GUIDE TO CONFIDENTIALITY LAWS APPLICABLE TO CHIPS PROCEEDINGS

This document was developed through the Wisconsin Director of State Courts Office, Children's Court Improvement Program and the Wisconsin Department of Justice, Children's Justice Act Program. Points of view expressed do not necessarily represent the official positions of any of the financial sponsors. The information contained in the guide should not be considered legal advice. You are cautioned to always refer to primary sources for the most current statutes, rules, and case law.

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CHAPTER 1
INTRODUCTION AND GENERAL LEGAL INFORMATION

CHILDREN'S CONFIDENTIALITY PROJECT

The Children's Court Improvement Program in the Director of State Courts Office and the Children's Justice Act Program in the Wisconsin Department of Justice collaborated in 1999 to establish 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 Child in Need of Protection or Services (CHIPS) cases under Chapter 48, Children's Code, of the Wisconsin Statutes. Points of view expressed in the guide do not necessarily represent the official positions of any of the financial sponsors.

This Guide explains federal and Wisconsin laws that govern medical, mental health, education, law enforcement, court, juvenile justice, social/human services 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 beyond CHIIPS proceedings.

The Guide does **not** provide legal advice for specific cases. Furthermore, the rules, regulations, and laws referenced in this publication may have changed since the Guide was last updated. Readers are encouraged to contact their respective legal counsel as needed and cautioned to always refer to primary sources for the most current statutes, rules, and case law.

GENERAL ADVICE FOR DEALING WITH CONFIDENTIALITY LAWS

- Assume that confidential information cannot be shared in any manner (verbal, written or electronic) without a written authorization, legal exception, or court order.
- Ensure that a written authorization meets legal requirements when acting as a legal custodian of information before disclosing confidential information.
- Be familiar with the specific statutory exceptions that permit disclosure without written authorization.
- Determine which law controls when more than one law may govern the confidential information.
- Seek a court order that clearly describes the information being requested 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, Children's Code	
§ 48.396	Law enforcement and court records relating to matters under Ch. 48
§ 48.78	Client/agency records maintained by an agency under Ch. 48
§ 48.981	Information relating to child abuse/neglect maintained under Ch. 48
Chapter 49, Public Assistance and Children and Family Services	Records maintained by agencies governed by Ch. 49
Chapter 51, State Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act	
§ 51.30(3)	Records related to court proceedings under Ch. 51
§ 51.30(4)	Mental health, developmental disability and alcohol and drug abuse registration and treatment records
Ch. 118, General School Operations § 118.125	Education/pupil records
Ch. 146, Miscellaneous Health Provisions §§ 146.81-84	Records created and maintained by health care providers as defined under § 146.81
Ch. 252, Communicable Diseases	
§ 252.11(7)	Sexually transmitted disease information, other than HIV test results
§ 252.15	HIV test results
Ch. 938, Juvenile Justice Code	
§ 938.396	Law enforcement and court records relating to matters under Ch. 938
§ 938.78	Records maintained by entities governed by Ch.938
WIS. ADMINISTRATIVE CODE	**INFORMATION COVERED**
DHS Ch. 92, Confidentiality of Treatment Records: DHS § 92.04	Mental health, developmental disability and alcohol and drug abuse information, as defined in § 51.30
DHS Ch. 145, Control of Communicable Diseases: DHS § 145.04	Reports of communicable diseases
CODE OF FEDERAL REGULATIONS	**INFORMATION COVERED**
34 CFR Part 99, Family Education Rights and Privacy Act (FERPA)	Education records
42 CFR Part 2, Confidentiality of Substance Use Disorder (SUD) Patient Information	Information related to diagnosis and treatment for substance use disorders
45 CFR 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, or about the person for whom the person is acting, to another 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 contained in various types of records.

2. LEGAL EXCEPTIONS

a. 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 CFR Part 2 and 45 CFR Parts 160 and164.

b. Statutory Waivers of Privileges

Wisconsin Statutes recognize statutory privileges between certain individuals. The privileges are not absolute, with each including circumstances under which the privilege is waived. When a privilege is waived, the otherwise confidential information may be obtained for specific purposes.

- **§ 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 identified in the statute may claim the privilege. The lawyer may claim on behalf of the client.

  Waiver

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

  Reports of abuse/neglect of child/unborn child

  The statutory provisions of this privilege do not include a specific wavier for reporting of abuse or neglect of a child, but § 48.981(2)(c), 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, podiatrist-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,

to 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." [§ 905.04(1)(b)]

Who may claim privilege?

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

Waiver

The privilege does not apply, and is waived, for the following:

- ✓ Proceedings, examinations and records related to commitment, guardianship, protective services or protective placement, or control, care or treatment of a sexually violent person. [§§ 905.04(4)(a), (am) and (b)]
- ✓ Communications relevant to the scope of discovery of an issue of physical, mental or emotional condition of a patient when a patient relies upon the condition as an element of claim or defense. [§ 905.04(4)(c)]
- ✓ Homicide trials when disclosure related directly to facts or circumstances of the homicide. [§ 905.04(4)(d)]
- ✓ Information obtained by intake worker or dispositional staff in provision of services under §§ 48.067, 48.069, 938.067 or 938.069. Disclosures shall comply with §§ 48.78 and 938.78. [§ 905.04(4)(i)]
- ✓ Reports of threats of violence in or targeted at a school under § 175.32(3). [§ 905.04(4)(em)]
- ✓ Results of and circumstances surrounding tests for intoxication or alcohol concentration under § 340.01(lv). [§ 905.04(4)(f)]
- ✓ Testimony about medical circumstances of pregnancy or condition or a child in a paternity proceeding under Ch. 767. [§ 905.04(4)(g)]
- ✓ Report, including name and type of wounds or burn injuries, under § 255.40. [§ 905.04(4)(h)]

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 § 48.981(3). [§ 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. [§ 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." [§ 905.045(1)(c)]

Who may claim privilege?

Privilege may be claimed by the victim, victim's guardian/conservator/personal representative, or by the victim advocate.

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 § 48.981 or under § 175.32 regarding a threat of violence at a school. [§ 905.045(4)]

Relationship to § 905.04

"If a communication or information that is privileged under sub. (2) is also a communication or information that is privileged under § 905.04(2), the provisions of § 905.04 supersede this section with respect to that communication or information." [§ 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." [§ 905.05(1)]

Who May Claim Privilege?

The person or person's spouse/domestic partner may claim the privilege.

Waiver

The privilege is waived when both spouses/partners are parties to a legal action, one spouse/domestic partner is charged with a crime against the person, property or child of the other, one person is charged with the crime of pandering/prostitution, or when a spouse/partner has acted as the agent for the other and communication is within scope of the agency. [§ 905.05(3)]

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." [§ 905.06(1)(b)]

Who may claim privilege?

The privilege may be claimed by the person, person's guardian/conservator/personal representative, or by the clergy on behalf of the person.

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 is required to report as suspected or threatened child abuse under § 48.981(2). [§ 905.06(4)]

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 laws do not identify clear procedures to be followed to request a court order, or standards that a judge must follow prior to issuing an order. However, 42 CFR Part 2, Confidentiality of Substance Use Disorder Patient Records, lays out the precise standards to which a judge must adhere prior to issuing an order. [§ 2.64 and § 2.65] Procedures to request court records under Ch. 48 and Ch. 938 are discussed in Ch. 3 of the Guide.

Under Ch. 146, Ch. 51, and DHS Ch. 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 signed by a judge is required. HIPAA regulations do not always require a court order. Under certain circumstances, a subpoena may be sufficient. See the HIPAA regulations.

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?

1. 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)
- Elderly person alleged to have been abused/neglected
- Minor in an out-of-home placement or on correctional supervision
- Minor or adult pupil
- Person committed under Ch. 51
- Minor or adult receiving health care services
- Person (ward) with a legal guardian under Ch. 54
- Representative of deceased individual
- Minor or adult receiving mental health, developmental disability or alcohol/drug abuse services

2. 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

3. 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
- Social services/public assistance agency

4. 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
- Guardian, health care agent, or representative
- Law enforcement official
- Court
- Advocacy organization
- Researcher

5. 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 disclose records only for the purposes identified in the applicable law. Examples include:

- For personal use by subject
- To provide information to a named recipient
- To investigate child abuse/neglect
- To provide health care
- To provide educational services
- To pay for health or other services
- For health care operations
- To protect others
- For a legal purpose/proceeding

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

DISCUSSION

Wisconsin statutes at § 48.981(2) require 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 a specific exception to the authorization requirement which clearly permits the reporting of child abuse/neglect. Some confidentiality laws are silent on the subject of abuse/neglect reporting, and do not include a specific exception to the need to obtain authorization of the subject of the information to share information for the purpose of reporting abuse/neglect. A mandated reporter whose records are governed by a statute lacking a specific exception must report the abuse/neglect, and should consult legal counsel, or other expert, regarding what information can be included in the report.

DEFINITIONS

Important definitions under § 48.981, include the following:

- An “agency” means a county department, the department in a county having a population of 750,000 or more, or a licensed child welfare agency under contract with a county department or the department in a county having a population of 750,000 or more to perform investigations under this section. [§ 48.981(1)(ag)]
- A “caregiver” means any of the following: child's parent, grandparent, great grandparent, stepparent, brother, sister, stepbrother, stepsister, half-brother, or half-sister; legal guardian; legal custodian; person who resides or has resided regularly or intermittently in the same dwelling as the child; employee of a residential facility or residential care center for children and youth in which the child was or is placed; person who provides or has provided care for the child in or outside of the child's home; any other person who exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child; and any relative of the child other than a relative specified in subd.1. [§ 48.981(1)(am)]
- A “record” means any document relating to the investigation, assessment and disposition of a report made under § 48.981. [§ 48.981(1)(f)]
- A “reporter” means a person who reports suspected abuse or neglect or a belief that abuse or neglect will occur. [§ 48.981(1)(g)]
- A “subject” of a report means a person or unborn child named in a report or record as of one the following: [§ 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 or 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 references the § 48.981 provision 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
Health Care Providers: • Physician • Nurse • Dentist • Chiropractor • Optometrist • Acupuncturist • Medical professional not otherwise specified in § 48.981(2) • Physical therapist and assistant • Occupational therapist • Dietitian • Speech-language pathologist • Audiologist • Emergency medical services practitioner • Emergency medical responder, per § 256.01(4p) [§§ 48.981(2)(a)1, 4, 5, 6, 7, 8, 9, 22, 22m, 23 to 28]	• § 146.82 governs confidentiality of health care records created by the health providers listed in the column to the left. • 45 CFR Part 164 governs confidentiality of protected health information maintained by HIPAA covered entities. • § 146.82(2)(a)11. and 45 CFR § 164.512(c) provides an exception that authorizes reporting of child abuse/neglect without authorization of the subject of the records, or individual authorized to act on behalf of the subject.
Health Care Providers offering care for mental illness, developmental disabilities, and alcohol/drug abuse: • Mental health professionals not otherwise specified in § 48.981(2) • Social worker • Marriage and family therapist • Professional counselor • Alcohol/drug abuse counselor [§§ 48.981(2)(a)9,10,11,12 & 20]	• § 51.30(4) governs the confidentiality of records relating to mental health, developmental disabilities, and alcohol/drug abuse. • 42 CFR Part 2 governs information relating to substance use disorder (formerly alcohol and drug abuse) for entities covered by 42 CFR Part 2. • § 51.30(4)(b)17. and 42 CFR § 2.12(c)(6) include an exception that authorizes reporting of child abuse and neglect without written authorization by subject of the records, or individual authorized to act on behalf of the subject.
• Coroner • Medical examiner [§§ 48.981(2)(a)2 & 3]	• § 146.82 governs records prepared by physicians who may be coroners/medical examiners. • § 146.82(2)(a)11. authorizes reporting of child abuse and neglect without written authorization by subject of the records, or individual authorized to act on behalf of the subject.

MANDATED REPORTERS	LAWS GOVERNING RECORDS
• Police/law enforcement officer • Juvenile correctional officer [§§ 48.981(2)(a)29 & 30]	• § 938.396 and § 48.396 govern law enforcement records relating to juveniles and children. • Statutes cited above do not include a specific exception that authorizes reporting of child abuse/neglect, but § 48.981 requires reporting.
Education professionals: • School teacher • School administrator • School counselor • School employee not otherwise specified in § 48.981(2) [§§ 48.981(2)(a)14,15,16 & 16m]	• § 118.125 and 34 CFR Part 99 (FERPA) govern confidentiality of educational records. • 34 CFR § 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. • § 48.981 requires reporting in Wisconsin, but Ch. 118 does not authorize disclosure of pupil records.
• Child-care worker in a child care center, group home or residential care center for children and youth • Child care provider [§§ 48.981(2)(a)18 & 19]	• § 48.78 governs records of a licensed child welfare agency or day care center. • Statute cited above does not include an exception for reporting of child abuse/neglect, but § 48.981 requires reporting.
• Treatment staff employed by or under contract with a county department under §§ 46.23, 51.42 or 51.437 • Residential care center for children & youth [§ 48.981(2)(a)21]	• § 146.82 or § 51.30(4) govern records depending on type of information being disclosed. • § 146.82(2)(a)11. and § 51.30(4)(b)17. authorize reporting of child abuse and neglect.
• Court appointed special advocate [§ 48.981(2)(b)]	• § 48.236(4)(a) governs confidentiality of all information gathered by advocate. • Statute cited above does not include an exception that authorizes reporting of child abuse and neglect, but § 48.981 requires reporting.
• Mediator under § 767.405 [§ 48.981(2)(a)17]	• § 767.11 describes duties of a mediator. • Statute does not include an exception that authorizes reporting of child abuse and neglect, but § 48.981 requires reporting.
• Public assistance worker including a financial and employment planner [§ 48.981(2)(a)13]	• 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 and neglect, but § 48.981 requires the worker to report.
• Clergy [under certain circumstances] [§ 48.981(2)(bm)]	• A report is not required when information is received by clergy solely through confidential communications, according to policies, tenets or traditions of religious organization.

VOLUNTARY REPORTERS

- Any person may voluntarily report abuse/neglect or suspected abuse/neglect of a child or unborn child, including an attorney. [§§ 48.981(2)(c) & (d)]
- Person delegated care and custody under § 48.979 is not a mandated reporter but may report. [§ 48.981(2r)]

EXCEPTIONS TO REPORTING REQUIREMENT

- 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, except as described below. [§ 48.981(2m)(c)]
- Per § 48.981(2m)(d), the persons listed above providing the described services must report under the following circumstances:
  - Sexual intercourse or sexual contact occurred or is likely to occur with a caregiver.
  - 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.
  - 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.
  - 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.
  - Another participant in the sexual contact or sexual intercourse was or is exploiting the child.
- Per § 48.981(2m)(e), the persons listed above providing the described services must report when she/he believes there exists any reasonable doubt as to the voluntariness of the child's participation in the interaction or activity.
- Agent/person named by a parent to exercise care and custody powers for a child under § 48.979 is not required to report, as provided in sub. (3), any suspected or threatened abuse or neglect of the child as required under sub. (2) (a), (b), or (bm) or (2m) (d) or (e), but MAY report under sub. (3).

