

 <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> 500.50.09	<b>Page</b> 1 of 17
	<b>Original Effective Date:</b> 05/15/04	<b>New Effective Date:</b> 11/24/14
	<b>Supersedes:</b> 500.50.09	<b>Dated:</b> 08/25/14
	<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> Disclosure of Protected Health Information (PHI) With Inmate Patient Authorization and Court Orders		

## POLICY

All Division of Adult Institution facilities shall permit individuals to inspect and/or obtain copies of inmate patient health care records upon the receipt of a legally valid written authorization, or pursuant to a court order, in compliance with applicable Wisconsin and federal laws, and Department of Corrections policies.

## REFERENCES

Wisconsin Statutes s. 51.30 – Records, State Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act  
Wisconsin Statutes ss. 146.81-.84 – Miscellaneous Health Provisions  
Wisconsin Statutes ss. 102.13 and 102.33 – Workers' Compensation  
Wisconsin Administrative Code, s. DHS 92.08 – Confidentiality of Treatment Records – Criminal Commitments  
42 C.F.R. Part 2 – Confidentiality of Alcohol and Drug Abuse Patient Records  
45 C.F.R. Parts 160 and 164 – Health Insurance Portability and Accounting Act (HIPAA)  
Executive Directive 30 – Entitlement Programs for Eligible Offenders  
DAI Policy 500.50.08 – Access by Inmate Patient to Their Health Care Records  
DAI Policy 500.50.10 – Authorized Disclosure of Protected Health Information (PHI) Without Inmate Patient Authorization  
DAI Policy 500.70.11 – Psychological Services Unit Record  
Attachment A – Partially Completed DOC-1160  
Attachment B – Review of Authorization Worksheet  
Attachment C – Individuals With Right To Access And Authorize Disclosure Of Health Information  
Attachment D – Records Sent to DDB  
Attachment E – Redacting Instructions

## DEFINITIONS, ACRONYMS AND FORMS

AODA – Alcohol and other drug abuse

Authorization – Document that permits a named individual or entity to disclose to named recipient confidential information identified in the document.

Authorized Representative – Individual with legal authority to act on behalf of another individual in matters related to health care.

C.F.R. – Code of Federal Regulations

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CMR – Central Medical Records at Dodge Correctional Institution

DAI – Division of Adult Institutions

DDB – Disability Determination Bureau

DHS – Department of Health Services

DJC – Division of Juvenile Corrections

DSR – Dental Services Unit

DOC – Department of Corrections

DOC-184 – Disbursement Request

DOC-1160 – Record Request Response

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

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

DOC-2309 – Certification of Records

DOC-3011 – Fees for Copies of Health Care Records

DOC-3326 – Signature Verification

DOC-3508 – Notarized Statement for Access to Health Information Regarding a Deceased Person

DOC-3688 – Failed Authorization Letter

DOJ – Department of Justice

DSR – Dental Service Request

DSU – Dental Services Unit

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, Medications Record envelope, Patient Request Folder, Psychological Services Unit Record, and other components as defined by the Bureau of Health Services

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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.

HSU – Health Services Unit

HIPAA Compliance Officer – Staff designated by the Secretary of the DOC to oversee implementation of and compliance with DOC policies and procedures, and Wisconsin and federal laws pertaining to confidentiality of offender health care information.

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.

IWMR – Inactive Women’s Medical Records located at Taycheedah Correctional Institution

LAW – Legal Action of Wisconsin

Legal Custodian – Employee who acts under the direction of the Department Legal Custodian and Deputy Department Legal Custodian to process requests from specific record sets.

MSDF – Milwaukee Secure Detention Facility

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

POC-051 – Notice Regarding AODA Information

POC-052 – Notice of Redaction and Withholding of Documents

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.

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PSU – Psychological Services Unit

Requester – Individual who asks to inspect and/or receive copies of documents containing PHI about an inmate or former inmate, generally filed in the DOC Health Care Record.

