

WAUPACA COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES
POLICY AND PROCEDURE MANUAL

CONFIDENTIALITY OF CLIENT INFORMATION

#41

It is the policy of Waupaca County Department of Health and Human Services to comply with all Health Insurance Portability and Accountability Act (HIPAA) rules as they pertain to Department programs. Specifically, we operate under all State Statutes pertinent to the services we provide. These Statutes are listed in this policy by Division.

WCDHHS maintains confidential information, both written and verbal, regarding individuals seeking services from the Department. The Department limits access by staff members to confidential information based on the employee having a legitimate, job-related reason or purpose to have access to any confidential material. Access to written or verbal information does not imply approval to release to outside agencies or individuals. Breach of confidentiality can result in financial liability of the Department and the staff member(s) involved, and can also result in disciplinary action, up to and including termination of employment.

The Department also authorizes access to confidential information to contracted employees, contracted agencies and their employees, students, interns, and other based on the individual having a legitimate, job-related reason or purpose to have access to any confidential material.

Client information is covered under various State Statutes, Federal Statutes, and Agency policy regarding release outside of the Agency and use within the Department itself. Confidentiality laws specifically prohibit the release of any information, written or verbal, that may result in the identity of an individual receiving services from the Department being known. It is the responsibility of any staff member releasing information to another Agency that all State Statutes, Federal Statutes, and Department policies have been followed.

Each Unit or Division has specific guidelines to follow regarding confidentiality and the release of confidential information to agencies or individuals outside the Department, described in the "Confidentiality of Client Case Records" (attached). Questions regarding confidential information should be discussed with a supervisor. This will usually result in the best decision being made and will minimize liability.

As a general rule, Department employees are discouraged from removing and transporting client records to an out-of-office location from the main office where permanently stored. When an employee is required to transport a partial or full client record, it must be in a secure container and reasonably secured in a vehicle for protection of loss or damage. Records will not be allowed out of the main office overnight without the direct approval of the employee's supervisor.

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WAUPACA COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES POLICY AND PROCEDURE MANUAL

CONFIDENTIALITY OF CLIENT CASE RECORDS

This outline is in summary form. When particular questions arise, consult your supervisor, read the state statutes, and consult with your legal counsel.

I. Legal Liability

A. Violation of confidentiality laws can result in financial liability of the involved agency and of the individual staff member(s). However, such liability rarely occurs. When it does occur, the following protection is available.

1. Wisconsin law requires the state and counties to insure employees against liability and attorney fees due to lawsuits filed against employees arising out of the course of employment. See s.895.46, Wis. Statutes.

2. The statute covers everything "within the scope of employment", including errors, mistakes, and

negligent acts. It applies as long as the employee honestly and reasonably believed "in good faith" that the activity or decision was within the scope of employment.

3. Employees of private (non-governmental) agencies should purchase commercial liability "malpractice" insurance policies if the employer does not provide such protection. If the employer does provide insurance, it is wise to ask to read the policy to be certain it provides satisfactory coverage.

B. When dealing with complex questions involving legal risk, it is often wise to seek consultation from supervisors, co-workers, and other professionals.

1. Comments and advice from such consultation usually result in the best possible decision being made. Two heads are usually better than one.

2. Such consultation maximizes the protection provided by the insurance provisions referred to in I. A. above by demonstrating clearly that the decision was made "in the course of employment" and "consistent with professional principles". This minimizes the legal risks involved.

3. If, after consultation with other sources, the worker is still not sure if release of confidential material is proper, then don't release. If an error is to be made, err on the side of not releasing information.

II. LAWS COVERING ALL RECORDS OF PUBLIC AGENCIES GENERALLY

A. The "Freedom of Information Act" (FOIA) is a federal law which Congress adopted to apply to federal government agencies only. It does not apply to nor affect state, county, or private agencies. It allows persons access to records of federal agencies, with certain exceptions for confidential or secret records.

B. Wisconsin has a state law that is similar to the federal FOIA law. It is called the Open Records Law. (Sometimes it is called the Public Records Law, and sometimes it is mistakenly called the Freedom of Information Act, but FOIA only applies to U.S. government agencies.)

1. The Wisconsin Open Records Law is contained in Sections 19.31 through 19.39 of the Wisconsin Statutes. It became effective on January 1, 1983.

2. The Open Records Law applies to all state, county, and local government agencies in Wisconsin.

3. The Open Records Law also applies to the records of all non-profit corporations which receive more than 50 percent of their funds from a county or municipality and which provide services related to public health, or safety, to the county or municipality.

4. Generally, the Open Records Law creates a presumption that all persons have access to all records of publicly operated agencies and of publicly-funded non-profit corporations mentioned above.

5. However, the Open Records Law exempts from disclosure all records (such as client case records) which are confidential by law. Therefore, (for example), all client case records of mental health and social service agencies are exempt from disclosure, unless the requester qualifies for disclosure under the specific confidentiality law that covers the records.

