

GUIDE TO CONFIDENTIALITY LAWS APPLICABLE TO CHIPS PROCEEDINGS

This document was developed in part through the Wisconsin Director of State Courts Office (DSCO), Children's Court Improvement Program (CCIP) and the Wisconsin Department of Justice, Children's Justice Act Program. Seventy-five percent of the CCIP funding is issued through the U.S. Department of Health and Human Services, Administration on Children, Youth, and Families and the remainder is from DSCO. Points of view expressed do not necessarily represent the official positions of any of the financial sponsors.

**GUIDE TO CONFIDENTIALITY
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PROCEEDINGS**

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GUIDE TO CONFIDENTIALITY LAWS APPLICABLE TO CHIPS PROCEEDINGS

CHAPTER 1 INTRODUCTION AND GENERAL LEGAL INFORMATION

CHILDREN'S CONFIDENTIALITY PROJECT

The Director of the Office of State Courts (Children's Court Improvement Program) and the Wisconsin Department of Justice (Children's Justice Act Program) collaborated in 1999 to initiate the Children's Confidentiality Project (Project) with the goal of exploring ways in which all the entities involved in child abuse and neglect cases could coordinate their efforts to improve services for children and their families. The partnering agencies appointed a Confidentiality Advisory Board (CAB) to identify specific Project goals and oversee their implementation. The CAB authorized the creation of this Guide to Confidentiality Laws Applicable to CHIPS Proceedings to provide information about the exchange of confidential information among professionals involved in Children in Need of Protection and Services (CHIPS) cases under Chapter 48, Children's Code, of the Wisconsin Statutes. Involved professionals include employees of Department of Health, Department of Children and Families, Department of Corrections, county departments of human and social services, and school districts, as well as health care providers, judges, and attorneys. Each professional may be the custodian of confidential information or the individual who is seeking confidential information.

This Guide explains Federal and Wisconsin laws that govern medical, mental health, education, law enforcement, court, juvenile justice, social services/human agency and other confidential information. It discusses how individuals may obtain confidential information with or without an authorization, when custodians of confidential information may disclose information, elements of written authorizations, requirements for recording disclosures of information, and the consequences for violating confidentiality laws. Although the focus of the Guide is on CHIPS proceedings, the content relates to a broad range of exchanges of confidential information which may be beneficial to situations other than CHIPS proceedings.

The Guide does **not** provide legal advice for specific CHIPS cases. Readers are encouraged to contact their respective legal counsel as needed and not rely on this Guide for legal advice in a particular case. The original Guide was issued in February 2006, and revised in 2009, 2011 and 2014.

GENERAL ADVICE FOR DEALING WITH CONFIDENTIALITY LAWS

- Assume that confidential information cannot be shared in any manner (written or verbal) without a written authorization, legal exception, or court order.
- Ensure that a written authorization meets legal requirements before disclosing confidential information.
- Be familiar with the specific statutory exceptions that permit disclosure without written authorization.
- When more than one law governs a type of confidential information, determine which law controls.
- Seek a court order that clearly describes the information being authorized for disclosure when the law requires an authorization, but it cannot be obtained, and no legal exception applies.
- Be aware that monetary fines and imprisonment, as well as employee discipline, may result from violating a confidentiality law.
- Consult with legal counsel whenever in doubt.

LAWS GOVERNING INFORMATION RELEVANT TO CHIPS CASES

WISCONSIN STATUTES	INFORMATION COVERED
Chapter 46, Social Services	Records maintained by entities governed by Ch. 46.
Chapter 48, Juvenile Justice Code	
s. 48.396	Law enforcement and court records relating to matters under Ch. 48.
s. 48.78	Client records maintained by an agency under Ch. 48.
s. 48.981	Information relating to child abuse/neglect maintained under Ch. 48.
Chapter 49, Public Assistance	Records maintained by agencies governed by Ch. 49.
Chapter 51, Mental Health, Developmental Disability and Alcohol and Other Drug Abuse Act	
s. 51.30(3)	Records related to court proceedings under Ch. 51
s. 51.30(4)	Mental health, developmental disability and AODA registration and treatment records
Ch. 118, General School Operations s. 118.125	Education/pupil records
Ch. 146, Miscellaneous Health Provisions: ss. 146.81-84	Records created and maintained by health care providers
Ch. 252, Communicable Diseases	
s. 252.11(7)	Sexually transmitted disease information, other than HIV test results
s. 252.15	HIV test results
Ch. 938, Juvenile Justice Code	
s. 938.78	Records maintained by entities governed by Ch.938.
s. 938.396	Law enforcement and court records relating to matters under Ch. 938.
WIS. ADMINISTRATIVE CODE	INFORMATION COVERED
Ch. DHS 92, Confidentiality of Treatment Records: s. DHS 92.04	Mental health, developmental disability and AODA information, as defined in s. 51.30.
Ch. DHS, Control of Communicable Diseases: s. DHS 145.04	Reports of communicable diseases
CODE OF FEDERAL REGULATIONS	INFORMATION COVERED
34 C.F.R. Part 99, Family Education Rights and Privacy Act (FERPA)	Education records.
42 C.F.R. Part 2, Confidentiality of Alcohol and Other Drug Abuse (AODA) Patient Information.	Information related to diagnosis and treatment for alcohol/other drug abuse.
45 C.F.R. Part 164, Health Insurance Portability and Accountability Act (HIPAA)	Protected Health Information

THREE PATHS TO LEGAL DISCLOSURE

1. WRITTEN AUTHORIZATION

The subject of the information, or a person authorized to act on behalf of the subject, has the legal right to authorize the disclosure of information pertaining to himself or herself to a person or entity named in a written authorization. Chapter 7 describes the elements of written authorizations, and identifies who has legal authority to access and authorize disclosure of confidential information in various types of records.

2. LEGAL EXCEPTIONS

➤ **Specific Statutory Exceptions**

Confidentiality laws identify specific exceptions to the requirement that the custodian of the information must obtain a written authorization from the subject, or person authorized to act on behalf of the subject, prior to sharing the confidential information. Subsequent chapters of the Guide describe the numerous statutory exceptions under Wisconsin Statutes Chapters 46, 48, 49, 51, 118, 146, 252 and 938, and 42 C.F.R. Part 2 and 45 C.F.R. Part 160 and 164.

➤ **Waivers of Statutory Privileges**

Wisconsin Statutes recognize statutory privileges between certain individuals. The privileges are not absolute with each including circumstances under which the privilege is waived.

- **905.03 Lawyer-client privilege**

Confidentiality

“A communication or information is ‘confidential’” if not intended to be disclosed to 3rd persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.”
[s. 905.03 (1)(d)]

Who May Claim Privilege

Client, client’s guardian/conservator, personal representative of a deceased client, and certain other persons may claim the privilege. The lawyer may claim on behalf of client.

Waiver

The privilege is waived under circumstances such as when the communication may result in the furtherance of crime or fraud, regarding a breach of duty by lawyer or client, or a communication of common interest between two or more clients. [s. 905.03(4)]

Reports of abuse/neglect of child/unborn child

The statutory provisions of this privilege do not include a specific waiver for reporting of abuse or neglect of a child, but s. 48.981(2), Wis. Stats., states that an attorney may report suspected and/or threatened child abuse/neglect.

- **905.04 Physician-patient, registered nurse-patient, chiropractor-patient, psychologist-patient, social worker-patient, marriage and family therapist-patient and professional counselor-patient privilege.**

Confidentiality

“A communication or information is “confidential” if not intended to be disclosed to 3rd persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication or information or persons who are participating in the diagnosis and treatment under the direction of the physician,

podiatrist, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor, including the members of the patient's family." [s. 905.04(1)(b)]

Who May Claim Waiver

Patient, patient's guardian/conservator, personal representative of a deceased patient may claim the privilege. Patient's health provider may claim privilege on behalf of patient.

Waiver

The privilege is waived under circumstances such as proceedings for hospitalization, guardianship, protective services or protective placement, paternity proceedings under ss. 767.45 to 767.53., and providing services to court in juvenile matters under s. 48.78 and s. 938.78, regarding informant obtained by intake worker/dispositional staff, and for homicide trials. [s. 905.04(4)]

Reports of abuse/neglect of child/unborn child

The privilege is waived for information contained in a report of child abuse or neglect made by a health provider under s. 48.981(3). [s. 905.04(4)(e)2m].

There is no privilege in situations where the examination of the expectant mother of an abused unborn child creates a reasonable ground for an opinion of the reporting health provider that the physical injury inflicted on the unborn child was caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree. [s. 905.04(4)(e)3.]

- **905.045 Domestic violence or sexual assault advocate-victim privilege.**

Confidentiality

"A communication or information is "confidential" if not intended to be disclosed to 3rd persons other than persons present to further the interest of the person receiving counseling, assistance, or support services, persons reasonably necessary for the transmission of the communication or information, and persons who are participating in providing counseling, assistance, or support services under the direction of an advocate, including family members of the person receiving counseling, assistance, or support services and members of any group of individuals with whom the person receives counseling, assistance, or support services." [s. 905.045(1)(c)]

Reports of abuse/neglect of child/unborn child

The privilege is waived for any report concerning child abuse that an advocate is required to make under s. 48.981. [s. 905.045(4)]

Relationship to S. 905.04

"If a communication or information that is privileged under sub. (2) is also a communication or information that is privileged under s. 905.04(2), the provisions of s. 905.04 supersede this section with respect to that communication or information." [s. 905.045(5)]

- **905.05 Husband–wife privilege and domestic partner privilege.**

Confidentiality :

"A person has a privilege to prevent the person's spouse or former spouse or domestic partner or former domestic partner from testifying against the person as to any private communication by one to the other made during their marriage or domestic partnership." [s. 905.05(1)]

Who May Claim Privilege

An individual or the spouse/domestic partner of the person when both are parties to the legal action.

Waiver

The privilege is waived under circumstances such as when one spouse/domestic partner is charged with a crime against the person, property or child of the other, or one person is charged with the crime of pandering/prostitution. [s. 905.06(4)]

Reports of abuse/neglect of child/unborn child

No waiver of this privilege is specified for reporting of abuse or neglect of a child.

• **905.06 Communications to members of the clergy.**

Confidentiality

“A communication is ‘confidential’ if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication. [s. 905.06(1)(b)]

Reports of abuse/neglect of child/unborn child

“There is no privilege under this section concerning observations or information that a member of the clergy, as defined in s. 49.981(1) (cx), is required to report as suspected or threatened child abuse under s. 48.981(2).”

3. COURT ORDERS

Most privacy laws permit a court order to be used as a method of obtaining confidential information. The court order permits the custodian of the information to disclose the information without a signed authorization or specific statutory exception. The entity seeking the information applies to the court for the order. The custodian may disclose only the information clearly identified in the Order.

Most statutes do not identify the exact steps or standards that a judge must follow prior to issuing an Order. However, 42 C.F.R. Part 2, Confidentiality of Alcohol and Drug Abuse Patient Information, lays out the precise standards to which a judge must adhere prior to issuing an Order. [s. 2.64 and s. 2.65]

Under ch. 146, ch. 51, and ch. DHS 92, a subpoena or a discovery request issued by an attorney does not authorize disclosure by a health provider. A lawful order of a court of record is required. HIPAA regulations do not always require a court order under certain circumstances

INFORMATION NEEDED BY CUSTODIAN OF RECORDS OR REQUESTER

Custodians of records must know the answer to five questions to determine whether they may legally provide information to a requester. An individual who requests information must answer the same questions in order to submit a valid request to obtain confidential information.

Who is the subject of the information?

What type of information is being requested?

Who maintains the information?

Who is requesting the information?

What is the purpose of the request?

WHO IS THE SUBJECT OF THE INFORMATION?

The subject of the records needs to be identified because characteristics, such as age or legal status, may determine who controls access to the records. Examples include:

➤ Minor suspected of being or found to have been abused/neglected

➤ Minor or adult receiving governmental services (social services/public assistance)

- Minor in an out-of-home placement or on correctional supervision
- Minor or adult pupil
- Minor or adult receiving health care services
- Representative of deceased individual
- Elderly person alleged to have been abused/neglected
- Person committed under ch. 51
- Person (ward) with a legal guardian under ch. 54
- Minor or adult receiving mental health, developmental disability or alcohol/drug abuse services

WHAT TYPE OF INFORMATION IS BEING REQUESTED?

To determine which law(s) apply, the type of information being requested must be identified.

- Health care records
- Court or law enforcement records
- Juvenile Justice Code records
- Pupil records
- Public assistance or social services agency records
- Children’s Code records

WHO MAINTAINS THE INFORMATION?

Persons seeking information must identify who maintains the information in order to submit a request to the legal custodian of the record. Examples include:

- Provider of medical care
- Provider of mental health care
- Law enforcement agency
- Educational agency/facility
- Court
- Agency providing social services/public assistance

WHO IS REQUESTING THE INFORMATION?

Confidentiality laws define who may access the information with and without a written authorization.

- Minor or adult subject of the information
- Parent, guardian or custodian of a minor
- Education professional
- Attorney in a legal proceeding
- Governmental agency
- Law enforcement official
- Court
- Advocacy organization
- Researcher
- Guardian, health care agent, other representative

WHAT IS THE PURPOSE OF THE REQUEST?

Confidentiality laws define for what purpose a requester may ask for records, and the custodian of the records must only disclose records for those purposes.

- To investigate child abuse/neglect
- To provide health care
- For personal review by subject
- For a legal proceeding

**CHAPTER 2
REPORTING OF CHILD ABUSE AND NEGLECT
AND DISCLOSURE OF INFORMATION UNDER S. 48.981, WIS. STATS.**

REQUIRED REPORTERS

DISCUSSION

Wisconsin law at s. 48.981 (2) requires the named professionals to report information about child abuse and neglect, and threatened child abuse and neglect. The law requires reporting by any mandated reporter who has reasonable cause to suspect that a child seen by the person in the course of professional duties has been abused or neglected, or who has reason to believe that a child seen by the person in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur.

The legislature determined that the public interest in protecting children from abuse and neglect supersedes the right of privacy generally afforded to the subject of confidential information. Federal privacy laws have reached the same conclusion when balancing those competing interests.

Many confidentiality laws include an exception to the authorization requirement in order to permit the reporting of child abuse/neglect. Some confidentiality laws are silent on the subject of abuse/neglect reporting. However, being mandated to report under s. 48.981 should provide legal protection to the reporter, assuming the individual adheres to the requirements of s. 48.981.

