

 WRAPAROUND MILWAUKEE Policy & Procedure	Date Issued: 9/1/98	Reviewed: 9/28/10 By: PE&MG Last Revision: 11/11/10	Section: ADMINISTRATION	Policy No: 009	Pages: 1 of 4 (5 Attachments)
	<input checked="" type="checkbox"/> Wraparound <input checked="" type="checkbox"/> Wraparound-REACH <input type="checkbox"/> FISS <input checked="" type="checkbox"/> Project O-Yeah	Effective Date: 1/1/11	Subject: CONFIDENTIALITY / EXCHANGE OF INFORMATION		

I. POLICY

It is the policy of Wraparound Milwaukee, and the State of Wisconsin Statute HFS 92 and the Mental Health Act Chapter 51(51.30), that all client information (written/electronic or verbal) remains confidential. Client identities and client specific information, whether stored in hard copy format or electronically, shall be considered confidential and may only be given/received/shared with authorized persons with the express, written, informed consent of the parent/legal guardian and youth/client. Exceptions to this rule are identified under Chapter HFS 92.04 “Disclosure Without Informed Consent” (*see Attachment 1*) and [the Mental Health Act](#) - Chapter 51.30(4)(b) (*see Attachment 2*).

Client identities and client specific information (whether it be the actual hard copy record or electronic files) are not to be removed from the Care Coordination Agency and/or its satellite offices, except as deemed necessary by job responsibilities.

II. PROCEDURE

A. Authorization for Release of Information.

- Client identity and client specific information may only be discussed with or released to the individuals/agencies that are listed on the signed Wraparound AUTHORIZATION FOR RELEASE OF INFORMATION form. (*see Attachment 3A for Wraparound, 3B for REACH and 3C for Project O-YEAH*). Information that is released must be limited to the minimum necessary information required to comply with the request as identified on the signed Authorization to Release Information form. (See Wraparound “Minimum Necessary” policy.) This form must be completed and signed by the appropriate parties **before** any information can be given/received/shared.

TO NOTE:

There [was a recent](#) change to the State Mental Health rule that allows the release of specific client related information without the client’s consent.

Treatment records of an individual may be released with informed consent to a “health care provider” in the following circumstances where it is “necessary for the current treatment of the individual. Information that may be released under this subdivision is limited to the individual’s **name, address and date of birth**; the **name of the individual’s provider of services for mental illness, developmental disability, alcoholism or drug dependence**; the **date of any of those services provided**; the individual’s **medications, allergies, diagnosis, diagnostic test results and symptoms**; and **other relevant demographic information necessary for the current treatment of the individual.**”

(8g. am. In this subdivision, “**diagnostic test results**” means the results of clinical testing of biological parameters, but does **not mean the results of psychological or neuropsychological testing.**”)

*Note that the permission to release information is very specific and does **NOT** include the entire medical record nor does it include any type of progress reports or treatment plans/plans of care or other medical information.*

Information could be released to the following:

(ag) “Health care provider” has the meaning given in s. 146.81 (1) (a) to (p).

146.81 Reads

- (1) “Health care provider” means any of the following:
- (a) A nurse licensed under ch. 441.
 - (b) A chiropractor licensed under ch. 446.
 - (c) A dentist licensed under ch. 447.
 - (d) A physician, physician assistant, perfusionist or respiratory care practitioner licensed or certified under subch. II of ch. 448.
 - (dg) A physical therapist licensed under subch. III of ch. 448.
 - (dr) A podiatrist licensed under subch. IV of ch. 448.
 - (em) A dietitian certified under subch. V of ch. 448.
 - (eq) An athletic trainer licensed under subch. VI of ch. 448.
 - (es) An occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.
 - (f) An optometrist licensed under ch. 449.
 - (fm) A pharmacist licensed under ch. 450.
 - (g) An acupuncturist certified under ch. 451.
 - (h) A psychologist licensed under ch. 455.
 - (hg) A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.
 - (hm) A speech-language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.
 - (hp) A massage therapist or bodyworker certified under ch. 460.
 - (i) A partnership of any providers specified under pars. (a) to (hp).
 - (j) A corporation or limited liability company of any providers specified under pars. (a) to (hp) that provides health care services.
 - (k) An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.
 - (l) A hospice licensed under subch. IV of ch. 50.
 - (m) An inpatient health care facility, as defined in s. 50.135 (1).
 - (n) A community-based residential facility, as defined in s. 50.01 (lg).
 - (p) A rural medical center, as defined in s. 50.50 (ll).
2. After the form is completed and signed by **all** necessary parties, a copy of the form is to be given to the client, client’s parent or legal guardian and the original copy of the form must be filed in the clients chart under the Intake/Consents section.
3. If new Providers, Team Members and/or any other individual(s) join the Child and Family Team and/or information needs to be shared/given/received after the initial consent is signed, the Care Coordinator must complete an **additional** Authorization for Release of Information form (*see Attachment 4 – for both Wraparound and REACH. O-YEAH program should just have the client sign another O-YEAH Authorization for Release of Information form*) that lists the new Providers/Team Members/Individuals. Again, this consent must be signed **before** any information can be given/received/shared.

B. Re-release of Information.

If a document specifically states that it “May Not be Re-released”, Wraparound Milwaukee will comply with that request. Otherwise, refer to the following in the Wisconsin State Regulations that allow for re-release of information:

From State of Wisconsin Statute HFS 92.03

Under “**General Requirements**”

- (h) No personally identifiable information in treatment records may be re-released by a recipient of the treatment record unless re-release is specifically authorized by informed consent of the subject individual, by this chapter or as otherwise required by law.
- (i) Any disclosure or re-release, except oral disclosure, of confidential information shall be accompanied by a written statement which states that the information is confidential and disclosure without patient consent or statutory authorization is prohibited by law.

No personally identifiable information in treatment records may be re-released by Wraparound Milwaukee unless the re-release is authorized by the client/guardian.

Written disclosures of information must be accompanied by a written statement that the information is confidential and disclosure without patient consent or statutory authorization is prohibited by law.

C. Disclosure Tracking Log.

1. For all disclosures of client related information in written form for which there is a signed Authorization and for ALL disclosures where there is NO signed authorization, an entry must be made on the Wraparound Milwaukee Disclosure Tracking Log (*see Attachment 5*) or within the context of a [Care Coordination](#) Progress Note (*see Progress Notes Policy & Procedure #037*).
2. The following information is to be identified on each Disclosure Tracking Log form.
 - a. Client Name.
 - b. Client Date of Birth.
3. For each disclosure, the following information is to be logged.
 - a. Date the request for the information was received. If “request date” does not apply, enter the date the entry is being made.
 - b. Name of the individual and/or agency along with additional identifying information such as the agency address or phone number.
 - c. Purpose for the disclosure using key at the bottom of the page.
 - d. Disclosure type.
 - Auth on file – Check YES or NO.
 - Check Written Material or Oral.
 - e. Information or document disclosed.
 - f. Date the information was disclosed.
 - g. Disclosed by – name of the person releasing the information.
4. Disclosure Tracking Logs are to be maintained as part of the client record.
5. More than one Disclosure Log may be used at the same time (i.e., at Care Coordination Agency and in Wraparound Administrative Offices); however, all Logs are to be filed in the client record at time of disenrollment.
6. Disclosures related to determining financial eligibility status and change of placement letters that are generated by the Synthesis (Wraparound Milwaukee’s IT system) application will be recorded in a report at the time of the client’s disenrollment and placed in the client record.

D. Photographing Clients.

1. Agencies will obtain consents from the client/person, or client’s/person’s parent/person legally responsible prior to any photography involving the client. Consent to be photographed will be signed

and on record before the photograph occurs. This includes using cameras, cell phones or other devices that capture images of clients.

2. Clients have the right to decline to have their picture taken. There should be no inappropriate pictures or images of clients receiving care and treatment and/or engaging in an activity where a client feels unsafe or humiliated. It is the provider's obligation to protect and promote each client's right to privacy. Invasion of privacy may form the basis for criminal or civil liability. See Wis. Stat. 942.08, 942.09 and 995.50.

Reviewed & Approved By: Bruce Kamradt
Bruce Kamradt

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Chapter DHS 92

CONFIDENTIALITY OF TREATMENT RECORDS

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Note: Chapter HSS 92 was renumbered chapter HFS 92 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, September, 1999, No. 525. Chapter HFS 92 was renumbered to chapter DHS 92 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 92.01 Introduction. (1) **SCOPE.** This chapter applies to all records of persons who are receiving treatment or who at any time received treatment for mental illness, developmental disabilities, alcohol abuse or drug abuse from the department, a board established under s. 46.23, 51.42 or 51.437, Stats., or treatment facilities and persons providing services under contract with the department, a board or a treatment facility whether the services are provided through a board or not. Private practitioners practicing individually who are not providing services to boards are not deemed to be treatment facilities and their records are not governed by this chapter.