SSA – Social Security Administration

SSA-827 – Authorization to Disclose Information to the Social Security Administration

WICS – Wisconsin Integrated Corrections System

## **PROCEDURES**

### **I. Responsibilities of Legal Custodians of the Record**

- A. Legal Custodians of the offender HCR in HSU, DSU, PSU, CMR and IWMR shall process requests for PHI in accordance with this policy.
- B. Legal Custodians of Social Services files shall forward to the location of the HCR (HSU, DSU, PSU, CMR or IWMR) a request for PHI, except for AODA program information the originals of which are filed in the Social Services files.
- C. Litigation Coordinators shall forward a request for PHI to the location of the HCR (HSU, DSU, PSU, CMR or IWMR).

### **II. Applicable Confidentiality Laws**

- A. Documents that include PHI, except for AODA information, created by DOC health providers are covered by confidentiality laws Wisconsin Statutes Ch. 146 and Ch. 252, and HIPAA regulations under 45 C.F.R., Part 164.
- B. Documents in HCRs and Social Services files containing AODA information are governed by federal regulations under 42 C.F.R. Part 2.
- C. Per Wisconsin Administrative Code s. DHS 92.08, DOC health care providers do not create mental health, intellectual disability and AODA records governed by Wisconsin Statutes Ch. 51, but the DOC HCRs may include outside (retrieval) records covered by that statute which places more restrictions on access than Ch. 146.

### **III. General Legal Guidelines**

- A. See DAI Policy 500.50.10 for the following:
  1. A request for PHI from a community (off-site) health care provider for ongoing treatment.
  2. A request for PHI for a Workers' Compensation case directly related to the claim for benefits.
  3. Specified disclosures of PHI under statutory exceptions.

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4. A request for PHI from a DOC employee, other than health staff, to perform a job duty.
- B. A verbal or written request for verbal or written disclosure of PHI that requires a signed authorization by the inmate patient shall be processed in accordance with this policy.
  - C. A request for PHI under a court order shall be processed in accordance with this policy.
- IV. Telephone Request for PHI**
- A. Call from community health care provider
    1. See DAI Policy 500.50.10 for processing most requests from community health providers; inmate patient authorization is generally not needed.
    2. If request is for AODA information, an authorization signed by the inmate patient is needed.
  - B. Call from other than health provider
    1. Inform caller (attorney, community agency, spouse, family member, friend, etc.) that a written authorization signed by the inmate patient is required. Inform the caller about facility procedures for completing the DOC-1163A– Authorization for Use and Disclosure of Protected Health Information (PHI).
    2. Direct former inmate patients calling a DAI facility for copies of PHI for their own use to contact CMR or IWMR.
    3. Inform former inmates requesting their PHI for their community health providers that the providers should contact CMR or IWMR.
- V. Written Request for PHI**
- A. A written request for PHI may come from an individual who wants the information, i.e., recipient, or from an inmate patient who asks the DOC to share PHI with a named recipient.
  - B. Immediately forward a copy of a request asking for records other than documents filed in the HCR to the appropriate other records locations . For example, documents relating to AODA programs are filed in the Social Services File and/or AODA Program records.
  - C. Immediately forward via global scan/email or fax, a request about an inmate patient not at the location where request is received, after checking WICS or Offender Search-Locator.
  - D. Forward a completed template DOC-1160 – Records Request Response and a blank or partially completed DOC-1163A – Authorization for Use and Disclosure of Protected Health Information (PHI) when requester does not send an authorization. See Attachment A.

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- E. Review an authorization, other than DOC-1163A, using the Review of Authorization worksheet to determine if the authorization meets all legal requirements. See Attachment B.
- F. If an authorization does not meet all requirements, forward the standard DOC-3688 – Failed Authorization Letter on the correct DOC letterhead, to inform the requester why the authorization is invalid.
  - 1. If an authorization does not meet all requirements, forward the standard DOC-3688 on the correct DOC letterhead, to inform the requester why the authorization is invalid.
  - 2. Also send a blank or partially completed DOC-1163A.
- G. When an authorization is signed by an individual on behalf of the inmate patient, verify the person has the legal authority to sign. See Attachment C.
- H. Note on the authorization the date of receipt to start the 30 day timeline to respond to the record request.
- I. Consult with a supervisor, CMR/IWMR staff, or the DOC Health Information Supervisor, as needed, if a question arises as to the adequacy of a form.