DEFINITIONS

Important definitions under s. 48.981, include the following:

- An “agency” means a county department, the department in a county having a population of 500,000 or more, or a licensed child welfare agency under contract with a county department or the department in a county having a population of 500,000 or more to perform investigations under this section. [s. 48.981(1)(ag)]
- A “caregiver” means any of the following: parent, grandparent and certain other family members/relatives, guardian, legal custodian, persons who resides in same dwelling, person who provides care outside of the child’s home, and some additional persons. [s. 48.981(1)(am)]
- A “reporter” means a person who reports suspected abuse or neglect or a belief that abuse or neglect will occur. [s. 48.981(1)(g)]
- A “record” means any document relating to the investigation, assessment and disposition of a report made under s. 48.981. [s. 48.981(1)(f)]
- A “subject” of a report means a person or unborn child named in a report or record as of one the following: [s. 48.981(1)(h)]
 - Child who is a victim/alleged victim of neglect or abuse, or who is threatened with abuse or neglect.
 - An unborn child who is a victim/alleged victim of abuse or who is at substantial risk of abuse.
 - Person suspected of abusing or neglecting a child or determined to have abused/neglected a child or to have abused an unborn child.

TABLE: MANDATED REPORTERS AND THE LAWS GOVERNING THEIR RECORDS

The left column in the table below lists mandated reporters by profession. The citation at the end of each section refers to the provision in s. 48.981 that identifies that professional as a mandated reporter. The right column identifies the law that protects the confidentiality of the type of information/records maintained by the professional(s) in the left column. If the law(s) governing the information/records

maintained by that professional includes a stated exception for reporting child abuse and neglect, the citation is included.

MANDATED REPORTERS	LAWS GOVERNING RECORDS
<p>Health Care Providers</p> <ul style="list-style-type: none"> ▪ Physician ▪ Nurse ▪ Dentist ▪ Chiropractor ▪ Optometrist ▪ Acupuncturist ▪ Medical professional not otherwise specified in s. 48.981 (2). ▪ Physical therapist and assistant ▪ Occupational therapist ▪ Dietitian ▪ Speech-language pathologist ▪ Audiologist ▪ Emergency medical technician ▪ First responder <p>[ss. 48.981(2)(a)1,4, 5, 6, 7, 8, 9, 22, 22m, 23 to 28]</p>	<ul style="list-style-type: none"> ▪ s. 146.82 governs confidentiality of health care records created by the health providers listed in the 1st column. ▪ 45 C.F.R. Part 164 governs confidentiality of protected health information maintained by HIPAA covered entities. ▪ s. 146.82 (2)(a)11. and 45 C.F.R. 164.512(c) provide an exception that authorizes reporting of child abuse/neglect without authorization of the subject.
<p>Health Care Providers offering care for mental illness, developmental disabilities and alcohol/drug abuse</p> <ul style="list-style-type: none"> ▪ Mental health professionals not otherwise specified in s. 48.981(2). ▪ Social worker ▪ Marriage and family therapist ▪ Professional counselor ▪ Alcohol/drug abuse counselor <p>[ss. 48.981(2)(a)9.,10.,11.,12.& 20.]</p>	<ul style="list-style-type: none"> ▪ s. 51.30(4) governs the confidentiality of records relating to mental health, developmental disabilities and alcohol/drug abuse. ▪ 42 C.F.R. Part 2 governs information relating to alcohol and drug abuse for entities covered by 42 CFR Part 2. ▪ s. 51.30 (4)(b)17. and 42 C.F.R. s. 2.12(c)(6) include an exception that authorizes reporting of child abuse and neglect without written authorization by subject.
<ul style="list-style-type: none"> ▪ Coroner ▪ Medical examiner <p>[ss. 48.981(2)(a)2. & 3.]</p>	<ul style="list-style-type: none"> ▪ s. 146.82 governs records prepared by physicians who may be coroners/medical examiners ▪ s. 146.82 (2)(a)11. authorizes reporting of child abuse and neglect without consent
<ul style="list-style-type: none"> ▪ Police/law enforcement officer <p>[s. 48.981(2)(a)29.]</p>	<ul style="list-style-type: none"> ▪ s. 938.396 and s. 48.396 govern law enforcement records relating to juveniles and children ▪ Statutes above do not include a specific exception that authorizes reporting of child abuse/neglect, but <u>s. 48.981 requires reporting.</u>
<p>Education professionals:</p> <ul style="list-style-type: none"> ▪ School teacher ▪ School administrator ▪ School counselor <p>[s. 48.981(2)(a)14.,15 & 16.]</p>	<ul style="list-style-type: none"> ▪ s. 118.125 and 34 CFR Part 99 (FERPA) govern confidentiality of educational records. ▪ 34 CFR s. 99.36 includes an exception to the authorization requirement for disclosures necessary to protect the health or safety of a student or others, which includes abuse/neglect reporting. ▪ s. 48.981 requires reporting in Wisconsin, but does not authorize disclosure of pupil records.

MANDATED REPORTERS-continued	LAWS GOVERNING RECORDS-continued
<ul style="list-style-type: none"> ▪ Child-care worker in a day care center ▪ Child care provider ▪ Residential care center for children and youth employees <p>[s. 48.981(2)(a)18. and 19.]</p>	<ul style="list-style-type: none"> ▪ s. 48.78 governs records of a licensed child welfare agency or day care center ▪ Statute above does not include an exception for reporting of child abuse/neglect, but <u>s. 48.981 requires reporting</u>
<ul style="list-style-type: none"> ▪ Treatment staff employed by or under contract with a county department under s. 46.23, 51.42 or 51.437 ▪ Residential care center for children/youth. <p>[s. 48.981(2)(a)21].</p>	<ul style="list-style-type: none"> ▪ s. 146.82 or s. 51.30(4) govern records depending on type of information being disclosed. ▪ s. 146.82(2)(a)11.and s. 51.30(4)(b)17.authorize reporting of child abuse and neglect.
<ul style="list-style-type: none"> ▪ Court appointed special advocate. <p>[s. 48.981(2)(b)]</p>	<ul style="list-style-type: none"> ▪ s. 48.236(4)(a) governs confidentiality of all information gathered by advocate. ▪ Statute does not include an exception that authorizes reporting of child abuse and neglect, but <u>s. 48.981 requires reporting</u>
<ul style="list-style-type: none"> ▪ Mediator in family court matter under s. 767.405. <p>[s. 48.981(2)(a)17.]</p>	<ul style="list-style-type: none"> ▪ s. 767.11 describes duties of a mediator. ▪ Statute does not include an exception that authorizes reporting of child abuse and neglect, but <u>s. 48.981 requires reporting</u>
<ul style="list-style-type: none"> ▪ Public assistance worker including a financial and employment planner <p>[s. 48.981(2)(a)13.]</p>	<ul style="list-style-type: none"> ▪ Chapter 49 governs records created and maintained by a public assistance worker ▪ Ch. 49 does not include an exception that authorizes reporting of child abuse & neglect, <u>but s. 48.981 requires the worker to report.</u>
<ul style="list-style-type: none"> ▪ Clergy [under limited circumstances] <p>[s. 48.981(2)(bm)]</p>	<p>Report not required when information received solely through confidential communications, according to policies, tenets or traditions of religious organization.</p>
VOLUNTARY REPORTERS	
<ul style="list-style-type: none"> • Any person may voluntarily report abuse/neglect or suspected abuse/neglect of a child or unborn child, including an attorney. [s. 48.981(2)(c)& (d)] • Person delegated care and custody under s. 48.979 is not a mandated reporter, but may report.[s. 48.981(2r)] 	
EXCEPTION TO REPORTING REQUIREMENT	
<p>Physicians, physician’s assistants and nurses certified/registered under Ch. 441 or Ch. 448 who provide minors with family planning services, pregnancy testing, obstetrical care and diagnosis/treatment for sexually transmitted disease, and others obtaining information about minors receiving those health care services do NOT have to report sexual contact and sexual intercourse as abuse, <u>except</u> as described below. [s. 48.981(2m)(c)]</p> <p>The above-described persons under s. 48.981 (2m)(c) must report under the following circumstances. [s. 48.981(2m)(d) and (e)]</p> <ol style="list-style-type: none"> 1. Sexual intercourse or sexual contact occurred or is likely to occur with a caregiver. 2. Child suffered or suffers from a mental illness/mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions. 3. Because of his or her age or immaturity, child was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact. 4. Child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact. 5. Another participant in the sexual contact or sexual intercourse was or is exploiting the child. 6. Any reasonable doubt as to the voluntaries of the child’s participation. 	

CONFIDENTIALITY OF RECORDS

DISCUSSION

All reports made under this section, notices provided and records maintained by an agency and other persons, official and institutions shall be confidential. Reports include facts and circumstances resulting in the suspicion of abuse or neglect of a child, or abuse of an unborn child, or a belief that abuse or neglect will occur. [s.48.981(3)] Reports and records may be disclosed without authorization of the subject **only** to the persons/entities as described in the table below. [s. 48.981(7)(a)]

A recipient of a record or report, including the subject of the report, or the parent/guardian/legal custodian of a minor child is prohibited from further disclosing the record or report, except to persons identified and for the purposes specified in s. 48.981. [s. 48.981(7)(e)]

A person who requests information, but is denied access to the information may petition the court under s. 48.981(7)(cr)4. The court shall notify the agency, District Attorney, the child, child’s parent/guardian /legal custodian of the filing of the petition. The court may hold a hearing and shall inspect the information sought to determined if reasons exist for not disclosing the information.

TABLE: DISCLOSURE OF INFORMATON IN REPORTS, NOTICES AND RECORDS UNDER S. 48.981

The table below describes the disclosures that an agency receiving reports under s. 48.981, may make without a signed authorization or court order. Each row identifies an authorized recipient who may receive the confidential information without a signed authorization.

TO SUBJECT OF RECORD/REPORT, PARENT/RELATIVE OF CHLD SUBJECT, AND REPORTER
Subject of the report without disclosing identify of reporter [s. 48.981(7)(a)1.]
Parent, guardian, legal custodian, foster parent, treatment foster parent or other person with physical custody of the child, or expectant mother, or person with custody of expectant mother without disclosing identify of reporter. [s. 48.981(7)(a)3m. and 4.]
Required reporter, or reporter who is a relative, upon written request, information only regarding what action, if any, was taken (unless prohibited by a court order) [s. 48.981(7)(a)1m.]
Relative of child placed outside parental home to facilitate establishment of relationship; limited information. [s. 48.981(7)(a)4m.]
TO LAW ENFORCEMENT/COURTS/ATTORNEYS
Law enforcement officer/agency, or District Attorney for investigation/prosecution. [s. 48.981(7)(a)8.]
Proceedings under s. 48.25(6), CHIPS; s. 813.122, Temporary Restraining Order; or 813.125, Injunction. [s. 48.981(7)(cm)]
Court or administrative agency for use in proceeding relating to licensing or regulation of a facility under this chapter. [s. 48.981(7)(a)9.]
Grand jury when needed to perform duties. [s. 48.981(7)(a)14.]
Judge conducting proceedings under s. 968.26. [s. 48.981(7)(a)14m]
Court conducting certain proceedings, when abuse/neglect is an issue, under ch. 48 and ch. 938 and county corporation counsel/DA, agency legal counsel or Guardian ad litem. [ss. 48.981(7)(a)10.,10g., 10j., and 11.]
Tribal court or other adjudicative body authorized by a tribe/band for certain proceedings, an attorney representing interests of an Indian tribe/band, and an attorney representing the child or unborn child in such proceedings. [ss. 48.981(7)(a)10m.,10r. and 11m.]

TO COUNTY AND STATE AGENCIES, TRIBAL AGENCIES , AND OTHER PROFESSIONALS
Appropriate staff of an agency or tribal social services department. [s. 48.981(7)(a)2.]
DOC, DHS, county department, or other person under contract who has custody/supervision over a child in a community placement who is subject of a report/record. [s. 48.981(7)(a)8m.]
DCF has access to any report or record maintained by an agency under s. 48.981. [s. 48.981(7)(d)]
Person authorized to provide intake/dispositional services under s. 48.067, 48.069, 48.10, 938.067, 938.069 or 938.10. [ss. 48.981(7)(a)2m. and 2r.]
May enter reports and records into statewide automated child welfare information system established under s. 48.47 (7g). [s. 48.981(7)(dm)]
Professional under s. 51.42 or s. 51.437 working with the child or expectant mother. [s. 48.981(7)(a)5.]
Health care provider under s. 146.81(1)(a) to (p) for diagnosis/treatment. [s. 48.981(7)(a)3.]
Coroner, medical examiner, pathologist or other physician to investigate cause of death of child when unexplained/unusual. [s. 48.981(7)(a)15m]
DCF, county department or licensed child welfare agency ordered to screen/ investigate a stepparent. [s. 48.981 (7)(a)13.]
Federal or state agency of any state or local governmental unit when needed to carry out responsibilities relating to protection of a child/unborn child from abuse/neglect. [s. 48.981(7)(a)17.]
Department of Corrections, Department of Health Services, Department of Justice or District attorney for use in evaluations/proceedings under ch. 980. Recipient may further disclose for purposes under ch. 980. [s. 48.981 (7)(a)8s.]
TO AUTHORIZED ADVOCATES AND TEAMS
Volunteer court appointed special advocate to perform advocacy services. [s. 48.981(7)(a)11r.]
Person employed by child advocacy center recognized by county board, county department, or agency under contract in county of 500,000 or more, in order to perform its recognized services. [s. 48.981(7)(a)6m.]
Multidisciplinary child abuse/neglect or unborn child abuse team or licensed child welfare agency. [s. 48.981(7)(a)6].
Child fatality review team, or agency under contract in a county of 500,000 or more. [s. 48.981(7)(a)15]
Citizen review panel established by DCF or county department. [s. 48.981(7)(a)15g.]
MISCELLANEOUS
Researcher with proper authorization from Department of Children and Families, without disclosing identify or subjects or reporters. [s. 48.981(7)(a)12].
Subunit of DCF responsible for statewide oversight of child abuse and neglect programs when a child has died or been placed in serious/critical condition. [s. 48.981(7)(cr)]
Agency investigating a person for licensing the person to operate foster home or for placing child in an adoptive home. [s. 48.981(7)(a)4p.]
Agency with information may enter reports and records into statewide automated child welfare information system established under s. 48.47 (7g). [s. 48.981(7)(dm)]

Section 48.981 permits either parent to authorize disclosure for use in child custody/adoption proceeding without disclosing identify of reporter. [s.48.981(7)(b)] Subject of report may authorize in writing disclosure to subject's attorney without disclosing identify of reporter. [s. 48.981(7)(c)]

**CHAPTER 3
RECORDS MAINTAINED UNDER CHILDREN’S CODE (CH. 48)
AND JUVENILE JUSTICE CODE (CH. 938)**

CHAPTER 48

DISCUSSION

Chapter 48, Children’s Code, of the Wisconsin Statutes, has the primary purposes of protecting children and unborn children and preserving the unity of the family whenever appropriate. Courts and agencies responsible for the welfare of children recognize that a child may have to be placed outside of the family to protect the child from harm. Ch. 48 includes two subsections that deal with records: s. 48.396 and s. 48.78, with the former section covering law enforcement and court records, and the latter dealing with agency records.