(2) **STATUTORY AUTHORITY.** This chapter is promulgated pursuant to s. 51.30 (12), Stats., which directs the department to promulgate rules to implement s. 51.30, Stats.

History: Cr. Register, May, 1984, No. 341, eff. 6-1-84.

DHS 92.02 Definitions. In this chapter:

(1) "Board" means the community board established under s. 46.23, 51.42 or 51.437, Stats.

(a) "51-board" means a community board established under s. 51.42 or 51.437, Stats.

(b) "Human services board" means a combined board established under s. 46.23, Stats.

(2) "Court order" means a lawful order of a court of competent jurisdiction.

(3) "Department" means the department of health services.

(4) "Director" has the meaning designated in s. 51.01 (6), Stats.

(5) "Discharge" has the meaning designated in s. 51.01 (7), Stats.

(6) "Inpatient facility" has the meaning designated in s. 51.01 (10), Stats.

(7) "Patient" means any individual who is receiving or who at any time has received services for mental illness, developmental disabilities, alcoholism or drug dependence from the department, a board, a treatment facility, or from persons providing services under contract to the department, a board or a treatment facility.

(8) "Program director" means the administrative director appointed by the board.

(9) "Pupil records" has the meaning designated in s. 118.125 (1) (d), Stats.

(10) "Qualified staff" means only those board staff or department staff who require confidential information for a valid reason connected with their assignment in the administration of services provided by the board or department.

(11) "Service provider" means a person who provides services under contract to the department, a board or a treatment facility, including any employee, consultant, volunteer, agency or

organization providing any assessment, treatment or other service or rendering any consultation or opinion regarding any patient assessment, need for service or course of treatment, whether as a contractor, subcontractor or in any other capacity.

(12) "Somatic treatment" means treatment by physical means.

Note: Somatic treatments include administration of medications, psychosurgery and electroconvulsive shock.

(13) "Treatment" has the meaning designated in s. 51.01 (17), Stats., namely, those psychological, educational, social, chemical, medical or somatic techniques designed to bring about rehabilitation of a mentally ill, alcoholic, drug dependent or developmentally disabled person.

(14) "Treatment director" has the meaning designated in s. 51.01 (18), Stats., except that in a hospital as defined under s. 50.33 (2) (a), Stats., the treatment director is the patient's primary physician.

(15) "Treatment facility" has the meaning designated in s. 51.01 (19), Stats., namely, any publicly or privately operated facility or unit of a facility providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient treatment programs and rehabilitation programs.

(16) "Treatment records" has the meaning designated in s. 51.30 (1) (b), Stats., namely, all records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by boards and their staffs, and by treatment facilities. "Treatment records" include written, computer, electronic and microform records, but do not include notes or records maintained for personal use by an individual providing treatment services for the department, a board, or a treatment facility if the notes or records are not available to others.

History: Cr. Register, May, 1984, No. 341, eff. 6-1-84; correction in (3) made under s. 13.92 (4) (b) 6., Stats., Register November 2008 No. 635.

DHS 92.03 General requirements. (1) **TREATMENT RECORDS.** (a) All treatment records or spoken information which in any way identifies a patient are considered confidential and privileged to the subject individual.

(b) If notes or records maintained for personal use are to be made available to other persons, they shall be placed in the treatment record, become part of that record and be governed by this chapter.

(c) The department and every board, treatment facility and service provider shall designate in writing one or more persons to serve as record custodians.

(d) The department and every board, treatment facility and service provider shall develop a notice describing the agency's treatment record access procedures. The notice shall be prominently displayed and made available for inspection and copying.

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(e) Information requests shall be filled as soon as practicable. If a request is denied, specific reasons shall be given for denying the request.

(f) No personally identifiable information contained in treatment records may be released in any manner, including oral disclosure, except as authorized under s. 51.30, Stats., this chapter or as otherwise provided by law.

(g) Whenever requirements of federal law regarding alcoholism and drug dependence services in 42 CFR Part 2 require restrictions on the disclosure of treatment records greater than the restrictions required by this section, the federal requirements shall be observed.

(h) No personally identifiable information in treatment records may be re-released by a recipient of the treatment record unless re-release is specifically authorized by informed consent of the subject individual, by this chapter or as otherwise required by law.

(i) Any disclosure or re-release, except oral disclosure, of confidential information shall be accompanied by a written statement which states that the information is confidential and disclosure without patient consent or statutory authorization is prohibited by law.

(j) Members and committees of boards shall not have access to treatment records. In meetings of boards and board committees, the program directors shall ensure that patient identities are not revealed or made obvious by description of particular patient situations.

(k) All treatment records shall be maintained in a secure manner to ensure that unauthorized persons do not have access to the records.

(L) Pupil records of minor patients in educational programs within treatment facilities, which are disclosed pursuant to s. 118.125, Stats., shall not contain any information from other treatment records unless there is specific informed consent for release of that information as required under s. DHS 92.06.

(m) No treatment record information may be released to a person previously unknown to the agency unless there is reasonable assurance regarding the person's identity.

(n) Whenever information from treatment records is disclosed, that information shall be limited to include only the information necessary to fulfill the request.

(o) Any request by a treatment facility for written information shall include a statement that the patient has the right of access to the information as provided under ss. DHS 92.05 and 92.06.

(p) The conditions set forth in this section shall be broadly and liberally interpreted in favor of confidentiality to cover a record in question.

Note: If a person requesting information does not qualify for it under the section cited in this chapter, other sections should be reviewed to determine if the requester qualifies under another section.

(2) DISCLOSURE OF PATIENT STATUS IN RESPONSE TO INQUIRIES. (a) No person may disclose information or acknowledge whether an individual has applied for, has received or is receiving treatment except with the informed consent of the individual, as authorized under s. 51.30 (4) (b), Stats., or as otherwise required by law and as governed by this subsection.

(b) The department and each board and treatment facility shall develop written procedures which include a standard, noncommittal response to inquiries regarding whether or not a person is or was receiving treatment. All staff who normally deal with patient status inquiries shall be trained in the procedures.

(3) INFORMED CONSENT. Informed consent shall be in writing and shall comply with requirements specified in s. 51.30 (2), Stats., and this subsection.

(a) Informed consent shall be valid only if voluntarily given by a patient who is substantially able to understand all information specified on the consent form. A guardian may give consent on behalf of the guardian's ward. If the patient is not competent to

understand and there is no guardian, a temporary guardian shall be sought in accordance with s. 54.50, Stats.

(b) Informed consent is effective only for the period of time specified by the patient in the informed consent document.

(c) A copy of each informed consent document shall be offered to the patient or guardian and a copy shall be maintained in the treatment record.

(d) Each informed consent document shall include a statement that the patient has a right to inspect and receive a copy of the material to be disclosed as required under ss. DHS 92.05 and 92.06.

(e) Any patient or patient representative authorized under s. 51.30 (5), Stats., may refuse authorization or withdraw authorization for disclosure of any information at any time. If this occurs, an agency not included under s. 51.30 (4) (b), Stats., that requests release of information requiring informed consent shall be told only that s. 51.30, Stats., prohibit release of the information requested.

(4) RELEASE OF TREATMENT RECORDS AFTER DEATH. (a) Consent for the release of treatment records of a deceased patient may be given by an executor, administrator or other court-appointed personal representative of the estate.

(b) If there is no appointment of a personal representative, the consent may be given by the patient's spouse or, if there is none, by any responsible member of the patient's family.

(c) Disclosures required under federal or state laws involving the collection of death statistics and other statistics may be made without consent.

History: Cr. Register, May, 1984, No. 341, eff. 6-1-84; correction in (3) (a) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 92.04 Disclosure without informed consent.

(1) AUDITS AND EVALUATION. (a) Treatment records may be disclosed for management audits, financial audits or program monitoring and evaluation but only as authorized under s. 51.30 (4) (b) 1., Stats., and this subsection.

(b) A record of all audits and evaluations shall be maintained at each treatment facility.

(c) Auditors and evaluators shall provide the treatment facility with written documentation regarding their authority to audit or evaluate by reference to statutes, administrative rules or certification by the department.

(2) BILLING OR COLLECTION. (a) Treatment records may be released for billing or collection purposes only as authorized under s. 51.30 (4) (b) 2., Stats., and this subsection.

(b) Any information specified in ch. DHS 1 may be released to the collection authority under ss. 46.03 (18) and 46.10, Stats.

Note: Under ss. 46.03 (18) and 46.10, Stats., the department is the collection authority for all services provided by the department's boards. Where collection authority has not been delegated, the department's bureau of collections is the only qualified service organization for collections allowed by Wisconsin law. Where collections have been delegated, boards or facilities are agencies of the department for billing and collection purposes.

