



WISCONSIN DEPARTMENT OF CORRECTIONS

Governor Tony Evers / Secretary Kevin A. Carr

GUIDANCE DOCUMENT CERTIFICATION

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections §227.10 and §227.11 of the Wisconsin Statutes.

I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated.

I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

James Greer

Name of Individual Certifying this Document/Proposed Document


Director, Bureau of Health Services

Title

Signature

Date Signed

Department of Corrections – Wisconsin
Office of the Secretary
Wis. Stat. § 227.112(6)
DOC-2910 (6/2019)

 <p style="text-align: center;">DIVISION OF ADULT INSTITUTIONS</p> <p style="text-align: center;">POLICY AND PROCEDURES</p>	DAI Policy #: 500.50.10	Page 1 of 7
	Original Effective Date: 05/15/04	New Effective Date: 08/25/14
	Supersedes: BHS500:10	Dated: 03/01/05
	Administrator's Approval: Cathy A. Jess, Administrator	
Required Posting or Restricted:		
<input checked="" type="checkbox"/> Inmate <input checked="" type="checkbox"/> All Staff <input type="checkbox"/> Restricted		
Chapter: 500 Health Services		
Subject: Authorized Disclosure of Protected Health Information (PHI) Without Inmate Patient Authorization		

POLICY

Division of Adult Institution facilities shall disclose outside of the Department of Corrections Protected Health Information without the written authorization of an inmate patient, or person authorized to act on behalf of the inmate patient, only as permitted under federal and Wisconsin law pursuant to a court order or a legal exception. The federal or Wisconsin confidentiality law that provides the most stringent privacy protection to the inmate patient shall be followed.

REFERENCES

Wisconsin Statutes Ch. 48 – Children's Code

Wisconsin Statutes Ch. 51 – State Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act

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

Wisconsin Statutes Ch. 55 – Protective Service System

Wisconsin Statutes ss.146.81-.84 – Miscellaneous Health Provisions

Wisconsin Statutes s. 252.15 – HIV Test Results

Wisconsin Statutes Ch. 971 – Criminal Procedure – Proceedings Before and at Trial

Wisconsin Statutes Ch. 975 – Sex Crimes Law

Wisconsin Statutes Ch. 980 – Sexually Violent Person Commitments

42 Code of Federal Regulations Part 2, AODA Records

45 Code of Federal Regulations, Parts 160 and 164, Health Insurance Portability and Accounting Act (HIPAA)

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

DAI Policy 500.50.15 – Request for Accounting of Disclosures of PHI Without Authorization

Attachment 1 – Disclosure Of PHI For Workers' Compensation Claim

Attachment 2 – Permitted Disclosures Under 42 C.F.R. PART 2 Regarding AODA Information

Attachment 3 – De-Identification of PHI

Attachment 4 – Required Recording/Logging

DEFINITIONS

AODA – Alcohol and Other Drug Abuse

CMR – Central Medical Records

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Correctional facility – Institution or correctional center operated by DAI.

Disclosure of PHI – Release, transfer, provision of access to, or divulging in any other manner of PHI outside of DOC.

DOC – Department of Corrections

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

DOC-3342 – Disclosure of PHI Without Patient Authorization

Health Care Record – Official DOC record that includes the Medical Chart, Dental Record Psychological Records-Copies envelope, Medications Record envelope, Patient Request Folder, Psychological Services Unit Record, and other components as determined 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.

HIV – Human immunodeficiency virus

HSU – Health Services Unit

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.

IV – Intravenous

Patient – An individual who receives health care services from a health care provider.

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) – Psychologists and support staff who provide psychological services to an inmate patient residing in a correctional facility.

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PROCEDURE

I. Legal Paths to Disclosure of PHI

- A. Valid authorization signed by the subject, or person authorized to act on behalf of the inmate patient. See DAI Policy 500.50.09.
- B. Court order. See DAI Policy 500.50.09.
- C. Legal exception under an applicable Wisconsin or federal confidentiality law, as described in this policy.

