.81(2) cont		<p>164.508(c)(2)</p> <p>164.508(c)(3)</p> <p>164.508(c)(4)</p> <p>164.506(b)(1)</p>	<p>authorization in writing, and either:</p> <p>(A) The exceptions to the right to revoke and a description of how the <i>individual</i> may revoke the authorization; or</p> <p>(B) To the extent that the information in paragraph (c)(2)(i)(A) of this section is included in the notice required by 164.520, a reference to the covered entity’s notice.</p> <p>(ii) The ability or inability to condition <i>treatment, payment</i>, enrollment or eligibility for benefits on the authorization, by stating either:</p> <p>(A) The CE may not condition <i>treatment, payment</i>, enrollment or eligibility for benefits on whether the <i>individual</i> signs the authorization when the prohibition on conditioning of authorizations in par. (b)(4) of this section applies; or</p> <p>(B) The consequences to the <i>individual</i> of a refusal to sign the authorization when, in accordance with par. (b)(4) of this section, the CE can condition <i>treatment</i>, enrollment in the health plan, or eligibility for benefits on failure to obtain such authorization.</p> <p>(iii) The potential for information to be disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by this rule.</p> <p>(3) Plain language requirement. The authorization must be written in plain language.</p> <p>(4) Copy to the <i>individual</i>. If a CE seeks an authorization from an <i>individual</i>, the CE must provide the <i>individual</i> with a copy of the signed authorization.</p> <p>Standard. Consent for <i>uses</i> and disclosures permitted.</p> <p>A covered entity may obtain consent of the <i>individual</i> to <i>use</i> or disclose PHI to carry out <i>treatment, payment, or health care operations</i>.</p>	<p>The HIPAA consent and the</p>

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146.81(2) cont		164.506(b)(2)	(b)(2) Consent, under paragraph (b) of this section, shall not be effective to permit a <i>use</i> or disclosure of PHI when an authorization, under section 164.508, is required or when another condition must be met for such <i>use</i> or disclosure to be permissible under this subpart.	Wisconsin informed consent for release are not the same type of document and are not comparable. There is no conflict between the HIPAA consent and the Wisconsin informed consent. The HIPAA consent is optional under HIPAA.
146.81(3)	(3) "Patient" means a person who receives health care services from a health care provider.	164.501	<i>Individual</i> means the person who is the subject of PHI.	Follow HIPAA. HIPAA is broader.
146.81(4)	(4) "Patient health care records" means all records related to the health of a patient prepared by or under the supervision of a health care provider, including the records required under s. 146.82 (2) (d) and (3) (c), but not those records subject to s. 51.30, reports collected under s. 69.186, records of tests administered under s. 252.15 (2) (a) 7., 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), fetal monitor tracings, as defined under s. 146.817 (1), or a pupil's physical health records maintained by a school under s. 118.125. "Patient health care records" also includes health summary forms prepared under s. 302.388 (2).	160.103 164.501 164.501	Health information means any information, whether oral or recorded in any form or medium, that: (1) Is created or received by a health care provider, health plan, <i>public health authority</i> , employer, life insurer, school or university, or health care clearinghouse; and (2) Relates to the past, present, or future physical or mental health or condition of an <i>individual</i> ; the provision of health care to an <i>individual</i> ; or the past, present, or future <i>payment</i> for the provision of health care to an <i>individual</i> . <i>PHI means individually identifiable health information:</i> (1) Except as provided in paragraph (2) of this definition, that is: (i) Transmitted by electronic media; (ii) Maintained in any medium described in the definition of electronic media at Sec. 162.103 of this subchapter; or (iii) Transmitted or maintained in any other form or medium. (2) PHI excludes <i>individually identifiable health information</i> in: (i) Education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g; and (ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv). Designated record set means: (1) A group of records maintained by or for a covered entity	Follow HIPAA. The HIPAA definition of health information is broader. HIPAA includes records recorded in any form, created or received and relating to past, present or future. HIPAA clarifies that billing records are PHI. HIPAA includes all the 146 exclusions to the definition of patient health care records except for FERPA (IEP). Note: The definition of Designated Record Set also applies to the HIPAA patient right of access.

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146.81(4)cont.			that is: (i) The medical records and billing records about <i>individuals</i> maintained by or for a covered health care provider; (ii) The enrollment, <i>payment</i> , claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) Used, in whole or in part, by or for the covered entity to make decisions about <i>individuals</i> . (2) For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes PHI and is maintained, collected, <i>used</i> , or disseminated by or for a covered entity.	
146.81(5)	(5) "Person authorized by the patient" means the parent, guardian, or legal custodian of a minor patient, as defined in s.48.02 (8) and (11), the person vested with supervision of the child under s. 938.183 or 938.34 (4d), (4h), (4m) or (4n), the guardian of a patient adjudged incompetent, as defined in s. 880.01 (3) and (4), the personal representative or spouse of a deceased patient, any person authorized in writing by the patient or a health care agent designated by the patient as a principal under ch. 155 if the patient has been found to be incapacitated under s. 155.05 (2), except as limited by the power of attorney for health care instrument. If no spouse survives a deceased patient, "person authorized by the patient" also means an adult member of the deceased patient's immediate family, as defined in s. 632.895 (1) (d). A court may appoint a temporary guardian for a patient believed incompetent to consent to the release of records under this section as the person authorized by the patient to	164.502(g)(1) 164.502(g)(2) 164.502(g)(3)	(1) Personal representatives. As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the <i>individual</i> for purposes of this subchapter. (2) Adults and emancipated minors. If under applicable law a person has authority to act on behalf of an <i>individual</i> who is an adult or an emancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to PHI relevant to such personal representation. (3) Unemancipated minors. (i) If under applicable law a parent, guardian, or other person acting in loco parentis has authority to act on behalf of an <i>individual</i> who is an unemancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to PHI relevant to such personal representation, except that such person may not be a personal representative of an unemancipated minor, and the minor has the	HIPAA refers to state law for the definition of personal representative. WI law defines a personal representative. WI law also allows the patient to designate any person authorized in writing by the patient. This person authorized in writing by the patient would meet the definition of personal representative under HIPAA. State law will define when a minor is emancipated. Emancipation in WI is a question of common law other than s.48.375(2)(e), parental consent for abortion.

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146.81(5) cont.	decide upon the release of records, if no guardian has been appointed for the patient.	164.502(g)(3)	<p>authority to act as an <i>individual</i>, with respect to PHI pertaining to a health care service, if:</p> <p>(A) The minor consents to such health care service; no other consent to such health care service is <i>required by law</i>, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative;</p> <p>(B) The minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the minor, a court, or another person authorized by law consents to such health care service; or</p> <p>(C) A parent, guardian, or other person acting in loco parentis assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.</p> <p>(ii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section:</p> <p>(A) If, and to the extent, permitted or required by an applicable provision of State or other law, including applicable case law, a CE may disclose or provide access in accordance with 164.524 to, PHI about an unemancipated minor to a parent, guardian, or other person acting in <i>loco parentis</i>;</p> <p>(B) If, and to the extent, prohibited by an applicable provision of State or other law, including applicable case law, a CE may not disclose or provide access in accordance with 164.524 to, PHI about an unemancipated minor to a parent, guardian, or other person acting in <i>loco parentis</i>; and</p> <p>(C) Where the parent, guardian, or other person acting in <i>loco parentis</i>, is not the personal representative under (g)(3)(i)(A), (B), or (C) and where there is no applicable access provision under State or other law, including case law, a CE may provide or</p>	<p>Note: (3)(i)(A-C) are three instances where HIPAA may preempt state law on the personal representative issue. HIPAA provides a minor who has the authority to act under state law the right to act as an <i>individual</i> and access their PHI under HIPAA.</p>