(c) Patient information may be released to county departments of public welfare or social services only in accordance with the provisions of sub. (13).

(d) Patient information may be released to third-party payers only with informed consent.

(e) Each agency with billing and collection responsibility shall develop further written procedures as needed to ensure confidentiality of billing and collection information. These procedures shall be made available to the department upon request.

Note: Further confidentiality provisions on billing and collections are specified in ss. DHS 1.05 and 1.06.

(3) RESEARCH. Treatment records may be released for purposes of research only as authorized under s. 51.30 (4) (b) 3., Stats.

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(4) COURT ORDER. (a) Treatment records may be released pursuant to a lawful court order only as authorized under s. 51.30 (4) (b) 4, Stats., and this subsection.

Note: If a treatment facility director, program director or department official believes that the court order is unlawful, that person should bring the order to the attention of his or her agency's legal counsel.

(b) A subpoena, unless signed by a judge of a court of record, is not sufficient to authorize disclosure.

(c) A court order regarding confidential drug or alcohol treatment information shall be in compliance with 42 CFR Part 2, Subpart E.

Note: When a subpoena signed by an attorney or the clerk of court requires the record custodian to appear at the hearing with the records, the custodian should assert the privilege and refuse to turn the records over until ordered to do so by the circuit judge.

(5) PROGRESS DETERMINATION AND ADEQUACY OF TREATMENT. (a) Treatment records may be made accessible to department and board staff to determine progress and adequacy of treatment or to determine whether a person should be transferred, discharged or released, but only as authorized under s. 51.30 (4) (b) 5., Stats., and this subsection.

(b) Treatment information as specified under s. 51.30 (4) (b) 10, Stats., may also be released to the following state employees and department board members concerning persons under their jurisdiction:

1. Members of the parole board;
2. Members of the special review board for sex crimes;
3. Employees of the juvenile offender review program; and
4. Members of the juvenile corrections reception center's joint planning and review committee.

(6) WITHIN THE TREATMENT FACILITY. (a) Treatment records maintained in the facility or as computerized records by the provider of data-processing services to the facility may be made available to treatment staff within the facility only as authorized under s. 51.30 (4) (b) 6., Stats., and this subsection.

(b) Confidential information may be released to students or volunteers only if supervised by staff of the facility.

(c) Treatment records may be taken from the facility only by staff directly involved in the patient's treatment, or as required by law.

(7) WITHIN THE DEPARTMENT. Treatment records may be made available to department staff only as authorized under s. 51.30 (4) (b) 7., Stats., and this chapter. Information may be disclosed to qualified staff of the department from the treatment records of persons who have been committed by a court to the care and custody of the department or who are voluntarily admitted to an institution of the department under chs. 51, 55, 971, or 975, Stats., or who are under probation or parole supervision.

(8) MEDICAL EMERGENCY. Treatment records may be released to a physician or designee for a medical emergency only as authorized under s. 51.30 (4) (b) 8., Stats.

(9) TRANSFER OF PERSON INVOLUNTARILY COMMITTED. (a) Treatment records may be released to a treatment facility which is to receive an involuntarily committed person only as authorized under s. 51.30 (4) (b) 9., Stats., and this subsection.

(b) When an individual is to be transferred, the treatment director or designee shall review the treatment record to ensure that no information is released other than that which is allowed under this subsection.

(c) If a summary of somatic treatments or a discharge summary is prepared, a copy of the summary shall be placed in the treatment record.

(d) A discharge summary which meets discharge summary criteria established by administrative rules or accreditation standards shall be considered to meet the requirements for a discharge summary specified under s. 51.30 (4) (b) 9., Stats.

(e) Treatment information may be disclosed only to the extent that is necessary for an understanding of the individual's current situation.

(f) Disclosure of information upon transfer of a voluntary patient requires the patient's informed consent, a court order or other provision of law.

(10) PERSONS UNDER THE RESPONSIBILITY OR SUPERVISION OF A CORRECTIONAL FACILITY OR PROBATION AND PAROLE AGENCY. (a) Information from treatment records may be released to probation and parole agencies and correctional facilities only as authorized under s. 51.30 (4) (b) 10., Stats., 42 CFR 2.31 and 2.35 and this subsection.

(b) In addition to the probation and parole agent, only the following persons may have access to information from treatment records:

1. The probation and parole agent's supervisor;
2. The patient's social worker, the social worker's supervisor and their superiors; and
3. Consultants or employees of the division of corrections who have clinical assignments regarding the patients.

(c) When a patient is transferred back from a treatment facility to a correctional facility the confidential information disclosed to the correctional facility shall be restricted to information authorized under s. 51.30 (4) (b) 9., Stats.

(d) When a patient is under supervision of a probation and parole agent the confidential information disclosed to the agent shall be restricted to information authorized under s. 51.30 (4) (b) 10., Stats.

(e) Every person receiving evaluation or treatment under ch. 51, Stats., as a condition of probation or parole shall be notified of the provisions of this subsection by the person's probation and parole agent prior to receiving treatment.

(11) COUNSEL, GUARDIAN AD LITEM, COUNSEL FOR THE INTERESTS OF THE PUBLIC, COURT-APPOINTED EXAMINER. (a) Treatment records or portions of treatment records may be made accessible to the patient's counsel or guardian ad litem only as authorized under s. 51.30 (4) (b) 11., Stats., and this section, to the counsel for the interest of the public only as authorized under s. 51.30 (4) (b) 14., Stats., and this section and to the court appointed examiner only as authorized under s. 51.20 (9) (a), Stats., and this section.

Note: 2001 Wis. Act 16 repealed s. 51.30 (4) (b) 14., Stats.

(b) A patient's attorney or guardian ad litem, or both, shall have access to alcohol and drug abuse patient treatment records only as authorized under 42 CFR 2.15 and 2.35.

(c) At times other than during normal working hours, patients' attorneys or guardians ad litem, or both, shall have access to those records directly available to staff on duty.

(d) Counsel for the interests of the public may have access to alcohol or drug abuse treatment records only with informed consent of the patient or as authorized under 42 CFR 2.61 to 2.67.

(e) A copy of the records shall be provided upon request. At times other than normal working hours, copies shall be provided only if copy equipment is reasonably available.

(12) NOTICE TO CORRECTIONAL OFFICER OF CHANGE IN STATUS. (a) A treatment facility shall notify the correctional officer of any change in the patient's status as required under s. 51.30 (4) (b) 12., Stats.

(b) Release of information from records of alcohol and drug abuse patients shall be in compliance with 42 CFR Part 2, Subpart C.

(13) BETWEEN A SOCIAL SERVICES DEPARTMENT AND A 51 BOARD. (a) Limited confidential information may be released between a social service department and a 51-board, but only as authorized under s. 51.30 (4) (b) 15., Stats.

(b) Limited confidential information regarding alcohol and drug abuse patients may be released between a social services

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department and a 51-board only with the patient's informed consent as authorized under 42 CFR 2.31 and with a qualified service agreement under 42 CFR 2.11 (n) and (p).

(14) BETWEEN SUB-UNITS OF A HUMAN SERVICES DEPARTMENT AND BETWEEN THE HUMAN SERVICES DEPARTMENT AND CONTRACTED SERVICE PROVIDERS. Confidential information may be exchanged between sub-units of a human services department, which is the administrative staff of a board organized under s. 46.23, Stats., and between the human services department and service providers under contract to the human services department, as authorized under s. 46.23 (3) (e), Stats.

(15) RELEASE TO LAW ENFORCEMENT OFFICERS. Release of limited confidential information to law enforcement officers without a patient's informed consent is permitted only to enable a law enforcement officer to take charge of and return a patient on unauthorized absence from the treatment facility, pursuant to s. 51.39, Stats., to enable a law enforcement officer to determine if an individual is on unauthorized absence from the treatment facility, pursuant to s. 51.30 (4) (cm), Stats., or by order of a court.

(a) The treatment director may disclose only the following information to the law enforcement officer acting pursuant to s. 51.39, Stats.:

1. Date, time and manner of escape;
2. Description and picture of the patient;
3. Addresses and phone numbers of relatives or other persons who might be contacted by the patient; and
4. Any other information determined by the treatment director to be of assistance in locating the patient, including advice regarding any potential danger involved in taking custody of the patient.

(b) Any access by law enforcement officers to confidential records other than as provided for in par. (a) and s. 51.30 (4) (cm), Stats., requires a court order.

1. A court order authorizing access to alcoholism or drug dependence treatment records shall comply with the requirements of 42 CFR 2.61 to 2.67.