DISCLOSURE OF INFORMATON IN REPORTS, NOTICES AND RECORDS

All reports made under this section, notices provided by the agency 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. [§ 48.981(3)]

The custodian of reports and records may disclose them without authorization of the subject **only** to the persons/entities identified below and for only the purposes described in the various categories of recipients such as the subjects of the reports, law enforcement, and county and state agencies. [§ 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 § 48.981. [§ 48.981(7)(e)]

A person who requests information, but is denied access to the information may petition the court under § 48.981(7)(cr)8. 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 determine if reasons exist for not disclosing the information.

TO SUBJECT OF RECORD/REPORT, PARENT/RELATIVE OF CHILD SUBJECT, AND REPORTER

- Subject of the report without disclosing identity of reporter. [§ 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 identity of reporter. [§§ 48.981(7)(a)3m. and 4.]
- Mandatory reporter; limited to the agency informing the mandatory reporter within 60 days after receiving the report what action, if any, was taken to protect the health and welfare of the child/unborn child. [§ 48.981(3)(c)6.]
- Upon written request, non-mandatory reporter who is a relative of the child/expectant mother; limited to information regarding what action, if any, was taken (unless prohibited by a court order). [§ 48.981(7)(a)1m.]
- Relative of child placed outside parental home to facilitate establishment of relationship; limited information. [§ 48.981(7)(a)4m.]

TO LAW ENFORCEMENT/COURTS/ATTORNEYS

- Law enforcement officer/agency or District Attorney for investigation/prosecution. [§ 48.981(7)(a)8.]
- Proceedings under § 48.25(6), CHIPS; § 813.122, Temporary Restraining Order; or § 813.125, Injunction. [§ 48.981(7)(cm)]
- Court or administrative agency for use in proceeding relating to licensing or regulation of a facility under Chapter 48. [§ 48.981(7)(a)9.]
- Grand jury when needed to perform duties. [§ 48.981(7)(a)14.]
- Judge conducting proceedings under § 968.26, John Doe proceeding. [§ 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 child's counsel or guardian ad litem. [§§ 48.981(7)(a)10.,10g., 10j., and 11.]

TO COUNTY AND STATE AGENCIES, TRIBAL AGENCIES, AND OTHER PROFESSIONALS

- 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. [§§ 48.981(7)(a)10m.,10r. and 11m.]
- Appropriate staff of an agency or tribal social services department. [§ 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. [§ 48.981(7)(a)8m.]
- DCF has access to any report or record maintained by an agency under § 48.981. [§ 48.981(7)(d)]
- Person authorized to provide intake/dispositional services under §§ 48.067, 48.069, 48.10, 938.067,

938.069 or 938.10. [§§ 48.981(7)(a)2m. and 2r.]

- May enter reports and records into statewide automated child welfare information system established under § 48.47(7g). [§ 48.981(7)(dm)]
- Professional under § 51.42 or § 51.437 working with the child or expectant mother. [§ 48.981(7)(a)5.]
- Health care provider under § 146.81(1)(a) to (p) for diagnosis/treatment. [§ 48.981(7)(a)3.]
- Coroner, medical examiner, pathologist or other physician to investigate cause of death of child when unexplained/unusual. [§ 48.981(7)(a)15m.]
- DCF, county department, or licensed child welfare agency ordered to screen/investigate a stepparent. [§ 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. [§ 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, Sexually Violent Person Commitments. [§ 48.981(7)(a)8s.]
- Section 48.981 permits either parent of a child to authorize disclosure of information for use in child custody/adoption proceeding without disclosing identity of reporter. [§ 48.981(7)(b)]
- Subject of report may authorize in writing disclosure to subject's attorney without disclosing identity of reporter. [§ 48.981(7)(c)]
- An agency may disclose a determination made before January 1, 2015, that a person has abused or neglected a child for purposes of a background check under §§ 48.685, 48.686, or 50.065 only if that determination has not been reversed or modified on appeal and may disclose such a determination made on or after January 1, 2015, for those purposes only as provided in sub. (3)(c)5r. [§ 48.981(7)(cp)]

TO AUTHORIZED ADVOCATES AND TEAMS

- Volunteer court appointed special advocate to perform advocacy services. [§ 48.981(7)(a)11r.]
- Person employed by child advocacy center recognized by county board, county department, or agency under contract in county of 750,000 or more, in order to perform its recognized services. [§ 48.981(7)(a)6m.]
- Multidisciplinary child abuse/neglect or unborn child abuse team or licensed child welfare agency. [§ 48.981(7)(a)6.]
- Child fatality review team, or agency under contract in a county of 750,000 or more. [§ 48.981(7)(a)15.]
- Citizen review panel established by DCF or county department. [§ 48.981(7)(a)15g.]
- Researcher with proper authorization from Department of Children and Families, without disclosing identity or subjects or reporters. [§ 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. [§ 48.981(7)(cr)]
- Agency investigating a person for licensing the person to operate foster home or for placing child in an adoptive home. [§ 48.981(7)(a)4p.]
- Agency with information may enter reports and records into statewide automated child welfare information system established under § 48.47(7g). [§ 48.981(7)(dm)]

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

CHAPTER 48

OVERVIEW

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: § 48.396 and § 48.78, with the former section covering law enforcement and court records, and the latter dealing with agency records.

The confidentiality provision for § 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. [§ 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. [§ 48.396(2)(a)]

The confidentiality provision for § 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 § 48.981(7) regarding child abuse/neglect. A recipient of information must maintain the confidentiality of the information. [§ 48.78(2)(a)]

DEFINTIONS

- Agency records under § 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 child care center about an individual in its care or legal custody.
- Child abuse/neglect records under § 48.981(7) include reports made, notices provided and records maintained by an agency and other persons, officials, and institutions.
- Court records under § 48.396(2) include confidential records maintained by courts with jurisdiction under Chapter 48 or 938.
- Law enforcement records under § 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

OVERVIEW

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: § 938.396 and § 938.78, with the former section covering law enforcement and court records, and the latter dealing with agency records.

The confidentiality provision for § 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. [§§ 938.396(1)(a) and (2)]

The confidentiality provision for § 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. [§ 938.78(2)(a)]

DEFINITIONS

- Agency records under § 938.78 include records kept or information received by the Department of Children and Families, Department of Corrections (DOC), a county department or a licensed child welfare agency about an individual in its care/legal custody.
- Court records under § 938.396(2) include confidential records maintained by courts with jurisdiction under Chapter 48 or 938, and municipal courts with jurisdiction under § 938.17(2).
- Department of Corrections records under § 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 § 938.396(1) are confidential records of juveniles maintained by a law enforcement agency that must be kept separate from records of adults.

PERMITTED DISCLOSURES UNDER § 48.396 AND § 938.396

The table below describes legal disclosures of information, permitted under § 48.396 and § 938.396, from Chapter 48 and Chapter 938 law enforcement and court records either without or with a signed authorization by the subject of the records, or person with legal authority to sign an authorization on behalf of the subject.

The left column under both the "Law Enforcement Records" and "Court Records" sections list the statutory provisions under Chapter 48 which permit sharing of law enforcement or court records with an identified entity. Read the left column as stating that law enforcement or court records may be shared with the identified entity for the purposes stated.

The right column under the "Law Enforcement" and "Court" records sections either lists the Ch. 938 statutory provision equivalent to Ch. 48 provision in the left column, states that no Ch. 938 equivalent provision exists to the Ch. 48 provision in the left column, or cites a Ch. 938 provision for which no Ch. 48 equivalent provision exists. In the latter circumstance, the left column states "no equivalent provision".

An entity receiving confidential from Ch. 48 and Ch. 938 law enforcement and court records must keep the information confidential and not re-disclose, except for legal purposes authorized per statutes governing the recipient's records.

LAW ENFORCEMENT RECORDS	
§ 48.396	**§ 938.396**
With any entity per court order. [§ 48.396(1)]	§ 938.396(1)(a) equivalent to § 48.396(1).
With news media to report without revealing identity of child. [§ 48.396(1)]	§ 938.396(1)(b)1. equivalent to § 48.396(1) but uses the term "juvenile" instead of "child".
With child's school of attendance. [§ 48.396(1)]	§ 938.396(1)(b)2. and 2m. equivalent to § 48.396(1).
With other law enforcement agencies. [§ 48.396(1)]	§ 938.396(1)(b)3. equivalent to § 48.396(1).
With social welfare agencies. [§ 48.396(1)]	§ 938.396(1)(b)4. equivalent to § 48.396(1).

LAW ENFORCEMENT RECORDS	
§ 48.396	**§ 938.396**
With a child aged 10 or over who is subject of criminal proceedings. [§ 48.396(1)]	§ 938.396(1)(b)5. equivalent to § 48.396(1).
If requested by the parent, guardian, or legal custodian of a child, or if requested by the child, if 14 years of age or over, a law enforcement agency may provide a copy of that report. If requested by the parent, guardian, or legal custodian of a child expectant mother of an unborn child or if requested by an expectant mother of an unborn child, if 14 years of age or over, or if requested by an unborn child's guardian ad litem, a law enforcement agency may provide a copy of that report. [§ 48.396(1b)]	§ 938.396(1)(c)1. equivalent to § 48.396(1b) without reference to child expectant mother of an unborn child.
Upon the written permission of the parent, guardian, or legal custodian of a child or upon the written permission of the child, if 14 years of age or over, a law enforcement agency may make reports available to the person named in the permission. Upon the written permission of the parent, guardian, or legal custodian of a child expectant mother of an unborn child, or of an expectant mother of an unborn child if 14 years of age or over, and of the unborn child's guardian ad litem, a law enforcement agency may make available reports to the person named in the permission. [§ 48.396(1d)]	§ 938.396(1)(c)2. equivalent to § 48.396 (1d) without reference to child expectant mother of an unborn child.
Per request of DOC, DHS, DOJ or District Attorney for an evaluation or proceeding under Ch. 980. [§ 48.936(6)]	Per request of DOC, DHS, DOJ and District Attorney for proceedings under Ch. 980. [§ 938.396(10)]
No equivalent provision.	Law enforcement agency may on its own, or by request of public school district administrator, or private school administrator, or tribal 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. [§ 938.396(1)(c)3.]
No equivalent provision.	Law enforcement agency may enter into interagency agreement with a school board, private school, other law enforcement agency and a social welfare agency for routine disclosures under (1)(b)2. and 2m., and (c)3. [§ 938.396(1)(c)4.]
No equivalent provision.	Per request of a victim, may disclose limited information relating to injury/loss. [§ 938.396(1)(c)5.]
No equivalent provision.	Per request of victim-witness coordinator for enforcing victim rights and providing services. [§ 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. [§ 938.396(1)(c)7.]

LAW ENFORCEMENT RECORDS	
§ 48.396	**§ 938.396**
No equivalent provision.	Per request of fire investigator to pursue investigation under § 165.55. [§ 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 § 118.125(1)(d) for purpose of an investigation. See statute for additional information about petition. [§ 938.396(1)(d)]
Denial of access: Person denied access to law enforcement records under § 48.396 (1), (1b), (1d) or (6) may petition court to order disclosure. [§ 48.396(5)]	Denial of access: Person denied access to law enforcement records under § 938.396(1)(a) or (10) may petition court to order disclosure. [§ 938.396(1j)(a)]

COURT RECORDS	
§ 48.396	**§ 938.396**
Upon request of the parent, guardian or legal custodian of a child or upon request of the child, if 14 years of age or over, court shall open records for inspection by the requester unless the court finds that inspection of those records would result in imminent danger to anyone. [§ 48.396(2)(ag)]	§ 938.396(2g)(ag) equivalent to § 48.396(2)(ag), except “juvenile” is used instead of “child”.
Upon request of the parent, guardian, or legal custodian of a child expectant mother of an unborn child or upon request of an expectant mother of an unborn child, if 14 years of age or over, or upon request of an unborn child's guardian ad litem, court shall open records for inspection by the requester unless the court finds that inspection of those records would result in imminent danger to anyone. [§ 48.396(2)(aj)]	No equivalent provision.
Upon the written permission of the parent, guardian or legal custodian of a child or upon the written permission of the child, if 14 years of age or over, to a named person, court shall open records for inspection to the named person unless the court finds that inspection of those records by the person named in the permission would result in imminent danger to anyone. [§ 48.396(2)(am)]	§ 938.396(2g)(am) equivalent to § 48.396(2)(am) except for “juvenile” instead of “child”.

COURT RECORDS	
§ 48.396	**§ 938.396**
Upon the written permission of the parent, guardian, or legal custodian of a child expectant mother of an unborn child, or of an expectant mother of an unborn child, if 14 years of age or over, and of the unborn child's guardian ad litem, to the person named in the permission, court shall open records for inspection to the named person unless the court finds that inspection of those records by the person named in the permission would result in imminent danger to anyone. [§ 48.396(2)(ap)]	No equivalent provision.
Upon request of DCF or federal agency to monitor and evaluate activities as required by 45 CFR 1355, 1356, and 1357, court shall open the records for inspection and copying. [§ 48.396(2)(b)1.]	§ 938.396(2g)(b)1. equivalent to § 48.396(2)(b)1. with addition of DOC as a requester.
Upon request of entity engaged in research, monitoring or evaluation of activities conducted under 42 USC 629h, as determined by director of state courts, court shall open the records for inspection and copying; and director of state courts may use the circuit court automated information system under § 758.19(4). [§ 48.396(2)(b)2.]	§ 938.396(2g)(b)2 equivalent to § 48.396(2)(b)2.
Upon request to review or be provided with information by a court with jurisdiction for actions affecting the family, attorney responsible for support enforcement under § 59.53(6)(a) or a party to a paternity proceeding under subch. IX of Ch. 767, the party's attorney or GAL for the child, the court assigned jurisdiction under Ch. 48 or Ch. 938 for the paternity action, the court shall open for inspection its records relating to the paternity of the child or disclose the records to the requester. [§ 48.396(2)(dm)]	§ 938.396(2g)(g) equivalent to § 48.396(2)(dm).
Upon request of DOC, or other person, to prepare a pre-sentence report under § 972.15, court shall open records for inspection for an authorized representative of the requester. [§ 48.396(2)(dr)]	§ 938.396(2g)(dr) equivalent to § 48.396(2)(dr).
Upon request of court of criminal jurisdiction or district attorney to review the records for preparing for proceeding in that court, court exercising jurisdiction under Ch. 48 and Ch. 938 shall open its records for inspection of records by authorized representative of the requester. [§ 48.396(2)(e)]	§ 938.396(d) equivalent to § 48.396(2)(e) with addition of requests by court with civil jurisdiction or attorney who is a party to the proceeding for impeachment purposes.