6. Nevertheless, despite the fact that statutes exempt most client records from disclosure under the Open Records Law, all public agencies must follow the procedural requirements of the Open Records Law. These requirements include: designating a custodian(s) of records; posting a notice(s) informing record requesters of record access procedures; making records available during normal office hours; basing fees for copying records on actual costs of the copying; notifying record requesters of the reasons for any denial of record access; and notifying record requesters of any applicable appeal rights if access is denied.

(Attachment of Open Records Policy for Agency.)

7. If you have questions about how Waupaca County Department of Health and Human Services is affected by the Wisconsin Open Records Law, you should consult with your supervisor or the Records Custodian designated for Waupaca County Department of Health and Human Services in accordance with the requirements of the Open Records Law. The Director or Designee will be the Records Custodian for all records of the Waupaca County Department of Health and Human Services.

III. WHICH CONFIDENTIALITY LAWS APPLY TO WHICH CLIENTS IN WHICH DHHS DIVISIONS?

Important: Waupaca County Department of Health and Human Services employees have legal access to all client records, including PHI and IIHI, on a "need to know" basis (see definitions).

A. Basically, there are six general types of client confidentiality laws involving human service professionals. The appointed members of the 46.23 Boards, and elected officials, are prohibited from

having access to names of clients and other identifiable client information. 51.31 (4)(a).

PLEASE NOTE: Health and Human Services employees may, at times, have clients that will fall under more than one confidentiality statute. **ALWAYS TAKE THE POSITION OF THE STRICTER GUIDELINE TO FOLLOW.**

1. The State mental health confidentiality law (s.51.30 of the Wisconsin Statutes) and special federal laws applicable only to alcohol and drug abuse (AODA) treatment providers (Title 42 of the code of Federal Regulations, Chapter I, Part 2.)

a. These laws are applicable wherever a client is receiving services for mental illness, developmental disabilities, alcoholism, or drug abuse.

b. In some nursing homes (N.H.'s), some community-based residential facilities (CBRF's), and in some child caring institutions (CCI's), all of the residents are receiving services for a mental disability and, therefore, the records of all residents are covered by these laws. In other such facilities, only some residents are receiving services for a mental disability and, therefore, only the records of some residents are covered by Section 51.30. This makes it difficult to determine when information can be released within informed consent, because the laws have different exceptions to the general requirement of informed consent. But the basic principles of the laws are the same: release information only with the client's informed, written consent, except in circumstances where the applicable statute permits release without consent.

c. Chapter HSS 92 of the Wisconsin Administrative Code adds some additional procedural requirements, clarification, and detail to the language contained in s.51.30 of the Statutes. (Available from Supervisor.)

d. Small community-based residential facilities (CBRF's) (with 20 or fewer beds) are covered by s.50.09 (1)(f)3., Wis. Stats., and by s.HSS 3.15 of the Wis. Adm. Code.

2. The Patient Health Care Records Law (s.146.81, s.146.82, and s.146.83 of the Wis. Statutes.)

a. This law applies to the patient records maintained by physicians, nurses, dentists, licensed psychologists, podiatrists, chiropractors, licensed physical therapists, hospitals, nursing homes, and large CBRF's, but this law does not apply if the records are covered by the mental disability confidentiality law above (51.30, Wis. Stats.).

3. Juvenile Court/Child Protective Services Unit of the Waupaca County Department of Health and Human Services (WCDHHS) and private child welfare agencies are covered by a variety of confidentiality laws outlined in Section VI below.

4. Confidentiality of records in the Economic and Employment Support Division (See VII).

5. Elder abuse and neglect laws and requirements (See VIII).

IV. CONFIDENTIALITY OF TREATMENT RECORDS FOR MENTAL DISABILITY CLIENTS UNDER SECTION 51.30, WIS. STATUTES.

A. Disabilities covered: mental illness, developmental disability, alcohol and drug abuse.

1. All records which identify individual clients, including registration records, treatment records, billing records, and correspondence. (The definition of registration and treatment records is very broad, but excludes private notes by an individual therapist if no person other than the therapist is ever permitted to see the notes.) 51.30 (1)(a) and (b).

B. Information from the records may be released only with the informed written consent of the client or with a specific statutory provision that permits release. (See example attached by Agency Consent form used by WCDHHS).

PLEASE NOTE!! Evaluations, reports, etc., received from other hospitals, treatment facilities, etc., and stamped with "This information cannot . . .", cannot be released to a third party. Request for this information should go back to originator.

1. Informed consent requirements, 51.30(2). See example consent form at end of this outline.

a. Written.

b. Name of individual or agency to whom information is to be disclosed.

c. Name of client whose record is being disclosed.

d. Specific type of record or information to be disclosed.

e. Time period during which consent is effective.

f. Purpose or need for the disclosure.

