

 <p style="text-align: center;"><b>DIVISION OF ADULT INSTITUTIONS</b></p> <p style="text-align: center;"><b>POLICY AND PROCEDURES</b></p>	<b>DAI Policy #:</b> 500.50.01	<b>Page</b> 1 of 9
	<b>Original Effective Date:</b> 03/30/81	<b>New Effective Date:</b> 08/25/14
	<b>Supersedes:</b> BHS500:01	<b>Dated:</b> 01/01/09
	<b>Administrator's Approval:</b> Cathy A. Jess, Administrator	
<b>Required Posting or Restricted:</b>		
<input checked="" type="checkbox"/> <b>Inmate</b> <input checked="" type="checkbox"/> <b>All Staff</b> <input type="checkbox"/> <b>Restricted</b>		
<b>Chapter:</b> 500 Health Services		
<b>Subject:</b> Minimum Necessary and Duty to Mitigate HIPAA Standards		

## POLICY

Employees of the Division of Adult Institutions shall request, access, use and disclose confidential Protected Health Information (PHI) in accordance with federal HIPAA regulations, and other relevant Wisconsin and federal laws. The DOC shall mitigate, to the extent practicable, any known harmful effect resulting from a use or disclosure of PHI by the DOC or a Business Associate that violates HIPAA regulations.

## REFERENCES

Wisconsin Statutes ss. 146.81-.84 – Health Care Records; definitions  
Wisconsin Statutes s. 51. 30(4) – Access to registration and treatment records  
Wisconsin Statutes s. 252.15 – Restrictions on Use of an HIV Test  
45 C. F. R. Part 164 – Health Insurance Portability and Accountability Act  
42 C. F. R. Part 2 – Confidentiality of Alcohol and Drug Abuse Patient Records  
Executive Directive 35 – Confidentiality of Health Information Relating to Offenders, and Protection of Employees and Offenders from Communicable Disease  
DAI Policy 500.50.08 – Access by Inmate Patients to Their Health Care Records  
DAI Policy 500.50.09 – Disclosure of PHI With Inmate Patient Authorization and Court Orders  
DAI Policy 500.50.10 – Authorized Disclosure of Protected Health Information Without Inmate Patient Authorization  
DAI Policy 500.50.17 – Complaints Alleging Violations of Confidentiality and Penalties  
DAI Policy 500.60.01 – Infection Control Policy

## DEFINITIONS, ACRONYMS AND FORMS

BOCM – Bureau of Offender Classification and Movement

C.F.R – Code of Federal Regulations

Covered Entity – Health care provider that electronically transmits any health information in connection with transactions for which Department of Health and Human Services has adopted standards. Generally, these transactions concern billing and payment for services or insurance coverage.

De-identified Information – Health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual.

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Disclosure – Release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.

DOC – Department of Corrections

DOC-1163A – Authorization for Use and Disclosure of Protected Health Information (PHI)

DOC-3490 – Employee Complaint Alleging Violation of Privacy of Protected Health Information (PHI)

DOC-3504 – Infection Control – Patient and Employee Precautions

DOC-3504A – Infection Control Notice

Health Care Provider – An individual identified under Wisconsin Statutes s. 146. 81.

Health Care Record (HCR) – Official confidential DOC record created and maintained for each inmate patient consisting of all or some of the following components: Medical Chart, Dental Record, Psychological Records-Copies envelope, Patient Request Folder, Medications Record envelope, Psychological Services Unit Record, and other components as defined by the Bureau of Health Services.

Health Information – Any information, including genetic information, whether oral or recorded in any form or medium, that: is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

Health Insurance Portability and Accountability Act (HIPAA) – Federal law that requires all covered entities to follow national standards that protect the privacy and security of protected health information.

Health Providers – Individuals identified under Wisconsin Statutes s. 146. 81.

Health Staff – All facility health care staff including dialysis, dental, health services and psychological services. This also includes administrative leadership staff who oversee the overall health services for the department.

HIPAA Compliance Officer – Employee designated by the Secretary of the DOC under the Health Insurance Portability and Accountability Act to oversee implementation of and compliance with DOC policies and procedures, and Wisconsin and federal laws pertaining to the confidentiality of health care information.

HIPAA Regulations – Regulations included in 45 Code of Federal Regulations Parts 160, 162 and 164, which implement the HIPAA law.

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ICE – Institution Complaint Examiner

ICRS – Inmate Complaint Review System

Individually identifiable health information – Information that is a subset of health information, including demographic information collected from an individual, and: is created or received by a health care provider, health plan, employer, or health care clearinghouse; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Minimum necessary – Least amount of PHI reasonably necessary to accomplish the purpose of the access, use, request or disclosure of the PHI.

Mitigate – To moderate in force or intensity or alleviate.

Need to know – Access to the PHI necessary to allow employees to perform assigned job duties.

Patient – Individual who receives health care services from a health care provider.

PREA – Prison Rape Elimination Act

Protected Health Information (PHI) – Individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium.