COURT RECORDS	
§ 48.396	**§ 938.396**
Upon request to review records by a court with jurisdiction under Ch. 48 or Ch. 938, or request of a municipal court exercising jurisdiction under § 938.17, or district attorney, corporation counsel or city attorney for a proceeding in that court, or upon request by an attorney or guardian ad litem representing a party in a proceeding, court shall open records for inspection by any authorized representative of the requester the court records relating to proceeding under Ch. 48. [§ 48.396(2)(g)]	§ 938.396(2g)(gm) equivalent to § 48.396(2)(g) with added language stating that court with jurisdiction under Ch. 938 and Ch. 48 and a municipal court with jurisdiction under § 938.17 shall open its records for inspection.
Upon request of a court with jurisdiction over an action affecting a family, or request of attorney for a party or guardian ad litem in an action affecting the family for purposes of determining custody of a child, court with jurisdiction under Ch. 48 and Ch. 938 shall open records for inspection its records by any authorized representative of the requester. [§ 48.396(2)(h)]	§ 938.396(2g)(h) equivalent to § 48.396(2)(h) with addition of a municipal court with jurisdiction under § 938.17(2) being required to open its records for inspection.
Electronic court records: Court with jurisdiction under Ch. 48 or Ch. 938 shall make available information in its electronic record to other courts with jurisdiction under Ch. 48 and Ch. 938, municipal court acting under § 938.17(2), court of criminal jurisdiction, person representing interests of the public under § 48.09 & § 938.09, attorney or guardian ad litem representing a party in a proceeding under Ch. 48 or Ch. 938 or a municipal court, district prosecuting a criminal case, DCF or county department under § 46.215, § 46.22 or § 46.23, regardless of whether the person to whom the information is transferred is a party to or otherwise involved in the proceeding for which the electronic records were created. Director of state courts may make information available through the circuit court automated information systems established under § 758.19(4). [§ 48.396(3)(b)1.]	§ 938.396(2m)(b)1. equivalent to § 48.396(3)(b)1, with addition of a law enforcement agency, DOC, and DCF as recipients of information from the electronic information system.
§ 48.396.(3)(b)1. does not authorize disclosure of protected by § 146.81(4), § 51.30(1)(b), § 48.135, § 48.295, § 48.33 and § 48.38 without a court order or signed authorization, or as otherwise permitted by law. [§ 48.396(3)(b)2.]	§ 938.396(2m)(b)2. equivalent to § 48.396(3)(b)2., with the addition of references to reports under § 938.295, § 938.33 and § 938.38.
DCF may transfer to the court information in statewide automated child welfare information system under § 48.47(7g). Director of state courts may use the circuit court automated information system under § 758.19(4) to facilitate transfer of information. The director and DCF shall specify what types of information may be transferred to the court by DCF and made available by the court to DCF under § 48.396(3)(b)1. [§ 48.396(3)(bm)]	No equivalent provision.

COURT RECORDS	
§ 48.396	**§ 938.396**
Law enforcement agency and court records exercising jurisdiction under Ch. 48 and Ch. 938 shall be open for inspection by DOC, DHS, DOJ and district attorney for proceedings under Ch. 980. Court may issue protective orders. Recipient of information may disclose information for purposes consistent with proceeding under Ch. 980. [§ 48.396(6)]	§ 938.396(10) equivalent to § 48.396(6).
No equivalent provision under § 48.396, but § 938.396(2g)(c) refers to Ch. 48.	Upon request of law enforcement to review court records for investigating alleged criminal activity or activity that may result in a court acting under § 938.12 or § 938.13(12), court with jurisdiction under Ch. 48 and Ch. 938 shall open its records relating to a juvenile who has been subject to a proceeding under Ch. 938 for inspection by an authorized representative of the requester. [§ 938.396(2g)(c)]
No equivalent provision.	Upon request of defense counsel to review records to prepare client's defense for delinquency or criminal proceedings, court shall open its records for inspection by an authorized representative of the requester. [§ 938.396(2g)(dm)]
No equivalent provision.	To DOC or other person to review records to prepare presentence investigation under § 972.15, court shall open its records about a juvenile who has been a subject of a Ch. 938 proceeding for inspection by an authorized representative of the requester. [§ 938.396(2g)(dr)]
No equivalent provision.	Upon request of DOC to review records to obtain information regarding a juvenile required to register under § 301.45, court shall open for inspection by an authorized representative of the requester, its records relating to a juvenile adjudicated delinquent or found in need of protection or services or not responsible by reason of mental disease or defect for offense under § 301.45(1g)(a) & (ad). DOC may disclose as permitted under § 301.46. [§ 938.396(2g)(em)]
No equivalent provision.	Upon request of victim-witness coordinator to review records for purpose of enforcing victim rights under the constitution, Ch. 938 and § 950.04 and providing services § 950.06(1m), court shall open for inspection by the victim-witness coordinator records relating to enforcement of right or provision of those services, including name and address of juvenile/parent, and may use information and make information available only for enforcing victim rights and providing services disclose names/addresses to victim. [§ 938.396(2g)(f)]

COURT RECORDS	
§ 48.396	**§ 938.396**
No equivalent provision.	Upon request of victim's insurer when juvenile ordered to pay restitution, court may disclose amount of restitution to authorized representative of the requester. [§ 938.396(2g)(fm)]
No equivalent provision in Ch. 48, but § 938.396(2g)(i) refers to a court with jurisdiction under Ch. 48.	Upon request of court exercising probate jurisdiction, attorney general, personal representative/special administrator or attorney performing services for the estate of a decedent or other interested party per § 851.21, to review court records of court with jurisdiction under Ch. 48 and Ch. 938 for juvenile adjudged delinquent for killing a person, the court shall open for inspection its records. [§ 938.396(2g)(i)]
No equivalent provision.	Upon request of fire investigator to pursue investigation under § 165.55 when juvenile adjudicated delinquent or in need of protection or services for certain violations. [§ 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. [§ 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. [§ 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. [§ 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. [§ 938.396(2g)(m)2.]
Court clerk give notice to child's public district school board or private school when child adjudged CHIPS is ordered to attend school as condition of dispositional order. [§ 48.355(2)(c)]	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. [§ 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. [§ 938.396(2g)(m)4.]

COURT RECORDS	
§ 48.396	**§ 938.396**
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. [§ 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. [§ 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. [§ 938.396(2g)(o)]

PROCEDURES TO REQUEST COURT RECORDS

REQUEST TO INSPECT JUVENILE COURT RECORDS USING JD-1738A & JD-1738B

A requester acting under § 48.396(2)(b)-(h) or § 938.396(2g)(b)-(l), completes, signs and files form JD-1738A, Request to Inspect Juvenile Court Records, in the circuit court. The child/juvenile's name, date of birth, and juvenile court case number must be entered at the top of JD-1738A. The form includes four sections, with Sections 1-3 containing check boxes for all of the statutory provisions that permit a named entity to make a request.

Requests for inspection made under Sections 1 and 3 do not require a court order by statute; however, records shall not be copied unless specifically ordered by the court.

Requests made under Section 2 are subject to § 48.396(2)(b)1-2 and § 938.396(2g)(b)1-2. A Section 2 request allows DCF, DOC, and a federal agency monitoring and conducting evaluations of activities defined under specific federal regulations or by an entity engaged in research, monitoring, or evaluation of activities under the Children's Court Improvement Program to inspect and obtain copies of the court records relating to the child/juvenile without a court order.

Requests under Section 3 can be made by any person when the records are related to a juvenile alleged to be delinquent as a serious juvenile offender or alleged to have committed a violation that would be a felony, who has previously been adjudicated delinquent. Dispositional reports, physical, psychological, mental or developmental examinations, and any other sensitive personal information about the juvenile and the juvenile's family shall not be open for inspection.

Section 4 of the form may be used by the requester to make additional requests, such as for copies of the records. A request for copies made for records under Sections 1 or 3 must be reviewed and approved by the court.

Upon receipt of a Request to Inspect Juvenile Court Records (JD-1738A), the clerk will review the form to ensure it is a proper request. If the request is proper, the clerk is permitted to provide access to the records for inspection. In some instances, per local procedure or when copies are requested, the clerk will ask the judge to sign an Order to Inspect Juvenile Court Records (JD-1738B). The Order to Inspect Juvenile Court Records grants or denies the request and may include a specific provision or limitation.

After the judge signs the Order, the clerk permits the requester to inspect the records. As previously mentioned, records shall not be copied unless ordered by the court or requested under Section 2 of JD-1738A.

During inspection of the records, a requester may take notes for personal use. However, the requester may not take photos of the documents unless copies were authorized by the court.

REQUEST AND AUTHORIZATION TO OPEN JUVENILE COURT RECORDS FOR INSPECTION USING JD-1739A & JD-1739B

A child/juvenile who is 14 years or older, parent of the child/juvenile, guardian of the child/juvenile, legal custodian of the child/juvenile, expectant mother 14 years or older whose unborn child is subject to a Chapter 48 proceeding, or a guardian ad litem for the unborn child can request to inspect the court records relating to the child/juvenile under § 48.396(2)(ag)-(am) and § 938.396(2g)(ag)-(am) by filing the Request and Authorization to Open Juvenile Court Records for Inspection (circuit court form JD-1739A). The child/juvenile's name, date of birth, and juvenile case number must be entered at the top of JD-1739A. The form contains three sections, with Section 1 containing check boxes for the statutorily authorized individuals who may make such a records request.

Section 1 requires the requester to indicate that she/he qualifies as a requester by checking the appropriate box.

Section 2.A. allows the requester to indicate if she/he would like to inspect the court records relating to the child/juvenile. Section 2.B. allows the requester to authorize another individual to inspect specific court records pertaining to the child/juvenile.

Section 3 of the form may be used by the requester to make additional requests, such as for copies of the records. Granting a request for copies is at the court's discretion and must be ordered by the judge.

Upon receipt of the Request and Authorization to Open Juvenile Court Records for Inspection (JD-1739A), the court is required to enter an Order to Open Court Records for Inspection (JD-1739B) either denying or granting the request. The court must analyze whether the inspection of court records will result in imminent danger to anyone. If inspection of court records would not result in imminent danger to anyone, the court shall permit the records to be released for inspection to the specific individual. If inspection of the court records may result in imminent danger to anyone, the court will order a hearing on the authorization and provide the scheduling information. If the court grants the request and enters the Order to Open Court Records for Inspection (JD-1739B), the clerk will make the records available to the specified individual.

During inspection of the records, a requester may take notes for his/her own personal use and take the notes with him/her. However, the requester may not take photos of the documents unless copies were ordered by the court.

REQUEST WHEN NO STATUTORY EXCEPTION APPLIES

Per Wisconsin case law, an individual not identified under the § 48.396(2) or § 938.396(2g) statutory exceptions discussed above, may petition the court to access court records, social services or law enforcement records. These procedures do not apply to accessing electronic information under § 48.396(3) and § 938.396(2m).

When the court is confronted with an inspection request of juvenile records under § 48.396(2)(a) or § 938.396(2)(a), an inspection request of agency records under § 48.78(2)(a) or § 938.78(2)(a), or a discovery request under § 48.293(2) or § 938.293(3), the following procedures apply:

1) The individual seeking the records shall provide the juvenile court with the following information, to the extent applicable to the request:
   - Description of the information sought,
   - Basis for the belief that the information is in the child's/juvenile's records,
   - Relevance of the information to the court action,
   - Probable admissibility of the information as evidence at trial,
   - Efforts made to obtain the information elsewhere, and
   - Any hardship to the individual if the records are not released.
2) The court must provide notice of the request to the parties and provide the child/juvenile with an opportunity to be heard. The child/juvenile whose confidentiality interests are at stake must be represented.
3) The court is required to conduct a threshold relevancy determination by an in-camera inspection of the records. If the court determines that certain information is essential to the individual's cause and cannot be obtained with reasonable effort from other sources, the court must then determine whether the petitioner's need for that information outweighs society's/child's/juvenile's interest in protecting its confidentiality. For example:
   - The victim's interest in recovering for the damage s/he has suffered and the juvenile's interest in rehabilitation and in avoiding the stigma of revelation.
   - The redress of private wrongs through private litigation and the protection of the integrity of the juvenile justice system.
4) If, after balancing these interests, the juvenile court judge determines that certain information should be disclosed, the court must carefully tailor the order to permit disclosure of only that information.

The procedures provided above are based on case law, including *State ex rel. Herget v. Waukesha County Circuit Court*, 84 Wis. 2d 435, 267 N.W. 2d 309 (1978), *Courtney F. v. Ramiro M.C.*, 2004 WI App 36, 269 Wis. 2d 709, 676 N.W.2d 545, and *State v. Bellows*, 218 Wis. 2d 614, 582 N.W.2d 53 (Ct. App. 1998).

ELECTRONIC COURT RECORDS

§ 48.396(3) and § 938.396(2m)

The table above includes the exception for accessing electronic court records, without authorization by the subject of the records, for specified reasons but it is repeated below in the body of the chapter due to its importance.

The juvenile court shall make available information in its electronic record to other courts with jurisdiction under Ch. 48 and Ch. 938, municipal court acting under § 938.17(2), court of criminal jurisdiction, person representing interests of the public under § 48.09 and § 938.09, attorney or guardian ad litem representing a party in a proceeding under Ch. 48 or Ch. 938 or a municipal court, district prosecuting a criminal case, DCF or county department under § 46.215, 46.22 or 46.23, regardless of whether the person to whom the information is transferred is a party to or otherwise involved in the proceeding for which the electronic records were created. [§ 48.396(3)(b)1.]

- § 938.396(2m)(b)1. is essentially the same as § 48.396(3)(b)1. with the addition of a law enforcement agency, DOC and DCF as entities with the right to access the records.
- § 48.396(3)(b)2. and § 938.396(2m)(b)2. prohibit disclosure of information relating to the physical or mental health of an individual or that deals with other sensitive personal matters. This includes

information in health care records under § 146.81(4), treatment records under § 51.30(1)(b), records of a proceedings § 48.135, report from an assessment under § 48.295 or 938.295, court report under § 48.33 or 938.33 or a permanency under § 48.38 or § 938.38, without the consent of the person authorized to consent, a court order, or otherwise permitted under law.

The entity permitted access to the electronic court records need not have been a party to or involved in the proceeding for which the electronic records were created. The entity who views the information such as a court, municipal court, criminal court, person representing the public, attorney, guardian ad litem, district attorney, county or county department, shall maintain the confidentiality of the records. They shall only use the information to perform authorized functions and duties. Performance of their functions and duties may include permitting access to the information to a recipient who was not a party to or involved in the proceedings for which the electronic records were created. [§§ 48.396(3)(b) and (c) and §§ 938.396(2m)(b) and (c)].