2. Statutory exceptions - release without informed consent.

a. Section 51.30(b) Wis. Stats.

i. To certain agencies for management audits, financial audits, program monitoring, and evaluation.

ii. To Wisconsin Department of Health and Social Services and to staff of 51.42/.437 Board for billing or collection.

iii. To certain approved researchers.

iv. To Department of Health and Social Services and to staff of 51.42/.437 Board to determine progress and adequacy of treatment.

v. Within the client's treatment facility to those staff with a need to know. An example would be sharing information between clinical social workers in outpatient unit for suggestions and advice from physician. However, the secretary in that unit has no need to know the information concerning the client.

vi. To physician or physician's designee (e.g., nurse) in medical emergency. An example could be of a drug overdose of AODA client - physician needs information on medications prescribed.

vii. Within Department of Health and Social Services for clients of the County Department of Health and Human Services in order to coordinate treatment of a mental disability.

viii. To facilities receiving transfers of involuntary clients. An example would be an emergency detention of mental health or AODA clients to inpatient facility for treatment.

ix. To parole agents or corrections institutions about their clients, certain information may be disclosed. Information released may be the following: evaluation reports, discharge summary, record, or summary of all somatic treatments, treatment plans, and/or the level and kind of supervision recommended.

x. To client's attorney, guardian, or guardian ad litem. Make sure a bona fide attorney-client relationship exists prior to release of information. Also, many parents of disabled adults (18 years or older) call themselves guardian of their children. However, a court action of declaration that the disabled adult has been declared incompetent and designating the parent or whomever constitutes true guardianship. A guardian ad litem is a court-appointed attorney representing the incompetent client.

xi. To parole agents or state correctional institutions about transferred, released, or escaped clients.

xii. Inpatient facility may inform client's family of client's presence. Police may be informed of escape.

xiii. To Corporation Counsel.

xiv. Health and Human Services staff may exchange information under a 46.23(10), Wis. Stats., without a release. However, WCDHHS expects that each exchange has a bona fide need to know for the person receiving the information.

xv. Certain information about patients who are under criminal commitments under Chapters 971 or 975 or serving a criminal sentence may be released to law enforcement agencies.

xvi. To an agency investigating elder abuse under 46.90(4)(a)&(5), Stats.

xvii. To the advocacy agency designated by the Governor under 51.62, Stats.

b. There are certain other statutory provisions outside of 51.30 which require release of information in certain circumstances although 51.30 makes no reference to them. These include:

i. Court-appointed examiners in civil commitment proceedings, 51.20(9)(a).

ii. Court proceedings involving testimony by physicians or psychologists, 905.04; or attorneys, 905.03.

iii. Mandatory reporting suspected child abuse or neglect, 49.981. (In 1979, the Wisconsin Attorney General issued an official opinion holding that the duty of mandatory reporters to report suspected cases of abuse or neglect under section 49.981 prevails over the confidentiality requirements of 51.30 Stats.) Also, under Public Law 99-401, Section 106 federal law now requires AODA counselor reporting of suspected abuse.

iv. Mandatory reporting under certain special education laws for children, Chapters 115 and 188.

v. Communicable disease, Chapter 143.

vi. Death reports, 979.20. There are specific sequences in release of information of the deceased. Specific to administrator or executor of estate, then spouse, and if none of preceding exists, then family members.

c. Courts are holding professionals more responsible for some of their decisions by recognizing professional duties in some areas when none existed in the law before.

i. These decisions are usually based upon ethical principles recognized by professional organizations.

ii. Courts in many states have followed the California Supreme Court in the Tarasoff case: the court held that a psychotherapist has a duty to use reasonable care to protect potential victims when the therapist knows or, according to the profession's standards, has reason to know that all the following conditions exist (even though the confidentiality law did not permit disclosure):

-- the patient has made a threat of serious physical harm to another person (suicidal threats not included);

-- the intended victim is reasonably identifiable;

-- the patient intends to (and is capable of) carry(ing) out of the threat (this usually requires that the patient is not confined, and the patient has access to the victim); and

-- the disclosure is reasonably believed necessary to prevent the harm to the victim.

iii. More recently, the Wisconsin Supreme Court (1988) addressed two specific issues regarding the "duty to warn" and has made decisions expanding the responsibility of clinical staff. These basic professional duties are:

-- the duty to inform patients about the side effects of medications.

-- the duty to protect the patient and the public from reasonably foreseeable dangerous behavior by the patient.

-- the Waupaca County Department of Health and Human Services - Outpatient Treatment Services Unit has developed policies and procedures for both issues.

See Outpatient Treatment Services Unit policy and procedure manual for specifics.

3. Records concerning alcohol and other drug abuse treatment are covered by very detailed federal regulations, which in many cases are more restrictive on disclosure of information than Wisconsin Statutes. (See "Specific Rules Alcohol and Drug".)