## **VI. Review of HCR**

- A. Read the authorization and the request (cover letter) to determine exactly which documents are being requested, so that pages can be counted for computing copying fees and/or for completing a certification form.
  - 1. When a cover letter requests a narrower range of records than the authorization, process the request according to the cover letter.
  - 2. When a cover letter requests records not included in the authorization, process the request according to the authorization.
  - 3. Note carefully any types of records excluded from disclosure in a DOC-1163A – Authorization for Use and Disclosure of Protected Health Information (PHI) in the section where inmate patient can exclude certain types of records. In case of a conflict within the DOC-1163A, provide the more limited set of records.
- B. Complete a DOC-1160 – Records Request Response when none of the requested PHI is contained in the HCR.
  - 1. Check the “no documents” box.
  - 2. Explain briefly in the “Comments” section why the documents are not available; i.e., the individual was never incarcerated, individual was not incarcerated for the time period for which requester asks for documents, or documents for the time period have been destroyed.

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- C. Requests for copies from Patient Request Folder
1. A request may specifically ask for contents of the Patient Request Folder, or the request may include those documents because the request is for the entire record.
  2. Patient Request Folders contain paper copies of forms (primarily Health Service Requests HSRs), and other documents, used by inmate patients to communicate with an HSU.
  3. HSUs remove, at regular intervals, the contents of the Patient Request Folders to send them to an outside scanning contractor that digitizes the documents.
  4. When documents for the date range requested are not in the Patient Request Folder, search Content Management using both a six and eight digit DOC numbers. Training materials, including printing instructions, are available from CMR.
  5. Compute the total of the paper forms in the Patient Request Folder and the number of digital forms to determine copying costs.
- D. Requests for entire HCR
1. Entire HCR includes documents filed in all parts of the HCR maintained in the HSU, DSU and PSU, or in storage at CMR or IWMR, and documents scanned into Electronic Content Management from the Patient Request Folder.
  2. Frequently, a requester asks for the entire record which can be extensive, but requester actually wants limited information. Contact requester to discuss narrowing the request as to types of records and/or date range.
  3. Documents below shall not be provided. Complete POC-052 – Notice of Redaction and Withholding of Documents and attach to the copies of the record to inform requester of what is not being provided.
    - a. DOC-3326 – Signature Verification forms in Medical Chart.
    - b. Pre-Sentence Investigation Reports sometimes filed in the PSU Record, and documents that refer to the Presentence Investigation PSI Report (generally Ch. 980 related documents and some psychological reports).
    - c. Victim Statements; most likely in PSU Record.
    - d. Copyrighted documents, primarily psychological test instruments. See DAI Policy 500.70.11 for further guidance.
    - e. Social Security numbers on any document.
- E. Requests that include date range of a stay in a Division of Juvenile Corrections facility.
1. If a HCR includes documents from a DJC stay, the authorization must state that records from a DJC stay are included which is unlikely except for the DOC-1163A – Authorization for Use and Disclosure of Protected Health Information (PHI) and the DOJ authorization.
  2. Except for a DOC-1163A or DOJ authorization, do not count pages in the Medical Chart behind the yellow tab for a DJC stay, Dental Record

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documents behind a cover sheet with the dates of DJC stay, or PSU  
Record documents behind a cover sheet with the dates of a DJC stay.

- F. Total the number of pages responsive to the request to determine fees, and to complete a DOC-2309 – Certification of Records, when requester asks for certified copies. Counting pages tool is available from CMR.
- G. Total the number of pages carefully so that the fees can be computed accurately. When counting pages, be sure to verify that each document pertains to the correct inmate by looking at the name and DOC number. It is a HIPAA breach if a document pertaining to another inmate is provided to a requester.