II. Legally Authorized Disclosures (Statutory Exceptions) Without Inmate Patient Authorization: Summary

- A. To Treatment Providers
 1. PHI needed by health providers, within and outside of the DOC, to perform job duties while rendering assistance to an inmate patient, or being consulted regarding the health of an inmate patient. See "3." for exceptions.
 2. HIV test results to a health provider who provides care during an emergency.
 3. Limitations of statutory exception:
 - a. Mental health and developmental disability information created by non-DOC providers beyond the limited data defined under Wisconsin Statutes s. 51.30(4)(b) 8g.
 - b. AODA information covered by 42 C.F.R. Part 2, created by DOC and non-DOC health providers.
 - c. Contact, as needed, with HIPAA Compliance Officer regarding disclosure of retrieval information under "a." and AODA information.
- B. To entities involved in the payment for off-site health care services provided to inmate patient; i.e., Third Party Administrator that pays, on behalf of the DOC, bills submitted by off-site health care providers.
- C. To certain entities to facilitate DOC health care operations.
- D. To county agency, law enforcement and District Attorney for reporting abuse/neglect:
 1. Medical information to investigate suspected child abuse/neglect.
 2. Mental health information to county agency, department, protective services agency and law enforcement for reporting abuse/neglect of child under Wisconsin Statutes Ch. 48 or of an adult under Wisconsin Statutes Ch. 55.
- E. To certain entities upon death of an inmate patient:
 1. Coroner or medical examiner to enable them to complete death certificate.
 2. Department of Health Services, law enforcement and District Attorney to enable them to investigate certain deaths.

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3. Sexual partners and co-users of IV drugs may be told HIV test results when infected person dies. Contact HIPAA Compliance Officer prior to any disclosure in this instance.
- F. To law enforcement and correctional facilities:
1. To health care provider at prison or jail in order to provide continuity of health services.
 2. Limited mental health information to law enforcement for person committed under Wisconsin Statutes Ch. 51, 971 or 975.
 3. Medical information to a sheriff to assess compliance with driver safety plan.
- G. To entities performing audits, program monitoring, oversight of licensed professionals, etc.
- H. To state epidemiologist to report certain communicable diseases, as required by Wisconsin Statutes.
- I. To subject's attorney and attorney for public for proceedings under Wisconsin Statutes Ch. 980. This does not include AODA information.
- J. To legally designated protection and advocacy agency Disability Rights of Wisconsin for investigations.
- K. To federal or state governmental agency: Consult with HIPAA Compliance Officer regarding a request from federal government relating to military service, national security, protection of the president, etc.
- L. To entities involved in an application for Workers' Compensation. See Attachment 1.
- M. To certain entities under very limited circumstances under AODA regulations. See Attachment 2.
- N. De-Identified PHI. See Attachment 3.
- O. Contact HIPAA Compliance Officer for additional guidance regarding permitted disclosures under statutory exceptions, and for a copy of a detailed table describing all exceptions under several Wisconsin and federal laws.
- III. Disclosing PHI**
- A. Health staff shall verify the identity of a person requesting PHI by obtaining documentation from the requester, such as asking that the request be sent to the DOC on the requester's letterhead, or that requester provide the phone number of the hospital, clinic or agency to enable DOC to call back the requester.

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- B. Health staff shall use great care when disclosing PHI to an individual/entity authorized to receive PHI under this policy by verifying names, phone numbers, fax numbers and addresses.
- C. If sending PHI via email, click on “encrypt message” to send PHI securely. This will require the recipient to obtain a password, unless DOC has an established secure network with the recipient, such as another state agency or hospital/other entity with which DOC has a contractual relationship.