C. Client's own access to treatment records. 51.30(4)(d).

1. While the client is still receiving treatment, the client may be permitted to read the record, but has no right to demand to see it. There should be some reason for denying access.

2. After discharge from treatment, the client has the legal right to view and receive a copy (upon payment for copying costs) of the entire treatment record.

a. Twenty-four (24) hour notice.

b. May delete information that identifies others.

D. Each time information is released, it must be noted in the record: to whom, what information released, purpose, date. 51.30(4)(3).

E. Client may request correction of factual information. If denied, client may insert statement. 51.30(4)(f).

F. Minors and incompetent clients 51.30(5).

1. Authorizing release of information.

a. Parents of minors, "persons in the place of a parent", and guardians appointed by court may authorize release by written consent as provided in 51.30(2).

b. Minors 14 years or older may authorize release with or without parent authorization.

2. Parental and guardian access to record.

a. Parents of minors and "persons in the place of a parent," have the same right of access as the client has under IV. C above (may be denied during treatment). Minors 14 years or older do not have the right to deny access to their parents or persons in place of parents.

b. Guardians of incompetent clients have the right of access at any time.

G. When adult client is in fact incompetent, a worker shall seek court appointment of a temporary guardian if no guardian exists. 51.30(5)(e).

H. Penalties for violation. 51.30(9), (10), and (11).

1. Client can file court suit and, if violation is proven, recover compensation for damages plus \$100 to \$1,000.

2. Employee disciplinary procedures apply.

I. 51.30 also applies to persons receiving services under Chapter 55 (the Protective Services Act) see 51.61(1) and (1)(n).

J. See Chapter HSS 92 of the Wisconsin Administrative Code (effective June 1, 1984) for additional details.

V. ACCESS TO HEALTH SERVICE DIVISION RECORDS

A. Wisconsin Statute 146.82 requires that all patient health care records remain confidential and can be released only to persons designated below or to other persons with the informed consent of the patient or person authorized by the patient.

1. To Health Services Division staff committees, or accreditation or health care services review organizations for the purposes of conducting management audits, financial audits, program monitoring and evaluation, health care services reviews or accreditation.

2. To the extent that performance of their duties requires access to the records, to health care providers, or persons acting under supervision of these providers, if:

a. The person is rendering assistance to the patient;

- b. The person is being consulted regarding the health of the patient;
 - c. The life or health of the patient appears to be in danger, and the information contained in the patient health care records may aid the person in rendering assistance, or
 - d. The person prepares or stores records, for the purpose of preparation or storage of those records.
3. To the extent that the records are needed for billing, collection, or payment of claims.
4. Under a lawful order of the court of record.
5. In response to a written request by any federal or state governmental agency to perform a legally authorized function, including but not limited to management audits, financial audits, program monitoring and evaluation, facility licensure, or certification or individual licensure or certification. The private pay patient may deny access by submitting a signed written request annually on a form provided by the DOH.
6. For purposes of research if the researcher is affiliated with the health services and provides assurance in writing that the information will be used only for the purposes for which it is provided to the researcher, and that the information will not be released to a person not connected with the study, and the final product of the research will not reveal information that will identify the patient without informed consent of the patient. The private pay patient may deny access by submitting a written request annually.
7. To the Community Care Division - Elder abuse reporting system - by initiating contact with them if provider believes abuse, material abuse, or neglect has occurred. (S.46.90)
8. To staff members of the protection and advocacy agency designated under s.51.62 or to staff members of the private, non-profit corporation with which the agency has contracted for the purpose of protecting and advocating the rights of a person with developmental disabilities, or a person with a mental illness, except when the patient has a guardian appointed under s.880.33. In that instance, information which can be released without notifying the guardian in writing of the request and of the guardian's right to object, is limited to the nature of the alleged rights violation.
9. To another county department, as defined under s.48.02, a sheriff or police department, or a district attorney for the purposes of investigation or prosecution of threatened or suspected child abuse or neglect if the person conducting the investigation or prosecution identifies the subject of the record by name. The health care provider may release information by initiating contact with a county department, sheriff, or district attorney without receiving a request for release.
10. To a school district employee or agent, with regard to student health care records maintained by the school district, if any of the following apply:
- a. The employee or agent has responsibility for preparation or storage of student health care records.
 - b. Access to the patient health care records is necessary to comply with a requirement in federal or state law.
11. To persons and entities under s.940.22. This statute refers to sexual exploitation by a therapist.
- B. Unless authorized by a court of record, the recipient of any information under 1-11 shall keep the information confidential and may not disclose identifying information about the patient whose patient health care records are released. For each release of patient health care record, the agency shall record the name of person or agency to which the records were released and the date, time, and content of the records released.**
- C. HSS 252.11 states that information provided under that subsection which deals with communicable disease control shall remain confidential, except as may be needed for the preservation of public health.**
- D. Upon submission of an informed consent, patients may have access to their own records and may**

also authorize access by others (146.83). Each time, the provider must make a notation including: time and date of request and inspection, name of inspecting person, and identity of records released. The agency should inform patients of this right upon the first provision of service.