The confidentiality provision for s. 48.396 law enforcement records states that the records may not be open to inspection or their contents disclosed, except as permitted under an exception under Ch. 48, or pursuant to a court order. [s. 48.396(1)] Court records relating to ch. 48 proceedings are also confidential, except as provided under ch. 48 and ch. 938, or per court order. [s. 48.396 (2)(a)]

The confidentiality provision for s. 48.78 records states that no agency may make available for inspection or disclose any record kept or information received about an individual who is or was in the care and custody, except as permitted under certain provisions under ch. 48 and ch. 938, or pursuant to a court order. An exception includes records under s. 48.981 (7) regarding child abuse/neglect. [s. 48.78(2)(a)] A recipient of information must maintain the confidentiality of the information.

DEFINITIONS

- “Agency records” under s. 48.78(1) are confidential records kept or any information received by the Department of Children and Families, county department, a licensed child welfare agency, or a licensed day care center about an individual in its care or legal custody.
- “Child abuse/neglect records” under s. 48.981(7) include reports made, notices provided and records maintained by an agency and other persons, officials, and institutions.
- “Court records” under s. 48.396(2) include confidential records maintained by courts with jurisdiction under Chapter 48 or 938.
- “Law enforcement officers’ records” under s. 48.396(1) are confidential records of children that must be kept separate from records of adults, and records of adult expectant mothers of unborn children that must be kept separate from records of other adults.

CHAPTER 938

DISCUSSION

Chapter 938, Juvenile Justice Code, has as its purpose the maintenance of a juvenile justice system that deals with the problem of juvenile delinquency, protects the public, equips delinquents with competencies to live responsibly and holds delinquents accountable for their actions. Ch. 938 includes two subsections that deal with records: s. 938.396 and s. 938.78, with the former section covering law enforcement and court records, and the latter dealing with agency records.

The confidentiality provision for s. 938.396 law enforcement and court records states that the records may not be open to inspection or their contents disclosed, except as permitted under Ch. 938, or pursuant to a court order. [s. 938.396(1)(a) and (2)]

The confidentiality provision for s. 938.78 records states that no agency may make available for inspection or disclose the contents of any record, except as permitted under certain provisions under ch. 48 and ch. 938, or pursuant to a court order. [s.938.78(2)(a)]

DEFINITIONS

- “Agency records” under s. 938.78 include records kept or information received by Department of Corrections (DOC), a county department or a licensed child welfare agency about an individual in its care/legal custody.
- “Court records” under s. 938.396(2) include confidential records maintained by courts with jurisdiction under Chapter 48 or 938, and municipal courts with jurisdiction under s. 938.17(2).
- “Department of Corrections records” under s. 938.54 include information received from the court, date of admission, all available data on the person/family, history of the juvenile, results of tests/examinations and history of all placements while a juvenile is under DOC supervision.
- “Law enforcement records” under s. 938.396(1) are confidential records of juveniles maintained by a law enforcement agency that must be kept separate from records of adults.

DERMINATION BY A COURT FOR DISCOVERY REQUEST

The juvenile court judge must make a threshold relevancy determination by reviewing the requested records in private when the court receives a discovery request under s. 48.293(2), an inspection request of juvenile records under ss. 48.396 (2) (a) and 938.396 (2) (a), or an inspection request of agency records under ss. 48.78 (2) (a) and 938.78(2) (a). The test for permissible discovery is whether it appears reasonable that the information sought will lead to the discovery of admissible evidence.

TABLE: PERMITTED DISCLOSURES UNDER CHAPTER 48 AND 938

The first part of the table below describes legal disclosures of information that can be made without a signed authorization from law enforcement and court records maintained under s. 48.396 and s. 938.396. The second part of the table describes disclosures of agency records under s. 48.78 and s. 938.78 that can be made without a signed authorization. Under almost all circumstances, an entity receiving confidential information under a statutory exception must keep the information confidential and not re-disclose.

LAW ENFORCEMENT RECORDS	
S. 48.396	S. 938.396
To any entity per court order. [s. 48.396(1)]	s. 938.396 (1)(a) equivalent to s. 48.396(1)
To news media to report without revealing identity. [s.48.396(1)]	s. 938.396 (1)(b)1. equivalent to s. 48.396(1)
Between police and child’s school of attendance. [s. 48.396(1)]	s. 938.396 (1)(b)2. and 2m. equivalent to s. 48.396(1)
Between other law enforcement agencies. [s. 48.396(1)]	s. 938.396 (1)(b)3. equivalent to s. 48.396(1)
Between social welfare agencies. [s. 48.396(1)]	s. 938.396(1)(b)4.equivalent to s. 48.396(1)
Pertaining to a child aged 10 or over who is subject of criminal proceedings. [s. 48.396 (1)]	s. 938.396(1)(b)5.equivalent to s. 48.396(1)
Per request of DOC, DHS, DOJ or District Attorney for an evaluation or proceeding under ch. 980. [s. 48.936(6).]	Per request of DOC, DHS, DOJ and District Attorney for proceedings under ch. 980. [s. 938.396(10)]

LAW ENFORCEMENT RECORDS-continued	
S. 48.396	S. 938.396
No equivalent provision	Law enforcement agency may on its own, or by request of public school district administrator, or private school administrator, provide information regarding alcohol, controlled substances, weapons, or acts for which a juvenile was taken into custody, or acts for which juvenile was adjudged delinquent. [s. 938.396(1)(c)3.]
No equivalent provision	Law enforcement may enter into interagency agreement with a school board, private school, other law enforcement agency and a social welfare agency for routine disclosures. [s. 938.396(1)(c)4.]
No equivalent provision	Per request of a victim, may disclose limited information relating to injury/loss. [s. 938.396(1)(c)5].
No equivalent provision	Per request of victim-witness coordinator for enforcing victim rights and providing services. [s. 938.396(1)(c)6].
No equivalent provision	Per request of victim's insurer if juvenile fails to pay restitution within one year after entry of order. [s. 938.396(1)(c)7.]
No equivalent provision	Per request of fire investigator to pursue investigation under s. 165.55. [s. 938.396(1)(c)8.]
No equivalent provision	By petition to a court by law enforcement agency, or fire investigator, for an order to review pupil records under s. 118.125(1)(d) for purpose of an investigation [s. 938.396(1)(d)]
<u>Denial of access</u> : Person denied access to law enforcement records under s. 48.396 (1), (1b) or (1d) may petition court to order disclosure. [s. 48.396(5)]	<u>Denial of access</u> : Person denied access to law enforcement records under s. 938.396(1)(a) or (10), (may petition court to order disclosure. [s. 938.396 (1j)(a)]
COURT RECORDS	
S. 48.396	S. 938.396
Per Court order. [s. 48.396(2)(a)]	s. 938.396 (2) equivalent to s. 48.396(2)(a)
Request of DCF or federal agency to monitor and evaluate activities as required by law. [s. 48.396 (2)(b)1.]	s. 938.396 (2g)(b) equivalent to s. 48.396 (2)(b)1.
To researcher when requirements are met. [s. 48.396(2)(b)2.]	No equivalent provision
Per request of court handling actions affecting the family, attorney enforcing support obligations and parties in a paternity action. [s. 48.396 (2)(dm)]	s. 938.396 (2g)(g) equivalent to s. 48.396 (2)(dm)
Per request of DOC, or other person, to prepare a pre-sentence report under s. 972.15. [s. 48.396 (2)(dr)]	s. 938.396 (2g)(dr) equivalent to s. 48.396 (2)(dr)
Per request of court of criminal jurisdiction or district attorney for preparing for proceeding in that court. [s. 48.396(2)e]	No equivalent provision

COURT RECORDS-continued	
S. 48.396	S. 938.396
Per request of a court with jurisdiction under ch. 48 or ch. 938, or request of a municipal court exercising jurisdiction under s. 938.17, or district attorney or corporation counsel or city attorney, or request by an attorney or guardian ad litem representing a party in a proceeding. [s. 48.396 (2)(g)]	s. 938.396 (2g)(gm) equivalent to s. 48.396 (2)(g) .
Per request of a court with jurisdiction over an action affecting a family, or request of attorney/guardian ad litem in an action for purposes of determining custody of a child. [s. 48.396 (2)(h)]	s. 938.396 (2g)(h) equivalent to s. 48.396 (2)(h)
Court shall make available information in its electronic record to other courts, certain attorneys/guardians ad litem and DCF. [s. 48.396(3)(b)1.] Does not authorize disclosure of physical, mental health, other sensitive information protected by s. 146.81(4), s. 51.30(1)(b), s. 48.135, s. 48.295, s. 48.33 and s. 48.398 without a court order or signed authorization, or as otherwise permitted by law. [s. 48.396.(3)(b)2.]	s. 938.396(2m)(b)1.and 2. equivalent to s. 48.396(3)(b)1.and 2.
DCF may transfer to the court information in statewide automated child welfare information system under s. 48.47(7g) [s. 48.396(3)(bm)]	No equivalent provision
To DOC, DHS, DOJ and district attorney, court records kept under ch. 48 and 938 for use in ch. 980 proceedings. [s. 48.396(6)]	To DOC, DHS, DOJ and district attorney for proceedings under ch. 980. [s. 938.396(10)]
No equivalent provision	Per request of law enforcement to review court records for investigating alleged criminal activity. [s. 938.396 (2g)(c)]
No equivalent provision	Per request of criminal court or DA for preparing/conducting a proceeding. [s. 938.396(2g)(d).]
No equivalent provision	Per request of defense counsel to prepare client's defense for delinquency or criminal proceedings. [s. 938.396 (2g)(dm).]
No equivalent provision	To DOC or other person preparing Presentence Investigation Report under s. 972.15. [s. 938.396 (2g)(dr)]
No equivalent provision	Per request of department to obtain information regarding a juvenile required to register under s. 301.45. [s. 938.396(2g)(em)]
No equivalent provision	Per request of victim-witness coordinator for enforcing victim rights and providing services. [s. 938.396(2g)(f).]
No equivalent provision	Per request of victim's insurer when juvenile ordered to pay restitution. [s. 938.396(2g)(fm)]
No equivalent provision	Per request of court, attorney responsible for support enforcement, party to a paternity action, party's attorney or guardian ad litem for use in a paternity action. [s. 938.396(2g)(g)]
No equivalent provision	Per request of a court, municipal court, district attorney, corporation counsel, attorney or guardian ad litem for certain court proceeding. [s. 938.396(2g)(gm)]

COURT RECORDS-continued	
S. 48.396	S. 938.396
No equivalent provision	Per request of court, attorney for a party or guardian ad litem in action affecting the family for considering custody of juvenile. [s. 938.396(2g)(h)]
No equivalent provision	Per request of court exercising probate jurisdiction, attorney general, personal representative or other party, performing services for the estate of a decedent to review record for juvenile adjudged delinquent for killing a person. [s. 938.396(2g)(i)]
No equivalent provision	Per request of fire investigator to pursue investigation under s. 165.55 when juvenile adjudicated delinquent or in need of protection/services for certain violations. [s. 938.396(2g)(j)]
No equivalent provision	Per request of any person, limited court records regarding a serious juvenile offender. No limits on re-disclosure. [s. 938.396(2g)(k)]
No equivalent provision	Per request of any person, limited court records regarding a juvenile adjudicated for offense that would be a felony if committed by an adult who also has a prior adjudication. s. 938.396(2g)(L)]
No equivalent provision	Court clerk gives notice to juvenile's public district school board or private school, of filing of a petition alleging that juvenile committed an act that would be a felony including the nature of the act, and subsequent notice if juvenile not found delinquent. [s. 938.396 (2g)(m)1.]
No equivalent provision	Court clerk gives notice within 5 days to juvenile's public district school board or private school, of the fact that a juvenile has been adjudged delinquent, including nature of the offense and disposition [s. 938.396 (2g)(m)2.]
No equivalent provision	Court clerk give notice within 5 days to juvenile's public district school board or private school, when juvenile adjudged delinquent is ordered to attend school as condition of dispositional order. [s. 938.396(2g)(m)3.]
No equivalent provision	Court clerk gives notice within 5 days to juvenile's public district school board or private school, of the fact that a juvenile has been adjudged delinquent for committing an act at the request of or for the benefit of a criminal gang that would have been a felony if committed by an adult including nature of the offense and disposition [s. 938.396(2g)(m)4.]
No equivalent provision	Court clerk gives notice within 5 days to a new public district school board or private school attended by a juvenile under subds. 2 or 4. [s. 938.396 (2g)(m)5.]
No equivalent provision	Court clerk gives notice to DOJ when juvenile adjudged delinquent for an act that would be a felony if committed by an adult; limited to fact of adjudication for firearms restriction record search or background check. [s. 938.396(2g)(n)]
No equivalent provision	Court clerk gives notice to DOJ of delinquency adjudication for serious crime for disclosure for criminal history record search. [s. 938.396(2g)(o)]