2. A subpoena, unless signed by a judge of a court of record, does not authorize disclosure of treatment records.

(c) Access to treatment records is not authorized for any local, state or federal investigatory agency conducting pre-employment or other clearances or investigating crimes unless the agency presents a statement signed by the patient giving informed consent or a court order.

(d) Access by law enforcement authorities, when allowed pursuant to informed consent or court order, shall always pertain to a specific situation or case. In any situation involving court orders which appear to give authorization for broad or blanket access to records, the treatment director, the program director or the secretary of the department or designee shall seek appropriate legal counsel before disclosing any records.

(16) UNAUTHORIZED ABSENCE. Information from treatment records of patients admitted under s. 971.14 or 971.17, Stats., or under ch. 975, Stats., or transferred under s. 51.35 (3) or 51.37, Stats., and who are on unauthorized absence from a treatment facility, may be released only as authorized under s. 51.30 (4) (b) 12m., Stats.

History: Cr. Register, May, 1984, No. 341, eff. 6-1-84; corrections in (2) (b), (15) (intro.) and (b) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 92.05 Patient access to treatment records.

(1) ACCESS DURING TREATMENT. (a) Every patient shall have access to his or her treatment records during treatment to the extent authorized under s. 51.30 (4) (d) 1., Stats., and this subsection.

(b) The treatment facility director or designee may only deny access to treatment records other than records of medication and somatic treatment.

1. Denial may be made only if the director has reason to believe that the benefits of allowing access to the patient are outweighed by the disadvantages of allowing access.

2. The reasons for any restriction shall be entered into the treatment record.

(c) Each patient, patient's guardian and parent of a minor patient shall be informed of all rights of access upon admission or as soon as clinically feasible, as required under s. 51.61 (1) (a), Stats., and upon discharge as required under s. 51.30 (4) (d) 4., Stats. If a minor is receiving alcohol or other drug abuse treatment services, the parents shall be informed that they have a right of access to the treatment records only with the minor's consent or in accordance with 42 CFR 2.15.

(d) The secretary of the department or designee, upon request of a director, may grant variances from the notice requirements under par. (c) for units or groups or patients who are unable to understand the meaning of words, printed material or signs due to their mental condition but these variances shall not apply to any specific patient within the unit or group who is able to understand. Parents or guardians shall be notified of any variance.

(2) ACCESS AFTER DISCHARGE FOR INSPECTION OF TREATMENT RECORDS. (a) After discharge from treatment, a patient shall be allowed access to inspect all of his or her treatment records with one working day notice to the treatment facility, board or department, as authorized under s. 51.30 (4) (d) 3., Stats., and this subsection.

(b) A patient making a request to inspect his or her records shall not be required to specify particular information. Requests for "all information" or "all treatment records" shall be acceptable.

(c) When administrative rules or accreditation standards permit the treatment facility to take up to 15 days or some other specified period after discharge to complete the discharge summary, the discharge summary need not be provided until it is completed in accordance with those rules or standards.

(3) COPIES OF TREATMENT RECORDS. (a) After being discharged a patient may request and shall be provided with a copy of his or her treatment records as authorized by s. 51.30 (4) (d), Stats., and as specified in this subsection.

(b) Requests for information under this subsection shall be processed within 5 working days after receipt of the request.

(c) A uniform and reasonable fee may be charged for a copy of the records. The fee may be reduced or waived, as appropriate, for those clients who establish inability to pay.

(d) The copy service may be restricted to normal working hours.

(4) MODIFICATION OF TREATMENT RECORDS. (a) A patient's treatment records may be modified prior to inspection by the patient but only as authorized under s. 51.30 (4) (d) 3., Stats., and this subsection.

(b) Modification of a patient's treatment records prior to inspection by the patient shall be as minimal as possible.

1. Each patient shall have access to all information in the treatment record, including correspondence written to the treatment facility regarding the patient, except that these records may be modified to protect confidentiality of other patients.

2. The names of the informants providing the information may be withheld but the information itself shall be available to the patient.

(c) Under no circumstances may an entire document or acknowledgement of the existence of the document be withheld from the patient in order to protect confidentiality of other patients or informants.

(d) Any person who provides or seeks to provide information subject to a condition of confidentiality shall be told that the provided information will be made available to the patient although the identity of the informant will not be revealed.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

(e) The identity of an informant providing information and to whom confidentiality has not been pledged shall be accessible to the patient as provided under this chapter.

(5) CORRECTION OF FACTUAL INFORMATION. (a) Correction of factual information in treatment records may be requested by persons authorized under s. 51.30 (4) (f), Stats., or by an attorney representing any of those persons. Any requests, corrections or denial of corrections shall be in accordance with s. 51.30 (4) (f), Stats., and this section.

(b) A written request shall specify the information to be corrected and the reason for correction and shall be entered as part of the treatment record until the requested correction is made or until the requester asks that the request be removed from the record.

(c) During the period that the request is being reviewed, any release of the challenged information shall include a copy of the information change request.

(d) If the request is granted, the treatment record shall be immediately corrected in accordance with the request. Challenged information that is determined to be completely false, irrelevant or untimely shall be marked through and specified as incorrect.

(e) If the request is granted, notice of the correction shall be sent to the person who made the request and, upon his or her request, to any specified past recipient of the incorrect information.

(f) If investigation casts doubt upon the accuracy, timeliness or relevance of the challenged information, but a clear determination cannot be made, the responsible officer shall set forth in writing his or her doubts and both the challenge and the expression of doubt shall become part of the record and shall be included whenever the questionable information is released.

(g) If the request is denied, the denial shall be made in writing and shall include notice to the person that he or she has a right to insert a statement in the record disputing the accuracy or completeness of the challenged information included in the record.

(h) Statements in a treatment record which render a diagnosis are deemed to be judgments based on professional expertise and are not open to challenge.

History: Cr. Register, May, 1984, No. 341, eff. 6-1-84.

DHS 92.06 Minors and incompetents. (1) Obtaining informed consent for release of information from the treatment records of minors, including developmentally disabled minors, and of incompetents and granting access by the parent or guardian and by the minor to treatment records shall be in accordance with s. 51.30 (5), Stats., and this section.

(2) Information may be released from the alcohol or drug abuse treatment records of a minor only with the consent of both the minor and the minor's parent, guardian or person in the place of a parent, except that outpatient or detoxification services information, with the qualifications about these services indicated in s. 51.47 (2), Stats., shall be disclosed only with the consent of the minor provided that the minor is 12 years of age or older.

Note: Section 42 CFR 2.14 (b) provides that when a minor under state law can obtain treatment for alcohol abuse or drug abuse without the parent or guardian's approval, as under s. 51.47, Stats., only the minor's consent is required for disclosure of information from records of that treatment.

(3) A developmentally disabled minor aged 14 or older shall be notified of the right to file a written objection to access to treatment records by his or her parent, guardian or person in place of parent and that notice shall be documented in the treatment record.

(4) All sections of this chapter that are applicable to adults shall apply to any access to treatment records and disclosure of information from treatment records when the patient ceases to be a minor.

History: Cr. Register, May, 1984, No. 341, eff. 6-1-84.

DHS 92.07 Privileged communications. Communications between a physician or psychologist and patient or between an attorney and a client shall be privileged.

Note: Federal regulations regarding alcohol and drug dependence treatment records do not recognize the statutory exceptions to the physician and psychologist privilege in s. 905.04, Stats., or the attorney privilege in s. 905.03, Stats., but require either informed consent or a court order under 42 CFR 2.61 to 2.67 for disclosure of confidential information.

History: Cr. Register, May, 1984, No. 341, eff. 6-1-84.

DHS 92.08 Criminal commitments. Treatment records of persons committed under chs. 971 and 975, Stats., are covered by s. 51.30, Stats., and this chapter. Treatment records of persons sentenced to correctional facilities under criminal statutes and not receiving services from a board or a state mental health institute are not covered.

History: Cr. Register, May, 1984, No. 341, eff. 6-1-84.

DHS 92.09 Grievance procedure. Any failure to comply with provisions of s. 51.30, Stats., or this chapter may be processed as a grievance under s. 51.61 (5), Stats., as provided in s. 51.30 (8), Stats.

History: Cr. Register, May, 1984, No. 341, eff. 6-1-84.

DHS 92.10 Discipline of employees. Employees of the department, board, or public treatment facilities who violate requirements under s. 51.30, Stats., or this chapter may be disciplined in accordance with s. 51.30 (11), Stats.

History: Cr. Register, May, 1984, No. 341, eff. 6-1-84.

DHS 92.11 Employee orientation. Directors and program directors shall ensure that persons whose regular duties include requesting, distributing, or granting access to treatment records are aware of their responsibility to maintain the confidentiality of information protected by this chapter and of the criminal and civil liabilities for violations of s. 51.30, Stats.