E. Wisconsin Statute 252.15 - Restrictions on use of test for HIV (AIDS) virus.

1. No health care provider may subject a person to a test for the presence of HIV or HIV antibodies unless the individual or his/her parent or legal guardian first provides informed consent.

2. An individual (or his/her parent or guardian when the individual is under 14 years of age or is adjudicated incompetent) may release test results to anyone. Test results can be released without authorization to the following persons and under the following circumstances:

a. To a health care provider who provides care to the test subject, including those instances in which a health care provider provides emergency care to the subject.

b. To the state epidemiologist or his or her designee, for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.

c. To health care facility staff committees or accreditation or health care services review organizations for the purposes of conducting program monitoring and evaluation and health care services reviews.

d. Under a lawful order of a court of record except as provided under s.901.05 (i.e., a civil or criminal action or proceeding or an administrative proceeding as evidence of a person's character, unless the court determines in a pretrial motion that it is material to a fact at issue).

e. To a person who conducts research, for the purpose of research, if the researcher:

i. Is affiliated with a health care provider.

ii. Has obtained permission to perform the research from an institutional review board.

iii. Provides written assurance to the person disclosing the test results that use of the information requested is only for the purpose under which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final research product will not reveal information that may identify the test subject, unless the researcher has first received informed consent for disclosure from the test subject.

iv. This access may be denied with a written request of the patient.

f. To a person who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim, if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for disclosure.

g. To a coroner, medical examiner, or an appointed assistant to a coroner or medical examiner, if one or more of the following conditions exist:

i. The possible HIV-infected status is relevant to the cause of death of a person whose death is under direct investigation by the coroner, medical examiner, or appointed assistant.

ii. The coroner, medical examiner, or appointed assistant is significantly exposed to a person whose death is under direct investigation by the coroner, medical examiner, or appointed assistant, if a physician, based on information provided to the physician, determines and certifies in writing that the coroner, medical examiner, or appointed assistant has been significantly exposed, and if the certification accompanies the request for disclosure.

h. To a sheriff, jailer, or keeper of a prison, jail, or house of correction or a person designated with custodial authority by the sheriff, jailer, or keeper, for whom disclosure is necessitated in order to permit the assigning of a private cell to a prisoner who has a positive test result.

i. If the test results of a test administered to an individual are positive and the individual is deceased, by the individual's attending physician, to persons, if known to the physician, with whom the individual has had sexual contact or has shared intravenous drug use paraphernalia.

j. To the parent or guardian who provides consent for the testing only during a period in which the test

subject is adjudicated incompetent or is under 14 years of age.

k. To the health care provider or employee of a health care provider who was significantly exposed.

l. To an alleged victim or victim, to a health care professional who provides care to the alleged victim or victim, and if the alleged victim or victim is a minor, to the parent or guardian of the alleged victim or victim, the results of testing which ordered by the court when there was probable cause that the defendant significantly exposed the victim.

m. To an emergency medical technician, fire fighter, peace officer, correctional officer, or state patrol officer, if the request is accompanied by an affidavit that certifies significant exposure.

F. WIC (Women, Infant, Children) CONFIDENTIALITY POLICY

Without informed consent from the participant, release of information is limited to:

1. Public health and welfare programs with which the WIC Program has an MOU, and then only for the purpose of establishing their eligibility for those programs. The State WIC Program has an MOU with the Bureau of Public Health Immunization Program and with the Bureau of Health Care Financing for client information to be released to Medicaid providers. In addition, the Waupaca County WIC Program also has an MOU with the Waupaca County Department of Health and Human Services, MCH Block Grant Program, and with Public Health Nursing.

2. County departments of social services, a sheriff or police department, or a district attorney, for the investigation of threatened or suspected abuse or neglect involving a particular child or children.

In most other situations, written informed consent is required for the release of information to other programs/organizations/individuals.

VI. CONFIDENTIALITY OF CARE RECORDS IN THE CHILD PROTECTIVE SERVICES/JUVENILE COURT UNIT

A. Case records of children are governed by s.48.78 and applies to the confidential exchange of information between the Juvenile Court/Child Protective Services Unit of WCDHHS and other agencies. This applies only to information obtained for the purposes of Chapter 48 proceedings.

1. Records are confidential and information generally cannot be released without a court order. This applies to records of all children who are in the care or legal custody of the WCDHHS due to Chapter 48 proceedings. "In the care" is defined as a child who has a legal relationship with the agency or has an open case for service, and includes all children on supervision, in alternate care, or receiving voluntary CPS services.