AGENCY RECORDS	
S. 48.78	S. 938.78
Exchange of information permitted between an agency and another social welfare agency, health care provider under s. 146.81(a) to (p), a enforcement agency and public/private/tribal school regarding an individual in the care or legal custody of the agency, but each recipient must maintain confidentiality. [s. 48.78(2)(b)]	Exchange of information permitted with an agency, social welfare agency, law enforcement agency, victim-witness coordinator, fire investigator, public school district or private/tribal school regarding an individual in the care or legal custody of the agency, but each recipient must maintain confidentiality. [s. 938.78 (2)(b)1.]
No equivalent provision	Interagency agreement may be entered with agency, school board, private school, law enforcement agency and another social welfare agency for routine disclosure of information. [s. 938.78(2)(b)1m.]
No equivalent provision	Upon petition by an agency, court may order disclosure of pupil records for the purpose of providing treatment/care of individual in car/custody of the agency. [s. 938.78 (2)(b)2.]
Use of media to recruit adoptive parents by DCF or county department. [s. 48.78(2)c]	No equivalent provision.
To DOC about a person formerly in custody/supervision when person is the subject of a presentence investigation, under a prison sentence, subject to an order under ch. 48 or ch. 938 and placed in a state prison, or on probation, parole or extended supervision. [s. 48.78(2)(d)]	s. 938.78 (2)(d) equivalent to s. 48.78 (2)(d)
Per request by DOC, DHS, DOJ or District attorney for use in evaluation/proceeding under ch. 980. [s. 48.78 (2)(e)]	s. 978.38 (2)(e) equivalent to s. 48.78 (2)(e)
Per request of Department of Safety and Professional Services or examining/credentialing board, for use in investigation or other proceeding. [s. 48.78 (2)(g)]	s. 938.78(2)(g) equivalent to s. 48.78 (2)(g)
Content of records and information received by agency may be entered into statewide automated child welfare information system under s. 48.47 (7g). [s. 48.78 (2)(h)].	s. 938.78 (2)(h) equivalent to s. 48.78 (2)(h)
To a relative of juvenile placed outside of home only to help establish relationship/placement. [s. 48.78(2)(i)]	s. 938.78(2)(i) equivalent to s. 48.78(2)(i).
For investigating a home for a foster home license or adoptive placement. [s. 48.78(2)(j)]	No equivalent provision.
To DOR limited information for specified purpose. [s. 48.78(2)(k)]	No equivalent provision.
No equivalent provision	To the public limited information about a certain juveniles upon escape from identified out of home placements. [s. 938.78 (3)]

CHAPTER 4 HEALTH INFORMATION

CHAPTER SUMMARY

The chapter consists of two sections:

- Section one describes Wisconsin and federal privacy laws that govern health information, including important terms used in those laws:
 - Miscellaneous Health Care Provisions
 - Wisconsin Mental Health, Developmental Disability and Alcohol and Other Drug Abuse Act
 - Communicable Diseases
 - Pupil Records with limited health information
 - Confidentiality of Alcohol and Drug Abuse Patient Records
 - Health Insurance Portability and Accountability Act (HIPAA)
- Section 2 explains the purpose of and how to use the Disclosures of Protected Health Information table, an Attachment to this Guide, regarding permitted disclosures of health information without a signed authorization by the subject of the health information or person authorized to act on behalf of the subject. It presents by topic the statutory exceptions to the requirement of written authorization under applicable Wisconsin statutes/administrative rules and federal regulations. The Attachment can be printed as a stand-alone document in landscape format.

CONFIDENTIALITY LAWS

INTRODUCTION

Some federal and Wisconsin laws govern only specific types of health information, while other laws cover all health-related information. The stringency of privacy protections vary depending on the type of health information. Each confidentiality law contains exceptions to the requirement that the subject of the information, or someone authorized to act on his/her behalf, consent in writing to the disclosure of confidential information to another person. The large number of exceptions and inconsistencies among the laws makes it quite challenging to determine who can disclose what information, to whom, and under what circumstances without a written authorization.

HIPAA regulations, which cover protected health information, generally defer to the state law that provides the greatest privacy protection to the subject of the information. For many years, Wisconsin laws often provided greater privacy protections than HIPAA regulations. In 2013, the legislature enacted s. 146.816, Uses and disclosures of protected health information, which states that s. 146.82 and s. 51.30(4) do not apply to a use and disclosure, or request for disclosure, by a covered entity or business associate for treatment, payment or health care operations. Consultation with legal counsel is recommended in order to determine the impact of s. 146.816.

The information regarding the applicable laws, definitions of essential terms, and Table 4 cannot answer all questions regarding the communication of health information. However, this chapter attempts to offer initial guidance to holders and seekers of various types of health information.

WISCONSIN LAWS APPLICABLE TO HEALTH INFORMATION

Miscellaneous Health Care Provisions: Chapter 146, Wisconsin Statutes

Discussion

Sections 146.81 through 146.84 govern the confidentiality of health care records prepared by or under the supervision of a health care provider. Section 146.81 (1) defines health care providers under Wisconsin law. S. 146.81(4) describes records that are and are not governed by these statutes. Section 146.82 includes more than 20 exceptions to the requirement that the subject sign a written authorization, s. 146.83 describes procedures for accessing records, and s. 146.84 explains the penalties for violating the law.

Definitions

- “Health care provider” means any of the professionals and other entities listed under s. 146.81.
- “Informed consent” means written consent to the disclosure of information from a patient health care record by the subject to an individual, agency or organization by a document that meets specified standards. [s. 146.81(2)]
- “Patient health care records” means all records related to the health of a patient prepared by or under the supervision of a health care provider, and all records made by an ambulance service provider, as defined in s. 256.01 (3), an emergency medical technician, as defined in s. 256.01 (5), or a first responder, as defined in s. 256.01 (9), in administering emergency care procedures to and handling and transporting sick, disable, or injured individuals. ‘Patient health care records’ includes billing statements and invoices for treatment or services provided by a health care provider and includes health summary forms prepared under s. 302.388 (2). ‘Patient health care records’ does not include not those records subject to s. 51.30, reports collected under s. 69.186, records of tests administered under ss. 252.15 (5g) or (5j), 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), records related to sales of pseudoephedrine products, as defined in s. 961.02 (20c), that are maintained by pharmacies under s. 961.235, fetal monitor tracings, as defined under s. 146.817 (1), or a pupil’s physical health records maintained by a school under s. 118.125. [s. 146.81(4)]
- “Person authorized by the patient” means the parent, guardian, or legal custodian of a minor patient, as defined in s. 48.02 (8) and (11), the person vested with supervision of the child under s. 938.34 (4d), (4h), (4m), or (4n), the guardian of a patient adjudicated incompetent in this state, the personal representative, spouse, or domestic partner under ch. 770 of a deceased patient, any person authorized in writing by the patient or a health care agent designated by the patient as a principal under ch. 155 if the patient has been found to be incapacitated under s. 155.05 (2), except as limited by the power of attorney for health care instrument. If no spouse or domestic partner survives a deceased patient, ‘person authorized by the patient’ also means an adult member of the deceased patient’s immediate family, as defined in s. 632.985 (1)(d). A court may appoint a temporary guardian for a patient believed incompetent to consent to the release of records under this section as the person authorized by the patient to decide upon the release of records, if no guardian has been appointed for the patient.” [s. 146.81 (5)]

As of 2013, s. 146.83(1b) states that an attorney appointed by the state public defender is a “person authorized by the patient” when the attorney has obtained a signed authorization from the patient.

- “Records” under s. 146.815, 146.82, s. 146.83 (4), and s. 146.835 include those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics. [s. 146.836]

Wisconsin Mental Health, Developmental Disability and Alcohol and Other Drug Abuse Act, Chapter 51, Wisconsin Statutes

Discussion

The statutory provisions under s. 51.30, Records, control access to and disclosure of registration and treatment information related to mental health, developmental disabilities, and alcohol and drug abuse. Section 51.30(1) includes important definitions, s. 51.30(3) covers court records, s. 51.30(4) describes the exceptions to the requirement of a written authorization, and s. 51.30(9) identifies penalties for violating the privacy provisions. Administrative rules under ch. DFS 92 provide additional guidance regarding access to s. 51.30 records.

Definitions

- “Health care provider” has the meaning given in s. 146.81(a) to (p). [s. 51.30(1)(ag)]
- “Informed consent. An informed consent for disclosure of information from court or treatment records to an individual, agency, or organization must be in writing and must contain the following: the name of the individual, agency, or organization to which the disclosure is to be made; the name of the subject individual whose treatment record is being disclosed; the purpose or need for the disclosure; the specific type of information to be disclosed; the time period during which the consent is effective; the date on which the consent is signed; and the signature of the individual or person legally authorized to give consent for the individual.” [s. 51.30(2)]
- “Records” include those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics. [s. 51.30(4)(g)]
- “Treatment records” include the registration and all other records of individuals that were created in the course of providing services to individuals for mental illness, developmental disabilities, alcoholism, or drug dependence and that are maintained by the department; by county departments under s. 51.42 and s. 51.437 and their staff; by treatment facilities; or by psychologists licensed under s. 455.04 (1) or licensed mental health professionals who are not affiliated with a county department or treatment facility. Treatment records do not include notes or records maintained for personal use by an individual providing treatment services for the department, a county department under s. 51.42 or 51.437, or a treatment facility if the notes or records are not available to others.” [s. 51.30(1)(b) and s. DHS 92.02(16)]

Communicable Diseases: Chapter 252, Wisconsin Statutes and Chapter DHS 145, Wisconsin Administrative Code

Discussion

Chapter 252 deals with a variety of issues related to communicable diseases including the statewide immunization program, regulation of body piercing, duties of local health officers, and quarantine procedures. Section 252.21 (1) requires teachers, nurses and principals to report communicable diseases or suspected communicable diseases to the local health authority. Section 252.15 governs the confidentiality of HIV test results, including list of exceptions to the authorization requirement as described in the Attachment to this Guide.

Administrative rules at s. DHS 145.04, Reports of Communicable Disease, requires health care providers licensed under Chapters 441 and 448 to report cases of communicable diseases or suspected cases of communicable disease to the state epidemiologist. Section DHS 145.15 requires administrators of health care facilities, state correctional facilities and jails to report cases of sexually transmitted diseases to the local health officer. Section DHS 145.04 (d) states that all information provided under this subsection shall remain confidential, except as may be needed for the purposes of investigation, control and prevention of communicable diseases.

Definitions

- “Communicable disease” means a disease or condition listed in Appendix A of Chapter DHS 145. s. DHS 145.03 (4)
- “Immunization Program” means the statewide immunization program to eliminate mumps, measles, rubella (German measles), diphtheria, pertussis (whooping cough), poliomyelitis and other diseases that the department specifies by rule, and to protect against tetanus. These records shall be available to the individual or, if the individual is a minor, to his or her parent, guardian or legal custodian upon request. [s. 252.04]
- “Local health officer” means the person designates as the local health officer for the place of residence of a case or suspected case of a communicable disease. [s. DHS 145.03 (17)]
- “State epidemiologist” means the individual appointed by the state health officer under s. 250.02 (1) as the state epidemiologist for acute and communicable diseases.” [s. 252.01 (6)]

S. 118.125, Pupil Records, Wisconsin Statutes

Pupil/education records maintained by Wisconsin school districts include two types of health information:

- Patient health care records, health care information other than information under s. 118.125 (1)(cm), protected under ss. 146.81-146.84, s. 51.30 or s. 252.15, or 42 CFR Part 2 and 45 CFR Part 164.
- Pupil physical health records as defined under s. 118.125 (1)(cm) governed by the Family Education Rights and Privacy Act (FERPA).

FEDERAL REGULATIONS

Confidentiality of Alcohol and Drug Abuse Patient Records: Volume 42, Public Health, Code of Federal Regulations, Part 2

Discussion

The federal regulations governing information related to the identity, diagnosis, prognosis and treatment for alcohol and drug abuse provide stringent privacy protections. The regulations apply to any AODA program receiving federal assistance which is a broad definition that does not require that the federal monies received actually be used for an AODA program. [42 C.F.R. s. 2.12]

The regulations require unconditional compliance by programs to which they apply. The only exceptions to the requirement of written authorization are for medical emergencies, approved research activities, and certain and audit and evaluation activities.

The disclosure restrictions do NOT apply to the reporting of child abuse and neglect. Therefore, per Wisconsin law custodians of AODA records may report suspected child abuse and neglect under 42 C.F.R s. 2.12. However note the following:

“restrictions continue to apply to the original alcohol or drug abuse patient records maintained by the program including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect.”

Definitions

- “Disclosure” means communication of patient identifying information, the affirmative verification of another person’s communication of patient identifying information, or the communication of any information from the record of a patient who has been identified. Does not apply to communication within a program or between a program and an entity having direct administrative control over that program. [42 CFR s. 2.11 and s. 2.12(c)(3)]

- “Patient identifying information” means the name, address, Social Security Number fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed. [42 CFR s. 2.11]
- “Records” mean any information, whether recorded or not, relating to a patient received or acquired by a federally assisted alcohol or drug program. [42 CFR s. 2.11]
- “Written consent” means the document that meets the requirements of the federal regulations and authorizes the disclosure of patient identifying information. [42 CFR s. 2.31]

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

Discussion

The HIPAA regulations apply to health care providers who perform one of eight identified electronic transactions. A health care provider who performs all business activities paper-based, rather than electronically, may be exempt from HIPAA. All health care providers also must adhere to Wisconsin privacy laws and other applicable federal laws. The HIPAA definition of a health care provider below is broader than under s. 146.81, so HIPAA may apply to some records that Wisconsin law does not.

The HIPAA Collaborative of Wisconsin has produced numerous documents for use by healthcare providers/organizations and others to facilitate implementation of HIPAA in Wisconsin. To view and print out the documents: go to www.hipaacow.org/home; click in left column on Documents/Forms; Privacy Documents; click “agree” and then review the list of “deliverables” posted.

HIPAA regulations require all covered entities to meet the minimum necessary standard when requesting, using or disclosing health information: i.e., only the information that is needed for the immediate use or disclosure should be made available by the health care provider or other covered entity, unless an exception to the minimum necessary standard under 45 C.F.R. s. 164.502 (b)(2) applies.

Definitions

- “Authorization” means the valid written document that meets the legal standards specified in the federal regulations and permits a covered entity to use or disclose protected health information. [45 C.F.R. s. 164.508(c)]
- “Covered entity” means a health plan, health care clearinghouse, or health care provider that transmits any health information in electronic form in connection with a transaction covered by this subchapter. [45 CFR s. 160.103]
- “Disclosure” means the release, transfer, provision of, access to, or divulging in any manner of information outside of the entity holding the information. [45 CFR s. 160.103]
- “Health care provider” means a provider of service, a provider of medical or health services, and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business. [45 CFR s. 160.103]
- “Health information” means 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. [45 CFR s. 160.103]
- “Individually Identifiable Health Information” is 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, 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; 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. [45 CFR s. 160.103]

- “Protected health information” means individually identifiable health information that is transmitted by or maintained in electronic media, or any other form or medium. It excludes individually identifiable health information in education records covered by FERPA, 34 CFR Part 99, and employment records held by a covered entity in its role as employer. [45 CFR s. 160.103]
- “Treatment” means the provision, coordination, or management of health care and related services by one or more health care providers...” [45 CFR s. 164.502]
- “Use” means the sharing, employment, application, utilization, examination, or analysis of individually identifiable information within an entity that maintains such information. [45 CFR s. 160.103]

EXPLANATION OF TABLE IN ATTACHMENT: DISCLOSURE OF HEALTH INFORMATION WITHOUT AUTHORIZATION

The table for this section is included in the Guide as an attachment because of its length and landscape format. It identifies “for what purpose” and “to whom” a health care provider may legally disclose health care information without obtaining a written authorization. It includes the exceptions in effect as of October 2014 under s. 146.82, s. 51.30 (4) and s. 252.15, Wisconsin Statutes, s. DHS 92.04, Wisconsin Administrative Code, and 42 C.F.R. Part 2 and 45 C.F.R. Parts 164.