Use – Sharing, employment, application, utilization, examination, or analysis of individually identifiable health information within DOC.

## **PROCEDURES**

### **I. Compliance Required**

- A. Failure by a DOC employee to comply with this policy may lead to employee discipline, referral to the Department of Safety and Professional Services and/or other sanctions under Wisconsin and federal laws, including fines and imprisonment. See DAI Policy 500.50.17.
- B. Employees shall not share PHI in any format, including verbal, hard copy and electronic:
  1. With a co-worker who lacks a job related need to know the PHI.
  2. With any person outside of the DOC without clear legal authorization. See DAI Policy 500.50.09 and 500.50.10.

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- C. Employees shall not remove from the premises of DAI facilities, or any DOC location, original documents or copies of documents containing PHI, without supervisory approval.

## II. Minimum Necessary Standard – General Information

- A. The minimum necessary standard applies to all requests for, access to, and use and disclosure of PHI except the following:
1. Uses and disclosures to and from a health care provider for treatment purposes.
  2. Disclosures to the inmate patient.
  3. Uses or disclosures made to a recipient named in an authorization signed by the inmate patient, or person authorized to sign on behalf of the inmate patient.
  4. Disclosures made to the U. S. Department of Health and Human Services for compliance and investigation purposes under HIPAA regulations.
  5. Uses and disclosures required by a Wisconsin or federal law.
  6. De-identified PHI.
- B. Per HIPAA regulations, the DOC must identify the persons or classes of persons within the DOC who need access to PHI to carry out their job duties, the categories or types of PHI needed, and conditions appropriate to such access.
- C. Only employees with a job-related need to know PHI shall request, access, use or disclose PHI in any format, including verbal, hard copy and electronic. The employee shall be able to explain why he or she cannot perform an assigned job duty without the PHI.

## III. Examples of Employees With a Need to Know Minimum Necessary PHI

- A. ICEs  
An ICE, and others with responsibilities in the ICRS, may request, access and use, including obtaining copies of records filed in a HCR, the minimum necessary PHI needed to investigate a health-related complaint filed by an inmate via the ICRS.
- B. PREA Investigators  
DOC employees with responsibilities to investigate a PREA complaint may request, access and use, including obtaining copies of records filed in a HCR, the minimum necessary PHI needed to investigate a PREA complaint.
- C. Agents  
An agent may request, access and use, including obtaining copies of records filed in a HCR, the minimum necessary PHI needed to perform a job duty such as planning for an inmate releasing from incarceration and supervision of a former inmate residing in the community.

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D. BOCM

BOCM employees may request, access and use, including obtaining copies of records filed in a HCR, the minimum necessary PHI needed to perform job duties such as determining custody levels, placement and transfer of inmates and recommending programming.

E. Officers

An officer may request and use the minimum necessary PHI needed to perform an assigned job duty such as transporting an inmate to an off-site appointment, ensuring health and safety of inmates and staff within a facility and delivering medications.

F. Social Worker

1. A Social Worker with state approved certification to provide individual or group counseling or facilitate treatment programs, and a Medical Social Worker may be considered to be a health provider for whom the minimum necessary standard does not apply.
2. Social workers performing non-health care related duties may request, access and use, including obtaining copies of records filed in a HCR, only the minimum necessary PHI needed to perform an assigned job duty, such as release planning.

G. Litigation Coordinator

A litigation coordinator assisting an employee to respond to a request from the Wisconsin Department of Justice may request, access and use, including obtaining copies of records filed in a HCR, PHI to the extent needed to provide that assistance.

H. Members of Mental Health Multi-Disciplinary Teams, Dialysis and Infirmity Care Conferences, other interdisciplinary meetings, etc.

1. Non-health staff such as officers, unit managers and chaplains may participate in team meetings/care conferences, in order to provide a holistic approach to inmate patient care.
2. PHI discussed shall be the minimum necessary needed for the non-health members to perform their duties/roles.
3. When it is determined that more than the minimum necessary PHI is to be discussed, the inmate patient shall sign a DOC-1163A– Authorization for Use and Disclosure of Protected Health Information (PHI).

I. Communicable Disease Information

1. Employees who may have contact with an inmate patient diagnosed as, or suspected of, having a communicable disease transmitted by contact, airborne or droplet may receive a DOC-3504 – Infection Control – Patient and Employee Precautions when the Health Services Unit determines specific precautions need to be taken by the inmate patient and/or employees.

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2. Employees who may have contact with an inmate diagnosed with a blood-borne communicable disease may receive a DOC-3504A – Infection Control Notice issued by the Warden/Superintendent.