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146.81(5) cont		164.502(g)(3)	deny access under 165.524 to a parent, guardian, or other person acting in <i>loco parentis</i> , if such action is consistent with State or other applicable law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment.	Follow HIPAA. HIPAA application would be more protective.
		164.502(g)(5)	Implementation specification: Abuse, neglect, endangerment situations. Notwithstanding a State law or any requirement of this paragraph to the contrary, a covered entity may elect not to treat a person as the personal representative of an <i>individual</i> if: (i) The covered entity has a reasonable belief that: (A) The <i>individual</i> has been or may be subjected to domestic violence, abuse, or neglect by such person; or (B) Treating such person as the personal representative could endanger the <i>individual</i> ; and (ii) The covered entity, in the exercise of professional judgment, decides that it is not in the best interest of the <i>individual</i> to treat the person as the <i>individual</i> 's personal representative.	
		164.502(f)	Deceased <i>individuals</i> . A covered entity must comply with the requirements of this subpart with respect to the PHI of a deceased <i>individual</i> .	
		164.502(g)(4)	Deceased <i>individuals</i> . If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased <i>individual</i> or of the <i>individual</i> 's estate, a covered entity must treat such person as a personal representative under this subchapter, with respect to PHI relevant to such personal representation.	
146.815	Contents of certain patient health	None	HIPAA does not address.	Follow State.

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146.817(2) cont.	or destruction of the fetal monitor tracing or of the microfilm copy of the fetal monitor tracing and of the patient's right, within 30 days after receipt of notice, to obtain the fetal monitor tracing or the microfilm copy of the fetal monitor tracing from the health care provider. (d) The notice requirements under this subsection do not apply after 5 years after a fetal monitor tracing was first made.			
146.819	Preservation or destruction of patient health care records. A health care provider who ceases practice or business as a health care provider or the personal representative of a deceased health care provider who was an independent practitioner shall do one of the following for all patient health care records: A) Provide for the maintenance of the records by a person who states, in writing, that the records will be maintained in compliance with 146. B) Provide for the deletion or destruction of the records. C) Provide for the maintenance of some and the deletion or destruction of other records.	None	164.528(a)(1) An <i>individual</i> has a right to receive an accounting of disclosures of PHI made by a covered entity in the six years prior to the date on which the accounting is requested.	HIPAA does not have a parallel provision. HIPAA requires CEs to maintain an accounting of disclosures for 6 years from the time of the disclosure. State law also has an accounting requirement. These requirements, along with various retention requirements, may limit the provider's ability to destroy or delete records even after ceasing practice. Practically speaking, retain all records for 6 years after practice ceases.
146.82(1)	Confidentiality: All patient health care records shall remain confidential and may be released only pursuant to statutory exception or with the informed consent of the patient or of a person authorized by the patient. This subsection does not prohibit the following reports: wound and burn injuries, birth defects, deaths.	164.502(a)	General rule: CE may not <i>use</i> or disclose PHI except as permitted or required by HIPAA regulations. Permitted <i>uses</i> and disclosures include: to the <i>individual</i> , pursuant to a consent for TPO, without consent for TPO if consent is not required (except for <i>psychotherapy notes</i>), pursuant to a valid authorization, as otherwise permitted by 164.510, 164.512 or 164.514(e), (f) and (g). (Required disclosures to requesting <i>individual</i> or to secretary to determine compliance.)	Need to follow same general rule with both HIPAA and state law: unless explicitly permitted under the law or explicitly authorized by the patient, may not <u>disclose</u> . HIPAA is more restrictive in that it also prohibits <u>use</u> of the information without the <i>individual's</i> explicit authorization or explicit permission under the rules. HIPAA also has the required disclosure to the secretary upon the secretary's request. Both

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146.82(1) cont.		164.508	compliance.) Other than those <i>uses</i> or disclosures specified above, a CE may not disclose or <i>use</i> PHI without authorization.	HIPAA and Wisconsin require disclosure to the <i>individual</i> upon receipt of a valid authorization.
146.82(2)(a)	Access without informed consent: Notwithstanding the general prohibition on disclosure, patient health care records <u>shall</u> be released upon request without informed consent in the following circumstances:			
NOTE: State law mandates certain disclosures without informed consent/authorization under 146.82(2)(a) by <i>use</i> of the word “shall.” Disclosures without an authorization under 164.512 are discretionary by the <i>use</i> of the word “may.” Arguably, HIPAA is more protective because it allows a CE not to disclose where State law would mandate disclosure. However, 164.512(a) 1 allows covered entities to <i>use</i> or disclose PHI to the extent that such <i>use</i> or disclosure is <i>required by law</i> and is limited to the relevant requirements of such law. Accordingly, HIPAA allows covered entities to follow State law where disclosures are required without informed consent/authorization. Although this interpretation may be valid, the following comparison of State and Federal law applies HIPAA’s “more stringent” criteria per 160.202.				
146.82(2)(a)1 <i>Audits, Programming Monitoring, Evaluation</i>	To health care facility staff committees, or accreditation or health care services review organizations for the purpose of conducting management audits, financial audits, program monitoring and evaluation, health care services reviews or accreditation.	164.501 164.502(a) 164.520(c)(2)(B)(ii) 164.506(c)(4)	<i>Health care operations</i> include conducting quality assessment and improvement activities, reviewing the competence or qualification of health care professionals and evaluating practitioner and provider performance health plan performance, accreditation, underwriting, conducting or arranging for medical review and auditing functions, etc. CEs are permitted to <i>use</i> or disclose PHI for TPO without authorization. Except in emergencies, CEs must make a good faith effort to obtain a written acknowledgment of receipt of the notice A covered entity may <i>use</i> or disclose PHI to another covered entity for <i>health care operations</i> activities of the entity that receives the information, if each entity either has or had a relationship with the <i>individual</i> who is the subject of the PHI being requested. The PHI pertains to such relationship, and the disclosure is for a	Follow HIPAA with regard to internal facility staff committees, accreditation organizations, or health care services review organizations for the purposes specified in this Wisconsin exception. The HIPAA definition of <i>health care operations</i> in § 164.501 covers the functions and purposes listed in this Wisconsin exception. HIPAA requires covered health care providers to make a good faith effort to get an acknowledgment of a notice of privacy practices before using or disclosing information to carry out the activities enumerated in § 146.82(a)1. Therefore, we suggest following HIPAA because it imposes a greater protection (i.e. HIPAA requires good faith effort to get acknowledgement before using PHI for HCO). One point that is unclear under state law is whether disclosure of <i>identifiable records</i> to another health

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146.82(2)(a)1 cont.			purpose listed in paragraph (1) or (2) of the definition of <i>health care operations</i> or for the purpose of health care fraud and abuse detection or compliance.	care facility's staff committee is permitted for such topics as physician peer review, infection control, etc.[See 146.38(1m) and (3)]. If such disclosure is not permitted under state law, state law would be more stringent and would control in this regard. If such disclosure is permitted under state law, HIPAA would require the disclosures to meet the requirements set forth in 164.506(c)(4)[the receiving entity has a relationship with the <i>individual</i> , the PHI pertains to that relationship, and the disclosure is for the purposes listed in paragraphs (1) or (2) of the definition of <i>health care operations</i> or is for the purpose of health care fraud and abuse detection or compliance].
146.82(2)(a)2 <i>Health Care Provider</i>	To the extent that performance of their duties requires access to the records, to a health care provider or any person acting under the provider's supervision, or to a person licensed under 146.50, including medical staff members, employees, or persons serving in training programs and volunteer programs and affiliated with the health care provider, if any one of the following is applicable: (a) the person is rendering assistance to the patient; (b) the person is being consulted regarding the health of the patient; (c) 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; (d) the person prepares or stores	164.501	<i>Treatment</i> is defined as the provision, coordination or management of health care related services by one or more health care providers, including the coordination or management of health care by a health care provider with 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. <i>Health care operations</i> include conducting quality assessment and improvement activities, reviewing the competence or qualification of health care professionals and evaluating practitioner and provider performance health plan performance, accreditation, underwriting, conducting or arranging for medical review and auditing functions, etc. A covered entity is permitted to use or	Follow Both. Both laws are consistent and both allow release in the circumstances contemplated by this exception.