## **VII. Determine Copy Fees and Receive Payment**

- A. Do not use the DOC-3011 – Fees for Copies, for requests from the Social Security Administration or Disability Determination Bureau because a flat fee of \$26 is paid to the DOC by the SSA/DDB, based upon the invoice sheet with a bar code sent to the DOC.
- B. Complete the DOC-3011 promptly after counting the pages responsive to the request, and send to requester, keeping in mind that DOC must respond to records requests within 30 days of the request. Note the date the DOC-3011 is sent to the requester.
- C. DOC-3011 fee categories include:
  1. Per page copying fees are charged to a former inmate patient and “person authorized by the former inmate patient”, such as parent of a minor, guardian and health care agent. Processing and certification fees are not charged.
  2. Per page copying fees are charged to an attorney, community agency (not a health provider), family member or friend, in addition to processing fee, and certification fee, when applicable.
  3. Standard Workers’ Compensation fees apply to documents directly related to the claim for benefits, but full fees under the top section of DOC-3011 are charged for documents not directly related to the claim.
  4. Flat fee of \$26 for Social Security appeals are charged when the requesting attorney clearly states that the records are being used for an appeal.
- D. Require pre-payment for any request equaling \$5.00 or more, unless pre-payment is waived per the Fee Grid, which can be obtained from CMR.
- E. Do not make copies prior to receiving payment when pre-payment is required.
- F. Compute postage by using postage estimating handout available from CMR.



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- G. DOC-3011 should instruct that payments be made to the facility Business Office for requests processed by all PSUs and most HSUs.
- H. DOC-3011 shall instruct that payments be made out to the Bureau of Health Services for requests processed by the following:
  - 1. CMR/IWMR.
  - 2. HSUs in Wisconsin Women's Correctional System.
  - 3. MSDF HSU.
  - 4. DCI Infirmary.
  - 5. Hemodialysis Units.
- I. Upon receipt of payments:
  - 1. Follow facility procedures for payments made to Business Offices.
  - 2. Stamp all payments on the reverse side:  
FOR DEPOSIT ONLY  
DEPARTMENT OF CORRECTIONS TREASURER  
STATE OF WISCONSIN
  - 3. Forward payments made out to BHS to:  
Fiscal Services, DOC Central Office Madison  
PO Box 7969  
3099 East Washington  
Madison, WI 53707-7969

### **VIII. Copying Documents**

- A. Upon receipt of payment, or when pre-payment is not required, copy only the documents authorized for disclosure.
  - 1. Ensure the documents are placed on copy machine so that entire page is copied with no information cut off.
  - 2. Copy both sides of a double-sided document.
  - 3. Make sure that the document pertains to the correct inmate by checking name and DOC number. It is a HIPAA breach if someone receives a document pertaining to another inmate patient.
- B. Count pages accurately when requester asks for copies to be certified, and complete the DOC-2309 – Certification of Records carefully. Failure to count accurately may require the entire request be processed again.
- C. Redact from a document any PHI not authorized for disclosure. For example, if an authorization only permits disclosure of PHI about medical conditions, and the document includes information about diabetes and mental health diagnoses, redact references to mental health diagnoses.
  - 1. As an alternative to redaction, contact the requester and ask that he/she obtain a broader authorization from the inmate patient to avoid the need to redact. Do not reveal what would be redacted.
  - 2. See Attachment E for redacting instructions.

