



# 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.

Casey Gerber

\_\_\_\_\_  
Name of Individual Certifying this Document/Proposed Document

Director, Office of Juvenile Offender Review

\_\_\_\_\_  
Title


Casey Gerber

\_\_\_\_\_  
Signature

06/24/2019

\_\_\_\_\_  
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>WISCONSIN</b> <b>DEPARTMENT OF CORRECTIONS</b>  Division of Juvenile Corrections  <b>Policy and Procedure</b></p>	EFFECTIVE DATE 2/1/2016	PAGE NUMBER 1 of 5
	MANUAL REFERENCE	<input checked="" type="checkbox"/> New <input type="checkbox"/> Revision
	DJC POLICY # 500.50.10	Original Date:
	ORIGINATED BY John D. Paquin, Administrator	Date Signed: 2/1/16
DISSEMINATION	X	
<input type="checkbox"/> All Staff <input type="checkbox"/> Institution <input type="checkbox"/> Field Offices <input type="checkbox"/> Supervisory Staff Only <input type="checkbox"/> Confidential-Security Related <input type="checkbox"/> Community Facilities <input checked="" type="checkbox"/> Health Records	PRIORITY <input checked="" type="checkbox"/> Policy/Directive Discuss at Staff Meeting	<input type="checkbox"/> Information Read/Route/Post
<b>SUBJECT: Disclosure of Protected Health Information without Patient Authorization</b>		

**Purpose**

This policy is to ensure that the handling of protected health information is done consistently throughout the Department of Corrections.

**Policy**

Division of Juvenile Corrections shall disclose outside of the Department of Corrections Protected Health Information without the written authorization of a patient, or authorized representative, only as permitted under federal and Wisconsin law pursuant to a court order or a legal exception.

**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

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Authorized Representative – Individual with legal authority to act on behalf of a minor such as a parent or legal guardian, or on behalf of an adult such as a guardian of the person, or health care agent under an activated Power of Attorney for Health Care.

CMR – Central Medical Records

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

Health Services Unit (HSU) – Work unit that includes the physicians, dentists, nurses and support staff who provide health care services to a patient in a DJC institution.

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 a patient in a DJC institution.

## Procedure

### **I. Legal Paths to Disclosure of PHI**

- A. Valid authorization signed by the subject, or person authorized to act on behalf of the youth patient. See DJC Policy 500.50.09.
- B. Court order. See DJC 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 Youth 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 a youth patient, or being consulted regarding the health of a youth 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 youth 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 a youth 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.
  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.
- 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 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 youth 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.

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.

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: James Greer RN Date Signed: 2-5-16  
 James Greer, Director

[Signature] Date Signed: 2/5/16  
 Ryan Holzmacher, MD, Medical Director

Mary Muse, MS, RN Date Signed: 2/8/16  
 Mary Muse, Nursing Director

cc: Office of the Secretary  
 DJC Leadership Team

<b>Division of Juvenile Corrections Facility/Region Implementation Procedure</b>	
Facility/Region:	
DJC Policy Number: 500.50.10	Supersedes Policy Number:
Subject: Disclosure of Protected Health Information without Patient Authorization	
New Effective Date: 2/1/2016	Original Effective Date:
Will Implement: <input type="checkbox"/> As Written <input type="checkbox"/> With following procedures for facility implementation	
Superintendent's/Regional Chief's Approval:	