The table answers important questions for custodians and requesters:

- Custodians of Confidential Information – For what purpose and to whom may I disclose confidential health information without a written authorization?
- Requesters of Confidential Information - Is there a legal exception that permits me to request/obtain health information without an authorization?

The table includes all the exceptions, under laws governing health information, to the requirement of written authorization, not just those related to CHIPS cases. Professionals working in the fields of human services, child welfare, law enforcement and health care deal with confidential health records in performing their job duties. The table offers guidance to professionals who possess confidential records and those who seek that information.

Rather than presenting the statutory exceptions under each law in the order in which they appear in the laws, the table identifies legal exceptions by the type or category of disclosure in the first column and then provides the information for each law in subsequent columns.

First Column - The type of or category of the disclosure appears in the far left column:

- | | |
|--------------------------------------|--|
| 1. Reporting abuse/neglect | 2. Treatment |
| 3. Payment for treatment | 4. Health care operations |
| 5. Persons involved with patient | 6. Law enforcement/Department of Corrections |
| 7. Legal proceedings; general | 8. Legal proceedings; non-criminal |
| 9. Legal proceedings; criminal | 10. Public health and safety activities |
| 11. Upon death | 12. Research |
| 13. Advocacy organization | 14. Organ and tissue donation |
| 15. Specialized government functions | 16. De-identified information |
| 17. Re-Disclosure | 18. Miscellaneous |

Second Through Sixth Columns - Each column deals with a specific law: s. 146.82, s. 51.30 and s. DHS 92.04, ch. 252, 42 CRF Part 2, and 45 CFR Part 164. The rows under each column describe a specific statutory exception to the requirement of a written authorization.

CHAPTER 5

PUPIL (EDUCATION) RECORDS

DISCUSSION

The federal Family Education Rights and Privacy Act (FERPA) protects the confidentiality of education records as described under 34 C.F.R. Part 99. The regulations define two categories of records: directory information and education records. A “record” is any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm and microfiche under 34 C.F.R. s. 99.3.

Section 118.125, Pupil Records, Wis. Stats., includes the equivalent confidentiality provisions contained in 34 C.F.R. Part 99. The statute identifies several categories of educational records maintained by Wisconsin school districts.

Pupil records maintained by a public school are confidential, except as provided under pars. (a) to (p) and sub. (2m). The exceptions are shown in the table in this chapter. [s. 118.125(2)]

Parents and pupils have the right to access and authorize disclosure of records, as described in Ch. 7 of this Guide.

DEFINITIONS

- “Behavioral records” include psychological tests, personality evaluations, records of conversations, any written statement relating specifically to an individual pupil’s behavior, tests relating to specifically to achievement or measurement of ability, physical health records other than immunization and lead screening records, law enforcement records obtained under s. 48.396(1) or s. 938.396(1)(b)2. or (c)3., and other pupil records that are not progress records. [s. 118.125(1)(a)]
- “Directory data” includes name, address, telephone, date/place of birth, fields of study, participation in activities/sports, weight and height of members of athletic teams, dates of attendance, photographs, degrees, or awards, and name of school most recently previously attended. [s. 118.125(1)(b)]
- “Law enforcement agency information” means records maintained by a school district or private school administrator received from a law enforcement agency under s. 48.936 (1) or s. 938.396 (1)(b)2. or (c)3. [s. 118.127]
- “Law enforcement unit records” mean records created and maintained by a school law enforcement unit for law enforcement purposes. [s. 118.125(1)(bs); not part of Pupil Records]
- “Patient health care records” means any pupil record that relates to a pupil’s physical health, that is not a pupil physical health record under s. 118.125 (2m), shall be treated as a patient health care record under ss. 146.81 to 146.84, except for a record related to HIV tests results which shall be treated as provided under s. 252.15.
- “Privileged communications” includes information maintained by psychologists, counselors, social workers, nurses, teachers and administrators engaging in AODA program activities. [s. 118.126]
- “Progress records” include grades, courses, attendance, immunization and lead screening records and information about extracurricular activities. [s. 118.125(1)(c)]
- “Pupil physical health records” means those pupil records that include basic health information about a pupil, including the pupil’s immunization records, an emergency medical card, a log of first aid and medicine administered to the pupil, an athletic permit card, a record concerning the pupil’s ability to participate in an education program, any lead screening records under s. 254.162, results of any routine screening test, such as for hearing, vision or scoliosis, and follow-up to such tests, and any other basic health information as determined by the state superintendent. [s. 118.125(1)(cm)]

- “Pupil records” include all records relating to a pupil maintained by a school except notes for personal use by a licensed or certified professional, records available only to those involved in psychological treatment of a pupil, and law enforcement unit records. [s. 118.125(1)(d)]
- “Record” means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.” [s. 118.125(1)(e)]

TABLE: DISCLOSURE OF PUPIL/EDUCATION RECORDS WITHOUT AUTHORIZATION

The primary rows in the table below (shaded with **bold** all CAP centered titles) describe the category/type of pupil information, as defined under Wisconsin law. The bullets appearing under the primary rows list the permitted disclosures by the custodian of the record without obtaining written authorization from the pupil or parent/guardian of the pupil. The relevant statutory citation appears in italics after each entry.

Note that access to records by a pupil and the parent/guardian of a pupil are described above, and are not included in the table below.

PUPIL RECORDS
<ul style="list-style-type: none"> ▪ To the DOC, DHS, DOJ, or a District Attorney for use in an evaluation and any proceeding under ch. 980. [s. 118.125.(2)(ck)] ▪ To employees of school district with legitimate educational interests. [s. 118.125(2)(d)] ▪ To a court upon issuance of a subpoena to review in camera for purpose of impeaching a witness. [s.118.125(2)(f)] ▪ To a public officer any information required under Chapters 115-121. [s. 118.125(2)(g)1.] ▪ To Department of Public Instruction for audit/evaluation of federal or state program. [s. 118.125(2)(g)2.] ▪ To parent/guardian of adult pupil when pupil dependent on parent/guardian and pupil does not object. [s. 118.125(2)(k)] ▪ To comply with a court order under Chapters 48 and 938 <u>after</u> making reasonable attempt to notify parent/guardian s. 118.125(2)(L) ▪ To city attorney, corporation counsel, agency under s. 938.78(1),intake worker, court of record, municipal court, private school, tribal school or another school board pursuant to an interagency agreement, for the purpose of providing services prior to adjudication for any purpose concerning juvenile justice system. [s.118.125(2)(n)1.] ▪ To appropriate authorities when necessary to protect health/safety of any person in an emergency. [s.118.125(2)(p)] ▪ District may use records for suspension/expulsion, and for multidisciplinary team purposes. [s. 118.125(5)] ▪ To law enforcement or DA with certification in writing that record relates to ongoing investigation or pending delinquency petition and will not be further disclosed. [s. 118.25(2)(n)2] ▪ Resident school board may provide disciplinary records to a district to which a pupil has applied for transfer. [s. 118.51(10)]
PROGRESS RECORDS
<ul style="list-style-type: none"> ▪ Upon request of a judge conducting a legal proceeding involving a pupil. [s.118.125(2)(c)1.]
BEHAVIORAL RECORDS
<ul style="list-style-type: none"> ▪ Disclosure permitted as part of pupil record when authorization by adult pupil or parent/guardian of minor pupil identifies the behavioral records. [s. 118.125(2)(e)]

DIRECTORY DATA
<ul style="list-style-type: none"> ▪ To any person with prior proper notice to the parent/guardian, or guardian ad litem of the type of data to be disclosed and parent/guardian, or guardian ad litem, has not objected to disclosure without prior consent. [s. 118.125(2)(j)1] ▪ To technical college district (if parent/guardian has notice and has not objected) names of pupils expected to graduate from high school in current school year. [s. 118.125(2)(j)2.] ▪ To law enforcement agency, DA, city attorney, corporation counsel, county department, court of record, municipal court for purpose of enforcing pupil's school attendance, investigating alleged criminal/delinquent activity, or relating to health and safety with prior notice to parent/guardian, or guardian ad litem, and that person has not objected). [s. 118.125(2)(j)3.] ▪ Disclosure permitted as part of pupil record when disclosure of pupil record is authorized.
HEALTH RECORDS
<ul style="list-style-type: none"> ▪ "Pupil physical health records", as defined under s. 118.125 (1)(cm), are pupil records. Other health records are governed by other laws. ▪ Health information not covered by s. 118.125(1)(cm) is governed by ss. 146.81-84 [s. 118.125(2m)(a)] ▪ HIV results are governed by s. 252.15. [s. 118.125.(2m)(b)]
LAW ENFORCEMENT UNIT RECORDS
<p>Disclosure is controlled by law enforcement agency standards under s. 938.396(1)(a). [s. 118.125(7)]</p>
LAW ENFORCEMENT AGENCY INFORMATION
<ul style="list-style-type: none"> ▪ Limited to information under s. 938.396(1)(c)3.: Investigation of possession of alcohol, controlled substance or dangerous weapon, or regarding pupil taken into custody for alleged violation of law, or adjudication of delinquency. ▪ To designated school district employees with legitimate educational interests, including safety, and to those who provide treatment programs. [s. 118.127(2)]
ATTENDANCE RECORDS
<ul style="list-style-type: none"> ▪ To law enforcement agency with written certification that pupil is being investigated for truancy or a criminal/delinquent act, and agency agrees to not further disclose. [s. 118.125(2)(cg)] ▪ To a fire investigator who certifies that the pupil is under investigation and the attendance record is needed, and agrees to not further disclose. [s. 118.125(2)(ch)] ▪ To a court when order issued under s. 118.163(2m)(b), names of dropouts. [s. 118.125(2)(c)2]. ▪ To county department supervising a child under s. 48.355 or s. 938.355 when attendance is a condition of the dispositional order, notification of absence within 5 days. [s. 118.125(2)(cm)] ▪ To recipient authorized to receive pupil record or directory data. s. 118.125(1)(b) and (d) ▪ To technical college district board, public assistance agency, DHS, DCF or county department names of withdrawn pupils. [s. 118.125(2)(i)]
LEAD SCREENING RECORDS
<ul style="list-style-type: none"> ▪ To a local and state health official under ss. 254.11 to 254.178. [s. 118.125(2)(hm)]
AODA INFORMATION
<p>Confidential Communication: Information received from a pupil about self or other pupil regarding use of alcohol or other drugs.</p> <ul style="list-style-type: none"> ▪ Social worker, teacher, counselor, psychologist or administrator who engages in AODA program activities shall not disclose information unless a serious risk to health, safety or life of any person exists and disclosure will alleviate the danger. [s. 118.126(1)(b)] ▪ Social worker, teacher, counselor, psychologist or administrator who engages in AODA program activities shall not disclose information unless required to report information under s. 48.981. [s. 118.126(1)(c)]

IMMUNIZATION RECORDS

- | |
|---|
| ▪ To DHS for purposes under s. 252.04. [s. 118.125(2)(h)] |
|---|

PUPIL HARM TO OTHERS

If a pupil has seriously physically harmed another person within the past 12 months or exhibits a pattern of seriously physically harming others AND there is reasonable cause to believe a current risk exists, school district may provide to teachers and other school personnel the minimum amount of information necessary to meet the educational needs of the students and protect the safety of staff and students.

CHAPTER 6 SOCIAL SERVICES (CH. 46) AND PUBLIC ASSISTANCE (CH. 49) INFORMATION

CHAPTER 46, SOCIAL SERVICES

PURPOSE AND APPLICABILITY

Statutory provisions in Chapter 46, Social Services, authorize Department of Health Services (DHS) to provide programs and services to children and unborn children in need of protection and services, and to coordinate and integrate social welfare programs in order to provide effective aid to all those in need of services for dependency, mental illness, developmental disabilities and other types of social maladjustment. Examples of programs include services for Alzheimer's Disease, homeless persons, children and families, and elderly persons.

DHS governs several county-level agencies:

- s. 46.21, Institutions and department of human services in populous counties. (Milwaukee County)
- s. 46.215 County department of social services in populous counties. (Milwaukee County)
- s. 46.22, County social services. (Counties with populations of less than 500,000)
- s. 46.23 County department of human services. (Counties with populations of less than 500,000)

EXCHANGE OF INFORMATION WITHOUT AUTHORIZATION

- The language below, or very similar wording, is included in several provisions including s. 46.21 (2m)(c), s. 46.215 (1m), s. 46.22 (1)(dm), and s. 46.23 (3)(e), that govern exchange of confidential information among various agencies such as county departments of social services, county departments of human services, county departments for long term care, tribal agencies, adult-at-risk agencies, care management organizations, and others.

Exchange of information. Notwithstanding ss. 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), and 253.07 (3) (c), a subunit of a county department of human services or tribal agency acting under this subsection may exchange confidential information about a client, without the informed consent of the client, with any other subunit of the same county department of human services or tribal agency, with a resource center, a care management organization, or a family [long-term] care district, with an elder-adult-at-risk agency, an adult-at-risk agency, or any agency to which referral for investigation is made under s. 46.90 (5) (a) 1. or 55.043 (1r) (a) 1g., or with a person providing services to the client under a purchase of services contract with the county department of human services or tribal agency or with a resource center, a care management organization, or a family [long-term] care district, if necessary to enable an employee or service provider to perform his or her duties, or to enable the county department of human services or tribal agency to coordinate the delivery of services to the client. [s. 46.21(2m)(c)]

- Section 146.22(i)(dp), permits entry of information into statewide automated child welfare database.
- The provisions require documentation of requests for and disclosures of information by stating:
An agency that releases information under this paragraph shall document that a request for information was received and what information was provided. [s. 46.21(2m)(c).]
- Note that although the disclosure authority without consent of the subject is broad, it does not supersede 42 C.F.R. Part 2 regulations governing AODA information or the confidentiality provisions of s. 48.981 governing reporting of child abuse and neglect.