The director of state courts may use the circuit court automated information systems (i.e., CCAP) to make information contained in the electronic records available as provided in § 48.396(3)(b)1. Per Administrative Bulletin 14-02 issued by the Wisconsin Director of State Courts, information provided from the CCAP court records includes the child's/juvenile's name, date of birth, gender, race, case number, filing date, court official, address, names of parents, attorney, GAL and petitioning attorney, grounds/charges, pleas, amendments and disposition.

§ 48.396(3)(bm)

DCF may transfer to the court information maintained in its statewide automated child welfare information system under § 48.47(7g). The director of state courts may use the circuit court automated information system under § 758.19(4) to transfer the electronic information from DCF to the court. The director of state courts and DCF determine what types of information may be transferred from DCF to the court and made available by the court to DCF under § 48.396(3)(b)1.

PERMITTED DISCLOSURES UNDER § 48.78 and § 938.78 RECORDS

This table is organized like the prior table for permitted disclosures under § 48.396 and § 938.396. The left column identifies statutory provisions under Ch. 48. The right column cites the same or similar provision under Ch. 938, states that Ch. 938 has no equivalent provision, or provides the citation in Ch. 938 for which there is no equivalent in Ch. 48.

An entity receiving confidential information from Ch. 48 and Ch. 938 agency records must keep the information confidential and not re-disclose, except for legal purposes authorized per statutes governing the recipient's records.

AGENCY RECORDS	
§ 48.78	**§ 938.78**
Under § 48.71, confidentiality waived to provide information to substitute care providers from court reports and permanency plans, including HIV and hepatitis B results, medical, mental health, emotional, cognitive, etc. information, gang activity, and other activities harmful to child's well-being, involvement in defined sexual activities and religious affiliation. See statute for additional information. [§ 48.78(2)(a)]	No equivalent provision.

AGENCY RECORDS	
§ 48.78	**§ 938.78**
Under §§ 48.38(5)(b) and (d) and (5m)(d), the court or agency must provide numerous specified persons with notices regarding permanency plan reviews and hearings, and copies of the permanency plan. See statute for additional information. [§ 48.78(2)(a)]	No equivalent provision.
Under § 48.432, § 48.433, and § 48.93, confidentiality is waived with respect to certain information in adoption records for specified persons, including medical information, identifying information about parents, and adoption proceedings records. See statutes for additional information. [§ 48.78(2)(a)]	No equivalent provision.
Under § 48.48(17)(bm), when a child receiving services from DCF in a county of more than 750,00 moves to a new county, the department notifies the new county of change in residence and services that were provided to the child. [§ 48.78(2)(a)]	No equivalent provision.
Under § 48.57(2m), when a child receiving services from a county department moves to a new county, the county shall notify the new county of the change and services that were provided, or notify the department when the child moves to a county of more than 750,000. [§ 48.78(2)(a)]	No equivalent provision.
Under § 48.66(6), the department requires a child welfare agency whose license may be revoked or suspended or contract terminated to provide copies of all the agency's records. [§ 48.78(2)(a)]	No equivalent provision.
Under § 48.981(7), employees of the agency shall report child abuse/neglect. See Chapter 2 of this Guide.	No equivalent provision.
Under § 938.51, the DOC or county department supervising an adjudicated delinquent shall notify law enforcement agencies, school district and county departments and certain victims of the release or escape of a juvenile from correctional custody, correctional supervision, or from a nonsecured residential care center. [§ 48.78(2)(a)]	No equivalent provision.
Agency may permit inspection or disclose contents of records upon the request of the parent, guardian, or legal custodian of the child who is the subject of the record or upon the request of the child, if 14 years of age or over, to the parent, guardian, legal custodian, or child, unless the agency determines that inspection of the record would result in imminent danger to anyone. [§ 48.78(2)(ag)]	§ 938.78(2)(ag)

AGENCY RECORDS	
§ 48.78	**§ 938.78**
Agency may permit inspection or disclose contents of records upon the request of a parent, guardian, or legal custodian of a child expectant mother of an unborn child who is the subject of the record, upon the request of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, or upon the request of an unborn child's guardian ad litem, to the parent, guardian, legal custodian, expectant mother, or unborn child's guardian ad litem, unless the agency determines that inspection of the record would result in imminent danger to anyone. [§ 48.78(2)(aj)]	No equivalent provision.
Agency may permit inspection or disclose contents of records upon the written permission of the parent, guardian, or legal custodian of the child who is the subject of the record or upon the written permission of the child, if 14 years of age or over, to the person named in the permission if the parent, guardian, legal custodian, or child specifically identifies the record in the written permission, unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone. [§ 48.78(2)(am)]	§ 938.78(2)(am) equivalent to § 48.78(2)(am).
Agency may permit inspection or disclose contents of records upon the written permission of the parent, guardian, or legal custodian of a child expectant mother of an unborn child who is the subject of the record, or of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, and of the unborn child's guardian ad litem, to the person named in the permission if the parent, guardian, legal custodian, or expectant mother, and unborn child's guardian ad litem, specifically identify the record in the written permission, unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone. [§ 48.78(2)(ap)]	No equivalent provision.
Exchange of information permitted between an agency and another social welfare agency, health care provider under §§ 146.81(a) to (p), an 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. [§ 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. [§ 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. [§ 938.78(2)(b)1m.]

AGENCY RECORDS	
§ 48.78	**§ 938.78**
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 care/custody of the agency. [§ 938.78(2)(b)2.]
Use of media to recruit adoptive parents by DCF or county department. [§ 48.78(2)c)]	No equivalent provision.
To DOC about a person formerly in custody or supervision when person is the subject of a presentence investigation, under a prison sentence, subject to an order under specified provisions of Ch. 48 or Ch. 938, 1993 stats, and placed in a state prison, or on probation, parole, or extended supervision. [§ 48.78(2)(d)]	§ 938.78 (2)(d) equivalent to § 48.78(2)(d).
Per request by DOC, DHS, DOJ or District attorney for use in evaluation/proceeding under Ch. 980. [§ 48.78(2)(e)]	§ 978.38(2)(e) equivalent to § 48.78(2)(e).
Per request of Department of Safety and Professional Services or examining/credentialing board, for use in investigation or other proceeding with limits on re-disclosing identifying information. [§ 48.78(2)(g)]	§ 938.78(2)(g) equivalent to § 48.78(2)(g).
Content of records and information received by agency may be entered into statewide automated child welfare information system under § 48.47(7g). [§ 48.78(2)(h)].	§ 938.78(2)(h) equivalent to § 48.78(2)(h).
To a relative of juvenile placed outside of home only to help establish relationship/placement. [§ 48.78(2)(i)]	§ 938.78(2)(i) equivalent to § 48.78(2)(i).
For investigating a home for a foster home license or adoptive placement. [§ 48.78(2)(j)]	No equivalent provision.
To DOR limited information for specified purpose. [§ 48.78(2)(k)]	No equivalent provision.
To qualified researcher (faculty member of university), information in department database to cross match information in database of researcher regarding pupils participating in the program under § 119.23. [§ 48.78(2)(L)]	§ 938.78(2)(L) equivalent to § 48.78(2)(L).
To law enforcement when a child is missing for entry into national crime information databases, to National Center for Missing and Exploited Children and to other agencies involved in searching for the child, per the timelines in the statute. [§ 48.78(2m)]	§ 938.78(2m) equivalent to § 48.78(2m).

AGENCY RECORDS	
§ 48.78	**§ 938.78**
No equivalent provision.	To the public limited information about a certain juveniles upon escape from identified out of home placements. [§ 938.78(3)]

CHAPTER 4
HEALTH INFORMATION

OVERVIEW

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, defer to the state law that provides the greatest privacy protection to the subject of the information. Until the past several years, Wisconsin laws often provided greater privacy protections than HIPAA regulations. Provisions in Ch. 146 governing health care records, and to some extent Ch. 51 records, have become more closely aligned with HIPAA regulations.

The information in this chapter 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. This chapter includes information about heath records not solely applicable to CHIPS proceedings, but to almost any situation involving requests for and disclosures of health information.

WISCONSIN LAWS APPLICABLE TO HEALTH INFORMATION

MISCELLANEOUS HEALTH CARE PROVISIONS: CHAPTER 146, WISCONSIN STATUTES

Overview

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. Section 146.81(4) describes records that are and are not governed by Ch. 146. Section 146.82 includes more than 20 exceptions to the requirement that the subject sign a written authorization which are too numerous to be discussed in this chapter but are included in the table at the end this Guide. Subsection 146.816 identifies additional exceptions, applicable to HIPAA covered entities, to the requirement of patient authorization for records under both § 146.82 and § 51.30(4)(b) and (d). See below for further discussion of § 146.816.

Subsection 146.83 provides information about inspecting and obtaining copies of records, and sets out copying fees. It should be noted that the fee structure effective in 2019 may conflict with HIPAA HITECH regulations for some types of records requests, especially patient-directed requests for access.

Custodians of records and requesters may need to consult with legal counsel, or other experts, regarding fees. Subsection 146.84 explains the penalties for violating the law, which are further discussed in Chapter 9 of this Guide.

Definitions

- "Health care provider" means any of the professionals and other entities listed under § 146.81(1).
- "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. [§ 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 § 256.01(3), an emergency medical technician, as defined in § 256.01(5), or a first responder, as defined in § 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 § 302.388(2). 'Patient health care records' does not include those records subject to § 51.30, reports collected under § 69.186, records of tests administered under §§ 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 § 961.02(20c), that are maintained by pharmacies under § 961.235, fetal monitor tracings, as defined under § 146.817(1), or a pupil's physical health records maintained by a school under § 118.125. [§ 146.81(4)]
- "Person authorized by the patient" means the parent, guardian, or legal custodian of a minor patient, as defined in §§ 48.02(8) and (11), the person vested with supervision of the child under §§ 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 § 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 § 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." [§ 146.81(5)]

  As of 2013, § 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. This provision does not identify other attorneys, or third parties, named as the authorized recipient of information as being a "person authorized by the patient".
- "Records" under § 146.815, § 146.82, § 146.83(4), and § 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. [§ 146.836]

§ 146.816 - Uses and Disclosures of Protected Health Information

The above statutory provision states that § 146.82 and §§ 51.30(4)(a) & (e), and rules promulgated under § 51.30(12), do **not** apply to a use and disclosure, or request for disclosure, by a covered entity or business associate that meets all of the following criteria:

- Covered entity/business associate makes the use, disclosure or request for disclosure in compliance

with 45 CFR 164.500 to 164.534.

- Covered entity/business associate makes the use, disclosure or request for disclosure in any of the following circumstances:
  - ✓ For purposes of treatment.
  - ✓ For purposes of payment.
  - ✓ For purposes of health care operations.
  - ✓ For purposes of disclosing information about a patient in a good faith effort to prevent or lessen a serious and imminent threat to the health or safety of a person or the public.
  - ✓ For purposes of disclosing under § 175.32 any threat made by a patient regarding violence in or targeted at a school in a good faith effort to prevent or lessen a serious and imminent threat to the health or safety of a student or school employee or the public.

The statutory changes resulting from the 2013 enactment and 2017 revision of § 146.816 brought Wisconsin law more closely aligned with HIPAA regulations by further clarifying when an authorization from the patient is not required. The statutory provisions referenced in § 146.816, § 146.82, and §§ 51.30(4)(a) and (e) have not been revised. Consultation with legal counsel, or other expert, is recommended in order to determine the impact of § 146.816 on records release procedures.

STATE ALCOHOL, DRUG ABUSE, DEVELOPMENTAL DISABILITIES AND MENTAL HEALTH ACT, CHAPTER 51, WISCONSIN STATUTES

Overview

The statutory provisions under § 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, § 51.30(3) covers court records including who may access records regarding proceedings under Ch. 51, Ch. 971, Ch. 975 and Ch. 980, § 51.30(4)(a) states that all records are confidential, except for disclosures permitted under § 118.125(4), §§ 610.70(3) & (5) and § 905.03 and § 905.04. Section 51.30(4)(b) describes the exceptions to the requirement of a written authorization by the subject of the records, or person authorized to act on behalf of the subject. The table at the end of this Guide identifies each of the permitted disclosures. Administrative rules under DHS Ch. 92 provide additional guidance regarding access to § 51.30 records. Section 51.30(9) identifies penalties for violating the privacy provisions which are discussed in Chapter 9 of this Guide.

As mentioned above, § 146.816 may be viewed as having a significant impact on §§ 51.30(4)(a) and (e). Records custodians should consult with legal counsel, or other knowledgeable persons, when processing a records request for treatment, payment, and health care operations, and when a health care provider believes that a patient presents a serious and imminent threat to another person. The requirement of making a notation of a release of information per § 51.30(4)(e) does not apply to disclosures; i.e., releases of information, described under § 146.816. See Chapter 8 of this Guide for a discussion of notation requirements.

Subsection 51.17(2), Warning of dangerousness, authorizes health care providers and law enforcement officers to disclose information that shows that a person poses a substantial probability of serious bodily harm to any person in a good faith effort to prevent or lessen a serious and imminent threat to the health and safety of a person or the public. The ways in which a health provider fulfills his or her duty to report are listed in § 51.17(3)(a): reporting the information to a law enforcement officer, contacting the county department that provider believes approves emergency detentions under § 51.15, and if an employee of the county department that approves emergency detentions, approve the detention, and other actions that fulfill duty to warn third parties of substantial probability of harm.

Definitions

- "Health care provider" has the meaning given in §§ 146.81(a) to (s). [§ 51.30(1)(ag)]
- "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. [§ 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. [§ 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 § 51.42 and § 51.437 and their staff; by treatment facilities; or by psychologists licensed under § 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 § 51.42 or 51.437, or a treatment facility if the notes or records are not available to others." [§ 51.30(1)(b) and DHS § 92.02(16)]

COMMUNICABLE DISEASES: CHAPTER 252, WISCONSIN STATUTES AND CHAPTER DHS 145, WISCONSIN ADMINISTRATIVE CODE

Overview

Chapter 252 addresses issues related to communicable diseases including, in part, the statewide immunization program, communicable disease control and prevention, HIV testing, regulation of body piercing and duties of local health officers.

Several provisions require various entities to report information regarding communication diseases, sexually transmitted diseases and failure of a child to be immunized, such as the following, which are also referenced in the table at the end of this Guide.

- § 252.04(6) requires schools, childcare centers and nursery schools to notify the district attorney of students who fail to present written evidence of completed immunizations or a written waiver. It describes procedures to be followed upon that notification.
- § 252.05, Reports of cases, requires health care providers, laboratories and anyone with knowledge of a person with a communicable disease to report to the local health officer or DHS.
- § 252.21(1) requires teachers, nurses and principals of schools and child care centers to report communicable diseases or suspected communicable diseases to the local health officer.
- § 252.15 governs the confidentiality of HIV test results, including list of exceptions to the authorization requirement as described in the table at the end of this Guide.