2. Major exceptions to the confidential exchange of information without a court order and when there is a "need to know":

a. Between County DSS/DHS in different counties.

b. Between WCDHHS and other law enforcement agencies.

c. Between WCDHHS and licensed child welfare agencies, such as licensed group homes and child caring institutions for placement purposes; and those listed in 48.78(1).

d. Between WCDHHS and foster parents for the purposes of placement/ supervision of a child.

e. Between WCDHHS and Probation/Parole, but only visual examination of records. Release of written material shall only be done by order of the court.

f. Release of reports and records as outlined in Section D.

3. Attorneys representing persons involved in Chapter 48 proceedings may have access. (S.48.293) This access is allowed with 48-hour notice to the WCDHHS, and copying of any material is subject to payment procedures as established by the WCDHHS.

4. Other statute references that may be of assistance in determining if information can be released are: 48.21(3m) and 48.299(1)(b).

B. Case records of juveniles are governed by s.938.78 and applies to the confidential exchange of information between the Juvenile Court/Child Protective Services Unit of WCDHHS and other agencies. This applies only to information obtained for the purposes of Chapter 938 proceedings.

1. Records are confidential and information generally cannot be released without a court order. This applies to records of all juveniles who are in the care or legal custody of the WCDHHS due to Chapter 938 proceedings. "In the care" is defined as a juvenile who has a legal relationship with the agency or has an open case for service, and includes all juveniles on supervision, in alternate care, or receiving informal services.

2. Major exceptions to the confidential exchange of information without a court order and when there is a "need to know":

a. Between County DSS/DHS in different counties.

b. Between WCDHHS and other law enforcement agencies.

c. Between WCDHHS and licensed child welfare agencies, such as licensed group homes and child caring institutions for placement purposes; and those listed in 938.78(1).

d. Between WCDHHS and foster parents for the purposes of placement/ supervision of a child.

e. Between WCDHHS and Probation/Parole, but only visual examination of records. Release of written material shall only be done by order of the court.

3. Attorneys representing persons involved in Chapter 938 proceedings may have access. (S.938.293) This access is allowed with 48-hour notice to the WCDHHS, and copying of any material is subject to payment procedures as established by the WCDHHS.

4. Other statute references that may be of assistance in determining if information can be released are: 938.21(3m), 938.243 (1m), 938.299(1)(b), 938.34(5), 938.343(5), and 938.346.

C. Release of information when a case record is closed.

1. When a case is closed by WCDHHS, the Chapter 48 or 938 information contained in the record may be released with a properly executed release and consent by the last case manager.

2. The release is to be signed by the parent (who is legal custodian) if the child is under age 14, or by a parent and child if the child is age 14 or older. A child who has reached the age of 18 may release information without parental knowledge or consent.

3. The information released shall only be given to the parent with legal custody and the child.

4. The agency is to have a 48-hour notice to release information, and the notice shall be in writing.

D. Documents from sources outside the Juvenile Court/Child Protective Services Unit.

1. Documents received/obtained by the Juvenile Court/Child Protective Services Unit are subject to the release providers, if any, of the document source.

2. Re-release of this confidential information shall only be done with a release of information properly executed or by order of the court.

E. Child Abuse and Neglect Reports are governed by s.48.981(7). Reports and records may only be disclosed under the following circumstances or by court order.

1. To the subject of a report, except that the person or agency maintaining the record may not disclose any information that would identify the reporter. Subject is defined as the person named in a report or record as the child who is the victim or the person suspected of abuse/neglect of a child (perpetrator). See 48.981(1)(h).

2. To appropriate staff of the department, a county department, or licensed child welfare agency under contract with the county department, or a tribal social service department.

3. To an attending physician for purposes of diagnosis and treatment.

4. To a child's foster parent or other person having custody of the child, except that the person or agency maintaining the record or report may not disclose any information that would identify the

reporter.

5. To WCDHHS staff who are evaluating and/or treating the child, or other appropriate staff of the WCDHHS based on "need to know".

6. To a multi-disciplinary child abuse or neglect team recognized by the WCDHHS.

7. To another county department, or licensed child welfare agency under contract with that county department, or tribal social service agency that is currently investigating a report of suspected or threatened abuse or neglect involving the subject of the report or record.

8. To a law enforcement officer or agency for the purposes of investigation or prosecution.

9. To a court or administrative agency for use in a proceeding relating to the licensing or regulation of a facility regulated under this chapter.

10. To a court conducting proceedings related to a petition under s.48.13 or a court conducting dispositional proceedings under Chapter 48 of the Wisconsin State Statutes in which abuse or neglect of the child who is the subject of the report or record is an issue.

11. To the county corporation counsel or district attorney representing the interests of the public in proceedings under C.10 above.

12. To a person engaged in bona fide research, with the permission of the department. Information identifying the subjects and reporters may not be disclosed.

13. Either parent of a child may authorize the disclosure of a record for use in a child custody proceeding under s.767.24 when the child has been the subject of a report. Information identifying the reporter must be deleted prior to the release. In this situation, the information will be released to the judge holding the child custody hearing to decide what information shall be released.