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3. Attach POC-052 – Notice of Redaction and Withholding of Documents as top page of the set of documents when some words have been redacted, or when an entire document is withheld.
- D. Attach POC-051 – Notice Regarding AODA Information whenever documents containing AODA information are copied.
- E. Arrange copies in the order in which they appear in the HCR.
1. Complete a DOC-2309, when requester has asked for certified copies. Describe what documents have been copied, or attach original request. Enter the number of pages copied.
  2. Copies may be faxed after verifying that fax is in a secure location, or that recipient of copies will be at fax upon arrival of copies.
  3. Do not scan and attach copies to an email except to another state agency such as DHS or DOJ, or a regular business partner such as the University of Wisconsin Hospital and Clinics or Waupun Memorial Hospital. Click the “encrypt message” button in Outlook when emailing to a state agency.
  4. Mail copies in a secure well sealed envelope or sturdy box that is not torn or worn, using mail tracking.
- F. File the authorization form.
1. Medical Chart – Consents/Refusals Section, when copies were from the Chart, Medications Record envelope, Psychological Records envelope and/or the PRF.
  2. PSU Record – Legal Documents/Consents/Outside Records Section, or in yellow envelope.
- IX. Request to Inspect Health Care Record**
- A. Infrequently, an attorney, or other individual. will ask to personally review the all or part of the actual HCR. See DAI Policy 500.50.08 for record reviews by inmates.
- B. The inmate patient shall sign DOC-1163A– Authorization for Use and Disclosure of Protected Health Information (PHI) or equivalent form, to permit an individual to inspect all or part of his/her HCR. Note that an inmate may not authorize another inmate to inspect his/her HCR.
- C. HSU/DSU/PSU shall follow security rules regarding entrance into the facility.
- D. Review the HCR that the individual intends to inspect to be sure that all documents pertain to the correct inmate by looking at the name and DOC number on the documents. It is a HIPAA breach if someone views a document pertaining to another inmate patient.

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- E. Supervise the inspection of the HCR to protect the integrity of the HCR, and provide the reviewer a way to indicate which pages, if any, he or she wants copied.
- F. If the individual inspecting the HCR wants copies, the health employee shall follow the provisions in this policy regarding charging for and providing copies.
- G. The health employee supervising the record review shall keep track of the parts of the HCR inspected, and document the inspection on the DOC-1163A, including the name of the person inspecting, date and time of the inspection, and documents in the HCR inspected.

#### **X. HIPAA Regulations Requirement**

- A. Make all reasonable attempts to provide the copies within a maximum of 30 days of receipt of the request and valid authorization.
- B. Contact the DOC Health Information Supervisor/HIPAA Compliance Officer to request an extension when deadline has not, or will not, be met, and provide the date of the request, and reason that the deadline will not, or has not, been met.
- C. Implement a system to track requests received in the HSU/DSU/PSU to ensure compliance with HIPAA deadlines, including the name of the requesters, date request received, and date response to request completed.
- D. Complete required Excel spreadsheets regarding external records requests and enter data into SharePoint monthly.

#### **XI. Request from Wisconsin DOJ**

- A. DOJ attorneys represent the DOC in lawsuits filed against the DOC.
- B. DOJ paralegals/attorneys generally make records requests by email with the standard approved DOJ authorization attached.
- C. Unless altered by the inmate patient, the standard DOJ authorization permits disclosure of all documents in the Health Care Record, including records from a stay in a DAI and DJC facility.
- D. DOJ generally wants all Health Services Requests both paper copies in the Patient Request Folder, and stored digitally in Content Management.
- E. Contact the paralegal/attorney by phone or email with questions about the exact records being requested, if needed. Requests will have to be redone if DOJ does not receive the copies requested.

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- F. Do not file the emails between DOC and DOJ in the HCR, and do not copy them for the records request.
- G. Copy the documents carefully making sure that the entire page is copied, and is not crooked or partially cut off.
- H. Make all copies one-sided.
- I. Complete an accurate DOC-2309 – Certification of Records, at no charge, and send copies directly to the requesting paralegal/attorney. Ensure the pages are counted correctly, and describe the copies being provided on the DOC-2309.
- J. DOJ may receive copies of the DOC-3326 – Signature Verification but do not include them in the certified record set. Separate the copies of these forms from the rest of the set of copied documents.
- K. Do not send copies to the facility litigation coordinator unless the DOJ paralegal/attorney makes that request, but inform litigation coordinator that the copies have been sent to the paralegal, if asked.

