



# WISCONSIN DEPARTMENT OF CORRECTIONS

Governor Tony Evers / Secretary Kevin A. Carr

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## 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*

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Name of Individual Certifying this Document/Proposed Document

*Director, Bureau of Health Services*

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Title


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Signature

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Date Signed

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

 <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> 500.50.16	<b>Page</b> 1 of 5
	<b>Original Effective Date:</b> 03/01/05	<b>New Effective Date:</b> 09/16/13
	<b>Supersedes:</b> BHS500:16	<b>Dated:</b> 01/01/09
	<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> Consent or Refusal for Recording and Imaging		

**POLICY**

The Division of Adult Institutions shall obtain an inmate patient's informed consent prior to creating any recording or image, such as videotape, audiotape, photograph or digital image, which when heard or viewed reveals protected health information, and shall not disclose the recording or image without written inmate patient authorization, unless permitted by Wisconsin or federal law. This policy does not apply to use of medical equipment for recording/imaging, nor to videotaping or other imaging for security purposes pursuant to the Division of Adult Institutions policies and procedures.

**REFERENCES**

Code of Federal Regulations – Title 45 – Section 164 – Public Welfare – Security and Privacy

Health Services Policy and Procedure 500:07 – Records Retention and Disposition Authorizations

Health Services Policy and Procedure 500:09 – Disclosure of PHI With Patient Authorization

Health Services Policy and Procedure 500:10 – Disclosure of PHI Without Patient Authorization

Records Retention Disposition Authorization 1A – BHS Inmate Healthcare Records – Purged Materials

**DEFINITIONS, ACRONYMS AND FORMS**

Authorized representative – Individual with legal authority to act upon behalf of a patient, such as a legal guardian of the person, or health care agent under an activated Power of Attorney for Health Care.

DAI – Division of Adult Institutions

Dental Services Unit (DSU) – Includes the dentists, dental assistants and support staff who provide dental care to inmate patients residing in a DAI correctional facility.

Disclosure – 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)

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DOC-3035 – Health Service Request and Copayment Disbursement Authorization

DOC-3035B – Psychological Service Request

DOC-3392 – Dental Services Request and Copayment Disbursement Authorization

DOC-3483 – Consent/Refusal for Recording & Imaging of PHI

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 inmate 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.

Patient – An individual who receives health care services from a health care provider. For purposes of this policy, patient includes a patient's authorized representative.

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 an inmate patient residing in a correctional facility.

## **PROCEDURES**

### **I. Obtaining Inmate Patient Written Consent or Refusal**

- A. The designated HSU or PSU employee shall discuss the contents of Section 1 of the DOC-3483 – Consent/Refusal for Recording & Imaging of PHI, with the inmate patient to determine whether the inmate patient understands the information, and appears capable of giving informed consent.
- B. Content of Section 1 of the DOC-3483 includes:
  1. Description of the type of device to be used for recording/imaging; e.g., video-camera, audio recorder, digital camera or still camera.
    - a. Medical equipment such as an x-ray machine or Magnetic Resonance Imaging scanner is not covered by the DOC-3483.
    - b. Devices used for security purposes are not covered by this policy.

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2. Description of the purpose(s) of recording/imaging, such as for a health appointment via telemedicine, recording of a therapy session, staff training or research.
  3. Statement that DOC will maintain the confidentiality of the recording/image.
  4. Statement that DOC will not disclose the recording/image outside of DOC without the written authorization of the inmate patient, unless permitted by law.
  5. Statement that inmate patient may revoke consent to the recording/image.
- C. The HSU or PSU employee shall sign and date Section 2 of the DOC-3483 verifying he or she has discussed the information with the inmate patient.
- D. The HSU/PSU shall ask an adult inmate patient, 18 years or older, to sign Section 3 of the DOC-3483 to indicate consent or refusal by checking the applicable box.
1. A court-appointed guardian of the person or health care agent shall sign the DOC-3483 for an incompetent or incapacitated inmate patient. Consult with the HIPAA Compliance Officer or Office of Legal Counsel as needed.
  2. A parent/guardian shall sign Section 3 of the DOC-3483 for a minor under 18 years old.
- E. The HSU/PSU shall:
1. File the original in the Medical Chart – Consents/Refusals Section Dental Record, or PSU Record, Legal Documents section, depending on the type of PHI being recorded/imaged.
  2. Provide the inmate patient, or parent/guardian, with a copy of the DOC-3483, if signer requests a copy.
  3. Inform other staff who would be involved in the recording/imaging of the inmate patient's decision.

## **II. Disclosure of Recording/Image**

- A. DOC may disclose, without written inmate patient authorization, a recording/image for the purposes of treatment, payment and health care operations, or other reason permitted by law. See Health Services Policy and Procedure 500:10.
- B. DOC shall obtain written inmate patient authorization to disclose the recording/image for reasons other than those under Section II. A. above by asking the inmate patient, or person authorized to act on behalf of the inmate patient, to sign a DOC-1163A – Authorization for Use and Disclosure of Protected Health Information (PHI). See Health Services Policy and Procedure 500:09.
- C. File the DOC-1163A obtained under Section II.B. above on top of the DOC-3483 to which it applies.

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**III. Withdrawal of Consent by Inmate Patient**

- A. Inmate patient shall complete a DOC-3035 – Health Service Request and Copayment Disbursement Authorization, DOC-3392 – Dental Services Request and Copayment Disbursement Authorization or DOC-3035B – Psychological Service Request, to withdraw consent to recording/imaging.
  
- B. Recipient of the form withdrawing consent shall file it on top of the DOC-3483 to which it applies.

**IV. Storage and Retention of Recording/Image**

- A. Store recording/image in a secure location that protects in confidentiality and permits access by authorized DOC staff.
  
- B. Retain recording/image in accordance with Records Retention Disposition Authorization 1A. See Health Services Policy and Procedure 500:07.

**Bureau of Health Services:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_  
James Greer, Director

\_\_\_\_\_ **Date Signed:** \_\_\_\_\_  
David Burnett, 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> 500.50.16	<b>Page</b> 5 of 5
<b>New Effective Date:</b> 00/00/00	<b>Supersedes Number:</b>	<b>Dated:</b>
<b>Chapter:</b> 500 Health Services		
<b>Subject:</b> Consent or Refusal for Recording and Imaging		
<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