14. The subject of a report may authorize the disclosure of a record to the subject's attorney. The authorization shall be in writing, and any information identifying a reporter shall be deleted before disclosure of the record.

15. The department may have access to any report or record maintained by a county department or licensed child welfare agency under contract with a county department.

16. A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

F. Any requests for release of information shall be cleared through the Unit Supervisor or the Director.

G. Any release of information request that does not fit the present policy shall be brought to the attention of the Unit Supervisor and Director. In those instances, a written opinion will be requested of the Corporation Counsel or District Attorney, whichever is appropriate.

VII. CONFIDENTIALITY OF RECORDS IN THE ECONOMIC AND EMPLOYMENT SUPPORT DIVISION.

A. No person may use or disclose any information not connected with program administration concerning applicants for and recipients of:

W-2 - Wisconsin Works

Child Care Assistance

Aid to Families with Dependent Children (AFDC)

Medical Assistance

Food Stamps

Low Income Energy Assistance Program

Other programs listed in the state and county contract for administering economic assistance programs.

B. The agency must maintain the most recent AFDC payroll, excluding foster children, group homes, and institutional care, available for public inspection. (Procedures for public inspection and all confidentiality regulations for Income Maintenance Programs are found in the Income Maintenance manual, Chapter II, Part B, and State Statute Chapter 49.53.) Public inspection will be done by the present Economic and Employment Support Coordinator, Manager, Lead Worker, or other Administrative Staff.

C. Examples in which disclosure is prohibited are:

1. Request of an official not connected with the agency for confidential information, i.e., law enforcement.

2. Request of private individuals for case information frequently related to business or personal matters, such as the collection of bills from the recipient.

D. However, the agency Director or Administrative Staff may authorize disclosure when information is needed because an individual's health or safety is in imminent danger. The agency must notify the client in writing within 7 days of this disclosure, or on the next regularly scheduled communication with that person, whichever is sooner.

E. Disclosure with consent of either a client or guardian who signed the application form has the authority to sign the release of information for the household members. A client may authorize, in writing, the disclosure of information about him or herself to a third party.

VIII. COMMUNITY CARE DIVISION/ELDERLY SERVICES

A. Elder abuse records/reporting/investigation. Records/reports of suspected elder abuse, material abuse, neglect or self-neglect, and investigation reports under this section are confidential and may not be released by WCDHHS agency or other investigating agency, except under the following circumstances [s.46.90(6)]:

1. The elder person and any person named in a report who is suspected of abusing or neglecting an elder person, except the information identifying the person who initially reported may not be released.

2. To an individual, organization, or agency designated by the department or as required by law for the purposes of management audits or program monitoring and evaluation. Information obtained under this subdivision shall remain confidential and shall not be used in any way that discloses the names or other identifying information about the individuals involved.

3. For purposes of research, if the research project has been approved by the department or the county agency, and the researcher has provided assurances that the information will be used only for the purposes for which it was provided to the researcher, the information will not be released to a person not connected with the study under consideration, and the final product of the research will not reveal information that may serve to identify the individuals involved. Such information shall remain confidential. In approving researching projects under this subdivision, the department shall impose any additional safeguards needed to prevent unwarranted disclosure of information.

4. Pursuant to lawful order of a court of record.

5. To the guardian of the elder person or the guardian of any person named in a report who is suspected of abusing or neglecting an elder person. These persons may inspect the report on the investigation, except that information identifying the person who initially reported may not be released.

6. To law enforcement officials.

B. General Older Americans Act Services

1. The Area Agency shall develop procedures to ensure that no information about an older person, or obtained from an older person, is disclosed in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring purposes by authorized federal, state, or local monitoring agencies.

2. The Area Agency shall not require a provider of legal or benefit assistance to reveal any information that is protected by attorney-client privilege. [Source: A Manual of Policies and Procedures for the Wisconsin Aging Network. 1.67 Confidentiality (45 CFR, s.1321.51)]

C. Nutrition Services Confidentiality

All nutrition programs must assure that no personal information obtained from an individual in conjunction with the program will be disclosed in a form in which it is identified with him or her, without written consent of the individual(s) concerned. All program records must be maintained in such a manner that confidentiality will not be violated. (Source: A Manual of Policies and Procedures for the Wisconsin Aging Network, Section 4.74 Nutrition Policies.)

D. Benefit Advocate/Specialist Services

The Older Americans Act provides that no state or state agency, and no Area Agency, may require any legal assistance program to reveal information that is protected by the attorney-client privilege. [42 USC s.3026(d) and s.3027(g)]. The legislative history indicates that such information includes identifying information about clients, stating that:

. . . The Committee understands that some legal assistance providers may be reluctant to contract with area agencies without this assurance. Many older individuals might be hesitant to ask for the legal advice and counsel they need if they thought others would have access to their identifying information. This assurance of confidentiality makes it easier for older persons to seek assistance they need to resolve their legal problems, and make it easier for legal assistance providers to serve them in good faith. [REP. No. 97, 100th Cong., 1st Sess. 122 (1987)] (Source: Program Policies and Procedures for the Wisconsin Legal Assistance/Benefit Specialist Program)

DEFINITIONS

For the purpose of this policy, unless context otherwise requires:

A.O.D.A. means Alcohol and Other Drug Abuse.