REPORTING ABUSE/NEGLECT UNDER S. 48.981

Chapter 46 does not contain a specific exception to the confidentiality requirement for the reporting of child abuse/neglect under s. 48.981, but professionals who perform duties under Chapter 46 (social workers, public assistance workers, etc.) are required reporters under s. 48.981. [See Ch. 2]

CHAPTER 49, PUBLIC ASSISTANCE

PURPOSE AND APPLICABILITY

Chapter 49, Public Assistance, states that DHS administers the use of relief block grants paid to counties, and programs such as Medical Assistance, Wisconsin Works, and Food Stamps.

EXCHANGE OF INFORMATION WITHOUT AUTHORIZATION

- “Except as provided under ss. 49.25 and 49.32 (9), (10), and (10m), no person may use or disclose information concerning applicants and recipients of relief funded by a relief block grant, aid to families with dependent children, Wisconsin Works under ss. 49.141 to 49.161, social services, child and spousal support and establishment of paternity and medical support liability services under s. 49.22, or supplemental payments under s. 49.77 for any purpose not connected with the administration of the programs except that the department of children and families may disclose such information to the department of revenue for the sole purpose of administering state taxes.” [s. 49.83, emphasis added]
- Individuals have access to agency records regarding themselves “except that the agency may withhold information obtained under a promise of confidentiality.” [s. 49.81 (3)]
- Information regarding applicants for and recipients of public assistance benefits shall be confidential except for the following:
 - Auditing/accounting purposes, and as permitted under federal law to locate person/assets of person who fails to comply with federal tax laws. [s. 49.81(2)]
 - Monthly reports by agency administering AFDC and Wisconsin Works that include name and amount paid shall be open to public inspection under specified circumstances. [s. 49.32(9)(b)]
 - County department may provide address of recipient of food stamps, AFDC, and Wisconsin Works to law enforcement under certain circumstances. [s. 49.32 (10)]
 - Disclosure of information permitted regarding applicant/recipient of Medical Assistance (Title 19) benefits only permitted when connected with administration of program. [s. 49.45 (4)]
 - County department, relief agency, or Wisconsin Works agency shall release recipient’s address to a person’s attorney who is a party to an action in which recipient is a party/witness, after following specified procedures. [s. 49.83 (10m)]

REPORTING UNDER S. 48.981

Chapter 49 does not contain a specific exception to the confidentiality requirement for the reporting of child abuse/neglect under s. 48.981, but professionals who perform duties under Chapter 49 (social workers, public assistance workers, etc.) are required reporters under s. 48.981. [See Chapter 4.]

CHAPTER 7 RIGHT TO ACCESS AND AUTHORIZE DISCLOSURE OF CONFIDENTIAL INFORMATION

CHAPTER SUMMARY

Health Information

- Describes the information that must be included in a written authorization for use and disclosure of health information under federal and Wisconsin laws including s. 146.82, 51.30 (4), s. 252.15 and 42 C.F.R. Part 2 and 45 C.F.R. Part 164.
- Provides guidance for reviewing an authorization for validity.
- Table identifies who has the legal authority to access various types of health information and authorize its disclosure to others.

Pupil/Education Information

- Describes the information that must be included in a written authorization for disclosure of pupil information under s. 118.125, Wis. Stats., and 34 C.F.R. Part 99.
- Identifies who has the legal authority to access education information and authorize its disclosure to others.

Records Under Chapters 48 And 938

- Describes who has access and the right to authorize disclosure of information maintained under ch. 48, Children's Code, and ch. 938, Juvenile Justice Code. Records in those chapters include records created and maintained by the agency, and court and law enforcement records for legal proceedings under those chapters.

HEALTH INFORMATION

DISCUSSION

Federal and Wisconsin confidentiality laws require a written authorization signed by the subject of the information, or person authorized to act on behalf of the subject, prior to communicating with or disclosing to others the covered information. Depending on the applicable law or laws, a valid form must include different elements; must meet specific standards. One must identify the type of health information to determine which of the following laws apply: s. 146.82, s. 51.30, s. 252.15, ch. DHS 92, 42 C.F.R. Part 2, and 45 C.F.R. Part 164.

The HIPAA Collaborative of Wisconsin website includes a helpful document that describes the Wisconsin and federal requirements for a valid written authorization. Go to www.hipaacow.org/home; click in left column on Documents/Forms; Privacy Documents; click "agree" and then review the list of "deliverables" posted. The site also includes a template Authorization.

ELEMENTS OF AN AUTHORIZATION

Information Required in an Authorization

1. Health care provider (individual/agency/organization) authorized to make disclosure.
[HIPAA regulations permit a "class/group" of providers to be named as disclosing entities, and s. 146.81 permits type of disclosing entity, but specificity required per s. 51.30 (2) and 42 C.F.R. s. 2.3.]
2. Name of patient whose information is being requested/disclosed
3. Authorized recipient of the information (individual/agency/organization).
[HIPAA permits a "class/group" of recipients to be named, but specificity required per under 146.81(2)(e). s. 51.30 (2) and 42 C.F.R. s. 2.3.]

4. Description of health information to be disclosed.
[Specific/meaningful per 45 C.F.R s. 164.508; how much/what kind per 42 C.F.R. s. 2.14, and type of information under s. 146.81(2)(b).]
5. Purpose of disclosure; e.g., treatment, coordination of care, legal representation, disability application, personal use.
6. Notice of rights of subject of records:
 - a. Right to revoke the authorization.
[Applies to s. 51.30 records per s. DHS 92.031(3)(e); AODA records per 42 C.F.R. s. 2.31(a)(8); HIPAA entities per 45 C.F.R. s. 164.508 (c)(1)(i)]
 - b. Statement of whether receipt of treatment, payment for services, or eligibility for coverage are based on signing.
[Applies to HIPAA entities per 45 C.F.R. s. 164.508(c)(2)(iii)]
 - c. Risk of further disclosure if named recipient not covered by Wis./federal privacy laws.
[Applies to HIPAA entities per 45 C.F.R. s. 164.508(c)(2)(iii)]
 - d. Statement of provider's use of information for marketing/fundraising, if applicable:
[Applies to HIPAA covered entities per 45 C.F.R. s. 164.508(c)(2)(iii)]
 - e. For mental health, developmental disabilities or AODA information under ch. 51, Wis. Stats, a statement that patient has a right to inspect/copy disclosed information per s. DHS 92.03.
7. Effective time period of the authorization; expiration date or event.
[Per 42 C.F.R. Part 2, may not be any longer than necessary.]
8. Signature of patient or other person authorized to sign on behalf of the patient
9. If signed by an authorized representative, state relationship; e.g., guardian, health care agent, parent of minor and certain persons upon the death of a patient.
10. Date signed

SPECIAL CAUTIONS

An authorization must identify the health information authorized for disclosure in specific terms as well as who may disclose and who may receive the information. Under HIPAA regulations, a request for an entire record must include a clear explanation of the need for the entire record.

Authorization Signed by a Guardian: A custodian of information reviewing an authorization signed by a guardian of an individual found incompetent under Chapter 54, Guardianship, should exercise caution. Only a guardian of the person, or a guardian of the person and the estate (not a guardian of the estate only) has access and authority to disclose health information on behalf of the ward. The Order Appointing Guardian, might not specifically grant the guardian of the person access to health records, but s. 54.25 (1)(b)1. states that a guardian's shall include: "Examination of the ward's patient health care records and treatment records and authorization for re-disclosure as appropriate."

Authorization Signed by a Health Care Agent: The authority of a health care agent named in a standard Power of Attorney for Health Care (POAHC) begins upon the determination that the patient has become mentally incapacitated. The record holder should review the POAHC carefully to be sure that it grants the agent authority to access and disclose health record. The principal (patient) may revoke the POAHC before or after activation. The authority of the agent terminates upon revocation by the principal, or upon death of the patient.

Authorization Signed by a Parent: If a family court has denied a parent of a minor the right to physical placement, or a court has terminated a parent's rights, she or he may not exercise the rights of a parent under the privacy laws.

TABLE: RIGHT TO ACCESS AND TO AUTHORIZE DISCLOSURE OF HEALTH INFORMATION

Generally, confidentiality laws provide that an adult subject of the information, or the parent/guardian of a minor (17 years and younger) who is the subject of the information, has the right to access and authorize the use and disclosure of the health information governed by the law. However, some privacy laws permit minors to access and authorize disclosure of information without the consent of a parent/guardian.

The table below includes a column for each privacy law. The rows under each column describe who has the right to access and authorize disclosure of the type of information covered by the law.

ADULT (18 years and older)				
S. 146.82	S. 51.30	S. 252.15	42 C.F.R. Part 2	45 CFR Part 164
Adult patient	Adult patient	Adult patient	Adult patient	Adult patient
HEALTH CARE AGENT, GUARDIAN OF THE PERSON & OTHER AUTHORIZED REPRESENTATIVES				
S. 146.82	S. 51.30	S. 252.15	42 C.F.R. Part 2	45 CFR Part 164
Health care agent under a valid activated Power of Attorney for Health Care or guardian of the person appointed by a court. Certain persons upon death of a patient.	Same as s. 146.82.	Same as s. 146.82. plus for a person who is unable to communicate due to a medical condition, closest living relative or another person with whom the person has a meaningful relationship.	Guardian or other person with legal authority to act under state law.	Person with legal authority to make health care decisions.
PARENT/GUARDIAN OF A MINOR				
S. 146.82	S. 51.30	S. 252.15	42 CFR Part 2	45 CFR Part 164
Parent/guardian of a minor under 18 years of age.	Parent/guardian of a minor under 18 years of age.	Parent/guardian of a minor under 14 years of age.	Parent/guardian of a minor under 12 years of age for all services. Parent of all minors for services requiring parental consent.	Parent/guardian for an unemancipated minor, unless minor can consent to care without consent of parent/guardian.
MINOR (under 18 years of age)				
S. 146.82	S. 51.30	S. 252.15	42 CFR Part 2	45 CFR Part 164
Minors lack authority to access or authorize disclosure.	Minor aged 14 years and older may access and authorize disclosure. NOTE: Consent of both minor and parent/guardian not required.	Minor 14 years of age or older controls access to and disclosure of information; may deny access to parent or guardian.	Minor 12 years and older controls access to and disclosure of information regarding services obtained without parent/guardian consent. Minor 14 years and older and parent must sign for disclosure of information regarding services obtained with parental consent.	Unemancipated minors lack authority unless legally authorized to consent to care without consent of parent/guardian.

AUTHORIZED REPRESENTATIVES OF A DECEASED PERSON				
S. 146.82	S. 51.30	S. 252.15	42 CFR Part 2	45 CFR Part 164
<ul style="list-style-type: none"> • Parent/guardian of a deceased minor. • Spouse, domestic partner or personal representative (appointed to handle estate of deceased person) of a deceased adult. • If no spouse/domestic partner survives, the following next of kin have equal authority: adult children, parents, grandparents and adult siblings, and their spouses. 	<ul style="list-style-type: none"> • Executor, administrator or other court-appointed representative of the estate. • Spouse if no court appointed representative. • Responsible member of patient's family if no spouse or court-appointed representative. 	No provision.	<ul style="list-style-type: none"> • Executor, administrator or other court-appointed representative of the estate. • Spouse if no court appointed representative. • Responsible member of patient's family if no spouse or court-appointed representative. 	<ul style="list-style-type: none"> • Executor, administrator or other person with legal authority to act on behalf of deceased individual, or estate.

PUPIL/EDUCATION INFORMATION

ELEMENTS OF A VALID AUTHORIZATION

FERPA and s. 118.125, Wis. Stats., requires an authorization signed by the subject of education information, or a person authorized to act on behalf of the subject, prior to the disclosure of information, unless the disclosure falls under an exception under 34 C.F.R. Part 99 or s. 118.125 (2).

- | | |
|--|---|
| ➤ Name of minor or adult pupil | ➤ Identify specific records to be disclosed |
| ➤ Purpose of disclosure | ➤ Recipient of records |
| ➤ Right of subject to obtain copy of information to be disclosed | ➤ Signed and dated |

PUPIL AND PARENT/GUARDIAN ACCESS TO RECORDS

- Progress records are available to a pupil or parent/guardian of minor pupil for reviewing and copying. [s. 118.125(2)(a)]
- Adult pupil, or parent/guardian of a minor pupil, may access and copy behavioral records in presence of school official who can explain contents. [s. 118.125(2)(b)]
- Parent/guardian of an adult pupil may access records if the adult pupil is dependent upon the parent/guardian when the adult pupil has not objected. [s. 118.125(2)(k)]
- Parent denied physical placement by a court under s. 767.24(4), does not have the rights of a parent. [s. 118.125(2)(m)]
- Adult pupil or parent/guardian of a minor pupil may access law enforcement unit records contained in pupil records under s. 938.396. [s. 118.125 (7)]
- Staff designated as engaging in AODA program activities shall not disclose AODA information unless pupil aged 12 years or older signs an authorization. [s. 118.126(1)(a)]

- Note that a student must be 18 years of age before she/he gains the right of access and authority to consent to disclosure of his or her records created when a minor. An adult pupil has access and the right to authorize disclosure of his or her records.

INFORMATION UNDER CHAPTERS 48 AND 938

RIGHT TO ACCESS AND AUTHORIZE DISCLOSURE

Access to and authority to consent to disclosure of non-health confidential information under the Children's Code and Juvenile Justice Code are essentially the same. These statutes do not define the required elements of an authorization.

Chapters 48 and 938 permit parents, guardians, legal custodians and minors 14 years and over to access law enforcement, court and agency records for their own review, and to authorize others to obtain those records.

- Law enforcement records under s. 48.396 and s. 938.396: s. 48.396(1b), s. 48.396(1d), s. 938.396(2)(c)1. and s. 938.396(1)(c)2.
- Court records under s. 48.396 and s. 938.396: s. 48.396(2)(ag), s. 48.396(2)(aj), s. 48.396(2)(am), and s. 48.396(2)(ap), s. 938.396.(2g)(ag), s. 938.396((2g)(am).
- Agency records under s. 48.78 and s. 938.78: s. 48.78(2)(ag), s. 48.78(2)(aj), s. 48.78(2)(am, s. 48.78(2)(ap), s. 938.78(2)(ag) and s. 938.78(2)(am).

Under both chapters 48 and 938, the court may refuse to release records if the court determines that such release could result in imminent danger to a person. The requester may appeal under both chapters.

**CHAPTER 8
RECORDING DISCLOSURES OF CONFIDENTIAL INFORMATION**

HEALTH INFORMATION

DISCUSSION

Some confidentiality laws require the holder of the information to record certain information regarding a disclosure/release/inspection of confidential information. The recording permits the subject of the record to track who has accessed her or his confidential information.