Administrative rules at 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(2)(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. [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. [§ 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. [DHS § 145.03(17)]
- 'State epidemiologist' means the individual appointed by the state health officer under § 250.02(1) as the state epidemiologist for acute and communicable diseases." [§ 252.01(6)]

§ 118.125, PUPIL RECORDS, WISCONSIN STATUTES

Pupil/education records maintained by Wisconsin school districts include two types of health information the disclosure of which are governed by various laws:

- Pupil physical health records as defined under § 118.125 (1)(cm) governed by the Family Education Rights and Privacy Act (FERPA)
- Patient health care records, protected health information, substance use disorder information and HIV results, received by a school are governed and protected by §§ 146.81-146.84, § 51.30, § 252.15, 42 CFR Part 2 and 45 CFR Part 164

FEDERAL REGULATIONS

CONFIDENTIALITY OF SUBSTANCE USE DISORDER PATIENT RECORDS: VOLUME 42, PUBLIC HEALTH, CODE OF FEDERAL REGULATIONS, PART 2

Overview

The federal regulations governing information related to the identity, diagnosis, prognosis and treatment for a substance use disorder (SUD), formerly called alcohol and other drug abuse (AODA), provide stringent privacy protections. The regulations apply to any SUD program receiving federal assistance which is a broad definition that does not require that the federal monies received to actually be used for a SUD program. The regulations require unconditional compliance by programs to which they apply. [42 CFR § 2.12]

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 § 2.11 and § 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 § 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 § 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 § 2.31]

Reports of suspected child abuse/neglect. Disclosure is permitted for reports of suspected child abuse and neglect to appropriate state or local authorities. However, the confidentiality protections continue to apply to the original substance use disorder patient records including disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect per 42 CFR 2.12(c)(6).

Exceptions to the Confidentiality of Records

- Regulations on disclosure do not apply to communications within SUD programs and with an entity with administrative control over the program, to qualified service organizations, or for reports to law enforcement regarding crimes on the premises or against program personnel. They do not apply to the Armed Forces or Department of Veterans Affairs.
- In a medical emergency, only the information needed by medical personnel to address the medical emergency may be disclosed. Information may be disclosed to medical personnel of Food and Drug Administration for notifying patients and physicians of a potential danger from a medication. The SUD program must inform patients of the disclosure per 42 C.F.R § 2.51.
- Researchers must meet the requirements identified in 42 C.F.R § 2.52, including agreeing not to disclose patient identifying information except to individual and entity form whom information was obtained.
- Auditors and evaluators must follow the procedures under 42 C.F.R § 2.53, which, among other requirements, do not permit removal of records nor copying of records.

Exceptions to Confidentiality of Confidential Communications

The regulations at 42 C.F.R § 2.63 include provisions regarding confidential communications by a patient to the SUD program. A court may order disclosure under three circumstances:

- To protect against an existing threat to life or serious bodily injury, including circumstances which constitute *suspected child abuse and neglect* and verbal threat against third parties. (italics added)
- In connection with an investigation or prosecution of an extremely serious crime allegedly committed by the patient, such as one that directly threatens loss of life or serious bodily injury, including homicide rape, kidnapping, armed robbery, assault with a deadly weapon, or *child abuse and neglect*. (italics added)
- In connection with litigation or an administrative proceeding in which patient offers testimony or other evidence pertaining to the confidential communication.

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Overview

The HIPAA regulations (Volume 45, Code of Federal Regulations, Parts 160 and 164) 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, whether HIPAA covered entities or not, 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 § 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 and search for Privacy related deliverable documents.

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 CFR § 164.502(b)(2) applies.

Exceptions to the requirement of a signed authorization, or request for access, are enumerated in the table at the end of this Guide. The primary exceptions are for the purposes of providing treatment, payment of bills and for health care operations, referred to as the TPO exceptions. Covered entities may make reports per state laws about suspected child abuse and neglect, and for other public health and safety purposes. Additional exceptions include auditing purposes, research after meeting specific standards, national security, court orders, and when information is properly de-identified. Custodians of records must be aware of any limitations on disclosure due to more stringent Wisconsin laws.

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 CFR § 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 § 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 § 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 § 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 § 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 § 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 § 160.103]

- "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers." [45 CFR § 164.501]
- "Use" means the sharing, employment, application, utilization, examination, or analysis of individually identifiable information within an entity that maintains such information. [45 CFR § 160.103]

EXPLANATION OF DISCLOSURE OF HEALTH INFORMATION TABLE

The table for this chapter of the Guide appears in landscape format after the end of Chapter 9 because of its complexity and length. It identifies "for what purpose" and **"**to whom" a health care provider may legally disclose health care information with or without obtaining a written authorization, including to the subject of the information, and to whom the subject may authorize disclosure. It includes the statutory provisions in effect as of June 2019 under § 146.82, § 51.30(4), and § 252.15, Wisconsin Statutes, DHS § 92.04, Wisconsin Administrative Code, 42 CFR Part 2, and 45 CFR Part 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 with and without a written authorization?
- Requesters of Confidential Information – Is there a statutory provision in the law governing the records I am seeking that permits me to request/obtain health information with or without an authorization?

The table includes all the exceptions, under laws governing health information, to the requirement of obtaining a written authorization, not just those related to CHIPS cases. Professionals working in the fields of human services, child welfare, law enforcement, corrections, education 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 the disclosure in the first column and then provides the information for each law in subsequent columns. The categories of the disclosures are in no particular order. The table begins with disclosures relating to reporting child abuse and neglect.

First Column - The type of or category of the disclosure appears in the far-left column of the table in the order as listed below. The categories in the table are not numbered.

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: § 146.82, § 51.30 and DHS § 92.04, Ch. 252, 42 CFR 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 CFR Part 99. The regulations define two categories of records, directory information and education records, with the latter directly relating to a student maintained by an educational agency or institution or party acting on behalf of an agency or institution. They do not include records kept by the law enforcement unit, kept for sole purpose of being a memory aid employee records, records regarding student 18 years and older maintained by a physician, and psychiatrist, psychologist or other professional or paraprofessional made in connection with treatment, and are disclosed only to individuals providing treatment. [99 CFR § 99.3]

Section 118.125, Pupil Records, Wis. Stats., includes the equivalent confidentiality provisions contained in 34 CFR 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 (q) and sub. (2m). The exceptions are shown in the discussion below in this chapter. [§ 118.125(2)]

Parents and pupils have the right to access and authorize disclosure of records, as described in a table in Chapter 7 of this Guide, which shows who has authority to disclose various types of confidential information.

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 § 48.396(1) or § 938.396(1)(b)2. or (c)3., and other pupil records that are not progress records. [§ 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. [§ 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 § 48.936(1) or § 938.396 (1)(b)2. or (c)3. [§ 118.127]
- "Law enforcement unit records" mean records created and maintained by a school law enforcement unit for law enforcement purposes. [§ 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 § 118.125(2m), shall be treated as a patient health care record under §§ 146.81 to 146.84, except for a record related to HIV tests results which shall be treated as provided under § 252.15. [§ 146.81(4)]
- "Privileged communications" includes information maintained by psychologists, counselors, social workers, nurses, teachers and administrators engaging in AODA program activities. [§ 118.126]
- "Progress records" include grades, courses, attendance, immunization, lead screening records, and information about extracurricular activities. [§ 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 care, a record concerning the pupil's ability to participate in an education program, any lead screening records under § 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. [§ 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. [§ 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." [§ 118.125(1)(e)]

DISCLOSURE OF PUPIL/EDUCATION RECORDS WITHOUT AUTHORIZATION

Categories of records appear below with the exceptions listed under each category to the requirement of obtaining a written consent for disclosure from the adult pupil or parent/guardian of the minor pupil. The relevant statutory citation appears after each entry. Individuals not listed below must have authorization from a person with authority to consent to disclosure of the records or a court order.

PUPIL RECORDS

- DOC, DHS, DOJ, or a District Attorney for use in an evaluation and any proceeding under Ch. 980. [§ 118.125(2)(ck)]
- Employees of school district who are required to hold a license, assigned law enforcement officers and other school district officials who school board determines to have legitimate educational interests. [§ 118.125(2)(d)]
- A court upon issuance of a subpoena to review in camera for purpose of impeaching a witness. [§ 118.125(2)(f)]
- Department of Public Instruction for audit/evaluation of federal or state program. [§ 118.125(2)(g)2.]
- A public officer any information required under Ch. 115-121. [§ 118.125(2)(g)1.]
- Department of Public Instruction for audit/evaluation of federal or state program. [§ 118.125(2)(g)2.]
- Parent/guardian of adult pupil when pupil dependent on parent/guardian and pupil does not object. [§ 118.125(2)(k)]
- Per a court order under Ch. 48 and 938 after making reasonable attempt to notify the parent or guardian. [§ 118.125(2)(L)]
- City attorney, corporation counsel, agency under § 938.78(1), intake worker under § 48.067/938.067, court of record, municipal court, private school, tribal school or another school board if pursuant to an interagency agreement and recipient certifies in writing that records will not be further disclosed unless legally authorized. Also, for the purpose of providing services prior to adjudication a school board may provide to tribal school under certain circumstances. [§ 118.125(2)(n)1.]
- Pertinent records to investigating law enforcement agency or district attorney when recipient certifies in writing that records concern juvenile justice system and its ability to serve the pupil, relate to ongoing investigation or pending delinquency petition, and will not further be disclosed unless legally authorized. [§ 118.125(2)(n)2.]
- Appropriate authorities when necessary to protect health/safety of any person in an emergency. [§ 118.125(2)(p)]

- Upon request by a caseworker or other representative of DCF, county department under § 46.215, § 46.22 or § 46.23, or tribal organization, records pertinent to addressing a pupil's educational needs when requester is legally responsible for care and protection of the pupil and has authority to access pupil's case plan. May not further disclose except to person addressing pupil's educational needs authorized by DCF, county department or tribal organization, to any court for addressing education needs, or in response to court order or subpoena under various sections of Ch. 48 and Ch. 938. [§ 118.125(2)(q)]
- District may use records for suspension/expulsion, and for multidisciplinary team purposes. [§ 118.125(5)]
- Resident school board may provide disciplinary records to a district to which a pupil has applied for transfer. [§ 118.51(10)]

PROGRESS RECORDS

- A pupil, or the parent or guardian of a minor pupil, shall, upon request, be shown and provided with a copy of the pupil's progress records. [§ 118.125(2)(a)]
- Upon request of a judge conducting a legal proceeding involving a pupil. [§ 118.125(2)(c)1.]

BEHAVIORAL RECORDS

- An adult pupil or the parent or guardian of a minor pupil shall, upon request, be shown, in the presence of a person qualified to explain and interpret the records, the pupil's behavioral records. Such pupil or parent or guardian shall, upon request, be provided with a copy of the behavioral records. [§ 118.125(2)(b)]
- Disclosure permitted to a named recipient, as part of pupil record, when authorization by adult pupil or parent/guardian of minor pupil identifies the behavioral records. [§ 118.125(2)(e)]

DIRECTORY DATA

- 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. [§ 118.125(2)(j)1.]
- 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. [§ 118.125(2)(j)2.]
- Law enforcement agency, DA, city attorney, corporation counsel, county department, court of record, or municipal court for purpose of enforcing pupil's school attendance, investigating alleged criminal/delinquent activity, or responding to a health or safety emergency, with prior notice to parent, guardian, or guardian ad litem, and that person has not objected. [§ 118.125(2)(j)3.]
- Disclosure permitted as part of pupil record when disclosure of pupil record is authorized.

HEALTH RECORDS

- Pupil physical health records, as defined under § 118.125(1)(cm), are pupil records. Other health records in the possession of a school district are governed by other laws.
- Health information not covered by § 118.125(1)(cm) is generally governed by §§ 146.81-84. [§ 118.125(2m)(a)]
- HIV results are governed by § 252.15. [§ 118.125(2m)(b)]
- Other health related information received by a school may be governed by § 51.30 or federal regulations under 42 CFR Part 2 or 45 CFR Part 164.

LAW ENFORCEMENT SCHOOL UNIT RECORDS

Disclosure of law enforcement unit records is controlled by law enforcement agency standards under § 938.396(1)(a). [§ 118.125(7)]

LAW ENFORCEMENT AGENCY RECORDS

- Persons required to hold a license per § 115.28(7), persons employed by private/tribal school as teachers and other school officials, as determined by school board or governing body to have legitimate educational interests, including safety, and to those who provide treatment programs. [§ 118.127]
- Limited to information under § 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.
- School district may not use records as sole basis for expelling/suspending a pupil or for other disciplinary action, except related to athletic code.

ATTENDANCE RECORDS

- 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. [§ 118.125(2)(cg)]
- Fire investigator who certifies that the pupil is under investigation and the attendance record is needed and agrees to not further disclose. [§ 118.125(2)(ch)]
- Court when order issued under § 118.163(2m)(b), names of dropouts. [§ 118.125(2)(c)2].
- County department supervising a child under § 48.355 or § 938.355 when attendance is a condition of the CHIPS, JIPS, or delinquency dispositional order, notification of absence within 5 days. [§ 118.125(2)(cm)]
- Recipient authorized to receive pupil record or directory data. [§§ 118.125(1)(b) and (d)]
- Technical college district board, public assistance agency, DHS, DCF or county department names of withdrawn pupils. [§ 118.125(2)(i)]

LEAD SCREENING RECORDS

Local and state health official under §§ 254.11 to 254.178. [§ 118.125(2)(hm)]

IMMUNIZATION RECORDS

DHS for purposes under § 252.04. [§ 118.125(2)(h)]

ALCOHOL AND OTHER DRUG ABUSE PROGRAM ACTIVITIES INFORMATION

Information received from a pupil about self or other pupil regarding use of alcohol or other drugs is a confidential communication**.** Social worker, teacher, counselor, psychologist or administrator who engages in alcohol and drug abuse program activities shall **not** disclose information, except as follows:

- Upon the written consent of the pupil. [§ 118.126(1)(a)]
- School employee has reason to believe that a serious and imminent risk to health, safety or life of any person exists, and disclosure to another person will alleviate the danger. Only information needed to reduce the risk may be disclosed. [§ 118.126(1)(b)]

- School employee is required to report information under § 48.981 or § 175.32. [§ 118.126(1)(c)]

MEMORANDUMS OF UNDERSTANDING

Department of Public Instruction (DPI) may enter MOUs with Department of Children and Families (DCF) to permit DPI to disclose information in pupil records pertinent to addressing pupil's educational needs to caseworker or other representative of DCF, county department or tribal organization legally responsible for care and protection of the pupil. [§ 115.298(1)(a)]

School boards may enter into a MOU with a county department or tribal organization to disclose information in pupil records as provided under § 118.125(2)(q) when the minor pupil's parent/guardian or adult pupil does not authorize the disclosure. [§ 115.298(1)(b)]

The recipient of information obtained under §§ 115.298(1)(a) and (b) shall not further disclose the information, except as follows:

- Person engaged in addressing pupil's educational needs who is authorized to receive the information. [§ 115.298(2)(a)]
- Upon request from a court for the purpose of addressing the educational needs of a pupil who is subject of the court proceeding. [§ 115.298(2)(b)]
- In response to a court order conducting proceedings under various provision of Ch. 48 or Ch. 938.

