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|  <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> 500.50.19   | <b>Page</b> 1 of 5                     |
|  | <b>Original Effective Date:</b><br>05/25/07                                | <b>New Effective Date:</b><br>01/17/24 |
|  | <b>Supersedes:</b> 500.50.19   | <b>Dated:</b> 06/01/16                 |
|  | <b>Administrator's Approval:</b> Sarah Cooper,<br>Administrator – 12/22/23 |  |
| <b>Required Posting or Restricted:</b>   |  |  |
| <input checked="" type="checkbox"/> <b>PIOC</b> <input checked="" type="checkbox"/> <b>All Staff</b> <input type="checkbox"/> <b>Restricted</b>  |  |  |
| <b>Chapter:</b> 500 Health Services  |  |  |
| <b>Subject:</b> Requests For Protected Health Information from Off-Site Health Care Providers  |  |  |
| <b>Guidance Document</b> <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>   |  |  |

**POLICY**

The Division of Adult Institutions shall ensure health care staff request protected health information from off-site health care providers in accordance with applicable federal and State of Wisconsin laws and Department of Corrections policies.

**REFERENCES**

Code of Federal Regulations – Title 42 –Public Health – Part 2

Code of Federal Regulations – Title 45 –Public Welfare – Parts 160 and 164

Wisc. Stat. s. 51.30 – Records

Wisc. Stat. s. 146.816 – Use and Disclosures of Protected Health Information

Wisc. Stat. s. 146.81-84 – Health Care Records

Wisc. Stat. s. 252.15 – Restrictions on Use of an HIV Test

DAI Policy 500.50.09 – Disclosure of Protected Health Information (PHI) with PIOC Patient Authorization and Court Orders

DAI Policy 500.50.10 – Authorized Disclosure of Protected Health Information (PHI) Without Patient Authorization

**DEFINITIONS, ACRONYMS AND FORMS**

Authorization – Legal form signed by a PIOC or person authorized to act on behalf of PIOC that permits a health care provider to communicate identified protected health information to another entity.

DOC – Department of Corrections

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

DOC-3335 – Request for Protected Health Information for Ongoing Treatment, Payment or Health Care Operations

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

DSU – Dental Services Unit

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Health Care Provider – Health professionals listed in Wisconsin Statutes s. 146.81.

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 Services Unit (HSU) – Includes the physicians, dentists, nurses and support staff who provide health care services to an PIOC patient residing in a DAI correctional facility.

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

Off-site health care provider – For purposes of this policy, a non-DOC health care provider who provides health care to PIOC.

PIOC - Persons in our care

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.

Psychological Services Unit (PSU) – Includes the psychologists and support staff who provide psychological services to PIOC residing in a DAI.

SUD – Substance Use Disorder

## **PROCEDURES**

### **I. Requesting PHI from an Off-Site Health Care Provider for Ongoing Treatment**

- A. In order to provide ongoing treatment, DOC health care providers may request, without a signed authorization from the PIOC, PHI created by a non-DOC health provider prior to or during incarceration.
- B. PHI that may be requested without a PIOC authorization includes medical, dental and mental health information, but does not include SUD information.

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- C. The HSU, DSU or PSU shall obtain a DOC-3335 – Request for Protected Health Information for Ongoing Treatment, Payment or Health Care Operations.
1. Complete DOC-3335 being sure to include the PIOC identifying information and describing clearly the PHI being requested.
  2. State on the DOC-3335 that the request is from a DOC health care provider by identifying the name and title of the health care provider, and including the facility HSU, DSU or PSU on the form.
  3. Check the box indicating the request is for ongoing treatment.
  4. Forward DOC-3335 to the off-site provider via mail, encrypted email, fax or scan.
- D. Even though a health provider may legally disclose PHI, without PIOC authorization, to another health provider, an off-site health care provider may require a signed authorization.
1. When the off-site provider requires a signed authorization, obtain a DOC-1163A – Authorization for Use and Disclosure of Protected Health Information, or use the form required by the off- site provider, identifying the specific PHI being requested.
  2. Consult, DAI Policy 500.50.09 – Attachment 3, which describes who may sign an authorization on behalf of adult and minor PIOC.
  3. Answer questions about the form to ensure the PIOC, or person signing on behalf of the PIOC, understands what is being signed.
  4. Forward the signed form to the off-site health care provider via mail, encrypted email, fax or scan.