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146.82(2)(a)2 cont.	records for the purposes of the preparation or storage of those records. Note: 146.50—Emergency medical services personnel	164.502(a)(1)(ii) 164.506(a)	disclose PHI for TPO as permitted by and in compliance with § 164.506. Except for <i>uses</i> or disclosures requiring an authorization, CEs may <i>use</i> or disclose PHI for TPO. Except with respect to <i>uses</i> or disclosures that require an authorization . . . , a covered entity may <i>use</i> or disclose PHI for <i>treatment, payment, or health care operations</i> .	
146.82(2)(a)3 <i>Billing, Collection, or Payment of Claims</i>	To the extent that records are needed for billing, collection or <i>payment</i> of claims.	164.501 164.502(a)(1)(ii) 164.502(b)(1) 164.506(a)	Payment means, among other things, activities undertaken by a health care provider or health plan to obtain or provide reimbursement for the provision of health care, including, among other things, billing and collection, review for medical necessity and utilization review. A CE may <i>use</i> or disclose PHI for <i>treatment, payment, or health care operations</i> as permitted by and in compliance with 164.506 Minimum necessary applies. When using or disclosing PHI or when requesting PHI from another covered entity, a covered entity must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the <i>use</i> , disclosure, or request. Except with respect to <i>uses</i> or disclosures that require an authorization . . . , a covered entity may <i>use</i> or disclose PHI for <i>treatment, payment, or health care operations</i> .	Follow both, as the two laws are consistent and both allow release in the circumstances contemplated by this exception. Apply minimum necessary.
146.82(2)(a)4 <i>Court Order</i>	Under a lawful order of a court of record.	164.512(e)	A CE may disclose PHI in the course of any judicial or administrative proceeding in response to a court order or administrative order provided that the disclosure is only as expressly authorized in the order. A CE may also disclose PHI in response to a subpoena, discovery request, or other lawful process, even without a court or administrative order,	Both laws allow disclosure under court order. A subpoena is a court order only if signed by a judge. A subpoena without a court order is sufficient under HIPAA but insufficient under Wisconsin law (except as contemplated in Wis.

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
			if the entity receives assurances from the requester that reasonable efforts have been made to give notice to the <i>individual</i> or the CE receives assurances from the requester that reasonable efforts have been made to secure a protective order.	Stats. § 908.03(6m)(c), dealing with legal actions) to compel disclosure. Similarly, an administrative order is sufficient under HIPAA, but insufficient under Wisconsin law to compel disclosure.
146.82(2)(a)5 <i>Federal or State Governmental Agency</i>	In response to a written request by any federal or state governmental agency to perform a legally authorized function, including but not limited to management audits, financial audits, program monitoring and evaluation, facility licensure or certification or <i>individual</i> licensure or certification. The private pay patient, except if a resident of a nursing home, may deny access granted under this subdivision by annually submitting to a health care provider, other than a nursing home, a signed, written request on a form provided by the department. The provider, if a hospital, shall submit a copy of the signed form to the patient's physician.	164.512(d) 164.501	A CE may disclose PHI to a <i>health oversight agency</i> for oversight activities authorized by law, including audits; civil, administrative or criminal investigation; inspections; licensure or disciplinary action; civil, administrative or criminal proceedings or actions; or other activities necessary for appropriate oversight of the health care system government benefit programs relevant to health information, etc. <i>Health oversight agency</i> means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or person or entity acting under a grant of authority from or contract with such public agency including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.	Follow both, depending on the circumstances. Under state law, the request must be in writing and private pay patients may block disclosure. On these issues, state law controls. Note: State allows disclosure to any state or federal agency for specific functions. HIPAA may restrict which state or federal agency.
146.82(2)(a)6 <i>Research</i>	For purposes of research if the researcher is affiliated with the health care provider and provides written assurances to the custodian of the patient health care records that the information will be used only for the purposes for which it is provided to the researcher, the information will not be released to a person not connected with the study, and the	164.512(i)	CE may <i>use</i> or disclose PHI for <i>research</i> only if certain difficult obstacles are overcome, including approval by an IRB or a privacy board of an altered authorization or waiver of an authorization, various representations from the researcher, including that no PHI will be removed from the CE, etc. Research under HIPAA as it stands would be extremely difficult.	Follow HIPAA. HIPAA makes it significantly more difficult to <i>use</i> or disclose PHI for the purposes of <i>research</i> by affiliated <i>researchers</i> . Accordingly, because HIPAA sets up more barriers to access, HIPAA controls. Note: "Affiliated" is not defined under state law.

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
	final product of the research will not reveal information that may serve to identify the patient whose records are being released under this paragraph without the informed consent of the patient. The private pay patient may deny access granted under this subdivision by annually submitting to the health care provider a signed, written request on a form provided by the department.			
146.82(2)(a)7 <i>Elder Abuse Agency</i>	To a county agency designated by the county board for the purposes of elder abuse or protective services/placement. Release may occur without a request from the county agency.	164.512(c)	CEs may disclose PHI about an <i>individual</i> whom the CE reasonably believes to be a victim of abuse, neglect or domestic violence to a government authority including a social service or protective services agency authorized by law to receive reports of such abuse, neglect or domestic violence, if disclosure is necessary and authorized by law or <i>individual</i> . The <i>individual</i> must be informed that such a report has been made unless this would place the <i>individual</i> at risk.	Follow Both. Note: However, HIPAA requires informing the <i>individual</i> unless it places the individual at risk.
146.82(2)(a)8 <i>Cancer Reporting</i>	To the Department of Health and Family Services for cancer reporting purposes.	164.512(b)	CEs may disclose PHI for public health activities to a <i>public health authority</i> authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury or disability, etc.	Follow Both. Cancer reports under state law are consistent with HIPAA. As with all 146.82(2)(a) exceptions, Wisconsin law mandates disclosure and HIPAA permits disclosure. However, the two laws are not contrary and both should be followed.
146.82(2)(a)9a <i>Protection and Advocacy Agency</i>	In this subdivision, "abuse" has the meaning given in s.51.62(1)(ag); "neglect" has the meaning given in s. 51.62(1)(br);and "parent" has the meaning given in s. 48.02 (13), except that "parent" does not include the parent of a minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11), or for whom a guardian is appointed under s. 880.33. Note: Abuse—act, omission or		Abuse, neglect and parent not defined.	No HIPAA definition; state definition controls.