## **XII. Record Request Agreements Between DOC and Other Agencies**

- A. DOC has established record request agreements with various agencies that define standard record sets and/or special fees, no fees, or other agreements regarding the processing of records requests.
- B. Agreements involve the Office of the State Public Defender, Division of Vocational Rehabilitation, Department of Safety and Professional Services, Offenders Achieving Reentry Success Program, Sand Ridge Treatment Center, and the Disabled Offenders Economic Security Project with Legal Action of Wisconsin. Other agreements may be added in the future.
- C. Contact the Health Information Supervisor/HIPAA Compliance Officer for information about the records request agreements in order to improve the efficiency of processing records requests.

## **XIII. Requests For Application for Disability Benefits**

- A. The DDB of the Wisconsin Department of Health Services makes disability eligibility determinations for the SSA when an individual applies for SSA disability benefits.
- B. Employees interested in learning how to process and submit DDB requests via the website should contact CMR for training.

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- C. Upon receipt of a request directly from the Wisconsin DDB or SSA, and a signed SSA-827, the HSU/PSU or CMR/IWMR shall process the request within 14 days of receipt, whenever practicable.
1. Prompt response to the request is important because it governs the timeline under which SSA handles the application for disability benefits.
  2. A HSU receiving a request that includes information filed in the PSU Record shall forward a copy of the request to the PSU, and vice versa. Each work unit may charge the standard fee described below.
  3. A recipient of a DDB/SSA request for an inmate patient whose HCR is at a different facility shall return the request to the DDB informing the DDB that the individual is active at another facility. The receiving facility may charge the standard fee described below, for reporting to DDB the name of the facility at which the inmate patient is currently incarcerated.
  4. A facility receiving a request from DDB regarding an inmate patient who has been released to the community shall return the request to the DDB informing the DDB that the individual has been released to the community. The receiving facility may charge the standard fee described under G. below, for reporting to DDB that the inmate patient has been released.
  5. Consult an experienced Health Information Technician at CMR or IWMR, as needed, with any questions. Note that the DOC and DDB have agreed upon a standard set of documents that DOC forwards to DDB, as described in Attachment D.
- D. Wisconsin DDB copying fees
1. DOC requests payment for copies from DDB at the set rate agreed upon between the DOC and DDB using the invoice provided by the DDB. Do not complete a DOC-3011 – Fees for Copies of Health Care Records.
  2. DDB pays BHS on a monthly basis for all records requests throughout the state. Facilities do not receive payment for requests processed at that location.
- E. Executive Directive 30 directs DOC Social Workers to assist certain inmates with applications for Social Security disability benefits prior to their release from a DOC facility.
1. DOC Social Workers may request HSU//DSU/PSU to provide copies of documents contained in any component of the HCR to the social worker without a written authorization from the inmate patient.
    - a. HSUs/DSUs/PSUs shall process requests promptly to enable the social worker to submit the documents with the application for benefits.
    - b. Generally, the requests for the prior 12 months of documents will be made three to four months prior to the anticipated release of the inmate patient.
  2. HSUs/PSUs shall not charge fees to inmate patients for the copies provided to a DOC social worker, and social workers shall not charge inmate patients for the copies provided to the SSA as part of the DOC pre-release application process.