History: Cr. Register, May, 1984, No. 341, eff. 6-1-84.

DHS 92.12 Retention periods. (1) Treatment records shall be retained for at least 7 years after treatment has been completed, unless under this section they are to be retained for a longer period of time.

(2) In the case of a minor, records shall be retained until the person becomes 19 years of age or until 7 years after treatment has been completed, whichever is longer.

(3) Any record undergoing federal or state audit shall be maintained until completion of the audit.

(4) Records relating to legal actions shall be maintained until completion of the legal action.

(5) Records relating to billing or collections shall be maintained for periods of time specified in s. DHS 1.06.

History: Cr. Register, May, 1984, No. 341, eff. 6-1-84; correction in (5) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 92.13 Certification of compliance. Each board shall include a clause in every purchase of service contract which states that the service provider agrees to abide by the requirements of this chapter.

History: Cr. Register, May, 1984, No. 341, eff. 6-1-84.

21 Updated 07–08 Wis. Stats. Database*Not certified under s. 35.18 (2), stats.***WRAPAROUND MILWAUKEE - Confidentiality Policy - Attachment 2**

individual's dangerousness to be evidenced by acts, attempts, threats, omissions or behavior referred to in sub. (1) (a) 2. Prior law allowed commitment of such an individual upon a showing that there was a substantial likelihood, based on the treatment record, that he or she would be a proper subject for commitment if treatment were withdrawn. [Bill 765–A]

Judicial Council Note, 1988: The amendment to sub. (2) allows notice of hearings to be given by telephone. The time at which such notice is given and the person to whom it is given must be noted in the case file. [Re Order effective Jan. 1, 1988]

The role of an attorney appointed under sub. (4), 1975 stats., [now (3)] is discussed. State ex rel. Memmel v. Mundy, 75 Wis. 2d 276, 249 N.W.2d 573 (1977).

The due process standard for hearings under this section is more flexible than the standard for criminal proceedings. In Matter of Parham, 95 Wis. 2d 21, 289 N.W.2d 326 (Ct. App. 1979).

The 14–day time limit in sub. (7) (c) is mandatory and refers to calendar days, not business days. State ex rel. Lockman v. Gerhardstein, 107 Wis. 2d 325, 320 N.W.2d 27 (Ct. App. 1982).

Criminal and civil commitments are not substantially the same. State v. Smith, 113 Wis. 2d 497, 335 N.W.2d 376 (1983).

A person may be a proper subject for treatment even though a cure is unlikely. In Matter of Mental Condition of C.J. 120 Wis. 2d 355, 354 N.W.2d 219 (Ct. App. 1984).

The 45–day limit in sub. (13) (g) 2. applies only to an original commitment order and does not bar subsequent extensions of the order. In Matter of M.J. 122 Wis. 2d 525, 362 N.W.2d 190 (Ct. App. 1984).

The use of telephone testimony by physicians did not violate the petitioner's due process rights. In Matter of W.J.C. 124 Wis. 2d 238, 369 N.W.2d 162 (Ct. App. 1985).

Hearings under sub. (12) are open unless the court grants the subject individual's motion for closure. Wisconsin State Journal v. Circuit Court for Dane County, 131 Wis. 2d 515, 389 N.W.2d 73 (Ct. App. 1986).

An individual's counsel may not withdraw a jury demand without the individual's consent. In Matter of S.B., 138 Wis. 2d 409, 406 N.W.2d 408 (1987).

Sub. (13) (c) 2. does not permit the committing court to specify a treatment method in addition to the facility. In Matter of J.R.R. 145 Wis. 2d 431, 427 N.W.2d 137 (Ct. App. 1988).

Under sub. (13) (g) 3. an individual has a right to a jury trial in proceedings to extend a commitment. In Matter of Mental Condition of G.O.T. 151 Wis. 2d 629, 445 N.W.2d 697 (Ct. App. 1989).

There is a bright–line rule prohibiting a circuit court from accepting petitions drafted by persons not authorized to do so under sub. (4). In Matter of S.P.B. 159 Wis. 2d 393, 464 N.W.2d 102 (Ct. App. 1990).

The services of appointed counsel for non–indigent individuals in civil commitment hearing should be paid for by the county. State ex rel. Chiarkas v. Skow, 160 Wis. 2d 123, 465 N.W.2d 625 (1991).

The assurance of representation by adversary counsel under sub. (3) does not preclude self–representation when a waiver of counsel is knowingly and competently made. In Matter of Condition of S.Y. 162 Wis. 2d 320, 469 N.W.2d 836 (1991).

The sub. (16) (c) provision for a hearing on a petition within 30 days of filing is directory and violation is not grounds for release. State v. R.R.E. 162 Wis. 2d 698, 470 N.W.2d 283 (1991).

When a recommitment hearing under sub. (13) (g) 3. is before the same judge who conducted the original commitment proceeding, a request for substitution under s. 801.58 is not allowed. Serocki v. Circuit Court for Clark County, 163 Wis. 2d 152, 471 N.W.2d 49 (1991).

Sub. (15) does not authorize the appeal of a court commissioner's order to the court of appeals; proper review is a new hearing by the circuit court. In Matter of Mental Condition of C.M.B. 165 Wis. 2d 703, 478 N.W.2d 385 (1992).

An involuntary commitment may not be ordered on summary judgment. Matter of Mental Condition of Shirley J.C. 172 Wis. 2d 371, 493 N.W.2d 382 (Ct. App. 1992).

A probable cause determination made by a court commissioner under sub. (7) may be reviewed by the circuit court, but nothing gives the subject a right to review. Factors to consider in deciding whether to grant review are discussed. Milwaukee County v. Louise M. 205 Wis. 2d 162, 555 N.W.2d 807 (1996), 95–0291.

The 14–day deadline under sub. (7) (c) is subject to reasonable extension when the need for the extension is caused solely by the conduct and manipulation of the detained subject. County of Milwaukee v. Edward S. 2001 WI App 169, 247 Wis. 2d 87, 633 N.W.2d 241, 00–1003.

By expressing the time requirement in sub. (7) (a) in terms of hours rather than days, the legislature manifested its intent that the clock start running immediately “after the individual arrives at the facility,” rather than the next day. The “exclude–the–first–day” rule of s. 990.001 (4) (a) and (d) does not apply in the context of this section under which 72 hours means 72 hours. Matter of the Mental Commitment of Ryan E. M. 2002 WI App 71, 252 Wis. 2d 490, 642 N.W.2d 592, 01–1175.

Sub. (1) (a) 2. e. is constitutional. It does not: 1) allow involuntary commitment upon a finding of mental illness alone and contains an ascertainable standard of commitment, and thus is not vague or overbroad; 2) create a class of persons who can be involuntarily committed upon a finding of mere mental or emotional harm, and thus does not violate equal protection; and 3) violate substantive due process because the constitution does not require proof of imminent physical harm prior to commitment for treatment. State v. Dennis H. 2002 WI 104, 255 Wis. 2d 359, 647 N.W.2d 851, 01–0374.

A corporation counsel has discretion to refuse to file a petition for examination after receiving signed statements under oath that meet the requirements contained in sub. (1) if the corporation counsel determines that it is not in the interests of the public to file the petition. A good faith discretionary determination on the part of the corporation counsel that the filing of a petition for examination would not be in the interests of the public is not susceptible to challenge in a mandamus action. OAG 4–10.

Under sub. (2), a court can entertain proceedings for involuntary commitment of a person admitted as a voluntary inpatient. 68 Atty. Gen. 97.

Sub. (14) requires a sheriff to transport the subject of a petition under s. 51.20 at all stages of the proceedings, regardless of reimbursement. 68 Atty. Gen. 225.

An individual in the custody of a sheriff for transport to, from, and during an involuntary commitment hearing has rights to the least restrictive restraint appropriate. 71 Atty. Gen. 183.

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The duties and obligations of a corporation counsel in involuntary civil commitment proceedings under this chapter are discussed. 79 Atty. Gen. 129.

Under sub. (14), the director of the county department under s. 51.42 or 51.437 may request the sheriff of the county in which an individual was placed under emergency detention to transport that individual to another designated inpatient facility prior to the initial court hearing under ch. 51, and the sheriff must do so within a reasonable time. 80 Atty. Gen. 299.

The state cannot confine, without more, nondangerous persons capable of surviving safely in freedom alone or with help from family or friends. O'Connor v. Donaldson, 422 U.S. 563.

Due process does not require states to use the “beyond a reasonable doubt” standard in civil commitment proceedings. Addington v. Texas, 441 U.S. 418 (1979).

In signing a commitment application, a county employee was in essence acting as a witness in a judicial proceeding and as such was entitled to immunity. Martens v. Tremble, 481 F. Supp. 831 (1979).