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
	<p>course of conduct inflicted intentionally or recklessly on an <i>individual</i> with developmental disability or mental illness that results in bodily harm or intimidates/ threatens the <i>individual</i>.</p> <p>Neglect—act, omission or course of conduct that because of failure to provide food, shelter, clothing, medical or dental care creates a significant danger to the physical or mental health of an <i>individual</i> with developmental disability or mental illness.</p> <p>Parent—biological or adoptive parent or husband of an artificially inseminated wife, but not the parent of a minor whose custody is transferred to a legal custodian or for whom a guardian is appointed.</p> <p>Legal custodian—a person, other than a parent or guardian, or an agency to whom legal custody of the child has been transferred by a court, but does not include a person who has only physical custody of the child.</p> <p>880.33—Appointment of Guardian</p>			
146.82(2)(a)9b	<p>Except as provided in subd.9.c. and d. to staff members of the protection and advocacy agency designated under s. 51.62(2) or to staff members of the private, nonprofit corporation with which the agency has contracted under s. 51.62(3)(a)3., if any, for the purpose of protecting and advocating the rights of a person with developmental disabilities, as defined under s. 51.62(1)(am), who resides in or who is receiving services from an inpatient health care facility, as defined under s. 51.62(1)(b), or a</p>	164.512(a)	<p>A CE may <i>use</i> or disclose PHI to the extent <i>required by law</i>, although must meet requirements of 164.512(c), (e) or (f). The Developmental Disabilities Bill of Rights Act of 2000, Pub. L. No. 106-402 (DD Act), mandates specific disclosures of IIHI to protection and advocacy systems designated by the chief elected official of the states and territories. CEs may make these disclosures under 164.512(a) without authorization unless the DD Act requires authorization. (65 Fed. Reg. 82594).</p>	<p>Disclosure to protection and advocacy agencies is consistent with HIPAA to the extent it is required by the DD Act. The DD Act allows state protective agencies to have access to records of <i>individuals</i> with disabilities in the following situations:</p> <ul style="list-style-type: none"> • All records of any DD <i>individual</i> in the system, if <i>individual</i> or authorized person has provided authorization; • Any DD <i>individual</i> where <i>individual</i> is unable to provide

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
	<p>person with mental illness, as defined under s.51.62(1)(bm). Note: 51.62—Protection and Advocacy System</p>			<p>authorization and does not have an authorized representative and a complaint is received by the system about the <i>individual's</i> care and <i>treatment</i>;</p> <ul style="list-style-type: none"> • Any DD <i>individual</i> in a situation where the <i>individual</i> has an authorized representative, a complaint has been received, the representative has been contacted but failed to respond; or • Any of the <i>individuals</i> described above or any DD <i>individual</i> where an incident of abuse or neglect has been reported to the system or there is probable cause to believe that the incidents occurred where the records are relevant to conducting an investigation not later than three business days after the system makes a written request; or • Immediate access not later than 24 hours after the system makes such a request to the records without consent from another party in a situation where services supports and other assistance are provided to a DD <i>individual</i> if the system determines there is probable cause to believe that the health or safety of the <i>individual</i> is in serious and immediate jeopardy or in any case of death of an <i>individual</i> with a developmental disability. (Pub. L. No. 106-402 § 143(a)(2)(I, J)). <p>HIPAA, via the DD Act, allows disclosure where there is some threat of abuse or neglect or other risk to health and safety. Wisconsin's scope of disclosure seems broader and thus less stringent. Follow HIPAA.</p>

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
146.82(2)(a)9c	<p>If the patient, regardless of age, has guardian appointed under s. 880.33, or if the patient is minor with developmental disability, as defined in s. 51.01 (5) (a), who has a parent or has a guardian appointed under s. 48.831 and does not have guardian appointed under s. 880.33, information concerning the patient that is obtainable by staff members of the agency or nonprofit corporation with which the agency has contracted is limited, except as provided in subd. 9. e., to the nature of an alleged rights violation, if any; the name, birth date and county of residence of the patient; information regarding whether the patient was voluntarily admitted, involuntarily committed or protectively placed and the date and place of admission, placement or commitment; and the name, address and telephone number of the guardian of the patient and the date and place of the guardian's appointment or, if the patient is minor with developmental disability who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 880.33, the name, address and telephone number of the parent or a guardian appointed under s. 48.831 of the patient.</p> <p>Note: 48.831—Appointment of guardian for child without a living parent for adoptability finding.</p>	<p>164.502(g)</p> <p>160.203(c)</p>	<p>HIPAA defers to state or other applicable law that allows or requires disclosure of the PHI of an unemancipated minor or access to such PHI. HIPAA also defers where such law leaves those decisions to the health care professional.</p> <p>The provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.</p>	Follow State.
146.82(2)(a)9d	<p>Except as provided in subd. 9. e., any staff member who wishes to obtain additional information about a patient described in subd. 9. c. shall notify the patient's guardian or, if</p>	160.203(c)	<p>The provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health</p>	Follow State.

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
	applicable, parent in writing of the request and of the guardian's or parent's right to object. The staff member shall send the notice by mail to the guardian's or, if applicable, parent's address. If the guardian or parent does not object in writing within 15 days after the notice is mailed, the staff member may obtain the additional information. If the guardian or parent objects in writing within 15 days after the notice is mailed, the staff member may not obtain the additional information.		surveillance, investigation, or intervention.	
146.82(2)(a)9e	The restrictions on information that is obtainable by staff members of the protection and advocacy agency or private, nonprofit corporation that are specified in subd. 9. c. and d. do not apply if the custodian of the record fails to promptly provide the name and address of the parent or guardian; if a complaint is received by the agency or nonprofit corporation about a patient, or if the agency or nonprofit corporation determines that there is probable cause to believe that the health or safety of the patient is in serious and immediate jeopardy, the agency or nonprofit corporation has made a good-faith effort to contact the parent or guardian upon receiving the name and address of the parent or guardian, the agency or nonprofit corporation has either been unable to contact the parent or guardian or has offered assistance to the parent or guardian to resolve the situation and the parent or guardian has failed or refused to act on behalf of the patient; if a complaint is received by the agency or nonprofit corporation	160.203(c)	The provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention	Follow State.

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
	about a patient or there is otherwise probable cause to believe that the patient has been subject to abuse or neglect by a parent or guardian; or if the patient is a minor whose custody has been transferred to a legal custodian, as defined in s. 48.02 (11) or for whom a guardian that is an agency of the state or a county has been appointed.			
146.82(2)(a)10	To persons as provided under 655.17(7)(b) if the patient files a submission of controversy under 655.04(1) after July 20, 1985 and before June 14, 1986 (sunsetting).	Not applicable.	Not applicable.	This provision of Wisconsin state law has sunsetted and no longer exists.
146.82(2)(a)11 <i>Child Abuse or Neglect to Law Enforcement, District Attorney</i>	To a county department, sheriff, police department or district attorney for purposes of investigation of threatened or suspected child abuse or neglect (including unborn children) may be released without receiving a request, restriction on re-disclosure by recipients unless consistent with 48.981(7) [confidentiality provision of children's code on abused or neglected children allowing release in numerous circumstances]. To a county department, as defined under s. 48.02 (2g), a sheriff or police department or a district attorney for purposes of investigation of threatened or suspected child abuse or neglect or suspected unborn child abuse or for purposes of prosecution of alleged child abuse or neglect, if the person conducting the investigation or prosecution identifies the subject of the record by name. The health care provider may release information by initiating	160.203(c)	The provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention	Follow State.

