



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-5104/1  
TJD:kjf

## 2017 ASSEMBLY BILL 848

January 18, 2018 - Introduced by Representatives LOUDENBECK, C. TAYLOR, KOLSTE, BERCEAU, DUCHOW, KITCHENS, MURSAU, NOVAK, QUINN, ROHRKASTE, SINICKI, SPIROS and SUBECK, cosponsored by Senators DARLING, OLSEN and L. TAYLOR. Referred to Committee on Mental Health.

\*\*\*AUTHORS SUBJECT TO CHANGE\*\*\*

1     **AN ACT** *to amend* 46.03 (18) (b) and 51.61 (6); and *to create* 51.138 of the  
2             statutes; **relating to:** emergency outpatient mental health treatment for  
3             minors.

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### *Analysis by the Legislative Reference Bureau*

This bill allows a treatment director to provide outpatient mental health treatment to children for 30 days without first obtaining informed consent if 1) an emergency situation exists, or time and distance requirements preclude obtaining written consent before beginning outpatient mental health treatment, and potential harm will come to the child or others if treatment is not initiated before written consent is obtained; and 2) a reasonable effort was made to obtain consent from the child's parent or guardian. During the 30-day treatment period, the treatment director of the outpatient mental health treatment provider must either obtain informed, written consent of a parent or guardian of the child or, if consent is not obtained, file a petition to initiate a review of outpatient mental health treatment of a minor under the current law procedure. Under the 30-day emergency treatment period established in the bill, no one may prescribe medications to the child seeking mental health treatment or admit the child to any inpatient facility without consent of the child's parent or guardian. Similar to the current procedure for billing a child for alcohol and other drug services, the bill requires the treatment director of the outpatient mental health treatment provider to obtain the child's consent before billing a third party for services provided under this bill when consent of a parent or guardian has not been obtained. If the child does not consent to billing a third party,

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the child is responsible for paying for the services, which the Department of Health Services must bill to the child with the fee based solely on the child's ability to pay.

Review of outpatient mental health treatment of children 14 years of age or older is unchanged by this bill. Currently, the review may be instigated by a child who is 14 years of age or older, or a person acting on the minor's behalf, and whose parent or guardian refuses or is unable to provide informed consent for outpatient mental health treatment or by a treatment director of a facility providing treatment to a child despite the child's refusal to consent. Within 21 days after the filing of a petition for review, a mental health review officer designated by the court must hold a hearing on the petition and must order either that informed consent by the parent or guardian is not required to treat the child or that treatment of the child is appropriate despite the child's objection, whichever is appropriate. After the mental health review officer's order, the child or someone acting on the child's behalf may petition the court for judicial review.

A procedure exists under current law for admission for inpatient mental health and alcohol and other drug abuse treatment for children without parental consent or without the child's consent depending on the age of the minor. Current law also allows a physician or credentialed health care facility to provide certain services for alcohol and other drug abuse to a child 12 years of age or over without parental consent or notification if a parent or legal guardian cannot be found or if there is no parent with legal custody.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 46.03 (18) (b) of the statutes is amended to read:

2           46.03 (18) (b) Except as provided in s. 46.10 (14) (b) and (c), any person  
3 receiving services provided or purchased under par. (a) or the spouse of the person  
4 and, in the case of a minor, the parents of the person, and, in the case of a foreign child  
5 described in s. 48.839 (1) who became dependent on public funds for his or her  
6 primary support before an order granting his or her adoption, the resident of this  
7 state appointed guardian of the child by a foreign court who brought the child into  
8 this state for the purpose of adoption, shall be liable for the services in the amount  
9 of the fee established under par. (a). If a minor receives services without consent of

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1 a parent or guardian under s. 51.138 or 51.47, the department shall base the fee  
2 solely on the minor's ability to pay.

3 **SECTION 2.** 51.138 of the statutes is created to read:

4 **51.138 Emergency outpatient treatment for minors. (1)** In this section,  
5 "outpatient mental health treatment" has the meaning given in s. 51.14 (1).

6 **(2)** Subject to sub. (4), a treatment director of an outpatient mental health  
7 treatment provider may provide outpatient mental health treatment to a minor for  
8 30 days without first obtaining informed consent if all of the following criteria are  
9 satisfied:

10 (a) An emergency situation exists, as determined by the treatment director of  
11 an outpatient mental health treatment provider, or time and distance requirements  
12 preclude obtaining written consent before beginning outpatient mental health  
13 treatment, and potential harm will come to the minor or others if treatment is not  
14 initiated before written consent is obtained.

15 (b) A reasonable effort has been made to obtain consent from a parent or  
16 guardian of the minor before initiating treatment.

17 **(3)** During the 30-day treatment period under sub. (2), the treatment director  
18 of the outpatient mental health treatment provider shall either obtain informed,  
19 written consent of a parent or guardian of the minor or, if consent is not obtained, file  
20 a petition to initiate a review of outpatient mental health treatment of a minor, if  
21 applicable, under s. 51.14.

22 **(4)** No person may, under the treatment period under sub (2), without the  
23 consent of a parent or guardian of the minor, prescribe medications to the minor who  
24 is seeking treatment for a mental health condition or admit a minor to an inpatient  
25 facility or an inpatient treatment facility without the consent of a parent or guardian.

**ASSEMBLY BILL 848****SECTION 2**

1           **(5)** For services provided under this section when consent of a parent or  
2 guardian has not been obtained, the treatment director of an outpatient mental  
3 health treatment provider shall obtain the minor's consent before billing a 3rd party  
4 for the services. If the minor does not consent to billing a 3rd party, the minor shall  
5 be responsible for paying for the services, which the department shall bill to the  
6 minor under s. 46.03 (18) (b).

7           **SECTION 3.** 51.61 (6) of the statutes is amended to read:

8           51.61 **(6)** Subject to the rights of patients provided under this chapter, the  
9 department, county departments under s. 51.42 or 51.437, and any agency providing  
10 services under an agreement with the department or those county departments have  
11 the right to use customary and usual treatment techniques and procedures in a  
12 reasonable and appropriate manner in the treatment of patients who are receiving  
13 services under the mental health system, for the purpose of ameliorating the  
14 conditions for which the patients were admitted to the system. The written,  
15 informed consent of any patient shall first be obtained, unless the person has been  
16 found not competent to refuse medication and treatment under s. 51.61 (1) (g) or the  
17 person is a minor 14 years of age or older who is receiving services for alcoholism or  
18 drug abuse or a minor under 14 years of age who is receiving services for mental  
19 illness, developmental disability, alcoholism, or drug abuse. In the case of such a  
20 minor, the written, informed consent of the parent or guardian is required, except as  
21 provided under an order issued under s. 51.13 (1) (c) or 51.14 (3) (h) or (4) (g), or as  
22 provided in s. 51.138 or 51.47. If Except as provided in s. 51.138, if the minor is 14  
23 years of age or older and is receiving services for mental illness or developmental  
24 disability, the written, informed consent of the minor and the minor's parent or  
25 guardian is required, except that a refusal of either such a minor 14 years of age or

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1     older or the minor's parent or guardian to provide written, informed consent for  
2     admission or transfer to an approved inpatient treatment facility is reviewable  
3     under s. 51.13 (1) (c), (3), or (4), or 51.35 (3) (b), and a refusal of either a minor 14 years  
4     of age or older or the minor's parent or guardian to provide written, informed consent  
5     for outpatient mental health treatment is reviewable under s. 51.14.

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**(END)**