Persons confined in a state hospital under ss. 51.20, 51.37, 971.14, 971.17 and 975.06 are being subjected to punishment within the meaning of the cruel and unusual punishment clause. Flakes v. Percy, 511 F. Supp. 1325 (1981).

Beyond Overt Violence: Wisconsin's Progressive Civil Commitment Statute as a Marker of a New Era in Mental Health Law. Erickson, Vitacco, and Van Rybroek, 89 MLR 359 (2005).

The privilege against self–incrimination in civil commitment proceedings. 1980 WLR 697.

51.22 Care and custody of persons. (1) Except as provided in s. 51.20 (13) (a) 4. or 5., any person committed under this chapter shall be committed to the county department under s. 51.42 or 51.437 serving the person's county of residence, and such county department shall authorize placement of the person in an appropriate facility for care, custody and treatment according to s. 51.42 (3) (as) 1r. or 51.437 (4rm) (a).

(2) Except for admissions that do not involve the department or a county department under s. 51.42 or 51.437 or a contract between a treatment facility and the department or a county department, admissions under ss. 51.10, 51.13, and 51.45 (10) shall be through the county department under s. 51.42 or 51.437 serving the person's county of residence, or through the department if the person to be admitted is a nonresident of this state. Admissions through a county department under s. 51.42 or 51.437 shall be made in accordance with s. 51.42 (3) (as) 1r. or 51.437 (4rm) (a). Admissions through the department shall be made in accordance with sub. (3).

(3) Whenever an admission is made through the department, the department shall determine the need for inpatient care of the individual to be admitted. Unless a state–operated facility is used, the department may only authorize care in an inpatient facility which is operated by or under a purchase of service contract with a county department under s. 51.42 or 51.437 or an inpatient facility which is under a contractual agreement with the department. Except in the case of state treatment facilities, the department shall reimburse the facility for the actual cost of all authorized care and services from the appropriation under s. 20.435 (7) (da). For collections made under the authority of s. 46.10 (16), moneys shall be credited or remitted to the department no later than 60 days after the month in which collections are made. Such collections are also subject to s. 46.036 or special agreement. Collections made by the department under ss. 46.03 (18) and 46.10 shall be deposited in the general fund.

(4) If a patient is placed in a facility authorized by a county department under s. 51.42 or 51.437 and the placement is outside the jurisdiction of that county department under s. 51.42 or 51.437, the placement does not transfer the patient's residence to the county of the facility's location while such patient is under commitment or placement.

(5) The board to which a patient is committed shall provide the least restrictive treatment alternative appropriate to the patient's needs, and movement through all appropriate and necessary treatment components to assure continuity of care.

History: 1975 c. 430; 1977 c. 428; 1983 a. 27 s. 2202 (20); 1983 a. 474; 1985 a. 176; 1989 a. 31; 2001 a. 16; 2005 a. 387, 444; 2009 a. 28.

The standard for determining whether the state has adequately protected a patient's rights is whether professional judgment was in fact exercised. Youngberg v. Romeo, 457 U.S. 307 (1982).

51.30 Records. (1) DEFINITIONS. In this section:

(ag) “Health care provider” has the meaning given in s. 146.81 (1) (a) to (p).

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(am) “Registration records” include all the records of the department, county departments under s. 51.42 or 51.437, treatment facilities, and other persons providing services to the department, county departments, or treatment facilities, that are created in the course of providing services to individuals for mental illness, developmental disabilities, alcoholism, or drug dependence.

(b) “Treatment records” include the registration and all other records that are created in the course of providing services to individuals for mental illness, developmental disabilities, alcoholism, or drug dependence and that are maintained by the department; by county departments under s. 51.42 or 51.437 and their staffs; by treatment facilities; or by psychologists licensed under s. 455.04 (1) or licensed mental health professionals who are not affiliated with a county department or treatment facility. Treatment records do not include notes or records maintained for personal use by an individual providing treatment services for the department, a county department under s. 51.42 or 51.437, or a treatment facility, if the notes or records are not available to others.

(2) INFORMED CONSENT. An informed consent for disclosure of information from court or treatment records to an individual, agency, or organization must be in writing and must contain the following: the name of the individual, agency, or organization to which the disclosure is to be made; the name of the subject individual whose treatment record is being disclosed; the purpose or need for the disclosure; the specific type of information to be disclosed; the time period during which the consent is effective; the date on which the consent is signed; and the signature of the individual or person legally authorized to give consent for the individual.

(3) ACCESS TO COURT RECORDS. (a) Except as provided in pars. (b), (bm), (c), and (d), the files and records of the court proceedings under this chapter shall be closed but shall be accessible to any individual who is the subject of a petition filed under this chapter.

(b) An individual’s attorney or guardian ad litem and the corporation counsel shall have access to the files and records of the court proceedings under this chapter without the individual’s consent and without modification of the records in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, or commitment under this chapter or ch. 971, 975, or 980.

(bm) Authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney shall have access to the files and records of court proceedings under this chapter for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the files or records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this paragraph. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

(c) The files and records of court proceedings under this chapter may be released to other persons with the informed written consent of the individual, pursuant to lawful order of the court which maintains the records or under s. 51.20 (13) (cv) 4.

(d) The department of corrections shall have access to the files and records of court proceedings under this chapter concerning an individual required to register under s. 301.45. The department of corrections may disclose information that it obtains under this paragraph as provided under s. 301.46.

(4) ACCESS TO REGISTRATION AND TREATMENT RECORDS. (a) *Confidentiality of records.* Except as otherwise provided in this chapter and ss. 118.125 (4), 610.70 (3) and (5), 905.03 and 905.04, all treatment records shall remain confidential and are privileged to the subject individual. Such records may be released only to the

persons designated in this chapter or ss. 118.125 (4), 610.70 (3) and (5), 905.03 and 905.04, or to other designated persons with the informed written consent of the subject individual as provided in this section. This restriction applies to elected officials and to members of boards appointed under s. 51.42 (4) (a) or 51.437 (7) (a).

(b) *Access without informed written consent.* Notwithstanding par. (a), treatment records of an individual may be released without informed written consent in the following circumstances, except as restricted under par. (c):

1. To an individual, organization or agency designated by the department or as required by law for the purposes of management audits, financial audits, or program monitoring and evaluation. Information obtained under this paragraph shall remain confidential and shall not be used in any way that discloses the names or other identifying information about the individual whose records are being released. The department shall promulgate rules to assure the confidentiality of such information.

2. To the department, the director of a county department under s. 51.42 or 51.437, or a qualified staff member designated by the director as is necessary for, and only to be used for, billing or collection purposes. Such information shall remain confidential. The department and county departments shall develop procedures to assure the confidentiality of such information.

3. For purposes of research as permitted in s. 51.61 (1) (j) and (4) if the research project has been approved by the department and the researcher has provided assurances that the information will be used only for the purposes for which it was provided to the researcher, the information will not be released to a person not connected with the study under consideration, and the final product of the research will not reveal information that may serve to identify the individual whose treatment records are being released under this subsection without the informed written consent of the individual. Such information shall remain confidential. In approving research projects under this subsection, the department shall impose any additional safeguards needed to prevent unwarranted disclosure of information.

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

5. To qualified staff members of the department, to the director of the county department under s. 51.42 or 51.437 which is responsible for serving a subject individual or to qualified staff members designated by the director as is necessary to determine progress and adequacy of treatment, to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility or for the purposes of s. 51.14. Such information shall remain confidential. The department and county departments under s. 51.42 or 51.437 shall develop procedures to assure the confidentiality of such information.

6. Within the treatment facility where the subject individual is receiving treatment confidential information may be disclosed to individuals employed, individuals serving in bona fide training programs or individuals participating in supervised volunteer programs, at the facility when and to the extent that performance of their duties requires that they have access to such information.

7. Within the department to the extent necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism or drug abuse of individuals who have been committed to or who are under the supervision of the department. The department shall promulgate rules to assure the confidentiality of such information.

8. For treatment of the individual in a medical emergency, to a health care provider who is otherwise unable to obtain the individual’s informed consent because of the individual’s condition or the nature of the medical emergency. Disclosure under this subdivision shall be limited to that part of the records necessary to meet the medical emergency.

8g. am. In this subdivision, “diagnostic test results” means the results of clinical testing of biological parameters, but does not mean the results of psychological or neuropsychological testing.

bm. To a health care provider, or to any person acting under the supervision of the health care provider who is involved with an individual's care, if necessary for the current treatment of the individual. Information that may be released under this subdivision is limited to the individual's name, address, and date of birth; the name of the individual's provider of services for mental illness, developmental disability, alcoholism, or drug dependence; the date of any of those services provided; the individual's medications, allergies, diagnosis, diagnostic test results, and symptoms; and other relevant demographic information necessary for the current treatment of the individual.