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
146.82(2)(a)11 cont.	contact with a county department, sheriff or police department or district attorney without receiving a request for release of the information. A person to whom a report or record is disclosed under this subdivision may not further disclose it, except to the persons, for the purposes and under the conditions specified in s. 48.981 (7). Note: 48.02(2g)—County department of social services or human services; 48.981(7)—Confidentiality of records.			
146.82(2)(a)12 <i>School District</i>	To a school district employee or agent with regard to patient health care records maintained by the school district which he or she is employed or is an agent, if any of the following apply: a. The employee or agent has responsibility for preparation or storage of patient care records. b. Access to the patient health care records is necessary to comply with a requirement in federal or state law.	None		Follow State.
146.82(2)(a)13 <i>Therapist</i>	To persons or entities under the statute governing sexual exploitation by a therapist and the duty to report same. 940.22(3)(a) If a therapist has reasonable cause to suspect that a patient or client he or she has seen in the course of professional duties is a victim of sexual contact by another therapist or a person who holds himself or herself out to be a therapist in violation of sub.2, as soon thereafter as practicable the therapist shall ask the patient or client if he or she wants the therapist	164.512(c) 164.512(f) 164.512(d)	Disclosures about victims of abuse, neglect or domestic violence. Disclosures for law enforcement purposes. Uses and disclosures for health oversight activities.	Follow State. State has more protection since provision for victim's authorization is needed for disclosure. HIPAA allows disclosure without authorization.

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
	to make a report under this subsection. The therapist shall explain that the report need not identify the patient or client as the victim. If the patient or client wants the therapist to make the report, the patient or client shall provide the therapist with a written consent to the report and shall specify whether the patient's or client's identity will be included in the report.			
146.82(2)(a)14 <i>Board on Aging & Long-Term Care</i>	To a representative of the Board on Aging and Long-Term Care in accordance with 49.498(5)(e). Note: 49.498(5)(e)—deals with the rights of residents in skilled nursing facilities and allows a designated representative of the long-term care ombudsman, with the resident's permission, to examine the resident's clinical records.	164.512(d)	Uses and disclosures for health oversight activities. Other than those <i>uses</i> or disclosures permitted under the rules, a CE may not disclose or <i>use</i> PHI without authorization.	Follow State. Wisconsin Stat. 49.498(5)(e) requires resident giving permission for the disclosure of clinical records. 164.512(d) allows disclosure to health oversight agencies and to the long-term care ombudsman without authorization and therefore is less protective.
146.82(2)(a)15 <i>Death Investigations</i>	To the Department of Health and Family Services or to a sheriff, police department or district attorney for the purposes of investigation of certain deaths.	164.512(d) 164.512(f)(4)	Uses and disclosures for health oversight activities. Permitted disclosures regarding decedents. A CE may disclose PHI about an <i>individual</i> who has died to a law enforcement official for the purpose of alerting law enforcement of the death if the CE suspects that it may have resulted from crime.	Follow State for disclosures to DHFS. Wisconsin is more restrictive because it only allows disclosure when the death occurs at specific locations. Follow HIPAA for disclosures to law enforcement. HIPAA is more restrictive because it only allows disclosure when the CE suspects that that death resulted from crime. Note: This exception addresses investigation. Separate HIPAA provisions govern the reporting of deaths.
146.82(2)(a)16 <i>Long-term Care Ombudsman</i>	To a designated representative of the long-term care ombudsman for the purpose of protecting and advocating the rights of an <i>individual</i> 60 years of age or older who resides in a long-term care facility in accordance with Wis. Stat. § 16.009(4)(b).	164.512(d)	Uses and disclosures for health oversight activities.	Follow both. Both laws allow disclosure to ombudsman without authorization.

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
146.82(2)(a)17 <i>Rural Medical Center Inspections</i>	To the Department for the purposes of unannounced inspections of a rural medical center. Wis. Stat. 50.53 states that a rural medical center that is inspected or investigated shall provide the Department with access to patient health care records regardless of the source of patient health care <i>payment</i> to fulfill the purpose of any inspections or investigations that the Department conducts.	164.512(d)	Uses and disclosures for health oversight activities. A CE may disclose PHI to a <i>health oversight agency</i> for oversight activities authorized by law including inspections or other activities necessary for appropriate oversight of the health care system.	Follow both. Both laws allow disclosure for Department inspections.
146.82(2)(a)18 <i>Coroner</i>	Following the death of a patient to a coroner, deputy coroner, medical examiner or medical examiner's assistant for the purposes of completing a medical certificate, the health care provider may release the information without a request and shall release information upon receipt of a request. The recipient of any information shall keep the information confidential except as necessary to comply with laws regarding cremation, death records and reporting of deaths.	164.512(g)	Uses and disclosures about decedents. A CE may disclose PHI to coroners or medical examiners for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law.	Follow both. Both allow disclosure to coroner or medical examiner for stated purposes. Note: State law restricts redisclosure by the recipient.
146.82(2)(a)18m <i>County Agencies</i>	If the subject of the patient health care records is a child or juvenile who has been placed in a foster home, group home or child care institution of any kind including secure correctional facilities, or for whom placement in such a facility is recommended by a number of specified entities, the records may be disclosed to agencies required to prepare court reports or permanency plans and may further be disclosed by any of those agencies to any of the other agencies and may be disclosed by the placing agency to the recipient facility or foster parent.	No specific reference found 164.502(g)	Allows for personal representative to act on the <i>individual's</i> behalf and defers to state law. Allows parent or guardian to act as personal representative (except for abuse/neglect situations).	An authorization may be required. For disclosure to agencies required to prepare court reports or permanency plans, there is no specific HIPAA provision allowing disclosure without an authorization. Depending on the facts relating to the request, there may be HIPAA provisions that allow disclosure (e.g. administrative proceedings, law enforcement, court order). To the extent that a patient contemplated in 146.82(2)(a)18m has a guardian or other personal representative, disclosures to that

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
				person will be governed by 164.502(g). Whether HIPAA applies to disclosures between agencies depends on whether the disclosing agency is a covered entity or business associate.
146.82(2)(a)19 <i>Organ Procurement</i>	To an organ procurement organization by a hospital pursuant to Wis. Stat. § 157.06(5)(b)1. Note: 157.06—Anatomical gift act	164.512(h)	Uses and disclosures for cadaveric organ, eye or tissue donation purposes. A CE may <i>use</i> or disclose PHI to organ procurement organizations or other entities engaged in the procurement, banking or transplantation of cadaveric organs, eyes or tissue for the purpose of facilitating organ, eye or tissue donation or transplantation.	If a hospital, follow both because no authorization is required. Note: For other health care providers, an authorization is required under State law.
146.82(2)(a)20 <i>De-identification</i>	If the patient health care records do not contain information and the circumstances of the release do not provide information that would permit the identification of the patient.	164.514(a) 164.514(b) 164.514(e)(1)	The identification of PHI health information that does not identify an <i>individual</i> and with respect to which there is no reasonable basis to believe that the information can be <i>used</i> to identify an <i>individual</i> is not covered under HIPAA. Implementation specifications: A CE may determine that information is de-identified either by having an expert using generally accepted statistical and scientific principles and methods or by removing all 18 specified identifiers. Limited Data Set. A covered entity may <i>use</i> or disclose a limited data set that meets the requirements of 164.514(e)(2) and 164.514(e)(3), if the covered entity enters into a data <i>use</i> agreement with the limited data set recipient in accordance with 164.514(e)(4).	The definitions appear to be consistent. However, we suggest following HIPAA because it sets forth a method/standard for de-identification. A limited data set, as defined by HIPAA, may be disclosed without an authorization if it meets the requirements of State law, i.e. the information and the circumstances of the disclosure cannot identify an <i>individual</i> .
146.82(2)(a)21 <i>Corrections</i>	To a prisoner's health care provider, the medical staff of a prison or jail in which the prisoner is confined, the receiving institution intake staff at a prison or jail to which a prisoner is being transferred or a person	164.512(k)(5)	Correctional institutions and other law enforcement custodial situations. A CE may disclose to a correctional institution or law enforcement official having lawful custody of an inmate or other <i>individual</i> , PHI about such inmate or <i>individual</i> if it is necessary	Both HIPAA and State law are broadly, but not identically, written to allow for the release of health information concerning an inmate to jail or prison personnel at the time of incarceration. HIPAA is perhaps