## II. Requesting SUD Information for Ongoing Treatment

- A. Federal regulations at 42 C.F.R. Part 2 govern records relating to SUD diagnosis and treatment under circumstances applicable to the DOC. Wisconsin Statutes s. 51.30 governing SUD information defers to the federal regulations.
- B. Federal regulations at 42 C.F.R. Part 2, requires a signed authorization from the PIOC, or person authorized to act on behalf of the PIOC, except to medical personnel in a medical emergency, and some additional exceptions generally not applicable to the DOC.
1. Consult DAI Policy 500.50.09 – Attachment 3, which describes who may sign an authorization on behalf of adult and minor PIOC.
  2. Answer questions about the form to ensure the PIOC, or person signing on behalf of the PIOC, understands what is being signed.
  3. Forward the signed form to the off-site health care provider via mail, encrypted email, fax or scan.

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### III. Requesting PHI Following Death for Purpose of Health Care Operations

- A. Under Wisconsin Statutes Ch. 146 and HIPAA regulations, a health care provider may disclose PHI about medical care and treatment to another health provider, without a signed authorization, for purposes of health care operations such as quality assessment investigations and audits. This includes the death investigations performed at DOC facilities and by the Committee on Inmate/Youth Deaths.
- B. If an off-site health care provider that treated a PIOC does not upon death disclose PHI to DOC health care providers, or respond to a verbal request take the following steps:
1. Obtain a DOC-3335 – Request for Protected Health Information for Ongoing Treatment, Payment or Health Care Operations.
  2. Complete DOC-3335 being sure to include the PIOC identifying information and describing the PHI being requested.
  3. State on the DOC-3335 that the request is from a DOC health care provider by identifying the name and title of the health care provider, and including the facility HSU, DSU or PSU on the form.
  4. Check the box indicating the request is for health care operations, review of PIOC death.
  5. Forward DOC-3335 to the off-site provider by mail, encrypted email, fax or scan.
- C. Even though Wisconsin and federal laws permit health care providers to disclose PHI for the health care operations of another health provider, the off-site health care provider may establish a policy that requires a signed authorization.
1. The DOC shall determine who has legal authority to act on behalf of the deceased individual and obtain the required signed forms: DOC-3508 – and DOC-1163A.
    - a. The court-appointed personal representative or the current spouse of the decedent has the legal authority to sign an authorization form on behalf of the deceased person.
    - b. If the decedent does not have a surviving spouse, the PIOC adult children, parents, grandparents, siblings, and their spouses, have equal authority to sign an authorization.
  2. Obtain from the authorized individual a signed DOC-3508.
  3. Obtain from the authorized individual a signed DOC-1163A or other form required by the off-site health provider.
  4. Forward the signed forms to the off-site provider who has previously refused to provide the requested PHI.
  5. Consult with Health Information Supervisor/HIPAA Privacy Compliance Officer or Office of Legal Counsel, as needed.
  6. Consult with the DOC HIPAA Privacy Compliance Officer or Office of Legal Counsel if SUD information is required from an off-site health care provider.

**DIVISION OF ADULT INSTITUTIONS FACILITY IMPLEMENTATION PROCEDURES**

|  |                                     |                    |
|--|-------------------------------------|--------------------|
| <b>Facility:</b> Name  |                                     |                    |
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| <b>New Effective Date:</b> 00/00/00  | <b>Supersedes Number:</b>           | <b>Dated:</b>      |
| <b>Chapter:</b> 500 Health Services  |                                     |                    |
| <b>Subject:</b> Requests For Protected Health Information from Off-Site Health Care Providers  |                                     |                    |
| <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.
    - 1.
      - a.
  - B.
  - C.
- II.
  - A.
  - B.
  - C.