8m. To appropriate examiners and facilities in accordance with s. 54.36 (3), 971.17 (2) (e), (4) (c), and (7) (c). The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17.

8s. To appropriate persons in accordance with s. 980.031 (4) and to authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the treatment records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subdivision. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this subdivision for any purpose consistent with any proceeding under ch. 980.

9. To a facility which is to receive an individual who is involuntarily committed under this chapter, ch. 48, 938, 971, or 975 upon transfer of the individual from one treatment facility to another. Release of records under this subdivision shall be limited to such treatment records as are required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but it may not include the patient's complete treatment record. The department shall promulgate rules to implement this subdivision.

10. To a correctional facility or to a probation, extended supervision and parole agent who is responsible for the supervision of an individual who is receiving inpatient or outpatient evaluation or treatment under this chapter in a program that is operated by, or is under contract with, the department or a county department under s. 51.42 or 51.437, or in a treatment facility, as a condition of the probation, extended supervision and parole supervision plan, or whenever such an individual is transferred from a state or local correctional facility to such a treatment program and is then transferred back to the correctional facility. Every probationer, parolee or person on extended supervision who receives evaluation or treatment under this chapter shall be notified of the provisions of this subdivision by the individual's probation, extended supervision and parole agent. Release of records under this subdivision is limited to:

a. The report of an evaluation which is provided pursuant to the written probation, extended supervision and parole supervision plan.

b. The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment which is provided as part of the probation, extended supervision and parole supervision plan.

c. When an individual is transferred from a treatment facility back to a correctional facility, the information provided under subd. 10. d.

d. Any information necessary to establish, or to implement changes in, the individual's treatment plan or the level and kind of supervision on probation, extended supervision or parole, as determined by the director of the facility or the treatment director.

In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only. In cases involving a person on probation, extended supervision or parole, disclosure shall be made to a probation, extended supervision and parole agent only. The department shall promulgate rules governing the release of records under this subdivision.

10m. To the department of justice or a district attorney under s. 980.015 (3) (b), if the treatment records are maintained by an agency with jurisdiction, as defined in s. 980.01 (1d), that has control or custody over a person who may meet the criteria for commitment as a sexually violent person under ch. 980.

11. To the subject individual's counsel or guardian ad litem and the corporation counsel, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patients' rights under this chapter or ch. 48, 971, 975, or 980.

11m. To the guardian ad litem of the unborn child, as defined in s. 48.02 (19), of a subject individual, without modification, at any time to prepare for proceedings under s. 48.133.

12. To a correctional officer of the department of corrections who has custody of or is responsible for the supervision of an individual who is transferred or discharged from a treatment facility. Records released under this subdivision are limited to notice of the subject individual's change in status.

12m. To any person if the patient was admitted under s. 971.14, 971.17 or 980.06 or ch. 975 or transferred under s. 51.35 (3) or 51.37 and is on unauthorized absence from a treatment facility. Information released under this subdivision is limited to information that would assist in the apprehension of the patient.

15. To personnel employed by a county department under s. 46.215, 46.22, 51.42 or 51.437 in any county where the county department has established and submitted to the department a written agreement to coordinate services to individuals receiving services under this chapter. This information shall be released upon request of such county department personnel, and may be utilized only for the purposes of coordinating human services delivery and case management. This information shall remain confidential, and shall continue to be governed by this section. Information may be released under this subdivision only if the subject individual has received services through a county department under s. 51.42 or 51.437 within 6 months preceding the request for information, and the information is limited to:

a. The subject individual's name, address, age, birthdate, sex, client-identifying number and primary disability.

b. The type of service rendered or requested to be provided to the subject individual, and the dates of such service or request.

c. Funding sources, and other funding or payment information.

16. If authorized by the secretary or his or her designee, to a law enforcement agency upon request if the individual was admitted under ch. 971 or 975 or transferred under s. 51.35 (3) or 51.37. Information released under this subdivision is limited to the individual's name and other identifying information, including photographs and fingerprints, the branch of the court that committed the individual, the crime that the individual is charged with, found not guilty of by reason of mental disease or defect or convicted of, whether or not the individual is or has been authorized to leave the grounds of the institution and information as to the individual's whereabouts during any time period. In this subdivision "law enforcement agency" has the meaning provided in s. 165.83 (1) (b).

17. To the elder-adult-at-risk agency designated under s. 46.90 (2) or other investigating agency under s. 46.90 for the purposes of s. 46.90 (4) and (5), to the county department as defined in s. 48.02 (2g) or the sheriff or police department for the purposes of s. 48.981 (2) and (3), or to the adult-at-risk agency designated under s. 55.043 (1d) for purposes of s. 55.043. The treatment record holder may release treatment record information by initiat-

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ing contact with the elder–adult–at–risk agency, adult–at–risk agency, or county department, as defined in s. 48.02 (2g), without first receiving a request for release of the treatment record from the elder–adult–at–risk agency, adult–at–risk agency, or county department.

18. a. In this subdivision, “abuse” has the meaning given in s. 51.62 (1) (ag); “neglect” has the meaning given in s. 51.62 (1) (br); and “parent” has the meaning given in s. 48.02 (13), except that “parent” does not include the parent of a minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11), or for whom a guardian is appointed under, or s. 54.10 or s. 880.33, 2003 stats.

b. Except as provided in subd. 18. c. and d., to staff members of the protection and advocacy agency designated under s. 51.62 (2) or to staff members of the private, nonprofit corporation with which the agency has contracted under s. 51.62 (3) (a) 3., if any, for the purpose of protecting and advocating the rights of persons with developmental disabilities, as defined under s. 51.62 (1) (am), or mental illness, as defined under s. 51.62 (1) (bm).

c. If the patient, regardless of age, has a guardian appointed under s. 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with developmental disability who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 54.10 or s. 880.33, 2003 stats., information concerning the patient that is obtainable by staff members of the agency or nonprofit corporation with which the agency has contracted is limited, except as provided in subd. 18. e., to the nature of an alleged rights violation, if any; the name, birth date and county of residence of the patient; information regarding whether the patient was voluntarily admitted, involuntarily committed or protectively placed and the date and place of admission, placement or commitment; and the name, address and telephone number of the guardian of the patient and the date and place of the guardian’s appointment or, if the patient is a minor with developmental disability who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 54.10 or s. 880.33, 2003 stats., the name, address and telephone number of the parent or guardian appointed under s. 48.831 of the patient.

d. Except as provided in subd. 18. e., any staff member who wishes to obtain additional information about a patient described in subd. 18. c. shall notify the patient’s guardian or, if applicable, parent in writing of the request and of the guardian’s or parent’s right to object. The staff member shall send the notice by mail to the guardian’s or, if applicable, parent’s address. If the guardian or parent does not object in writing within 15 days after the notice is mailed, the staff member may obtain the additional information. If the guardian or parent objects in writing within 15 days after the notice is mailed, the staff member may not obtain the additional information.

e. The restrictions on information that is obtainable by staff members of the protection and advocacy agency or private, nonprofit corporation that are specified in subd. 18. c. and d. do not apply if the custodian of the record fails to promptly provide the name and address of the parent or guardian; if a complaint is received by the agency or nonprofit corporation about a patient, or if the agency or nonprofit corporation determines that there is probable cause to believe that the health or safety of the patient is in serious and immediate jeopardy, the agency or nonprofit corporation has made a good–faith effort to contact the parent or guardian upon receiving the name and address of the parent or guardian, the agency or nonprofit corporation has either been unable to contact the parent or guardian or has offered assistance to the parent or guardian to resolve the situation and the parent or guardian has failed or refused to act on behalf of the patient; if a complaint is received by the agency or nonprofit corporation about a patient or there is otherwise probable cause to believe that the patient has been subject to abuse or neglect by a parent or guardian; or if the patient is a minor whose custody has been transferred to a legal custodian, as defined in s. 48.02 (11) or for whom a guardian that is an agency of the state or a county has been appointed.

19. To state and local law enforcement agencies for the purpose of reporting an apparent crime committed on the premises of an inpatient treatment facility or nursing home, if the facility or home has treatment records subject to this section, or observed by staff or agents of any such facility or nursing home. Information released under this subdivision is limited to identifying information that may be released under subd. 16. and information related to the apparent crime.