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
146.82(2)(a)21 cont	designated by a jailer to maintain prisoner medical records, if the disclosure is made with respect to a prisoner's patient health care records under § 302.388 or to the department of corrections if the disclosure is made with respect to a prisoner's patient health care records under § 302.388(4) [contemplates health summary information on a standardized form for prisoners].		for the provision of health care to the inmate, the health and safety of the inmate, the health and safety of other officers or employees of correctional institutions, the health and safety of transporters, law enforcement on correctional premises or the administration and maintenance of the safety, security and good order of the correctional institution.	incarceration. HIPAA is perhaps somewhat broader in that it allows disclosure of PHI for the purposes of the health and safety of others, has a "catch-all" provision and, finally, may allow release to a wider range of police and jail personnel than does state law. The practical implications of these differences are unclear and depend on the particular circumstances. The health care summary contemplated under Wis. Stat. § 302.388 relates to any care and <i>treatment</i> that a prisoner requires during the period of incarceration and the summary is meant to accompany the prisoner when transferred to a different facility.
146.82(2)(b)	(b) Except as provided in s. 610.70 (3) and (5), unless authorized by a court of record, the recipient of any information under par. (a) shall keep the information confidential and may not disclose identifying information about the patient whose patient health care records are released. Note: 610.70 –health plan disclosures	164.508(c)(2)(iii)	No specific HIPAA provision on redisclosure When an authorization is required from the <i>individual</i> for <i>use</i> or disclosure of PHI the authorization is required to contain the following language: The potential for information to be disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer protected by this rule.	Follow State. State allows for redisclosure of provider records in the possession of health plans as regulated by 610.70(3) and (5) or a court order.
146.82(2)(c)	(c) Notwithstanding sub. (1), patient health care records shall be released to appropriate examiners and facilities in accordance with ss. 971.17 (2) (e), (4) (c) and (7) (c), 980.03 (4) and 980.08 (3). The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17 or ch. 980. Note: 971.17—Commitment of persons found not guilty by reason of	164.512(a) 164.512(e)(1)	(1) A covered entity may <i>use</i> or disclose PHI to the extent that such <i>use</i> or disclosure is <i>required by law</i> and the <i>use</i> or disclosure complies with and is limited to the relevant requirements of such law. (2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for <i>uses</i> or disclosures <i>required by law</i> . (1) Permitted disclosures. A covered entity may disclose PHI in the course of any	Follow HIPAA. Both allow disclosure, but HIPAA requires assurances that the <i>individual</i> has been noticed. Note: State will require the disclosure "as required by law" since "shall" is used in State law.

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
146.82(2)(c) cont	mental disease or mental defect; 980—Sexually Violent Person Commitments	(i) & (ii)	judicial or administrative proceeding: (i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the PHI expressly authorized by such order; or (ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if: (A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the <i>individual</i> who is the subject of the PHI that has been requested has been given notice of the request; or (B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.	
146.82(2)(d)	(d) For each release of patient health care records under this subsection, the health care provider shall record the name of the person or agency to which the records were released, the date and time of the release and the identification of the records released.	164.528(b)	Implementation specifications: Content of the accounting. The covered entity must provide the individual entity with a written accounting that meets the following requirements. (1) Except as otherwise provided by paragraph (a) of this section, the accounting must include disclosures of protected health information that occurred during the six years (or such shorter time period at the request of the individual as provided in paragraph (a)(3) of this section) prior to the date of the request for an accounting, including disclosures to or by business associates of the covered entity. (2) The accounting must include for each disclosure:	Implementation requires providers to comply with two separate obligations: (1) recording/accounting for certain specified disclosures; and (2) documenting/recording certain information about the disclosures. State law requires providers to record all disclosures (regardless of whether informed consent is given). HIPAA's accounting requirement is more narrow and generally requires providers to account only for disclosures made for health oversight purposes, disclosures required by law

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
146.82(2)(d) cont			<p>(i) The date of the disclosure;</p> <p>(ii) The name of the entity or person who received the protected health information and, if known, the address of such entity or person;</p> <p>(iii) A brief description of the protected health information disclosed; and</p> <p>(iv) A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure; or, in lieu of such statement:</p> <p>(A) A copy of the individual's written authorization pursuant to Sec. 164.508; or</p> <p>(B) A copy of a written request for a disclosure under Secs. 164.502(a)(2)(ii) or 164.512, if any.</p> <p>(3) If, during the period covered by the accounting, the covered entity has made multiple disclosures of protected health information to the same person or entity for a single purpose under Secs. 164.502(a)(2)(ii) or 164.512, or pursuant to a single authorization under Sec. 164.508, the accounting may, with respect to such multiple disclosures, provide:</p> <p>(i) The information required by paragraph (b)(2) of this section for the first disclosure during the accounting period;</p> <p>(ii) The frequency, periodicity, or number of the disclosures made during the accounting period; and</p> <p>(iii) The date of the last such disclosure during the accounting period.</p>	<p>or for certain research activities (not TPO). Therefore, compliance with state law with respect to the obligation of which disclosures are recorded/accounted for will generally put the provider in compliance with HIPAA. With respect to the specific documentation required for recording/accounting of disclosures, providers must incorporate BOTH HIPAA and State law elements as they are not identical. In implementing these two obligations, providers must consider whether or not to integrate the process of recording and generating an accounting. For example, a provider may chose to record all disclosures in the health care record and not generate a separate disclosure list (accounting) unless and until one is requested by the individual.</p> <p>One view is that recording a disclosure is not the same as accounting for a disclosure. All disclosures must be recorded (e.g., noted in the health care record), however only HIPAA sets for the requirement that providers be able to generate a list of the various disclosures made--the accounting.</p>
146.83(1)	<p>146.83 Access to patient health care records.</p> <p>(1) Except as provided in s. 51.30 or 146.82 (2), any patient or other person may, upon submitting a statement of informed consent:</p> <p>(a) Inspect the health care records of a health care provider pertaining to that patient at any time during regular</p>	164.524(a)(1)	<p>(1) Right of access. Except as otherwise provided in paragraph (a)(2) or (a)(3) of this section, an <i>individual</i> has a right of access to inspect and obtain a copy of PHI about the <i>individual</i> in a designated record set, for as long as the PHI is maintained in the designated record set, except for:</p> <p>(i) <i>psychotherapy notes</i>;</p> <p>(ii) Information compiled in reasonable</p>	<p>Follow HIPAA. HIPAA provides a greater right of patient access to a greater amount of information through the designated record set and no time constraints for requests.</p> <p>(i-iii) Follow State, when the i-iii information is a Ch 146 record. For Psychotherapy Notes, refer to</p>

