

 <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> 500.50.17	<b>Page</b> 1 of 7
	<b>Original Effective Date:</b> 03/05/05	<b>New Effective Date:</b> 05/01/16
	<b>Supersedes:</b> 500.50.17	<b>Dated:</b> 09/16/13
	<b>Administrator's Approval:</b> Jim Schwochert, 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> Inmate Complaints and Employee Breach Reports Alleging Violations of Confidentiality of Inmate Health Information		

## POLICY

The Division of Adult Institutions shall ensure that employees and offenders may file a written breach report or complaint alleging a violation of privacy rights pertaining to offender protected health information.

## REFERENCES

Code of Federal Regulations – Title 42 – Section 2 – Confidentiality of Alcohol and Drug Abuse Patient Records

Code of Federal Regulations – Title 45 – Section 160 and 164 – General Administrative Requirements and Security and Privacy, Health Insurance Portability and Accountability Act

Executive Directive 2 – Employee Discipline

Executive Directive 35 – Confidentiality of Offender Health Information

Wisconsin Statutes s. 51.30 – State Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act

Wisconsin Statutes ss. 146.81-84 – Miscellaneous Health Provisions

Wisconsin Statutes s. 252.15 – HIV Test Results

Wisconsin Administrative Code Ch. DOC 310 – Complaint Procedures

DAI Policy 310.00.01 – Inmate Complaints Regarding Staff Misconduct

DAI Policy 500.50.01 – Minimum Necessary and Duty to Mitigate HIPAA Standards

DAI Policy 500.50.09 – Disclosure of PHI with Patient Authorization and Court Orders

DAI Policy 500.50.10 – Disclosure of Protected Health Information (PHI) With Inmate Patient Authorization and Court Orders

Attachment – Penalties For Violating Privacy Laws Governing Health Information

## DEFINITIONS, ACRONYMS AND FORMS

Authorized representative – Individual with legal authority to act on behalf of an inmate patient, including a guardian of the person, parent of a minor or health care agent under an activated Power of Attorney for Health Care

Breach Report – Form completed by a DOC employee to report an alleged breach of confidentiality of offender protected health information.

Complaint – Form completed by an inmate, and submitted to the proper authority to initiate a complaint under Wisconsin or federal law.

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Correctional facility – Institution or correctional center operated by DAI, and the Wisconsin Resource Center and Wisconsin Women’s Resource Center, operated by Department of Health Services.

DAI – Division of Adult Institutions

DHHS – Federal Department of Health and Human Services

DOC – Department of Corrections

DOC-400 – Inmate Complaint

DOC-2718 – HIPAA Breach Report by Employee

DOC-3722 – HIPAA Breach Investigation Assessment

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 to protect the privacy and security of protected health information.

HHS-700 – Federal Health Information Privacy Complaint

HIPAA Compliance Officer – Employee 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 health care information.

HIV – Human immunodeficiency virus

ICRS – Inmate Complaint Review System

Individually identifiable health information – Information that identifies an individual, including demographic information, created or received by a health care provider that 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.

Inmate Complaint Review System – DOC system by which inmates file a complaint which is investigated under Wisconsin Administrative Code Ch. DOC 310.

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Patient – An individual who receives or has received health services from a qualified health care professional or health care provider. For purposes of this policy, patient includes an authorized representative of the patient.

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.

U.S. Department of Health and Human Services – Federal agency responsible for overseeing compliance by covered entities with the HIPAA regulations.

## **PROCEDURES**

### **I. Overview of Process To Investigate an Allegation of a Violation of Confidentiality Rights**

- A. Wisconsin and federal laws protect the privacy of an individual's health information.
- B. The DOC shall investigate a breach report filed by an employee or a complaint filed by an inmate, in accordance with established DOC policies and procedures, HIPAA regulations, and other applicable laws.
- C. The DOC, and its employees, shall not retaliate against an employee or inmate who files a breach report or complaint.
- D. The DOC may discipline, per established disciplinary procedures, an employee found to have violated a Wisconsin and/or federal law, or DOC policy or procedure, regarding accessing, using or disclosing PHI in a manner that violates the privacy rights of an inmate.

### **II. Complaint by a DAI Inmate Using ICRS**

- A. An inmate may file a complaint alleging a violation of privacy rights. Examples include:
  1. To allege that a DOC employee has violated his or her privacy rights under Wisconsin or federal law.
  2. To allege that an employee has failed to follow procedures that implement HIPAA patient rights.
  3. To allege that a DOC policy does not comply with Wisconsin or federal laws governing inmate health information, or that the DOC lacks a needed policy and procedure in order to implement confidentiality-related laws.
- B. DAI shall provide inmates with handbooks that explain the ICRS, and make readily available the DOC-400 – Inmate Complaint.
- C. The inmate shall follow complaint procedures per the ICRS, governed by Wisconsin Administrative Code Ch. DOC 310.