RESPONSE TO A COURT ORDER OR SUBPOENA

Pupil records may be disclosed to any person addressing educational needs of a pupil named in the court order or subpoena under the following circumstances [§ 115.298(2)(c)]:

- Court order issued for proceedings under §§ 48.135, 48.21, 938.135, 938.18, 938.183 or 938.21.
- Proceedings related to a petition under §§ 48.13, 48.133, 48.42, 938.12 or 938.13.
- Dispositional proceedings under subch. VI or VIII of Ch. 48 or subch. VI or Ch. 938.

Per 20 USC 1232g(b)(2)(B), except under the circumstances below, DCF, county department or tribal organization receiving a court order or subpoena shall provide notice to the pupil's parent or guardian before complying with the order or subpoena:

- When parent is party to a proceeding regarding child abuse/neglect or dependency, and order/subpoena relates to that matter.
- When subpoena is issued by a federal grand jury, or for a law enforcement purpose, and a court order issued for good cause requires non-disclosure of the subpoena or information provided pursuant to the subpoena.

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, youth probation, extended supervision/parole, alcohol/drug abuse services, and other types of social maladjustment. Examples of programs include services for Alzheimer's Disease, homeless persons, children and families, and elderly persons.

In addition to have responsibility for the operation of the mental health institutes, centers for developmentally disabled persons, Wisconsin Resource Center and Sand Ridge, DHS governs several county-level agencies:

- § 46.21, Institutions and department of human services in populous counties; 750,000 and over (Milwaukee County).
- § 46.215 County departments of social services in populous counties; 750,000 and over (Milwaukee County).
- § 46.22, County departments of social services. (Counties with populations of less than 750,000.)
- § 46.23 County departments of human services. (Counties with populations of less than 750,000.)

EXCHANGE OF INFORMATION WITHOUT AUTHORIZATION

- Sections 46.21(2m)(c), 46.215(1m), 46.22(1)(dm), and 46.23(3)(e) 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 §§ 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 § 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. [§ 46.21(2m)(c)] Sections 46.22(1)(dm) and 46.23(3)(e) also cite § 938.78(2)(a) in first sentence of the provisions.
- Sections 46.215(1p), 46.22(1)(dp) and 46.23(3)(ed) permit entry of any information kept or received the agency into statewide automated child welfare database established under § 48.47(7g).
- An agency that releases information shall document that a request for information was received and what information was provided. [§ 46.21(2m)(c), § 46.215(1m), § 46.22(1)(dm), & § 46.23(3)(e)]

- Note that although the disclosure authority without consent of the subject is broad, it does not supersede 42 CFR Part 2 regulations governing AODA/SUD information or the confidentiality provisions of § 48.981 governing reporting of child abuse and neglect.

REPORTING ABUSE/NEGLECT UNDER § 48.981

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

CHAPTER 49, PUBLIC ASSISTANCE AND CHILDREN AND FAMILY SERVICES

PURPOSE AND APPLICABILITY

Chapter 49 authorizes DHS to administer the use of relief block grants paid to counties, children and family services, other support and medical programs, and programs such as Medical Assistance, Wisconsin Works, and Food Stamps.

EXCHANGE OF INFORMATION WITHOUT AUTHORIZATION

- DCF may disclose to DHS information to assist DHS to identify children with medical assistance coverage who have other health insurance coverage or access to other health insurance coverage. [§ 49.25]
- Qualified independent researcher may access database to cross match information in researcher's database regarding pupils participating in Milwaukee parental choice school program under § 119.23. [§ 49.32(6m)]
- Monthly reports kept by agency administering AFDC and Wisconsin Works that include name and amount paid shall be open to public inspection to a person who proves his/her identify and address and a written reason for request. Agency shall notify person whose records were inspected and identity of the inspecting person. [§ 49.32(9)]
- County department may provide address of recipient of food stamps, AFDC, and Wisconsin Works to law enforcement if officer provides name of recipient, and demonstrates that person is a fugitive felon, violating conditions of correctional supervision and that location/apprehension of the person is needed to fulfill officer's job duties. [§ 49.32(10)]
- 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. [§ 49.32(10m)]
- Disclosure of information regarding applicant/recipient of Medical Assistance (Title 19) benefits only permitted when connected with administration of program. [§ 49.45(4)]
- Auditing/accounting purposes, and as permitted under federal law to locate person/assets of person who fails to comply with federal tax laws. [§ 49.81(2)]
- "Except as provided under §§ 49.25 and 49.32(6m), (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 §§ 49.141 to 49.161, social services, child and spousal support and establishment of paternity and medical support liability services under § 49.22, or supplemental payments under § 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." [§ 49.83]

ACCESS BY SUBJECT OF RECORDS

Individuals have access to agency records regarding themselves "except that the agency may withhold information obtained under a promise of confidentiality." [§ 49.81(3)]

REPORTING UNDER § 48.981

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

CHAPTER 7
RIGHT TO ACCESS AND AUTHORIZE DISCLOSURE OF CONFIDENTIAL INFORMATION

CHAPTER SUMMARY

This chapter includes information about how the subject of a record may request access to her/his own confidential information and authorize the custodian of the information to disclose information to a third party. Federal and Wisconsin confidentiality laws differ in their requirements for an individual to request and obtain information.

HEALTH INFORMATION

- Describes the information that must be included in a HIPAA written authorization, and a HITECH (HIPAA) patient-directed right of access request, for use and disclosure of health information, as well as requirements of an authorization under other federal and Wisconsin laws governing health information, including § 146.82, § 51.30(4), § 252.15, 42 CFR Part 2, and 45 CFR Part 164.
- Provides guidance for reviewing an authorization for validity.
- Includes a table which 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 § 118.125, Wis. Stats., and 34 CFR 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 relating to activities and legal proceedings under those chapters.

HEALTH INFORMATION

DISCUSSION

Federal and Wisconsin confidentiality laws require a written document signed by the subject/patient of the information, or person authorized to act on behalf of the subject, prior to the custodian of the information verbally sharing with or disclosing written or electronic health information to others. The applicable law or laws set out the specific requirements for the written request. One must identify the type of health information being sought to determine which of the following laws apply: § 146.82, § 51.30, § 252.15, DHS Ch. 92, 42 CFR Part 2, and 45 CFR 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 to locate deliverable Privacy documents.

ELEMENTS OF A WRITTEN HIPAA AUTHORIZATION WHEN AUTHORIZATION REQUIRED

It is increasingly unlikely that a health care provider as defined under § 146.81 in Wisconsin is not a HIPAA covered entity. HIPPA regulations require more elements in an authorization than Ch. 146. Therefore, unless a written patient-directed request for access is provided, a third party must submit to the custodian of the protected health information an authorization which includes the elements discussed below. See later discussion about a patient-directed right of access request.

- Information Required in an Authorization
  - Name of patient whose information is being requested/disclosed, as shown by patient's signature.
  - Description in a meaningful manner of the specific health information to be used/disclosed.
  - Name or other specific identification of the person, or class of persons authorized to make disclosure.
  - Name or other specific identification of the person or class of persons authorized to receive the information.
  - Description of purpose of use/disclosure; e.g. request of patient, treatment, coordination of care, legal representation, disability application, personal use.
  - Signature of patient or other person authorized to sign on behalf of the patient.
  - 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.
  - Date signed.
  - Effective time period of the authorization; date or event.
  - Notice of rights of subject of records, per 45 CFR 164.508:
    - ✓ Right to revoke the authorization.
    - ✓ Statement of whether receipt of treatment, payment for services, or eligibility for coverage are based on signing.
    - ✓ Risk of further disclosure if named recipient not covered by Wisconsin or federal privacy laws.
    - ✓ Statement of provider's use of information for marketing/fundraising, if applicable.

HIPPA PATIENT DIRECTED REQUEST FOR PROTECTED HEALTH INFORMATION

HIPAA HITECH regulations permit a patient wishing to obtain protected health information (PHI) for himself/herself or to direct the custodian of a HIPAA covered entity to send records to a third party, to submit a written request that meets the following requirements, instead of completing the formal authorization form discussed above:

- Be in writing.
- Signed by the patient, or person authorized to act on behalf of the patient.
- Clearly identify the designated recipient: self or third party.
- State where to send the records.

The patient may provide the written request directly to the custodian of the PHI or give to a third party who then submits it to the custodian of the records. The custodian must treat the request as a patient-directed right of access request, rather than a request requiring a formal authorization form. Right of access requests must be completed within 30 days and only very limited copying fees may be assessed.

A third party who directly requests PHI for purposes other than treatment, payment, health care operations, to prevent or lessen a serious threat to health and safety of others, or under a statutory exception, must submit a HIPAA compliant authorization form. However, if a third party has obtained from a patient a written request meeting the right of access requirements which directs the records custodian to share the PHI with the third party, an authorization form should not be needed. Requesters and custodians of records may find it helpful to consult with legal counsel, or other expert, to determine the appropriateness of an authorization form or a patient-directed right of access request.

REQUIREMENTS OF WRITTEN AUTHORIZATION FOR SECTION 146.81 RECORDS

The requirements below apply to a health provider who is not a HIPAA covered entity for all requests that do not fall under a specific statutory exception.

- Name of patient.
- Type of information to be disclosed.
- Types of health care providers making disclosure.
- Name of individual, agency or organization to receiving the information.
- Purpose of disclosure.
- Signature of patient, or person with authority to act on behalf of patient and authority of that person to act for patient.
- Date of authorization.
- Time period of authorization.

REQUIREMENTS OF WRITTEN AUTHORIZATION FOR SECTION 51.30 RECORDS

The requirements below apply to a health provider who is not a HIPAA covered entity for all requests that do not fall under a specific statutory exception.

- Name of patient.
- Specific information to be disclosed.
- Name of individual, agency or organization to receiving the information.

- Purpose or need for disclosure.
- Signature of patient, or person with authority to act on behalf of patient.
- Date of authorization.
- Time period of authorization.
- Statement that patient has a right to inspect/copy disclosed information per DHS § 92.03(3)(d).

REQUIREMENTS OF WRITTEN AUTHORIZATION FOR SUD RECORDS, 42 CFR PART 2

- Name of patient.
- Entity/program authorized to disclose.
- Specific description of how much and what kind of information authorized to be disclosed.
- Name of recipient (See regulations for additional information depending on whether recipient has a treatment provider relationship with the patient).
- Purpose of disclosure with information disclosed is limited to that which will carry out purpose.
- Statement about revocation of consent.
- Statement about prohibition on redisclosure.
- Date, event or condition upon which consent expires.
- Signature of patient, or person authorized to act on behalf of patient.
- Date of signature.

SPECIAL CAUTIONS

Authorization Signed by a Guardian: A records custodian reviewing an authorization signed by a guardian of an individual found incompetent under a 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 § 54.25(1)(b)2. states that a guardian's responsibilities 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 who executed the documents has become mentally incapacitated. The record custodian should review the POAHC carefully to be sure that it grants the agent authority to access and disclose health records. 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)				
§ 146.82	**§ 51.30**	**§ 252.15**	**42 CFR 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				
§ 146.82	**§ 51.30**	**§ 252.15**	**42 CFR 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 § 146.82.	Same as §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				
§ 146.82	**§ 51.30**	**§ 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 or guardian of a minor under 14 years of age.	Parent or guardian of a minor under 12 years of age for all services. Parent of all minors for services requiring parental consent.	Parent or guardian for an unemancipated minor, unless minor can consent to care without consent of parent/guardian.
MINOR (under 18 years of age)				
§ 146.82	**§ 51.30**	**§ 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 or guardian.

AUTHORIZED REPRESENTATIVES OF A DECEASED PERSON				
§ 146.82	**§ 51.30**	**§ 252.15**	**42 CFR Part 2**	**45 CFR Part 164**
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.	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.	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.	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 § 118.125, Wis. Stats., require 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 CFR Part 99 or § 118.125(2). The elements of a valid authorization include the following:

- Name of minor or adult pupil.
- 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. [§ 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. [§ 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. [§ 118.125(2)(k)]
- Parent denied physical placement by a court under § 767.24(4) does not have the rights of a parent. [§ 118.125(2)(m)]
- Adult pupil or parent/guardian of a minor pupil may access law enforcement unit records contained in pupil records under § 938.396. [§ 118.125(7)]

- Staff designated as engaging in SUD/AODA program activities shall not disclose SUD/AODA information unless pupil aged 12 years or older signs an authorization form. [§ 118.126(1)(a)]

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. The chapters do not include a description of an authorization form to be used for requests to inspect and/or obtain copies of records 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. See Ch. 3 of this Guide for discussion of the approved circuit court forms and orders for requests to inspect and/or obtain copies of records, and access to electronic records.

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

HEALTH INFORMATION

DISCUSSION

Some confidentiality laws require the custodian of the health records to document specific information regarding a request, inspection or disclosure/release of health information. The recording permits the subject of the record to track who has accessed her or his confidential information.

Custodians of health records should consult with legal counsel, or other expert, when it is unclear which law governs the confidential records for which the custodian receives a request to inspect or provide copies.

RECORDING OF INSPECTIONS AND DISCLOSURES OF HEALTH INFORMATION

Chapter 146 - § 146.83(3)

- The health care provider shall note in the record each request by a patient, or person authorized by the patient, to inspect the patient's health care records.
- Notation shall include:
  - Name of the inspecting person.
  - Time and date of request.
  - Time and date of inspection.
  - Description of the records released for inspection.

Chapter 51 – § 51.30(4)(e)

- HIPAA Covered Entities/Business Associates
  - Custodian of the record shall record each time written information is released from the treatment record for disclosures for purposes **other than** treatment, payment, health care operations, and to provide notices of threats to health and safety. Limitations on recording requirements under § 51.30(4)(e) are identified under § 146.816(2).
  - Notation, when required, shall include:
    - ✓ Name of recipient of information.
    - ✓ Identification of information released.
    - ✓ Purpose of release.
    - ✓ Date of release.
- Non-HIPPA Covered Health Care Providers
  - Custodian of the record shall record each time written information is released from the treatment record.
  - Notation shall include:
    - ✓ Name of recipient of information.

- ✓ Identification of information released.
- ✓ Purpose of release.
- ✓ Date of release.

HIPAA Regulations

- Disclosures Requiring Recording
  - 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
- Contents of Notation
  - Name and address, if known, of recipient of information
  - Date of disclosure
  - Description of information disclosed
  - Purpose of disclosure
  - Summary permitted for multiple disclosures to same recipient for same purpose
- Disclosures **Not** Requiring Recording
  - 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)

PUPIL/STUDENT INFORMATION

Federal regulations at 34 CFR § 99.32(a) require that an educational agency or institution maintain a record of most requests 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 identified in the recording.