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
146.83(1) cont	<p>business hours, upon reasonable notice.</p> <p>(b) Receive a copy of the patient’s health care records upon <i>payment</i> of fees, as established by rule under (3m).</p> <p>(c) Receive a copy of the health care provider’s X-ray reports or have the X-rays referred to another health care provider of the patient’s choice upon <i>payment</i> of fees, as established by rule under sub. (3m).</p>	<p>164.524(b)</p> <p>164.524(c)</p>	<p>anticipation of, or for <i>use</i> in, a civil, criminal, or administrative action or proceeding; and</p> <p>(iii) PHI that is:</p> <p>(A) subject to CLIA</p> <p>(B) Except from CLIA pursuant to 42 CFR 493.3(a)(2)</p> <p>(2) Unreviewable grounds for denial</p> <p>(3) Reviewable grounds for denial</p> <p>(4) Review of a denial of access</p> <p>(b) Requests for access and timely action</p> <p>(b)(1) <i>Individual’s</i> request for access. The covered entity must permit an <i>individual</i> to request access to inspect or to obtain a copy of the PHI about the <i>individual</i> that is maintained in a designated record set. The covered entity may require <i>individuals</i> to make requests for access in writing, provided that it informs the <i>individuals</i> of such requirement.</p> <p>(b)(2) Timely action by the covered entity.</p> <p>(b)(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the covered entity must act on a request for access no later than 30 days after receipt of the request as follows.</p> <p>(b)(2)(i)(A)...grants the request...</p> <p>(b)(2)(i)(B)...denies the request...</p> <p>(c) Provision of access. If the covered entity provides an <i>individual</i> with access, ... , to PHI, the covered entity must comply with the following requirements.</p> <p>(c)(1) Providing the access requested. The CE must provide the access requested by <i>individuals</i>, ... , of the PHI about them in a DRS. If the same PHI ... is maintained in more than one location, the CE need only produce the PHI once in response to a request for access.</p> <p>(c)(2) Form of access requested. (i) The CE must provide the <i>individual</i> with access to the PHI in the form or format requested by the <i>individual</i>, if it is readily producible in</p>	<p>Wis. Stat 51.30 analysis.</p> <p>Follow State. Greater patient access is provided. Disregard reviewable and unreviewable process.</p> <p>HIPAA allows a greater access by allowing the request to be oral. Covered entity may require access requests in writing provided CE has informed the <i>individual</i> of the requirement.</p> <p>HIPAA requires that access be granted within 30 days or within the extensions. HIPAA controls unless the WI standard of “reasonable notice” can be deemed to be shorter and provide a greater right of access.</p> <p>Follow HIPAA. HIPAA requires that the patient copy be provided in a patient requested format. HIPAA provides greater rights as to format of</p>

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
146.83(1) cont			such form or format; or, if not, in a readable hard copy form or such other form or format as agreed to by the CE and the <i>individual</i> . (c)(3) Time and manner of access. The covered entity must provide the access as requested by the individual in a timely manner as required by paragraph (b)(2) of this section, including arranging with the individual for a convenient time and place to inspect or obtain a copy of the PHI, or mailing the copy of the PHI at the individual's request. The covered entity may discuss the scope, format, and other aspects of the request for access with the individual as necessary to facilitate the timely provision of access.	the information and HIPAA controls. By not requiring reasonable notice or access during regular business hours for an individual's request, HIPAA provides a greater right of access to the individual.
146.83(1m)	(1m) (a) A patient's health care records shall be provided to the patient's health care provider upon request and, except as provided in s. 146.82 (2), with a statement of informed consent. (b) The health care provider under par. (a) may be charged reasonable costs for the provision of the patient's health care records.	164.506(a) 164.506(c)(2) 164.508(a)(1)	Except with respect to <i>uses</i> or disclosures that require an authorization ... , a covered entity may <i>use</i> or disclose PHI for <i>treatment, payment, or health care operations</i> . A covered entity may disclose PHI for <i>treatment</i> activities of a health care provider. (1) <u>Authorization required: general rule.</u> Except as otherwise permitted or required by this subchapter, a covered entity may not <i>use</i> or disclose PHI without an authorization that is valid under this section. When a covered entity obtains or receives a valid authorization for its <i>use</i> or disclosure of PHI, such <i>use</i> or disclosure must be consistent with such authorization.	Follow Both. HIPAA and State provide for release of PHI to another health care provider for <i>treatment</i> purposes with or without an authorization/informed consent.
146.83(2)	(2) The health care provider shall provide each patient with a statement paraphrasing the provisions of this section either upon admission to an inpatient health care facility, as defined in s. 50.135 (1), or upon the first provision of services by the health care provider.	164.520(b)(1)(iv)(C)	The notice must contain a statement of the <i>individual's</i> rights with respect to PHI and a brief description of how the <i>individual</i> may exercise these rights, as follows: ... 9 c) The right to inspect and copy PHI as provided by section 164.522(b)...	Follow Both. Both laws require notice to the patient of the right of access.
146.83(3)	(3) The health care provider shall	164.524(e)	Documentation. A covered entity must	Follow State. HIPAA has no

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146.83(3) cont.	note the time and date of each request by a patient or person authorized by the patient to inspect the patient's health care records, the name of the inspecting person, the time and date of inspection and identify the records released for inspection.	164.528(b)(2)	document the following and retain the documentation as required by 164.530(j): (1) The designated records sets that are subject to access by <i>individuals</i> ; and (2) The titles of the persons or offices responsible for receiving and processing requests for access by <i>individuals</i> . The accounting is required to include; the date of the disclosure, name and address of the recipient; brief description of information disclosed; and brief statement of the purpose of the disclosure.	requirements to document the receipt of the request or to document inspection by the patient.
146.83(3m)	a) The department shall, by rule, prescribe fees that are based on an approximation of actual costs. The fees, plus applicable tax, are the maximum amount that a health care provider may charge under sub. (1) (b) for duplicate patient health care records and under sub. (1) (c) for duplicate X-ray reports or the referral of X-rays to another health care provider of the patient's choice. The rule shall also permit the health care provider to charge for actual postage or other actual delivery costs. In determining the approximation of actual costs for the purposes of this subsection, the department may consider all of the following factors: 1. Operating expenses, such as wages, rent, utilities, and duplication equipment and supplies. 2. The varying cost of retrieval of records, based on the different media on which the records are maintained. 3. The cost of separating requested patient health care records from those that are not requested. 4. The cost of duplicating requested patient health care records. 5. The impact on costs of advances	164.524 (c)(4)	(c)(4) Fees. If the <i>individual</i> requests a copy of the PHI or agrees to a summary or explanation of such information, the CE may impose a reasonable, cost-based fee, provided that the fee includes only the cost of: (i) Copying, including the cost of supplies for and the labor of copying, the PHI requested by the <i>individual</i> ; (ii) Postage, when the individual has requested the copy, or the summary or explanation, be mailed,; and (iii) Preparing an explanation or summary of the PHI, if agreed to by the <i>individual</i> ...	Follow HIPAA when setting a cost-based fee for the "patient" until the State rule is established. HIPAA only addresses fees charged to the patient and specifies what costs can be included in this fee. Follow State for all other requests. State allows for a reasonable fee when releasing records to both the patient and anyone else with informed consent/authorization.

