

DAI 500.50.17 – Inmate Complaints and Employee Breach Reports Alleging Violations of Confidentiality of Inmate Health Information
Attachment – Penalties For Violating Privacy Laws Governing Health Information
Effective: 05/01/16

The table includes a section for each of the following laws: s. 146.84, s. 51.30, and 42 C.F.R. Part 2, and 45 C.F.R. Part 164. Some laws contain civil penalties, criminal penalties and employee discipline as methods of enforcing the confidentiality provisions.

PENALTIES FOR VIOLATING PRIVACY LAWS GOVERNING HEALTH INFORMATION

PATIENT HEALTH CARE RECORDS
<p>Civil Penalties: s. 146.84 (1)</p> <p>Actions for violations; damages; injunction:</p> <ul style="list-style-type: none"> ▪ Custodian of records incurs no liability for release when acting in good faith. ▪ Violator who acted in a knowing and willful manner liable for actual damages to person and exemplary damages up to \$25,000 for each violation, plus cost and attorney fees. ▪ Violator who negligently violates confidentiality liable for actual damages to a person and exemplary damages up to \$1,000 for each violation, and costs and attorney fees ▪ A person may bring an action to enjoin any violation or to compel compliance as well as seek damages as stated above. <p>Criminal Penalties: s. 146.84 (2)</p> <ul style="list-style-type: none"> ▪ Whoever does any of the following may be fined not more than \$25,000 or imprisoned for not more than 9 months or both: <ul style="list-style-type: none"> ✓ Requests/obtains confidential information under false pretenses ✓ Discloses confidential information with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm. ✓ Violates s. 146.83(4) • Whoever negligently discloses confidential information in violation of s. 146.82 is subject to a forfeiture of not more than \$1,000 per violation. • Whoever intentionally discloses confidentially informant under this chapter, 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.
HIV TEST RESULTS
<p>Civil Liability:</p> <p>Any person who violates statute is liable to subject of the test for actual damages, costs, attorney fees, and exemplary damages up to \$2,000 for a negligent violation and up to \$50,000 for an intentional violation. s. 252.15 (8)</p> <p>Criminal Penalties: s. 252.15 (9)</p> <p>Whoever intentionally discloses the results of an HIV test in violation of sub. (3m) (b) or (f) or (5m) and thereby causes bodily harm or psychological harm to the subject of the HIV test may be fined not more than \$50,000 or imprisoned not more than 9 months or both.</p> <p>Whoever negligently discloses the results of an HIV test in violation of sub. (3m) (b) or (f) or (5m) is subject to a forfeiture of not more than \$2,000 for each violation.</p> <p>Whoever intentionally discloses the results of an HIV test in violation of sub. sub. (3m) (b) or (f) or (5m), knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than \$200,000 or imprisoned not more than 3 years and 6 months, or both.</p> <p>Employee Discipline:</p> <p>Any employee of the state or a political subdivision of the state who violates this section may be discharged or suspended without pay. s. 252.15 (10)</p>
ALCOHOL AND DRUG ABUSE PATIENT RECORDS
<p>Criminal Penalty: 42 C.F.R. s. 2.4 : Any person who violates any provision shall be fined not more than \$500 for a 1st and not more than \$5,000 for each subsequent offense.</p>

HIPAA

Civil Penalties: 45 C.F.R. s. 160.404

Due to a reasonable cause: \$1,000 per violation up to \$100,000

Willful neglect, corrected: \$10,000 per violation up to \$250,000

Willful neglect, not corrected: \$50,000 per violation up to \$1,500,00

Criminal Penalties: 42 USC § 1320d-5

- A covered entity or an individual employee of a covered entity may be criminally prosecuted if the information involved is maintained by the covered entity.
- A person who knowingly and in violation of the law does one of the following:
 - ✓ Uses/causes to be used a unique health identifier
 - ✓ Obtains individually identifiable health information relating to an individual
 - ✓ Discloses individually identifiable health information to another person
- Shall:
 - ✓ Be fined not more than \$50,000, sentenced to 1 year in prison, or both.
 - ✓ If the offense is committed under false pretenses, be fined not more than \$100,000, sentenced to no more than 5 years in prison, or both.
 - ✓ If the offense is committed to use the individually identifiable health information for commercial advantage, personal gain or malicious harm, be fined not more than \$250,000, sentenced to not more than 10 years in prison, or both.

NOTE: DOC DOES NOT CREATE CH. 51 RECORDS, BUT MAY RECEIVE CH. 51 RECORDS FROM COMMUNITY PROVIDERS, AND FILE THEM IN THE DOC HEALTH CARE RECORD

MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND AODA INFORMATION

Civil Penalties: s. 51.30 (9)

Actions for violations; damages; injunction

- Violator liable for actual damages to a person and up to \$1,000 in exemplary damages for each violation, and costs and attorney fees.
- No liability to custodian of records when acting in good faith.
- Violator who acted in a knowing and willful manner liable for actual damages to person and up to \$25,000 in exemplary damages for each violation, plus costs and attorney fees. Actual damages to plaintiff are not a prerequisite.
- A person may bring an action to enjoin any violation or to compel compliance as well as seek damages as stated above.

Criminal Penalties:

- Whoever does any of the following may be fined not more than \$25,000 or imprisoned for not more than 9 months or both: s. 51.30 (10)(a)
 - ✓ Requests/obtains confidential information under false pretenses
 - ✓ Discloses confidential information with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.
- Violates s. 51.30(4)(dm)1, 2. or 3.
- Whoever negligently discloses confidential information is subject to a forfeiture of not more than \$1,000 per violation. s. 51.30(10)(b)
- Whoever intentionally discloses confidential information under this Chapter, 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. s. 51.30(10)(bm)

Employee Discipline: s. 51.30 (11)

Any employee of DHS, county department or public treatment facility who violates this Chapter or any rule promulgated pursuant to this Chapter may be subject to discharge or suspension without pay.