DISCLOSURES NOT REQUIRING RECORDING

All requests/disclosures of student records shall be noted, **except** as listed below:

- To parents of dependent students under 34 CFR 99.31(a)(8).
- Pursuant to court orders, lawfully issued subpoenas or litigation under § 99.31(a)(9).
- Disclosures of directory information under § 99.31(a)(11).
- Disclosures to parents/student under § 99.31(a)(12).
- Disclosures with respect to disciplinary proceedings under § 99.31(a)(14).
- To parents under § 99.31(a)(15). [34 CFR § 99.33(c)]

CONTENT OF RECORD OF REQUESTS/DISCLOSURES

- 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 § 99.33(b), names of additional recipients and their legitimate interests.

NOTICE TO RECIPIENT OF STUDENT INFORMATION

Custodians of student records shall notify 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. [§ 99.33(d)]

CHAPTER 46

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

CHAPTER 9
PENALTIES FOR VIOLATING RIGHT TO PRIVACY OF CONFIDENTIAL INFORMATION

HEALTH INFORMATION

Laws governing different types of health records include penalties for violating the confidentiality of those records. The subsections below describe penalties under § 146.84 and § 51.30, Wis. Stats., 42 CFR Part 2, and 45 CFR Part 164. Some include specific civil damages, criminal penalties and employee discipline.

PATIENT HEALTH RECORDS

- **Actions for violations; damages; injunction: § 146.84(1)**
  - Person who violates § 146.82 or § 146.83 in a knowing and willful manner is liable for actual damages to person and exemplary damages up to $25,000 for each violation, plus cost and attorney fees.
  - Person who negligently violates § 146.82 or § 146.83 is 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 with § 146.82 or § 146.83 as well as seek damages as stated above.

- **Penalties - § 146.84(2)**
  - Whoever does any of the following may be fined not more than $25,000 or imprisoned for not more than 9 months or both:
    - ✓ Requests/obtains confidential information under § 146.82 or § 146.83(1c) or (3f) using false pretenses.
    - ✓ Discloses confidential information with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.
    - ✓ Violates § 146.83(4).
  - Whoever negligently discloses confidential information in violation of § 146.82 is subject to a forfeiture of not more than $1,000 per violation.
  - Whoever intentionally discloses information in violation of § 146.82 or § 146.83, 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.

- **Employee Discipline – § 146.84(3)**
  - An employee of the state, or a political subdivision of the state, who violates § 146.82 or § 146.83 may be discharged or suspended without pay. [Does not apply to a health provider who negligently violates § 153.50(6)(e).]

ALCOHOL, DRUG ABUSE, DEVELOPMENTAL DISABILITIES AND MENTAL HEALTH INFORMATION

- **Actions for violations; damages; injunction, § 51.30(9)**
  - 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.

➢ **Penalties - § 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. [§ 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 § 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. [§ 51.30(10)(b)]
- Whoever intentionally discloses confidential information under Chapter 51, 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. [§ 51.30(10)(bm)]

➢ **Employee Discipline - § 51.30(11)**

- Any employee of DHS, county department, or public treatment facility who violates Chapter 51 or any rule promulgated pursuant to Chapter 51 may be subject to discharge or suspension without pay.

HIV TEST RESULTS

➢ **Civil Liability - 252.15(8)**

- Any person violating sub. (2m), (3m)(b), (c), (d), or (f), (5m), (6), or (7)(c) is liable to subject of the test for actual damages, costs and attorney's fee plus exemplary damage up to $2,000 for negligent violation and up to $50,000 for intentional violation.

➢ **Penalties - § 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. (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 - § 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.

SUBSTANCE USE DISORDER PATIENT RECORDS, 42 CFR PART 2

- **Criminal Penalty - 42 CFR § 2.3**

  - Under 42 USC 290dd-2(f), a person who violates any provision of this section or regulation issued pursuant the section shall be fined in accordance with Title 18 of the U.S. Code.

HIPAA - PROTECTED HEALTH INFORMATION, 45 CFR PART 164

- **Civil Penalties - 45 CFR § 160.404**

  - For violations occurring *prior to 2-18-09*, federal DHHS Secretary may not impose a civil money penalty exceeding:
    - ✓ More than $100 for each violation.
    - ✓ More than $25,000 for identical violations during a calendar year.
  - For violations occurring *on or after 2-18-09*, federal DHHS Secretary may not impose a civil money penalty as follows:
    - ✓ For a violation wherein the covered entity or business associate did not know, and by exercising reasonable diligence, would not have known that a violation occurred, not less than $100 or more than $50,000 for each violation, nor more than $1,500,000 for identical violations during a calendar year. Note: annual limit of $25,000 recommended by HHS Office of General Counsel.
    - ✓ For a violation due to reasonable cause and not to willful neglect, not less than $1,000 or more than $50,000 for each violation, and not more than $1,500,000 for identical violations in a calendar year. Note: annual limit of $100,000 recommended by HHS Office of General Counsel.
    - ✓ For a violation due to willful neglect corrected during the 30-day period beginning on the first date the covered entity or business associate knew, or by exercising reasonable diligence, would have known the violation occurred, not less than $10,000 or more than $50,000 for each violation, of more than $1,5000,00 for identical violations occurring during a calendar year. Note: annual limit of $250,000 recommended by HHS Office of General Counsel.
    - ✓ For a violation due to willful neglect and not corrected during the 30 days from when the covered entity or business associate knew, or by exercising reasonable diligence, would have known the violation occurred, not less than $50,000 for each violation, or not more than $1,500,000 for identical violations during a calendar year. Note: annual limit of $1,500,000 recommended by HHS Office of General Counsel.

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 takes 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 CFR § 99.67].

OTHER RECORDS

Child abuse/neglect reporting information: § 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. [§ 48.981(7)(f)]

Certain electronic information under § 48.396(3)(d) and § 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 § 48.47(7g).

PERMITTED DISCLOSURES OF HEALTH INFORMATION					
PURPOSE/ENTITY	**§ 146.82 (Health Care Records)**	**§ 51.30/DHS § 92.04 (Treatment Records)**	**CH. 252 (Communicable Diseases)**	**42 CFR PART 2 (SUD Records)**	**45 CFR PART 164 (HIPPA)**
TO REPORT ABUSE/NEGLECT AND TO ADVOCACY AGENCY	County department, sheriff/police and DA for investigation and prosecution of suspected child abuse/neglect under § 48.981(7). Health provider may initiate contact or respond to request. [§ 146.82(2)(a)11.]	Elder-at-risk/other agency investigating under § 46.90; county dept., sheriff, or police under § 48.981 (child abuse/neglect); or adult-at-risk agency under § 55.043. [§ 51.30(4)(b)17.]		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 § 2.12(c)(6) and (d)]	Appropriate authorities, as required by state law, authorized to receive reports of child abuse, neglect, or domestic violence. [§ 164.512(b)(1)(ii)]
	Elder-at-risk agency or other agency investigating suspected abuse/neglect of elderly/vulnerable adults under §§ 46.90 and 55.043. [§ 146.82(2)(a)7.]	Board on Aging and Long Term Care under § 49.498(5)(a). [§ 51.30(4)(b)22.]		Court order required to disclose patient communications and original AODA/SUD records. [42 CFR § 2.63(a)(2)]	Appropriate authorities, as required by law, authorized to receive reports of domestic violence. [§ 164.512(c)(1)] [Domestic violence reporting not required under Wis. law, so reporting not authorized without consent.]
	Protection and Advocacy agency for developmentally disabled and mentally ill. See statute for procedures when guardian involved. [§ 146.82(2)(a)9.]	Protection and Advocacy agency: Disability Rights Wisconsin. See statute for procedures when guardian involved. [§ 51.30(4)(b)18]			
	Board on Aging and Long Term Care. [§ 146.82(2)(a)14.]				

PERMITTED DISCLOSURES OF HEALTH INFORMATION					
PURPOSE/ENTITY	**§ 146.82 (Health Care Records)**	**§ 51.30/DHS § 92.04 (Treatment Records)**	**CH. 252 (Communicable Diseases)**	**42 CFR PART 2 (SUD Records)**	**45 CFR PART 164 (HIPPA)**
TO REPORT ABUSE/NEGLECT AND TO ADVOCACY AGENCY - CONTINUED	Long term care ombudsman for persons 60 yrs. and older living in long term facility or enrolled in family care program. [§ 146.82(2)(a)16.]				
FOR TREATMENT	Health care provider or persons under supervision, including employees, trainees and volunteers, to perform duties related to providing assistance, being Consulted, or when life or health of patient is in danger. [§§ 146.82(2)(a)2.a., b. & c.]	Health care providers for treatment **limited** to demographic data, diagnoses, medications, allergies name of provider, dates of service, and test results of biological parameters, not psychological tests. [§ 51.30(4)(b)8g.bm]	HIV test results to health provider who provides care to the subject. [§ 252.15(3m)(d)2].	Personnel within an AODA/SUD 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 CFR § 2.12(c)(3)]	Health care provider for treatment. [§§ 164.502(a)(1)(ii) & 164.506(c)(1) & (2)]
	Individual who prepares or stores records documenting treatment. [§ 146.82(2)(a)2.d.]	Employees, trainees and volunteers within a treatment facility with the need to know to perform required job duties. [§ 51.30(4)(b)6. and DHS § 92.04]	HIV test results: person who prepares or stores records for health provider. [§ 252.15(3m)(d)3.]	Medical personnel in medical emergency. [42 CFR § 2.51(a)]	To patient to participate in own treatment. [§ 45 CFR 164.502(a)(1)(i)]
		Health care provider in an emergency when patient cannot consent due to medical condition; only information needed to address emergency. [§ 51.30(4)(b)8. and DHS § 92.04(8)]		FDA when a patient's health may be threatened by a medication taken or prescribed. [42 CFR § 2.51(b)]	

PERMITTED DISCLOSURES OF HEALTH INFORMATION					
PURPOSE/ENTITY	**§ 146.82 (Health Care Records)**	**§ 51.30/DHS § 92.04 (Treatment Records)**	**CH. 252 (Communicable Diseases)**	**42 CFR PART 2 (SUD Records)**	**45 CFR PART 164 (HIPPA)**
FOR TREATMENT - CONTINUED		Within DHS to coordinate treatment for mental illness, developmental disabilities and alcohol/drug abuse for persons committed to or under DHS supervision. [§ 51.30(4)(b)7. and DHS § 92.04(7)]			
		Qualified DHS and director of county departments to measure progress of a patient, to assess least restrictive placement, etc. [§ 51.30(4)(b)5.]			
		Facility receiving person under a Chapter 48, 938, 971 or 975 order; limited record set; not entire treatment record. [§ 51.30(4)(b)9., DHS §§ 92.04(9)(a) & (9)(f)]			
		County department to coordinate services per written agreement approved by DHS; limited to demographic and types/dates of services information within past 6 months. [§ 51.30(4)(b)15.]			

PERMITTED DISCLOSURES OF HEALTH INFORMATION					
PURPOSE/ENTITY	**§ 146.82 (Health Care Records)**	**§ 51.30/DHS § 92.04 (Treatment Records)**	**CH. 252 (Communicable Diseases)**	**42 CFR PART 2 (SUD Records)**	**45 CFR PART 164 (HIPPA)**
FOR PAYMENT	Information to extent needed for billing, collections and payment of claims. [§ 146.82(2)(a)3.]	DHS and director of county departments for billing/collection purposes. Note: More limited than under § 146 or HIPAA. [§ 51.30(4)(b)2.]			Payment activities. [45 CFR § 164.506(c)(3) & § 164.502(a)(1)(i)]
FOR HEALTH CARE OPERATIONS (AUDITS, PROGRAM EVALUATION, ETC.)	Health care operations as defined in 45 CFR 164.501. [§ 146.82(1)]	Individual, agency organization designated by DHS to perform audits, program monitoring, and evaluation without identifying individuals. [§ 51.30(4)(b)1.]	HIV test results to health care facility staff, accreditation organization for monitoring and evaluation. [§ 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 CFR § 2.53]	Quality assessment, patient safety activities, case management, review/evaluations of providers, certification/licensing, health insurance activities, arranging for medical review, legal services, auditing and business management activities. [45 CFR § 164.501 and § 164.506(c)(4)]
	Written request by federal/state government entity to perform authorized functions such as audits, program monitoring and licensure. [§ 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. [§ 51.30(4)(b)7.]		Program to entity with administrative control. [42 CFR § 2.12(c)(3)]	

PERMITTED DISCLOSURES OF HEALTH INFORMATION					
PURPOSE/ENTITY	**§ 146.82 (Health Care Records)**	**§ 51.30/DHS § 92.04 (Treatment Records)**	**CH. 252 (Communicable Diseases)**	**42 CFR PART 2 (SUD Records)**	**45 CFR PART 164 (HIPPA)**
TO PERSONS INVOLVED WITH OR IN CONTACT WITH PATIENT, INCLUDING SUBJECT OF RECORD (PATIENT)	A portion, but not a copy, of record to any person with verbal consent of physically present patient; and when patient incapacitated, not physically available or in an emergency, and health provider thinks it is in patient's best interest a limited portion of record to Immediate family member, other relative, close friend, or victim advocate under § 50.378 (1) & (2)-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. [§ 146.82(4)]	Information limited to summary of diagnosis/prognosis, medications and description of treatment plan to spouse, domestic partner, parent, adult child/sibling directly providing care or monitoring treatment, as verified per statutory provision and upon person making request in writing (except in emergency). Does not include information about substance use treatment. [§ 51.30(4)(b)20.]	HIV test results to subject or personal representative. [§ 252.15(3m)(d)1.]	Acknowledge presence in facility known as AODA/SUD treatment facility only with written consent of subject or court order. [42 CFR § 2.13(c)]	Family member or friend involved with care or payment for care of subject, unless subject objects, or when patient not present or incapacitated, only information directly relevant to person's involvement with patient. [45 CFR § 164.510(b)(1)(i)]
	Entities involved in placement of child outside of the home from recommendation through placement under Chapter 48 or 938. [§ 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. [§ 51.30(4)(b)13.]	Subject or personal representative may disclose HIV test results to anyone. [§ 252.15(3m)(a)]		Notification of subject's location, condition, and/or death to persons involved in the care of the subject. [45 CFR § 164.510(b)(1)(ii)]