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
146.83(3m) cont.	in technology. (b) By January 1, 2006, and every 3 years thereafter, the department shall revise the rules under par. (a) to account for increases or decreases in actual costs			
146.83(4)	(4) No person may do any of the following: (a) Intentionally falsify a patient health care record. (b) Conceal or withhold a patient health care record with intent to prevent or obstruct an investigation or prosecution or with intent to prevent its release to the patient, to his or her guardian appointed under ch. 880, to his or her health care provider with a statement of informed consent, or under the conditions specified in s. 146.82 (2), or to a person with a statement of informed consent. (c) Intentionally destroy or damage records in order to prevent or obstruct an investigation or prosecution.	164.530(c)(2)(i)	A covered entity must reasonably safeguard PHI from any intentional or unintentional <i>use</i> or disclosure that is in violation of the standards, implementation specifications or HIPAA requirements.	Follow Both.
146.835	Parents denied physical placement rights. A parent who has been denied periods of physical placement may not have the rights of a parent or guardian under this chapter with respect to access to that child's record.	164.502(g)(3)	HIPAA defers to state law regarding disclosure of the PHI of unemancipated minors.	Follow State.
146.836	Applicability. Sections 146.815, 146.82, 146.83(4) and 146.835 apply to all patient health care records, including those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics.	160.103 Definitions	Health Information means any information, whether oral or recorded in any form or medium that is created or received by a health care provider, health plan, <i>public health authority</i> , employer, life insurer, school or university, or health care clearing house and relates to the past, present, or future physical or mental health or condition of an <i>individual</i> ; the provision of health care	Follow Both. HIPAA definition includes billing records and records created by the CE.

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
			to an <i>individual</i> ; or the past, present, or future <i>payment</i> for the provision of health care to an <i>individual</i> .	
146.84 (1) & (2)	<p>Violations related to patient health care records.</p> <p>(1) Actions for Violations; Damages; Injunction.</p> <p>(a) A custodian of records incurs no liability under par. (bm) for the release of records in accordance with s. 146.82 or 146.83 while acting in good faith.</p> <p>(b) Any person, including the state or any political subdivision of the state, who violates s. 146.82 or 146.83 in a manner that is knowing and willful shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than \$25,000 and costs and reasonable actual attorney fees.</p> <p>(bm) Any person, including the state or any political subdivision of the state, who negligently violates s. 146.82 or 146.83 shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than \$1,000 and costs and reasonable actual attorney fees.</p> <p>(c) An <i>individual</i> may bring an action to enjoin any violation of s. 146.82 or 146.83 or to compel compliance with s. 146.82 or 146.83 and may, in the same action, seek damages as provided in this subsection.</p> <p>(2) Penalties.</p> <p>(a) Whoever does any of the following may be fined not more than \$25,000 or imprisoned for not more than 9 months or both:</p>	<p>164.512 (j) 4</p> <p>164.514 (h) 1 (iv)</p>	<p>Presumption of good faith belief. A covered entity that <i>uses</i> or discloses PHI pursuant to (j)(1) is presumed to have acted in good faith with regard to a belief based upon the actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.</p> <p>Exercise of professional judgment. The verification requirements of this paragraph are met if the entity relies on the exercise of professional judgement in making a <i>use</i> or disclosure in accordance with 164.510 or acts on a good faith belief in making a disclosure in 164.512.</p> <p>HIPAA specific noncompliance with privacy regulations: \$50,000 fine and imprisonment for one year if we knowingly obtain or disclose <i>individually identifiable health information</i>; \$100,00 fine and imprisonment for 5 years if we knowingly obtain or disclose PHI under false pretenses and a maximum fine of \$250,000 and/or up to 10 years imprisonment if we obtain or disclose PHI with the intent to sell, transfer or <i>use</i> health information for commercial advantage, personal gain or malicious harm.</p>	<p>HIPAA and WI Statutes recognize acts in good faith. The covered entity is liable for negligence only. State law allows for an additional civil action suit with the <i>individual</i> being personally liable to the injured person.</p>

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
146.84 (1) & (2) cont	<p>1. Requests or obtains confidential information under s. 146.82 or 146.83 (1) under false pretenses.</p> <p>2. Discloses confidential information with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.</p> <p>3. Violates s. 146.83 (4).</p> <p>(b) Whoever negligently discloses confidential information in violation of s. 146.82 is subject to a forfeiture of not more than \$1,000 for each violation.</p> <p>(c) Whoever intentionally discloses confidential information in violation of s. 146.82, knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than \$100,000 or imprisoned not more than 3 years and 6 months, or both.</p>			
146.84(3)	<p>Discipline of employees. Any person employed by the state or any political subdivision of the state who violates s. 146.82 or 146.83, except a health care provider that negligently violates s. 153.50 (6) (c), may be discharged or suspended without pay.</p> <p>Note 153.50(6)(c)—A health care provider that is not a hospital or ambulatory surgery center may not submit data elements to the department.</p>	164.530(e)(1)	Sanctions. A covered entity must have and apply appropriate sanctions against members of its workforce who fail to comply with the privacy policies and procedures of the covered entity or the requirements of this subpart.	Follow Both.
146.84(4)	<p>(4) Exceptions. This section does not apply to any of the following:</p> <p>(a) Violations by a nursing facility, as defined under s. 49.498 (1) (i), of the right of a resident of the nursing facility to</p>	P.L. 104-191 (the Health Insurance Portability and Accountability Act of 1996)	SEC. 1177. (a) OFFENSE.--A person who knowingly and in violation of this part-- “(1) <i>uses</i> or causes to be <i>used</i> a unique health identifier; “(2) obtains <i>individually identifiable health information relating to an individual</i> ; or	Follow HIPAA.

State of WI Statutory Ref	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
146.84(4) cont.	<p>confidentiality of his or her patient health care records.</p> <p>(b) Violations by a nursing home, as defined under s. 50.01 (3), of the right of a resident of the nursing home to confidentiality of his or her patient health care records</p>	sec. 1177 provides:	<p><i>information</i> relating to an <i>individual</i>; or</p> <p>“(3) discloses <i>individually identifiable health information</i> to another person, shall be punished as provided in subsection (b).</p> <p>“(b) PENALTIES.--A person described in subsection (a) shall--</p> <p>“(1) be fined not more than \$50,000, imprisoned not more than 1 year, or both;</p> <p>“(2) if the offense is committed under false pretenses, be fined not more than \$100,000, imprisoned not more than 5 years, or both; and</p> <p>“(3) if the offense is committed with intent to sell, transfer, or <i>use individually identifiable health information</i> for commercial advantage, personal gain, or malicious harm, be fined not more than \$250,000, imprisoned not more than 10 years, or both.</p>	

Consulted with the Wisconsin Department of Health and Family Services and the analysis has been reviewed by the Department.

146 Preemption Analysis Prepared By:

Cheryl Becker, CPHQ, RHIA St. Mary's Hospital, Green Bay
Cindy Case Physicians Plus Insurance Corporation, Madison
Sarah Coyne, JD Quarles and Brady, LLP Madison
Chris Duprey Stratagem, Inc. Appleton
Heather Fields, JD Reinhart Boerner Van Deuren s.c Milwaukee
Corey Huber Community Care Organization Milwaukee
Thomas Huiting, The Human Services Center, Rhinelander
Daniel Icenogle, MD, JD Whyte Hirschboeck Dudek SC, Madison
Charlotte Lefert, RHIA Independent Consultant, Madison
Laura Leitch, JD Wisconsin Health and Hospital Association Madison

Chrisann Lemery, NHA, RHIA WEA Trust Insurance, Madison
Sally Luehring, RHIT St Vincent Hospital, Green Bay
Susan Manning, JD, RHIA Consultant
Jennifer Mirus, JD Boardman Law Firm Madison
Meg Pekarske, JD Reinhart Boerner Van Deuren s.c Madison
Steven J. Rollins, JD Manitowoc County Manitowoc
Elizabeth Stone, JD University of Wisconsin-Madison
Jodie Svoboda, RHIA North Central Health Care Wausau
Judy Titera Fortis Health Milwaukee
Brad Trudell, JD WPS Madison