#### **IV. Health Staff Access to PHI**

- A. Health providers, and employees supervised by health providers, may request, access, use and disclose PHI verbally, by hard copy and electronically, without a signed authorization, in order to provide ongoing treatment to an inmate patient.
- B. Health staff shall not:
  1. Request, access, use or disclose written or electronic PHI, pertaining to inmate patients with whom they have no treatment relationship without prior authorization of their supervisor.
  2. Remove from the premises of any DAI facility, or DOC office, original documents, copies of documents, or printouts from electronic databases/screens that contain PHI without prior authorization of their supervisor.
  3. Make copies of documents containing PHI and maintain them outside of the standard HCR without prior authorization of a supervisor.
  4. Maintain written records that contain PHI separate from the official DOC HCR.
  5. Create and maintain, outside of the official HCR, any written notes pertaining to an inmate patient except for notes related to the performance of on-call job duties. On-call notes shall be destroyed upon entry of the PHI in the proper location in the HCR.
  6. Make copies of documents containing PHI for personal use; e. g. , to respond to a lawsuit in which a health staff member is named as a defendant, an employee disciplinary action, or an investigation by the Department of Safety and Professional Services except as follows:
    - a. The Bureau of Health Services Director/designee, may authorize the copying of documents from the HCR to respond to a request by the health staff member for a legal proceeding, including an employee disciplinary action.
    - b. Inmate patient identifying information shall be redacted from the documents, approved for copying, prior to providing the copies to the requesting health staff member, or other individuals involved in an internal disciplinary proceeding.
    - c. Health staff shall consult with the HIPAA Compliance Officer or Office of Legal Counsel, as needed.

#### **V. Health Staff Response to Request for PHI from Non-Health Staff**

- A. Health staff shall establish the identity and job related need-to-know of the requester prior to communicating PHI in any format, including verbal, hard copy or electronic. Being a DOC employee by itself does not establish a job-related need to know specific PHI about an inmate patient.

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- B. When the health staff knows the identity of the requester and has determined that the requester has a job related need-to-know the PHI, he/she may provide the minimum necessary PHI.
- C. When the health staff cannot determine the identity of the requester and/or establish the job related need to know, the he or she shall deny the request, and refer the requester to the HIPAA Compliance Officer.

**VI. Reporting Breaches and Duty to Mitigate a Known Harmful Effect of a Use/Disclosure**

- A. A DOC employee, upon becoming aware of possible violation by a DOC employee, including agency and contracted staff, interns and volunteers, or a Business Associate of the DOC, of a policy or procedure, or a Federal or Wisconsin law regarding the use or disclosure of PHI has a duty to report the possible breach to the DOC HIPAA Compliance Officer via telephone, email and/or by completing a DOC-3490 – Employee Complaint Alleging Violation of Privacy of Protected Health Information (PHI). See DAI Policy 500. 50. 17.
- B. The HIPAA Compliance Officer shall conduct an investigation into the reported possible breach under Subpart D, Notification in the Case of Breach of Unsecured PHI, of the Part 164 of the HIPAA regulations.
- C. The HIPAA Compliance Officer shall provide required notification(s) to the inmate patient, media and/or Department of Health and Human Services when a breach has occurred.
- D. The HIPAA Compliance Office shall notify the appropriate Division Administrator, Office of Legal Counsel, and Office of the Secretary, when appropriate.
- E. The DOC, as a HIPAA covered entity, must mitigate, to the extent practicable, any harmful effects that are known to the DOC that result from a use or disclosure of PHI (breach) by the DOC or its Business Associates, in violation of DOC privacy policies and procedures, or the Privacy Rule of the HIPAA regulations.

**Bureau of Health Services:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_  
 James Greer, Director

\_\_\_\_\_ **Date Signed:** \_\_\_\_\_  
 Ryan Holzmacher, MD, Medical Director

\_\_\_\_\_ **Date Signed:** \_\_\_\_\_  
 Mary Muse, Nursing Director

**Administrator's Approval:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_  
 Cathy A. Jess, Administrator

**DIVISION OF ADULT INSTITUTIONS FACILITY IMPLEMENTATION PROCEDURES**

<b>Facility:</b> Name		
<b>Original Effective Date:</b>	<b>DAI Policy Number:</b> 500.50.01	<b>Page</b> 8 of 9
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<b>Chapter:</b> 500 Health Services		
<b>Subject:</b> Minimum Necessary and Duty to Mitigate HIPAA Standards		
<b>Will Implement</b> <input type="checkbox"/> As written <input type="checkbox"/> With below procedures for facility implementation		
<b>Warden's/Center Superintendent's Approval:</b>		



**DIVISION OF ADULT INSTITUTIONS FACILITY IMPLEMENTATION PROCEDURES**

<b>Facility:</b> Name		
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<b>Chapter:</b> 500 Health Services		
<b>Subject:</b> Minimum Necessary and Duty to Mitigate HIPAA Standards		
<b>Will Implement</b> <input type="checkbox"/> As written <input type="checkbox"/> With below procedures for facility implementation		
<b>Warden's/Center Superintendent's Approval:</b>		

**REFERENCES****DEFINITIONS, ACRONYMS, AND FORMS****FACILITY PROCEDURE**

I.

- A.
- B.
  - 1.
  - 2.
    - a.
    - b.
    - c.
  - 3.
- C.

II.

III.

**RESPONSIBILITY**

I. Staff

II. Inmate

III. Other