A.F.D.C. means Aid for Families with Dependent Children.

Court Order means a directive issued by a court or other judicial or quasi-judicial body, directing the party or parties named therein to act or refrain from acting in a certain specified manner.

D.H.H.S. means the Department of Health and Human Services

D.H.S. means the Department of Human Services.

D.H.S.S. means the Department of Health and Social Services.

D.S.S. means the Department of Social Services.

Guardian means the person named by the court having the duty and authority of guardianship. "Guardian" also means one appointed by a court to have care, custody, and control of the person of a minor or incompetent or the management of the estate of a minor, an incompetent, or a spendthrift.

Guardian ad litem means a lawyer admitted to practice law in this state who is appointed to protect the interest of the child or an incompetent in a particular court proceeding.

H.S.S. means Health and Social Services.

IIHI means Individually Identifiable health information. Information that is a subset of health information, including demographic information collected from an individual that:

- ü Is created by or received from a health care provider, health plan, employer, or health care clearinghouse.

- ü Relates to the past, present, or future physical or mental health 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.

- ü Identifies the individual or there is a reasonable basis to believe the information can be used to identify the individual.

Refer to s.160.103 of the privacy regulations for a complete definition of IIHI.

Incompetent means a person adjudged by a court of record to be substantially incapable or managing his property or caring for himself by reason of infirmities of aging, developmental disabilities, or other like incapacities. Physical disability without mental incapacity is not sufficient to establish incompetence.

Informed Consent means written consent to the disclosure of information from the client's records to an individual, agency, or organization containing the name of the client whose record is being disclosed, the purpose of the disclosure, the type of information to be disclosed, the individual, agency

or organization to which disclosure may be made, the signature of the client or the person authorized by the client, the date on which the consent is signed, and the time period during which the consent is effective.

Legal Custodian means a person, other than a parent or guardian, or an agency to whom legal custody of the child has been transferred by a court, but does not include a person who has only physical custody of the child.

Legal Custody means a legal status created by the order of a court, which confers the right and duty to protect, train, and discipline the child, and to provide food, shelter, legal services, education, and ordinary medical and dental care, subject to the rights, duties, and responsibilities of the guardian of the child and subject to any existing parental rights and responsibilities and the provisions of any court order.

Minor means a person who has not attained the age of 18 years.

Need to know means the employee must have a legitimate, job-related reason or purpose to have access to confidential material or records.

Parent means either a biological parent, a husband who has consented to the artificial insemination of his wife under s.981.40, or a parent by adoption. If the child is a non-marital child who is not adopted or whose parents do not subsequently intermarry under s.767.60, "parent" includes a person adjudged in a judicial proceeding to be the biological father. "Parent" does not include any person whose parental rights have been terminated.

Person Authorized by the Client/Patient means the parent, guardian, or legal custodian of a minor client as defined in s.48.02(8) and (11), the guardian of a client adjudged incompetent, as defined in s.880.01(3) and (4), or the personal representative or spouse of a deceased client. "Person authorized by the client" also means an adult member of the deceased client's immediate family, as defined in s.632.895(1)(d). A court may appoint a temporary guardian for a client believed to be incompetent to consent to the release of records under this section as the person authorized by the client to decide upon the release of records, if no guardian has been appointed for the client. For ES, either the client or guardian who signs the application may authorize release of the client's records.

PHI means Protected Health Information. PHI is IHI that is one or more of the following:

ü Transmitted by electronic media.

ü Maintained in any medium described in the definition of electronic media (s.162.103 of the privacy regulations).

ü Transmitted or maintained in any other form or medium. Refer to s.164.501 of the privacy regulations for exceptions to this definition.

Physical Custody means actual custody of the person in the absence of a court order granting legal custody of the physical custodian.

Record means any material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved, or is being kept by the Waupaca County Department of Health and Human Services. "Record" includes, but is not limited to, handwritten, typed, or printed pages, maps, charts, photographs, films, records, tapes (including computer tapes), and computer printouts. "Record" does not include drafts, notes, preliminary computations, and like materials prepared for the originator's personal use.

Subpoena means an order or process issued by either a court or other judicial or quasi-judicial body or an attorney appearing before that body which commands the named individual to appear to give testimony. It can also contain an order to produce certain specified documents.

WCDHHS means Waupaca County Department of Health and Human Services.

Without Informed Consent means without the client's knowledge or their written consent with the requester qualifies for disclosure under the specific confidentiality law that covers that record or material.