Subsection 146.83 requires health providers to note the time and date of an inspection of health records, and the records inspected, by a patient, or person authorized by the patient. HIPAA requires the recording of certain types of disclosures of health information. Section 51.30 (4)(e) requires a notation in the patient treatment record whenever written information is released with or without patient authorization.

The table below lists the disclosures/inspections that require recording under each applicable law. Custodians of health records should consult with legal counsel when the applicable laws appear to be in conflict regarding recording requirements. See www.hipaacow.org for more information.

TABLE: RECORDING DISCLOSURES OF HEALTH INFORMATION

The table below includes the following information regarding recording of disclosures/releases of information under Chapter 146, Chapter 51 and HIPAA regulations.

- Disclosures that require notation/logging
- Disclosures that do not have to be noted/logged
- Contents of the required notation/log

DISCLOSURES REQUIRING RECORDING
CHAPTER 146: Requests for and inspections of records by patients and persons authorized by patients. [s. 146.83 (3)]
CHAPTER 51: Each release of written information. [s. 51.30 (4)(e)]
<p>HIPAA:</p> <ul style="list-style-type: none"> ▪ Public health activities ▪ Mandatory reporting of abuse, neglect, or violence against any person ▪ Health oversight activities ▪ Judicial/administrative proceedings ▪ Law enforcement activities except relating to inmates ▪ About decedents as required by law ▪ Research purpose ▪ Specialized government functions ▪ Workers' Compensation
DISCLOSURES NOT REQUIRING RECORDING
CHAPTER 146: Until 10-1-2008, s. 146.82 (2)(d) required notation of all releases of information without informed consent, but those notations are no longer required. Currently, s. 146.83 requires notation of inspection of records by patients and persons authorized by the patient, but does not require notations regarding other inspections.
CHAPTER 51: No exceptions to recording/notation requirement.

DISCLOSURES NOT REQUIRING RECORDING-continued

HIPAA:

- For treatment, payment, and healthcare operations
- Disclosures made prior to a health care provider becoming a covered entity
- To subject of information
- To recipient named in signed authorization
- For national security and intelligence purposes
- To persons involved in care of patient
- For notification purposes to family
- To law enforcement and correctional institutions per state law
- Facility directories (hospitals)

CONTENTS OF NOTATION/LOG

S. 146.83 (3):

- Date and time of each request to inspect
- Name of inspecting person
- Date and time of inspection
- Type of information inspected

S. 51.30 (4)(e):

- Name of recipient of information
- Identification of information released
- Purpose of release
- Date of release

HIPAA:

- Name, and address (if known) of recipient
- Date of disclosure
- Brief description of PHI
- Purpose of disclosure
- Summary entry permitted for multiple disclosures to same party for the same purpose

PUPIL INFORMATION

DISCUSSION

Federal regulations at 34 C.F.R. s. 99.32 (a) require that an educational agency or institution maintain a record of each request for access to and each disclosure of personally identifiable information from a student's record. The agency/institution must keep the record of the requests and disclosures for as long as the records are retained. When an agency/institution discloses information with the understanding that the recipient may further disclose the information, the expected recipients shall be included in the recording.

TABLE: RECORDING DISCLOSURES OF PUPIL INFORMATION

The table below is broken into four sections:

- Disclosures that require recording in the student record
- Disclosures that need not be recorded
- Obligation of educational agency/institution to inform recipient of prohibition against re-disclosure
- Content of the recording

REQUESTS/DISCLOSURES REQUIRING RECORDING
All requests/disclosures shall be noted except as described in the following section.
DISCLOSURES NOT REQUIRING RECORDING
<ul style="list-style-type: none"> • To parents of dependent students under 34 C.F.R. 99.31 (a)(8) • Pursuant to court orders, lawfully issued subpoenas or litigation under s. 99.31(a)(9) • Disclosures of directory information under s. 99.31(a)(11) • Disclosures to parents/student under s. 99.31 (a)(12) • Disclosures with respect to disciplinary proceedings under s. 99.31 (a)(14) • To parents under s. 99.31 (a)(15) <p>[34 C.F.R. s. 99.33(c)]</p>
OBLIGATION TO INFORM RECIPIENT OF PROHIBITION OF RE-DISCLOSURE UNDER 34 C.F.R. S. 99.33
All recipients of information except for those recipients of disclosures listed above that do not require recording shall be informed of the prohibition on re-disclosure. [s. 99.33 (d)]
CONTENTS OF RECORD OF REQUESTS/DISCLOSURES
<ul style="list-style-type: none"> • Party making the request or recipient of information • Legitimate interests of requesting/receiving party • Date access provided • If information will be further disclosed by recipient under s 99.33 (b), names of additional recipients and their legitimate interests

CHAPTER 46

An agency that releases information under this paragraph shall document that a request for information was received and what information was provided. [s. 46.21(2m)(c).]

**CHAPTER 9
PENALTIES FOR VIOLATING RIGHT TO PRIVACY
OF CONFIDENTIAL INFORMATION**

HEALTH INFORMATION

TABLE: PENALTIES FOR VIOLATING CONFIDENTIALITY LAWS

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

PATIENT HEALTH RECORDS
<p>Civil Penalties - s. 146.84 (1): 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. <p>Employee Discipline – s. 146.84 (3): An employee of state, or a political subdivision, who violates s. 146.82 or s. 146.83 may be discharged or suspended without pay. [Does not apply to health provider who negligently violates s. 153.50(6)(e)]</p>
MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND AODA INFORMATION
<p>Civil Penalties - s. 51.30 (9): Actions for violations; damages; injunction</p> <ul style="list-style-type: none"> ▪ 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 pre-requisite. ▪ A person may bring an action to enjoin any violation or to compel compliance as well as seek damages as stated above.

MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND AODA INFORMATION-continued

Criminal Penalties - s. 51.30 (10):

- 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.

HIV TEST RESULTS

Civil Liability - 252.15 (8):

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.

Criminal Penalties - s. 252.15 (9):

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.

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.

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.

Employee Discipline - s. 252.15 (10):

Any employee of the state or a political subdivision of the state who violates this section may be discharged or suspended without pay.

ALCOHOL AND DRUG ABUSE PATIENT RECORDS

Criminal Penalty - 42 C.F.R. s. 2.4:

Any person who violates any provision shall be fined not more than \$500 for a first offense and not more than \$5,000 for each subsequent offense.

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

HIPAA

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.

PUPIL/EDUCATION INFORMATION

FERPA, protecting privacy of education records, also contains enforcement mechanisms for violation of the subject's rights. If the Secretary of U.S. Department of Education finds that an educational agency or institution has not complied with an order to take steps to comply with the law, the Secretary may withhold further payments for a particular program, issue a cease and desist order, or terminate eligibility to receive funding under any applicable program. [34 C.F.R. s. 99.67].

OTHER RECORDS

Child abuse/neglect reporting information: S. 48.981: Penalties for violating this subsection, or for permitting or encouraging unauthorized disclosure or use of confidential information, may be fined not more than \$1,000 or imprisoned for not more than 6 months or both. [s. 48.981 (7)(f)]

Certain electronic information under s. 48.396(3)(d) and s. 938.396(2)(d): Any person who intentionally discloses information in violation of par. (c) may be required to forfeit not more than \$5,000. Par. (c) includes electronic information in the electronic records of the court and electronic records of DCF maintained in the statewide automated child welfare information system under s. 48.47(7g).

This document was developed in part through the Wisconsin Director of State Courts Office (DSCO), Children's Court Improvement Program (CCIP) and the Wisconsin Department of Justice, Children's Justice Act Program. Seventy-five percent of the CCIP funding is issued through the U.S. Department of Health and Human Services, Administration on Children, Youth, and Families and the remainder is from DSCO. Points of view expressed do not necessarily represent the official positions of any of the financial sponsors.

ATTACHMENT

PERMITTED DISCLOSURES OF HEALTH INFORMATION WITHOUT WRITTEN PATIENT AUTHORIZATION

PURPOSE/ENTITY	S. 146.82	S. 51.30/S. DHS 92.04	CH. 252	42 C.F.R. PART 2	45 C.F.R. PART 164
<p>TO REPORT ABUSE/NEGLECT AND TO ADVOCACY AGENCY</p>	<p>County department, sheriff/police and DA for investigation and prosecution of suspected child abuse/neglect under s. 48.981(7). [s. 146.82(2)(a)11.]</p>	<p>Elder- at-risk /other agency investigating under s. 46.90; county dept., sheriff, or police under s. 48.981 (child abuse/neglect); or adult-at-risk agency under s. 55.043. [s. 51.30(4)(b)17.]</p>		<p>Appropriate local/state authorities for state required reporting of incidents of child abuse and neglect, but not for use in civil/criminal proceedings without a court order. [42 CFR s. 2.12(c)(6) and (d)]</p>	<p>Appropriate authorities, as required by state law, authorized to receive reports of abuse, neglect, or domestic violence. [s. 164.512(b)(1)(ii) and (c)(1)] [domestic violence reporting not required under Wis. law, so reporting not authorized without consent]</p>
	<p>Elder-at-risk agency or other agency investigating suspected abuse/neglect of elderly/vulnerable adults under ss. 46.90 and 55.043. [s. 146.82(2)(a)7.]</p>	<p>Board on Aging and Long Term Care under s. 49.498(5)(a). [s. 51.30(4)(b)22.]</p>		<p>Court order required to disclose patient communications and original AODA records. [42 CFR s. 2.63(a)(2).]</p>	
	<p>Protection and Advocacy agency for developmentally disabled and mentally ill. [s. 146.82(2)(a)9.]</p>	<p>Protection and Advocacy agency: Disability Rights Wisconsin. [s. 51.30(4)18.]</p>			
	<p>Board on Aging and Long Term Care. [s. 146.82(2)(a)14.]</p>				
	<p>Long term care ombudsman for persons 60 yrs. and older living in long term facility. [s. 146.82(2)(a)16.]</p>				
<p>FOR TREATMENT</p>	<p>Health care provider or persons under supervision to perform duties related to providing assistance, being consulted or when life/health is in danger. [ss. 146.82(2)(a)2.a., b., and c.]</p>	<p>Health care providers for treatment, but only limited information, including demographic data, diagnoses, medications, allergies name of provider, dates of service, and some test results. [s. 51.30 (4)(b)8g.bm]</p>	<p>HIV test results to health provider who provides care to the subject. [s. 252.15 (3m)(d)2].</p>	<p>Personnel within an AODA program on a need to know basis. Note: Limited to a program; exchange of information not permitted between treatment providers outside of a program. [42 C.F.R. s.2.12(c)(3)]</p>	<p>Health care provider for treatment. [s. 164.502(a)(1)(ii) s.164.506(c)(1) & (2)]</p>

PURPOSE/ENTITY	S. 146.82	S. 51.30/S. DHS 92.04	CH. 252	42 C.F.R. PART 2	45 C.F.R. PART 164
FOR TREATMENT-CONTINUED	Individual who prepares or stores records documenting treatment. [s. 146.82(2)(a)2.d.]	Staff within a treatment with the need to know to perform job duties. [s. 51.30(4)(b)6. and s. DHS 92.04]	HIV test results: person who prepares or stores records for health provider. [s. 252.15 (3m)(d)3.]	Medical personnel in medical emergency. [42 C.F.R. s.2.51(a)]	
		Health care provider in an emergency when patient cannot consent due to medical condition. [s. 51.30(4)(b)8. and s. DHS 92.04(8)]		FDA when a patient's health may be threatened by a medication taken/prescribed. [42 C.F.R. s. 2.51(b)]	
		Within DHS to coordinate treatment for mental illness, developmental disabilities and AODA for persons committed to or under DHS supervision. [s. 51.30(4)(b)7. s. DHS 92.04(7)]			
		Qualified DHS and director of county departments to measure progress of a patient, to assess least restrictive placement, etc. [s. 51.30(4)(b)5.]			
		Facility receiving person under a Chapter 48, 938, 971 or 975 order; limited record set; not entire treatment record. [s. 51.30(4)(b)9. s. DHS 92.04(9)(a)]			
		County department to coordinate services per written agreement approved by DHS; limited information. [s. 51.30(4)(b)15].			

PURPOSE/ENTITY	S. 146.82	S. 51.30/S. HFS 92.04	CH. 252	42 C.F.R. PART 2	45 C.F.R. PART 164
FOR PAYMENT	Information to extent needed for billing, collections and payment of claims. [s. 146.82(2)(a)3.]	DHS and director of county departments for billing/collection purposes. Note: More limited than under s. 146 or HIPAA. [s. 51.30(4)(b)2.]			Payment activities. [45 C.F.R. s. 164.506(c)(3) & s.164.502(a)(1)(ii)]
FOR HEALTH CARE OPERATIONS (AUDITS, PROGRAM EVALUATION, ETC.)	Health care operations as defined in 45 C.F.R. 164.501. [s. 146.82(1)]	Individual, agency/organization designated by DHS to perform audits, program monitoring, and evaluation without identifying individuals [s. 51.30(4)(b)1.]	HIV test results to health care facility staff, accreditation organization for monitoring and evaluation. [s.252.15(3m)(d)8.]	Qualified personnel for management, financial audits and program evaluation with agreement that no identifying information will be included in any report. [42 C.F.R. s. 2.53]	Audits, quality assessment, investigations, inspections, licensure or disciplinary actions, etc., for oversight of health care system/government benefit programs, civil rights compliance. [45 C.F.R. s. 164.501 and s. 164.506(c)(4)]
	Written request by federal/state government entity to perform authorized functions such as audits, program monitoring and licensure. [s.146.82(2)(a)5.]	DHS to coordinate treatment for mental illness, developmental disabilities and AODA; limited information to county department for coordination of services. [s. 51.30 (4)(b)7.]		Program to entity with administrative control. 42 C.F.R. s. 2.12(c)(3)	
TO PERSONS INVOLVED WITH OR IN CONTACT WITH PATIENT	Limited portion of record to immediate family member, other relative or close friend with verbal consent of patient, or when patient incapacitated the portion of record related to person's involvement with patient, or portion of record to help locate a family member or other person responsible for care of patient. [s. 146.82 (4)]	Spouse, parent, adult child/sibling directly providing care or monitoring treatment as verified by under statute; only limited information. [s. 51.30(4)(b)20.]	HIV test results to entities involved in the out-of-home placement of a minor under Chapters 938. [s. 252.15 (3m)(d)15.]	Acknowledge presence in facility known as AODA treatment facility only with written consent of subject or court order. [42 C.F.R. s. 2.13(c)]	Family member or friend involved with care or payment for care of subject unless subject objects. [45 C.F.R s. 164.510(b)(1)(i)]