IV. Recording Certain Authorized Disclosures Made Without Inmate Patient Authorization

- A. Wisconsin Statutes Ch. 146 and Ch. 51, and HIPAA regulations have different requirements regarding the recording of disclosure of PHI, and the inspection of health care records. See Attachment 4.
- B. Complete the DOC-3342 – Disclosure of PHI Without Patient Authorization to meet the recording requirements under Ch. 51 and HIPAA regulations. Note that recording of disclosures under Ch. 51 only applies to disclosure of documents with mental health/developmental disability information created by non-DOC health providers.
- C. Read the top of the DOC-3342 to determine whether the disclosure made requires logging. For example, DOC is not required to record disclosures made to another treatment provider, or with the authorization of the inmate patient.
- D. Information entered on the DOC-3342 includes the name of the non-DOC recipient of the PHI, date/time of the disclosure, description of PHI disclosed, purpose of the disclosure, and initials of DOC employee completing the form.
- E. File the DOC-3342 and the written request received (if any) for the disclosure of the PHI in the Medical Chart, Miscellaneous Section, or PSU Record, Legal Section.
- F. Record information about the inspection of the Health Care Record, required by Ch. 146, on the DOC-1163A – Authorized Disclosure of Protected Health Information (PHI) Without Inmate Patient Authorization, or equivalent form.

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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:** _____
Cathy A. Jess, Administrator

DIVISION OF ADULT INSTITUTIONS FACILITY IMPLEMENTATION PROCEDURES

Facility: Name		
Original Effective Date:	DAI Policy Number: 500.50.10	Page 7 of 7
New Effective Date: 00/00/00	Supersedes Number:	Dated:
Chapter: 500 Health Services		
Subject: Disclosure of Protected Health Information Without Inmate Patient Authorization		
Will Implement <input type="checkbox"/> As written <input type="checkbox"/> With below procedures for facility implementation		
Warden's/Center Superintendent's Approval:		

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

**DAI Policy 500.50.10 – Authorized Disclosure of Protected Health Information (PHI)
Without Inmate Patient Authorization
Attachment 1 – Disclosure Of Protected Health Information For Workers’
Compensation Claim
Effective Date: 08/25/14**

Waiver of Confidentiality by Applicant

Under Wisconsin law, an individual who files an application for Workers’ Compensation due to a work-related injury or illness agrees to the following:

1. To submit to an examination to determine the validity of the claim, referred to as an Independent Medical Examination (IME).
2. To waive the health care provider-patient privilege with respect to:
 - a. Health condition(s) upon which the application is based.
 - b. Records requests by the employee, employer, Wisconsin Department of Workforce Development, or representative of any of these entities, in order to process the claim.

Responsibilities of DOC Health Care Providers

Health care providers shall process written requests for PHI from the applicant (employee), employer, workers’ compensation insurance, Department of Workforce Development, or its representative according to the following standards:

1. Respond to a request for copies within a reasonable time (14 calendar days from receipt of the request when practicable).
2. Require a written authorization from the patient, or person authorized to act on behalf of the patient, if the PHI being requested is not directly related to the health condition(s) for which the claim has been filed. See DAI 500.50.09 for guidance on processing records requests with a written authorization.
3. Redact PHI not directly related to the claim if the patient has not signed an authorization for its disclosure, and the unrelated PHI is included in a document that includes PHI related to the WC claim.

Fees for Copies

1. Requests for documents directly related to WC claim: DOC shall charge only the statutorily mandated fees for copies: \$7.50 per request **or** 45 cents per page, whichever is greater, plus the actual postage cost, as described on the DOC-3011, Fees for Copies.
2. Requests for documents beyond those directly related to WC claim: DOC shall charge fees as described on the DOC-3011, Fees for Copies, in the first section of the form.
3. See DAI Policy 500.50.09 for guidance regarding charging and collecting fees.

**DAI Policy 500.50.10 – Authorized Disclosure of Protected Health
Information Without Inmate Patient Authorization
Attachment 2 – Permitted Disclosures
Under 42 C.F.R. PART 2 Regarding AODA Information
Effective Date: 08/25/14**

1. Internal communications: DOC employees with the need to know the PHI to perform job duties.
2. De-Identified information: See Attachment 3.
3. Valid authorization signed by subject of records (patient): see DAI Policy 500.50.09 for guidance in processing records request with an authorization.
4. Qualified Service Organization Agreement.
5. Medical emergency: limited to PHI required to permit treatment; must request recipient to make no further disclosure and notify subject of information (patient) of the disclosure.
6. Approved research/audit permitted by law: research approved per DOC Executive Directive 36.
7. Court order: issued under provisions of 42 C.F.R. Part 2. Consult with HIPAA Compliance Officer or Office of Legal Counsel to verify validity of a court order.
8. Reporting of a crime on AODA program premises or against program personnel.
9. Reporting suspected child abuse/neglect: Ch. 48, Children's Code, Wisconsin Statutes.