PERMITTED DISCLOSURES OF HEALTH INFORMATION					
PURPOSE/ENTITY	**§ 146.82 (Health Care Records)**	**§ 51.30/DHS § 92.04 (Treatment Records)**	**CH. 252 (Communicable Diseases)**	**42 CFR PART 2 (SUD Records)**	**45 CFR PART 164 (HIPPA)**
TO PERSONS INVOLVED WITH OR IN CONTACT WITH PATIENT, INCLUDING SUBJECT OF RECORD (PATIENT) - CONTINUED	School district under special circumstances. [§ 146.82(2)(a)12.]	Court-appointed guardian of person found incompetent to court and treatment records; parent, guardian or person in place of parent of developmentally disabled minor to court and treatment record, unless minor 14 years of older objects. [§ 51.30(5)(b)1.]	Health care professional to person with significant exposure under § 252.15(5g) or (5j). [§ 252.15(3m)(e)]		Facility directory information to person contacting facility including name, location, condition in general terms, and religious affiliation unless subject objects. [45 CFR § 164.510(a)]
		Minor aged 14 years and over to court and treatment records. Minor under 14 years in presence of parent, guardian, counsel or judge. [§ 51.30(5)(b)2.]	HIV test results to entities involved in out-of-home placements under Ch. 48 and Ch. 938 for court reports and permanency plans and to foster parents, group home, and other facility operators. [§ 252.15(3m)(d)15.]		
		Parent, guardian, person in place of parent of minor, guardian of adult or minor aged 14 years or older may release court and treatment records to named person. [§ 51.30(5)(a)]			
		Care provider/child welfare agency of child placed out of home, limited information including diagnosis, treatment plan and medications, needed to provide care, but not copies. [§ 51.30(4)(cg)]			

PERMITTED DISCLOSURES OF HEALTH INFORMATION					
PURPOSE/ENTITY	**§ 146.82 (Health Care Records)**	**§ 51.30/DHS § 92.04 (Treatment Records)**	**CH. 252 (Communicable Diseases)**	**42 CFR PART 2 (SUD Records)**	**45 CFR PART 164 (HIPPA)**
TO PERSONS INVOLVED WITH OR IN CONTACT WITH PATIENT, INCLUDING SUBJECT OF RECORD (PATIENT) - CONTINUED		For entering information into statewide automated child welfare information system under § 46.03(7)(g). [§ 51.30(4)(b)27.]			
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 § 302.388. [§ 146.82(2)(a)21.]	Correctional officer with custody or supervision of person transferred or discharged from a treatment facility; change in status only. [§ 51.30(4)(b)12.]	HIV test results to sheriff, jail or keeper of prison for proposes of assigning single cell. [§ 252.15(3m)(d)12.]	Report a crime on premises of AODA program or against program personnel; facts of crime not AODA information. [42 CFR § 2.12(c)(5)]	Upon request from law enforcement for identifying/locating a suspect, fugitive, material witness, or missing person; limited information identified in regulations. [45 CFR § 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 and 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. [§ 146.82(2)(a)22.]	Correctional facility or agent supervising individual receiving services under Ch. 51 as a condition of supervision; limited information. [§ 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 § 302.388. [§ 252.15(3m)(d)16.]	Undercover agents/informants on premises to criminally investigate employees: court order needed. [42 CFR § 2.67]	Law enforcement about a victim or suspected victim with consent, or when in best interest of victim/suspected victim if patient unable to consent and information is not intended for use against the victim. [45 CFR § 164.512(f)(3)]

PERMITTED DISCLOSURES OF HEALTH INFORMATION					
PURPOSE/ENTITY	**§ 146.82 (Health Care Records)**	**§ 51.30/DHS § 92.04 (Treatment Records)**	**CH. 252 (Communicable Diseases)**	**42 CFR PART 2 (SUD Records)**	**45 CFR PART 164 (HIPPA)**
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 §§ 51.35 or 51.37; limited information, not including treatment information. [§ 51.30(4)(a)16.]	HIV test results of prisoner to correctional officer with custody, or transporting, if necessary for health and safety of subject or others. [§ 252.15(3m)(d)17.]		Law enforcement when entity believes information is evidence of criminal conduct on premises of covered entity. [45 CFR § 164.512(f)(5)]
		Law enforcement to report apparent crime on premises; limited information. [§ 51.30(4)(b)19.]			In response to court order, grand jury subpoena or administrative request. [45 CFR § 164.512(f)(1)(ii)]
		DOC for purpose of registration with Sex Offender Registry Program under § 301.45. [§ 51.30(4)(b)24.]			Law enforcement when provider of emergency health care believes a crime has been committed elsewhere. [45 CFR § 164.512(f)(6)]
		DOC/sheriff to assess compliance with driver safety plan. [§ 51.30(4)(b)26.]			Law enforcement or correctional institution to provide health care to inmates, [§ 164.512(k)(5)]
		DOC the court records of Ch. 51 proceeding for sex offender registrants under § 301.45. [§ 51.30(3)(d)]			Law enforcement to identify/apprehend individual; limited information. [45 CFR § 164.512(j)(1)(ii)]

PERMITTED DISCLOSURES OF HEALTH INFORMATION					
PURPOSE/ENTITY	**§ 146.82 (Health Care Records)**	**§ 51.30/DHS § 92.04 (Treatment Records)**	**CH. 252 (Communicable Diseases)**	**42 CFR PART 2 (SUD Records)**	**45 CFR PART 164 (HIPPA)**
TO LAW ENFORCEMENT AND/OR DEPARTMENT OF CORRECTIONS (DOC) - CONTINUED		DOC, DOJ, DHS and district attorney, the court records of Ch. 51 proceeding for a Ch.980 proceeding. [§ 51.30(3)(bm)]			Upon death if suspicion that crime led to death. [45 CFR § 164.512(f)(4)]
					Required reporting of wounds and other injuries. [45 CFR § 164.512(f)(1)(i)]
PER COURT ORDER - GENERAL	Lawful order of a court of record signed by a judge. [§ 146.82(2)(a)4.]	Treatment records per lawful order of a court of record signed by a judge. [§ 51.30(4)(b)4.] Subpoena not adequate unless signed by judge. [DHS § 92.04(4)(b)]	HIV test results by lawful order of a court of record. [§ 252.15 (3m)(d)9.]	Lawful order of a court of record issued per regulations. Subpoena needed to compel disclosure. [42 CFR §§ 2.64-2.65]	Judicial or administrative proceedings pursuant to court order, or subpoena or discovery request under circumstances specified in regulations. [45 CFR § 164.512(e)]
		Court records regarding Chapter 51 proceeding per lawful order of court of record. [§ 51.30(3)(c)]			
FOR CIVIL LEGAL PROCEEDINGS	An official entity involved in an out-of-home placement of child or juvenile under Ch. 48 or 938. [§ 146.82(2)(a)18m.]	DOJ and district attorney for Ch.980 proceedings. [§ 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. [§ 252.04(6)]	See “Court Order” above. [42 CFR § 2.64]	See “Court Order” above.

PERMITTED DISCLOSURES OF HEALTH INFORMATION					
PURPOSE/ENTITY	**§ 146.82 (Health Care Records)**	**§ 51.30/DHS § 92.04 (Treatment Records)**	**CH. 252 (Communicable Diseases)**	**42 CFR PART 2 (SUD Records)**	**45 CFR PART 164 (HIPPA)**
FOR CIVIL LEGAL PROCEEDINGS - CONTINUED	Appropriate examiners and facilities in accordance with § 971.17. [§ 146.82(2)(c)]	Examiners/facilities for proceeding under § 971.17. [§ 51.30(4)(b)8m.]	Court order may be Records divulged for public health, purposes or commitment proceedings under (5) of Chapter 252, or under § 938.296(4) or § 968.38(4). [§ 252.11(7)]		
	Elder-at-risk agency, or adult-at-risk agency, under § 46.90 or § 55.043. [§ 146.82(2)(a)7.]	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 Chapter 51 or Ch. 48, 971, 975, or 980. [§ 51.30(4)(b)11.]			
	DOC, DHS, DOJ and district attorneys for evaluations and proceedings under Ch. 980. [§ 146.82 (cm)]	GAL for unborn child for proceedings under § 48.133. [§ 51.30(4)(b)11m.]			
		Appropriate persons in DOC, DHS, DOJ and district attorneys for evaluations and court proceedings under Ch. 980. [§ 51.30(4)(b)8s.]			

PERMITTED DISCLOSURES OF HEALTH INFORMATION					
PURPOSE/ENTITY	**§ 146.82 (Health Care Records)**	**§ 51.30/DHS § 92.04 (Treatment Records)**	**CH. 252 (Communicable Diseases)**	**42 CFR PART 2 (SUD Records)**	**45 CFR PART 164 (HIPPA)**
FOR CIVIL LEGAL PROCEEDINGS - CONTINUED		Mental health review officer for minors involved in proceedings under Chapter 48 or 938. [§ 51.30(4)(b)21.]			
		Access to court records by subject of records, individual's attorney, GAL and corporation for involuntary commitment, recommitment, reexaminations, appeals and other actions under Chs. 51, 971, 975 and 980. [§ 51.30(3)(a) & (b)]			
		Access to court records DOC, DOJ, DHS or district attorney for Ch. 980 proceedings. [§ 51.30(3)(bm)]			
		Access to court records to others with written consent of subject and court order, or under § 51.20(13)(cv)4. [§ 51.30(3)(c)]			
		Access to court records by DOC for individuals required to register as sex offenders. [§ 51.30(3)(d)]			

PERMITTED DISCLOSURES OF HEALTH INFORMATION					
PURPOSE/ENTITY	**§ 146.82 (Health Care Records)**	**§ 51.30/DHS § 92.04 (Treatment Records)**	**CH. 252 (Communicable Diseases)**	**42 CFR PART 2 (SUD Records)**	**45 CFR PART 164 (HIPPA)**
FOR CRIMINAL PROCEEDINGS	Entities investigating or prosecuting sexual exploitation by a therapist under § 940.22. [§ 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 § 938.296 and § 968.38. [§ 252.11(5m)]	Petition to court to use informant information to prosecute AODA program. [42 CFR § 2.66.] See "Court Order" above. [42 CFR § 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. [§§ 146.82(3)(a) & (b)]	Warning of dangerousness: Health care provider in HIPAA covered entity, or law officer, may disclose limited information to notify identified entities of a potential risk to health and safety of others. [§ 51.17(3)]	Health care providers, laboratories, and anyone with knowledge report communicable diseases to local health officer and/or department of health services. [§§ 252.05(1), (2) & (3)]	Audit and evaluation activities without copying or removal of records. [42 CFR § 2.53]	Person who may have been exposed to communicable disease and employer under certain circumstances. [45 CFR § 164.512(b)(1)(iv)]
	Covered HIPAA entity may disclose information in good faith to prevent/lessen serious and imminent threat to health/safety of person/public. [§ 146.816(2)(b)4.]	To any person to assist to apprehend person with unauthorized absence from an admission under § 971.14, 971.17, 980.06 or Ch. 975, or transferred under § 51.35(3) or 51.37; limited information described. [§ 51.30(12m)]	Teachers, nurses and principals report communicable diseases to local health officer. [§ 252.21]		Employer under limited circumstances per 29 CFR §§ 1904-1928 & 30 CFR §§ 50-90.
	DHS for inspection and investigation of rural medical center under § 50.53. [§ 146.82(2)(a)17.]	To DOJ regarding possession of a firearm for person under § 51.20 or § 51.45. [§ 51.30(4)(b)28.]			Limited information to disaster relief entities to coordinate relief efforts for notification purposes. [45 CFR § 164.510(b)(4)]

PERMITTED DISCLOSURES OF HEALTH INFORMATION					
PURPOSE/ENTITY	**§ 146.82 (Health Care Records)**	**§ 51.30/DHS § 92.04 (Treatment Records)**	**CH. 252 (Communicable Diseases)**	**42 CFR PART 2 (SUD Records)**	**45 CFR PART 164 (HIPPA)**
FOR PUBLIC HEALTH AND SAFETY ACTIVITIES; HEALTH OVERSIGHT - CONTINUED	For the purpose of disclosing information about a patient in good faith to lessen serious/imminent threat to health/safety of others, including a threat against a school, student, or employee. [§§ 146.816(2)(b)4. and 5.]		Physicians and other health professionals report sexually transmitted diseases to local health officer and department of health services. [§ 252.11(1m)]		Reporting of disease, injury, births/deaths, public health investigations and interventions. [45 CFR § 164.512(b)(1)(i)]
			Report by health providers of HIV test results to state epidemiologist. [§ 252.15(3m)(d)6.]		FDA regarding adverse events, product defects, etc. [45 CFR § 164.512(b)(1)(iii)]
			When person ceases treatment for communicable disease, physician or APNP shall report to DHS. [§ 252.11(4)]		Oversight agency for audits; administrative, civil or criminal investigations; inspections; licensure/ disciplinary actions; administrative, civil, criminal or proceedings. [45 CFR § 164.512(d)]
			HIV test results to blood bank, blood center, or plasma center. [§ 252.15(3m)(d)4.]		To avert serious threat to health and safety. [45 CFR § 164.512(j)(1)(i)]
UPON DEATH	Coroner/medical examiner to complete medical certificate or investigate a death under § 979.01 or 979.10. [§ 146.82(2)(a)18.]	DHS, sheriff, police, or DA to investigate death reported under § 51.64. [§ 51.30(4)(b)23.]	Coroner or medical examiner under certain conditions. [§ 252.15(3m)(d)11.]		Coroners/medical examiners to perform duties. [45 CFR § 164.512(g)(1)]

PERMITTED DISCLOSURES OF HEALTH INFORMATION					
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	DHFS, law enforcement or DA to investigate certain deaths in nursing homes/CBRFS. [§ 146.82(2)(a)15.]		Funeral director or other person preparing body or performing autopsy. [§ 252.15(3m)(d)7.]		Funeral directors. [45 CFR § 164.512(g)(2)] [Not permitted in Wisconsin 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. [§ 252.15(3m)(d)13.]		
FOR RESEARCH	Researcher upon meeting statutory standards. [§ 146.82(2)(a)6.]	Researcher upon meeting statutory standards. [§ 51.30(4)(b)3.]	Researcher who meets statutory standards. [§ 252.15(3m)(d)10.]	Researcher who meets federal standards. [§ 42 CFR s 2.52(a)]	Research upon meeting federal standards. [45 CFR § 164.512(i)]
FOR ORGAN AND TISSUE DONATION	Organ procurement organization to examine a body under § 157.06(5)(b)1. [§ 146.82(2)(a)19.]		Entities involved in organ and tissue donation. [§ 252.15(3m)(d)5.]		Organ, eye and tissue donation. [45 CFR § 164.512(h)]
FOR SPECIALIZED GOVERNMENT FUNCTIONS					Military activities, national security and other federal government purposes. [45 CFR § 164.512(k)] [Consult legal counsel]
DE-IDENTIFIED INFORMATION	To anyone if Information that does not permit identification of patient. [§ 146.82(2)(a)20.]	Information that does not permit identification of patient. [§ 51.30(4)(b)25.]			Permitted after meeting stringent standards. [45 CFR § 164.514(a)]

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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. [§ 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.