PURPOSE/ENTITY	S. 146.82	S. 51.30/S. HFS 92.04	CH. 252	42 C.F.R. PART 2	45 C.F.R. PART 164
To PERSONS INVOLVED WITH OR IN CONTACT WITH PATIENT-CONTINUED	Entities involved in placement of child outside of the home from recommendation through placement under Chapter 48 or 938. [s. 146(2)(a)18m.]	Notice of presence or absence at an inpatient facility to parents, spouse, children, mental health professionals providing treatment and law enforcement. [s. 51.30(4)(b)13.]	HIV test results to subject or personal representative. [s. 252.15(3m)(d)1.]		Notification of subjects' location, condition, and/or death to persons involved in the care of the subject. 45 C.F.R. s. 164.510(b)(1)(ii)
		Person consenting for mental health care: Guardian under Ch. 880, parent of child under 14 years or subject unable to consent. [s. 51.30 (4)(b)]	Health care professional to person with significant exposure under s. 252.15(5g) or (5j). [s. 252.15(3m)(e)]		Limited information to disaster relief entities to coordinate relief efforts for notification purposes. 45 C.F.R. s. 164.510(b)(4) [no equivalent in WI law]
To LAW ENFORCEMENT AND/OR DEPARTMENT OF CORRECTIONS (DOC)	Prisoner's health care provider, medical staff of prison/jail, intake staff at prison/jail or person maintaining medical records for disclosure of health information under s. 302.388. [s. 146.82(2)(a)21.]	Correctional officer with custody or supervision of person transferred or discharged from a treatment facility; change in status only. [s. 51.30(4)(b)12.]	HIV test results to sheriff, jail or keeper of prison for proposes of assigning single cell. [s. 252.15 (3m)(d)12.]	Report a crime on premises of AODA program or against program personnel; facts of crime not AODA information. [42 C.F.R. s.]2.12(c)(5)]	Upon request from law enforcement for identifying/locating a suspect, fugitive, material witness, or missing person; limited information. [45 C.F.R. s.]164.512(f)(2)
	To correctional officer with custody/supervision, to a person designated by a jailer to have custodial authority, or to a law enforcement officer/other person transferring a prisoner, if prisoner has a communicable disease <u>and</u> disclosure is necessary for the health and safety of the prisoner or of other prisoners, of the person whom the information is disclosed, or of any employee of the prison or jail. [s. 146.82(2)(a)22.]	Correctional facility or agent supervising individual receiving services under ch. 51 as a condition of supervision; limited information. [s. 51.30(4)(b)10.]	HIV results to prisoner's health care provider, medical staff of prison or jail, intake staff or person maintaining medical records under s. 302.388. [s. 252.15 (3m)(d)16.]	Undercover agents/informants on premises to criminally investigate employees: court order needed. 42 C.F.R. S. 2.67	Law enforcement about a victim or suspected victim when patient unable to consent and information is not intended for use against the victim. 45 C.F.R. s. 164.512(f)(3) [No equivalent under WI law]

PURPOSE/ENTITY	S. 146.82	S. 51.30/S. HFS 92.04	CH. 252	42 C.F.R. PART 2	45 C.F.R. PART 164
TO LAW ENFORCEMENT AND/OR DEPARTMENT OF CORRECTIONS (DOC)-CONTINUED		Law enforcement, if authorized by DHS Secretary, regarding persons under Chapters 971 or 975, or ss. 51.35 or 51.37; limited information. [s. 51.30(4)(a)16.]	HIV test results of prisoner to correctional officer with custody, or transporting, if necessary for health and safety. [s. 252.15(3m)(d)17.]		Law enforcement when entity believes information is evidence of criminal conduct on premises of covered entity. [45 C.F.R. s. 164.512(f)(5)]
		Law enforcement to report apparent crime on premises; limited information. [s. 51.30(4)(b)19.]			Law enforcement if provider believes a crime has been committed elsewhere. [45 C.F.R. s. 164.512(f)(6)]
		DOC for purpose of registration with Sex Offender Registry Program under s. 301.45. [s.51.30(4)(b)24]			Law enforcement when provider of emergency health care believes a crime has been committed elsewhere. [45 C.F.R. s. 164.512(f)(6)]
		DOC/sheriff to assess compliance with driver safety plan. [s. 51.30(4)(b)26.]			Law enforcement or correctional institution to provide health care to inmates, [s. 164.512(k)(5)]
		DOC the court records of ch. 51 proceeding for sex offender registrants under s. 301.45. [s. 51.30(3)(d)]			Law enforcement to identify/apprehend individual; limited information. [45 CFR s.164.512(j)(1)(ii)]
		DOC, DOJ, DHS and district attorney, the court records of ch. 51 proceeding for a ch. 980 proceeding. [s. 51.30(3)(bm)]			Upon death if suspicion that crime led to death. [45 CFR s. 164.512(f)(4)]
					Required reporting of wounds and other injuries. [45 CFR s. 164.512(f)(1)(i)]

PURPOSE/ENTITY	S. 146.82	S. 51.30/S. HFS 92.04	CH. 252	42 C.F.R. PART 2	45 C.F.R. PART 164
PER COURT ORDER - GENERAL	Lawful order of a court of record. [s. 146.82(2)(a)4.]	Treatment records per lawful order of a court of record. [s. 51.30(4)(b)4.]	HIV test results by lawful order of a court of record. [s. 252.15 (3m)(d)9.]	Lawful order of a court of record issued per regulations. Subpoena needed to compel disclosure. [42 C.F.R. s. 2.64 & 2.65]	Judicial or administrative proceedings pursuant to court order, or subpoena or discovery request under some circumstances. [45 C.F.R. s. 164.512(e)]
		Court records regarding ch. 51 proceeding per lawful order of court of record. [s. 51.30(3)(c)]			
FOR CIVIL LEGAL PROCEEDINGS	An official entity involved in an out -of-home placement of child or juvenile under Chapters 48 or 938. [s. 146.82(2)(a)18m.]	DOJ and district attorney for ch.980 proceedings. [s. 51.30(4)(b)10m]	School, day care center or nursery school to DA regarding a student who fails to comply with immunization or waiver requirement within 60 days. [s. 252.04(6)]	See "Court Order" above. [42 C.F.R. s. 2.64]	See "Court Order" above.
	Appropriate examiners and facilities in accordance with s. 971.17. [s. 146.82(2)(c)]	Examiners/facilities for proceeding under s. 971.17. [s. 51.30(4)(b)8m.]	Court order may be Records divulged for pubic health, purposes or commitment proceedings under (5) of this chapter, or under s.938.296(4) or s. 968.38(4). [s. 252.11 (7)]		
	To elder at risk agency, or adult at risk agency, under s. 46.90 or s. 55.043. [s. 146.82 (2)(a)7.]	To attorneys involved in proceedings at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patients' rights under this chapter or ch. 48, 971, 975, or 980. [s. 51.30(4)(b)11.]			

PURPOSE/ENTITY	S. 146.82	S. 51.30/S. HFS 92.04	CH. 252	42 C.F.R. PART 2	45 C.F.R. PART 164
FOR CIVIL LEGAL PROCEEDINGS-CONTINUED	DOC, DHS, DOJ and district attorneys for evaluations and proceedings under ch. 980. [s. 146.82 (cm)]	GAL for unborn child for proceedings under s. 48.133. [s. 51.30(4)(b)11m.]			
		Appropriate persons in DOC, DHS, DOJ and district attorneys for evaluations and court proceedings under ch. 980. [s.51.30(4)(b)8s.]			
		Mental health review officer for minors involved in proceedings under Chapters 48 or 938. [s. 51.30(4)(b)21.]			
		Access to court records by individual's attorney, g.a.l. and corporation for involuntary commitment, recommitment, reexaminations, appeals and other actions under ch. 51, ch. 971, 975 and 980. [s. 51.30(3)(b)]			
		Access to court records by DOC, DOJ, DHS or district attorney for ch. 980 proceedings. [s. 51.30(3)(bm)]			
		Access to court records to others with consent of subject and court order. [s. 51.30(3)(c)]			
		Access to court records by DOC for individuals required to register as sex offenders. [s. 51.30(3)(d)]			

PURPOSE/ENTITY	S. 146.82	S. 51.30/S. HFS 92.04	CH. 252	42 C.F.R. PART 2	45 C.F.R. PART 164
FOR CRIMINAL PROCEEDINGS	Entities investigating or prosecuting sexual exploitation by a therapist under s. 940.22. [s. 146.82(2)(a)13.]	See "Court Order" above.	Court may order testing for sexually transmitted disease, HIV and communicable disease for person alleged to have violated certain statutes, and then order disclosure under s. 938.296 and s. 968.38. [s. 252.11(7)]	Petition to court to use informant information to prosecute AODA program. [42 C.F.R. s. 2.66.] See "Court Order" above. [42 C.F.R. s.2.65]	See "Court Order" above.
FOR PUBLIC HEALTH AND SAFETY ACTIVITIES; HEALTH OVERSIGHT	Identified health providers may report to DOT when physical or mental condition may interfere with ability to control vehicle. [s. 146.82(3)(a) & (b)]	"Duty to warn" under case law.	Report of communicable disease by health care providers, laboratories, and anyone with knowledge, to local health officer and/or department of health services. [s. 252.05.(1), (2) & (3)]	Audit and evaluation activities without copying or removal of records. [42 CFR s. 2.53]	Person who may have been exposed to communicable disease and employer under certain circumstances. 45 CFR s. 164.512(b)(1)(iv)
	DHS to report cancer under s. 255.04. [s. 146.82(2)(b)9.]		Report of communicable diseases by teachers, nurses and principals to local health officer. [s. 252.21.]		Employer under limited circumstances per 29 CFR ss. 1904-1928 & 30 CFR ss. 50-90
	DHS for inspection and investigation of rural medical center under s. 50.53. [s. 146.82(2)(a)17.]		Report of sexually transmitted diseases to local health officer and department of health services by physicians & other health professionals [s. 252.11(1m)]		Reporting of disease, injury, births/deaths, public health investigations and interventions. 45 C.F.R. s. 164.512(b)(1)(i)
			Report by health providers of HIV test results to state epidemiologist. [s. 252.15 (3m)(d)6.]		FDA regarding adverse events, product defects, etc. [45 C.F.R. s. 164.512(b)(1)(iii)]

PURPOSE/ENTITY	S. 146.82	S. 51.30/S. HFS 92.04	CH. 252	42 C.F.R. PART 2	45 C.F.R. PART 164
FOR PUBLIC HEALTH AND SAFETY ACTIVITIES; HEALTH OVERSIGHT-CONTINUED			When person ceases treatment for communicable disease, physician or APNP shall report to DHS. [s.252.11(4)]		Oversight agency for audits; administrative, civil or criminal investigations; inspections; licensure/disciplinary actions; administrative, civil, criminal or proceedings. [45 C.F.R. s. 164.512(d)]
			HIV test results to blood bank, blood center, or plasma center. [s. 252.15 (3m)(d)4.]		To avert serious threat to health and safety. [45 CFR s. 164.512(j)(1)(i)]
UPON DEATH	Coroner/medical examiner to complete medical certificate or investigate a death under Chapter 979.01. [s. 146.82(2)(a)18.]	DHS, sheriff, police, or DA to investigate death reported under s. 51.64. [s. 51.30(4)(b)23.]	Coroner or medical examiner under certain conditions. [s. 252.15(3m)(d)11]		Coroners/medical examiners to perform duties. [45 C.F.R. s.]164.512(g)(1)
	DHFS, law enforcement or DA to investigate certain deaths in nursing homes/CBRFs. s. 146.82(2)(a)15.		Funeral director or other person preparing body or performing autopsy. [s.252.15(3m)(d)7.]		Funeral directors 45 C.F.R. s. 164.512(g)(2) [Not permitted in Wis except for HIV positive test results].
			HIV results to sexual contacts and those with whom a decedent shared intravenous drug paraphernalia by decedent's physician. [s.252.15(3m)(d)13.]		
FOR RESEARCH	Researcher upon meeting statutory standards. [s. 146.82(2)(a)6.]	Researcher upon meeting statutory standards. [s. 51.30(4)(b)3.]	Researcher who meets statutory standards. [s. 252.15(3m)(d)10.]	Researcher who meets federal standards. [s. 42 CFR s 2.52(a)]	Research upon meeting federal standards. [45 C.F.R. s. 164.512(i)]
FOR ORGAN AND TISSUE DONATION	Organ procurement organization to examine a body under s. 157.06(5)(b)1. [s. 146.82(2)(a)19.]	No provision.	Entities involved in organ and tissue donation. [s. 252.15 (3m)(d)5.]	No provision.	Organ, eye and tissue donation. [45 CFR s. 164.512 (h)]

PURPOSE/ENTITY	S. 146.82	S. 51.30/S. HFS 92.04	CH. 252	42 C.F.R. PART 2	45 C.F.R. PART 164
FOR SPECIALIZED GOVERNMENT FUNCTIONS					Military activities, national security and other federal government purposes. 45 C.F.R. s. 164. 512(k) [Consult legal counsel]
DE-IDENTIFIED INFORMATION	To anyone if Information that does not permit identification of patient. [s.146.82 (2)(a)20.]	Information that does not permit identification of patient. [s. 51.30(4)(b)25.]			Permitted after meeting stringent standards. [45 C.F.R. s. 164.514(a)]
RE-DISCLOSURE	HIPAA covered health provider may re-disclose health records received without patient consent from other providers for the same permitted purposes as health records created by the health provider. More limited for non HIPAA entity. [s.146.82 (5)]			Regulations require the notice be provided to recipient of information that re-disclosure is prohibited without proper authorization.	Treated same as all protected information in designated record set of covered entity.
MISCELLANEOUS	School district under special circumstances. [s. 146.82(2)(a)12.]	Anyone to assist in apprehension of escapee admitted or committed under Chapter 51, 971, 975 or 980. [s. 51.30(4)(b)12m.]	Subject or personal representative may disclose HIV test results to anyone. [s. 252.15(3m)(a)]	42 C.F.R. Part 2 does not apply to records maintained by VA or Armed Forces. [42 C.F.R. s. 2.12(c)]	Facility directory information to person contacting facility including name, location, condition in general terms, and religious affiliation unless subject objects. [45 C.F.R. s. 164.510(a).]
		For entering information into statewide automated child welfare information system under s. 46.03(7)(g). [s. 51.30(4)(b)27.]			
		To DOJ regarding possession of a firearm for person under .s. 51.20 or s.51.45. [s. 51.30(4)(b)28.]			