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- D. All individuals involved in the investigation of a complaint shall only access, and enter into ICRS, PHI related to the complaint, and shall maintain the confidentiality of the PHI.
- E. The HIPAA Compliance Officer/designee shall:
  1. Act as the Reviewing Authority for a complaint filed by an inmate alleging a violation of privacy rights regarding PHI.
  2. Act as the Reviewing Authority for complaints alleging a violation of patient rights under HIPAA regulations, such as failure of the DOC to provide a timely record review or proper access to the Health Care Record.
  3. Act as a consultant to a Warden/Superintendent conducting an investigation under DAI Policy 310.00.01 that involves a possible work rule violation due to accessing, requesting, using or disclosing PHI in a manner that violated privacy rights, which would be conducted outside of the ICRS.

### III. **Breach Report by a DOC Employee Using Internal DOC Procedure**

- A. An employee shall complete a DOC-2718 – HIPAA Breach Report by Employee when the employee has reason to believe that a violation of an inmate’s privacy rights has occurred, either because of the action of an employee, or due to non-compliance of DOC policies and procedures with confidentiality laws. Examples of potential violations include:
  1. An employee shares PHI in any manner with another employee who has no job-related need to know the PHI, or sharing beyond the minimum necessary PHI when that standard applies, as described in DAI Policy 500.50.01.
  2. An employee discloses PHI to someone outside of the DOC without a legally valid authorization, court order or statutory exception, as described in DAI Policy 500.50.09 and 500.50.10.
  3. An employee uses or discloses PHI for financial gain or with malicious intent.
  4. An employee becomes aware that an inmate has viewed PHI relating to another inmate.
  5. An employee discovers that all or part of an inmate Health Care Record cannot be located.
  6. An employee believes that the DOC has issued a policy inconsistent with Wisconsin or federal privacy laws.
- B. The employee completing the DOC- 2718 – HIPAA Breach Report by Employee shall follow the instructions being sure to describe in detail information about the alleged breach, and submit it via the “Send” button on the form to the HIPAA Breach Report mailbox.
- C. HIPAA Compliance Officer Shall:
  1. Review the DOC-2718 – HIPAA Breach Report by Employee.

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2. Conduct any investigation necessary, including requesting additional information.
3. Complete the DOC-3722 – HIPAA Breach Investigation Assessment as appropriate.
4. Determine whether a breach has occurred.
5. Take appropriate action, and make recommendations, to address the breach when found to have occurred.

#### **IV. HIPAA Complaint with U.S. Department of Health and Human Services**

- A. An inmate or employee who believes that a DOC employee or the DOC has violated a right of an inmate under the HIPAA regulations may file a complaint with the DHHS, Office for Civil Rights.
- B. The DOC shall make readily available in DOC correctional facility libraries the DHHS Health Information Privacy Complaint Package.
  1. An inmate may review the DHHS complaint package at no charge, and may obtain, for the standard DOC copying fee, a copy of all or part of the DHHS complaint package, including the HHS-700 – Health Information Privacy Complaint.
  2. Per the instructions included in the DHHS package, available in the libraries, an inmate may submit a complaint to the DHHS using the HHS-700, or may follow the instructions for submitting a complaint without using the DHHS Health Information Privacy Complaint Package.
- C. An employee may access the instructions for filing a HIPAA complaint on the DHHS website at [www.hhs.gov/ocr/privacy/hipaa/complaints](http://www.hhs.gov/ocr/privacy/hipaa/complaints).

#### **V. Referral by DOC of Health Care Provider for External Investigation**

- A. The DOC may file a complaint with the Department of Safety and Professional Services regarding a health care provider who has allegedly violated a Wisconsin or federal privacy law.
- B. The DOC may refer a health care provider who is believed to have violated a Wisconsin confidentiality law to the Department of Health Services for investigation under Wisconsin Statutes s. 146.84.

#### **VI. Sanctions: Civil Liability, Criminal Penalties and Employee Discipline**

- A. Wisconsin and federal laws provide for civil liability, fines and criminal penalties upon a finding that an individual or the department has violated an inmate's confidentiality rights.
- B. See Attachment to this policy for penalties under Wisconsin and federal laws.

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**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:** \_\_\_\_\_  
Jim Schwochert, Administrator

**DIVISION OF ADULT INSTITUTIONS FACILITY IMPLEMENTATION PROCEDURES**

<b>Facility:</b> Name		
<b>Original Effective Date:</b>	<b>DAI Policy Number:</b> 500.50.17	<b>Page</b> 7 of 7
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<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