**DAI Policy 500.50.10 – Authorized Disclosure of Protected Health Information (PHI) Without
Inmate Patient Authorization
Attachment 3 – De-Identification of PHI
Effective Date: 08/25/14**

De-identified health care information is not individually identifiable and can be disclosed without authorization of the patient under one of the two following circumstances:

1. No reasonable basis exists to believe that the information can be used to identify a patient or relatives, employers or household members of the patient AND the following identifiers have been removed:
 - a. Names
 - b. Geographic subdivisions smaller than a state (e.g. city, county) except for the first 3 numbers of a zip code that could be used to identify the geographic location of the patient.. See 45 C.F.R.164.514 (b)(2)(i) for additional guidance
 - c. All dates except the year that directly relates to an individual including:
 - i. Date of Birth
 - ii. Admission Date
 - iii. Discharge date
 - iv. Date of death
 - v. Ages over 89: See 45 C.F.R.164.514 (b)(2)(i)(C) for additional guidance
 - d. Telephone numbers
 - e. Fax numbers
 - f. Electronic mail addresses
 - g. SSN
 - h. Medical record numbers
 - i. Health plan beneficiary numbers
 - j. Account numbers
 - k. Certificate/license numbers
 - l. Vehicle identifies
 - m. Device identifier & serial numbers
 - n. URLs
 - o. IP addresses
 - p. Biometric identifiers (finger and voice prints)
 - q. Full face photographic images
 - r. Any other unique identifying number (DOC number). See 45 C.F.R.164.514 (c) for additional guidance.
2. A person with knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable has done **all** of the following:
 - a. Applied those principles and methods
 - b. Determined that the risk is very small that recipient of the information could use the information alone or combined with other available information to identify the individual
 - c. Documented the methods and results of the analysis that the information has been de-identified.

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

Attachment 4 – Required Recording/Logging

Effective Date: 08/25/14

Wisconsin Statutes Chapter 51

- Ch. 51 requires recording of disclosures of records governed by ch. 51, which in the DOC applies to mental health, developmental disability and AODA records received by DOC from community providers and filed in the Health Care Record, but not to documents created by DOC health providers, including psychologists and psychiatrists. (See Wisconsin Administrative Code s. DHS 92.08)
- Content of recording/log:
 - ✓ Name of recipient
 - ✓ Date/time of disclosure
 - ✓ Type of information disclosed
- Record information on the DOC-3342.

Wisconsin Statutes Chapter 146

- Records created by DOC all health providers, including psychologists and psychiatrists, are governed by ch. 146.
- Ch. 146 does not require recording of disclosures (copies provided) of information, but does require recording of some inspections of records under s. 146.83(3), Wis. Stats.
- Content of recording/log:
 - ✓ Time and date of request by patient, or person authorized by the patient, to inspect record.
 - ✓ Name of inspecting person
 - ✓ Date of inspection
 - ✓ Description of records inspected.
- Record in Medical Chart, Progress Notes, in PSU Record, or on DOC-1163A, or equivalent.

HIPAA Regulations

- Requires recording of the following disclosures:
 - ✓ Disclosures required by federal/state law
 - ✓ Public health activities
 - ✓ Mandatory reporting of abuse, neglect, or violence against any person
 - ✓ Health oversight activities
 - ✓ Judicial/administrative proceedings, including court orders
 - ✓ Law enforcement activities, except relating to inmates
 - ✓ About decedents as required by law
 - ✓ Research purposes
 - ✓ Specialized government functions
 - ✓ Workers' Compensation cases
- Content of recording/log:
 - ✓ Name of recipient & address (if known)
 - ✓ Date of disclosure
 - ✓ Brief description of PHI
 - ✓ Purpose or copy of authorization/request
 - ✓ Summary entry for multiple disclosures to same party/purpose
- Record information on DOC-3342.