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3. Social Workers shall obtain the proper SSA release form from the inmate patient prior to forwarding the documents to SSA, so a DOC-1163A – Authorization for Use and Disclosure of Protected Health Information (PHI) naming the SSA/DDB is not needed.
- F. Under a contract with Legal Action of Wisconsin called the Disabled Offenders Economic Security Project, attorneys assist inmates at designated facilities to apply for benefits.
1. LAW attorneys shall obtain a DOC-1163A – Authorization for Use and Disclosure of Protected Health Information (PHI) for filing in the HCR.
  2. LAW attorneys may have physical access to the HCR, but may not remove the HCR from the health records area.
  3. LAW attorneys may make copies from the HCR on-site at the location of the HCR, and shall pay no fees.
- XIV. Disclosure of PHI Upon Death of an Inmate Patient**
- A. Guardianships of the Person and Powers of Attorney for Health Care terminate upon the death of the individual, thereby ending the authority of the former guardian or health care agent to access the deceased inmate patient's PHI, or to authorize disclosure of the PHI.
- B. Upon the death, a court-appointed personal representative and the current spouse of the deceased inmate patient have equal authority to access PHI.
- C. If the deceased inmate patient did not have a surviving spouse, the inmate patient's adult children, parents, grandparents, siblings, and their spouses, have equal authority to access PHI. A court-appointed personal representative also retains authority.
- D. DOC requires an authorized requester to do the following:
1. Complete and submit a notarized DOC-3508 – Notarized Statement for Access to Health Information Regarding a Deceased Person.
  2. Complete and submit a DOC-1163A – Authorization for Use and Disclosure of Protected Health Information (PHI) indicating the type(s) and date range(s) of PHI are being requested.
- E. Upon receipt of the required forms under "D." the custodian of the PHI, generally BHS Central Office, CMR or IWMR, shall process records request in accordance with this policy.
- XV. Disclosure of PHI to the Media**
- A. Upon receipt of a request from any type of media (print, radio, television, etc.), contact the Health Information Supervisor/HIPAA Compliance Officer for guidance.

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- B. Do not disclose any PHI to the media unless directed to do so by Public Information Officer or Office of Legal Counsel.

#### **XVI. Disclosure of PHI for Judicial and Administrative Proceedings**

- A. DOC shall disclose PHI for a judicial or administrative proceeding only with a court order signed by a judge, or written authorization of the inmate patient, unless the disclosure is otherwise permitted by law.
- B. Under Wisconsin law, a subpoena, discovery request or administrative order generally do not provide DOC with the legal authority to disclose PHI. Consult with DOC HIPAA Compliance Officer, or Office of Legal Counsel, as needed.
- C. Disclose only PHI specifically identified in a court order. Consult with DOC HIPAA Compliance Officer, or Office of Legal Counsel, as needed.
- D. When an HSU/PSU/CMR/IWMR receives an "Order for Competency Examination" which refers to Wisconsin Statutes s. 51.30 records, DOC shall request that the District Attorney obtain an amended Order because records created by DOC health care providers are Wisconsin Statutes Ch. 146 records, by sending the standard Memorandum to the District Attorney named on the Order.

#### **XVII. Revocation of an Authorization**

- A. A current or former inmate patient may request a DOC-1163R – Revocation of Authorization for Use and Disclosure of Protected Health Information (PHI) to revoke a DOC-1163A at any time.
  - 1. A current inmate patient shall submit a HSR, DSR or PSR to request a free copy of a DOC-1163R in order to revoke/withdraw a prior authorization.
  - 2. A former inmate patient may call or write CMR or IWMR to request a free copy of a DOC-1163R.
- B. Upon receipt of a completed DOC-1163R, staff shall file the form in the Medical Chart, Consents/Refusals Section, and/or the PSU Record, Legal Documents section on top of the authorization being revoked.
- C. DOC shall cease making any disclosures of PHI based upon the revoked authorization.

#### **XVIII. Court Orders**

- A. To qualify as a Court Order, a legal document must be signed by a judge, not by a clerk of court or attorney.
- B. Read the Order carefully to determine which records are being ordered to be disclosed and the named recipient of the records.

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- C. Inmate patient authorization is not required for disclosure of documents identified in the Order.
  
- D. Contact the Health Information Supervisor/HIPAA Compliance Officer or Office of Legal Counsel if Order appears unclear.

**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> 500.50.09	<b>Page</b> 17 of 17
<b>New Effective Date:</b> 00/00/00	<b>Supersedes Number:</b>	<b>Dated:</b>
<b>Chapter:</b> 500 Health Services		
<b>Subject:</b> Disclosure of Protected Health Information (PHI) With Inmate Patient Authorization and Court Orders		
<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