20. Except with respect to the treatment records of a subject individual who is receiving or has received services for alcoholism or drug dependence, to the spouse, domestic partner under ch. 770, parent, adult child or sibling of a subject individual, if the spouse, domestic partner, parent, adult child or sibling is directly involved in providing care to or monitoring the treatment of the subject individual and if the involvement is verified by the subject individual’s physician, psychologist or by a person other than the spouse, domestic partner, parent, adult child or sibling who is responsible for providing treatment to the subject individual, in order to assist in the provision of care or monitoring of treatment. Except in an emergency as determined by the person verifying the involvement of the spouse, domestic partner, parent, adult child or sibling, the request for treatment records under this subdivision shall be in writing, by the requester. Unless the subject individual has been adjudicated incompetent in this state, the person verifying the involvement of the spouse, domestic partner, parent, adult child or sibling shall notify the subject individual about the release of his or her treatment records under this subdivision. Treatment records released under this subdivision are limited to the following:

a. A summary of the subject individual’s diagnosis and prognosis.

b. A listing of the medication which the subject individual has received and is receiving.

c. A description of the subject individual’s treatment plan.

21. To a mental health review officer for the purposes of s. 51.14.

22. To a representative of the board on aging and long–term care, in accordance with s. 49.498 (5) (e).

23. To the department under s. 51.03 (2) or to a sheriff, police department or district attorney for purposes of investigation of a death reported under s. 51.64 (2) (a).

24. To the department of corrections for the purpose of obtaining information concerning a person required to register under s. 301.45. The department of corrections may disclose information that it receives under this subdivision as provided under s. 301.46.

25. If the treatment records do not contain information and the circumstances of the release do not provide information that would permit the identification of the individual.

26. To the department of corrections or to a sheriff, to determine if a person incarcerated is complying with the assessment or the driver safety plan ordered under s. 343.30 (1q) (c).

27. For the purpose of entering information concerning the subject individual into the statewide automated child welfare information system established under s. 48.47 (7g).

28. To the department of justice, under the requirements of ss. 51.20 (13) (cv) 4. and 51.45 (13) (i) 4.

(c) *Limitation on release of alcohol and drug treatment records.* Notwithstanding par. (b), whenever federal law or applicable federal regulations restrict, or as a condition to receipt of federal aids require that this state restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency in a program or facility to a greater extent than permitted under this section, the department may by rule restrict the release of such information as may be necessary to comply with federal law and regulations. Rules promulgated under this paragraph shall supersede this section with respect to alcoholism and drug dependency treatment records in those situations in which they apply.

(cm) *Required access to certain information.* Notwithstanding par. (a), treatment records of an individual shall, upon request, be released without informed written consent, except as restricted under par. (c), to the parent, child, sibling, spouse, or domestic partner under ch. 770 of an individual who is or was a patient at an inpatient facility; to a law enforcement officer who is seeking to determine whether an individual is on unauthorized absence from the facility; and to mental health professionals who are providing treatment to the individual at the time that the information is released to others. Information released under this paragraph is limited to notice as to whether or not an individual is a patient at the inpatient facility and, if the individual is no longer a patient at the inpatient facility, the facility or other place, if known, at which the individual is located. This paragraph does not apply under any of the following circumstances:

1. To the individual's parent, child, sibling, spouse, or domestic partner under ch. 770 who is requesting information, if the individual has specifically requested that the information be withheld from the parent, child, sibling, spouse, or domestic partner.

2. If, in the opinion of the inpatient facility, there is reasonable cause to believe that disclosure of the information would result in danger to the individual.

(d) *Individual access.* 1. Access to treatment records by a subject individual during his or her treatment may be restricted by the director of the treatment facility. However, access may not be denied at any time to records of all medications and somatic treatments received by the individual.

2. The subject individual shall have a right, following discharge under s. 51.35 (4), to a complete record of all medications and somatic treatments prescribed during admission or commitment and to a copy of the discharge summary which was prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

3. In addition to the information provided under subd. 2., the subject individual shall, following discharge, if the individual so requests, have access to and have the right to receive from the facility a photostatic copy of any or all of his or her treatment records. A reasonable and uniform charge for reproduction may be assessed. The director of the treatment facility or such person's designee and the treating physician have a right to be present during inspection of any treatment records. Notice of inspection of treatment records shall be provided to the director of the treatment facility and the treating physician at least one full day, excluding Saturdays, Sundays and legal holidays, before inspection of the records is made. Treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any other persons referred to in the record who gave information subject to the condition that his or her identity remain confidential. Entire documents may not be withheld in order to protect such confidentiality.

4. At the time of discharge all individuals shall be informed by the director of the treatment facility or such person's designee of their rights as provided in this subsection.

(dm) *Destruction, damage, falsification or concealment of treatment records.* No person may do any of the following:

1. Intentionally falsify a treatment record.

2. Conceal or withhold a treatment record with intent to prevent its release to the subject individual under par. (d), to his or her guardian, or to persons with the informed written consent of the subject individual or with intent to prevent or obstruct an investigation or prosecution.

3. Intentionally destroy or damage records in order to prevent or obstruct an investigation or prosecution.

(e) *Notation of release of information.* Each time written information is released from a treatment record, a notation shall be made in the record by the custodian thereof that includes the following: the name of the person to whom the information was released; the identification of the information released; the pur-

pose of the release; and the date of the release. The subject individual shall have access to such release data as provided in par. (d).

(f) *Correction of information.* A subject individual, the parent, guardian, or person in the place of a parent of a minor, or the guardian of an individual adjudicated incompetent may, after having gained access to treatment records, challenge the accuracy, completeness, timeliness, or relevance of factual information in his or her treatment records and request in writing that the facility maintaining the record correct the challenged information. The request shall be granted or denied within 30 days by the director of the treatment facility, the director of the county department under s. 51.42 or 51.437, or the secretary depending upon which person has custody of the record. Reasons for denial of the requested changes shall be given by the responsible officer and the individual shall be informed of any applicable grievance procedure or court review procedure. If the request is denied, the individual, parent, guardian, or person in the place of a parent shall be allowed to insert into the record a statement correcting or amending the information at issue. The statement shall become a part of the record and shall be released whenever the information at issue is released.

(g) *Applicability.* Paragraphs (a), (b), (c), (dm) and (e) apply to all treatment records, including those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics.

(5) **MINORS AND INCOMPETENTS.** (a) *Consent for release of information.* The parent, guardian, or person in the place of a parent of a minor or the guardian of an adult adjudicated incompetent in this state may consent to the release of confidential information in court or treatment records. A minor who is aged 14 or more may consent to the release of confidential information in court or treatment records without the consent of the minor's parent, guardian or person in the place of a parent. Consent under this paragraph must conform to the requirements of sub. (2).

(b) *Access to information.* 1. The guardian of an individual who is adjudicated incompetent in this state shall have access to the individual's court and treatment records at all times. The parent, guardian or person in the place of a parent of a developmentally disabled minor shall have access to the minor's court and treatment records at all times except in the case of a minor aged 14 or older who files a written objection to such access with the custodian of the records. The parent, guardian or person in the place of a parent of other minors shall have the same rights of access as provided to subject individuals under this section.

2. A minor who is aged 14 or older shall have access to his or her own court and treatment records, as provided in this section. A minor under the age of 14 shall have access to court records but only in the presence of a parent, guardian, counsel, guardian ad litem or judge and shall have access to treatment records as provided in this section but only in the presence of a parent, guardian, counsel, guardian ad litem or staff member of the treatment facility.

(bm) *Parents denied physical placement.* A parent who has been denied periods of physical placement with a child under s. 767.41 (4) (b) or 767.451 (4) may not have the rights of a parent or guardian under pars. (a) and (b) with respect to access to that child's court or treatment records.

(c) *Juvenile court records.* The court records of juveniles admitted or committed under this chapter shall be kept separately from all other juvenile court records.

(d) *Other juvenile records.* Sections 48.78 and 938.78 do not apply to records covered by this section.

(e) *Temporary guardian for adult alleged to be incompetent.* If an adult is alleged to be incompetent, under the requirements of s. 54.10 (3), to consent to the release of records under this section, but no guardian has been appointed for the individual, consent for the release of records may be given by a temporary guardian who

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is appointed for the purpose of deciding upon the release of records.

(f) *Applicability.* Paragraph (a) and (bm) to (e) apply to all treatment records, including those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics.

(6) **PRIVILEGES.** Sections 905.03 and 905.04 supersede this section with respect to communications between physicians and patients and between attorneys and clients.

(7) **CRIMINAL COMMITMENTS.** Except as otherwise specifically provided, this section applies to the treatment records of persons who are committed under chs. 971 and 975.

(8) **GRIEVANCES.** Failure to comply with any provisions of this section may be processed as a grievance under s. 51.61 (5), except that a grievance resolution procedure option made available to the patient, as required under s. 457.04 (8), applies to failures to comply by a licensed mental health professional who is not affiliated with a county department or treatment facility. However, use of the grievance procedure is not required before bringing any civil action or filing a criminal complaint under this section.

(9) **ACTIONS FOR VIOLATIONS; DAMAGES; INJUNCTION.** (a) Any person, including the state or any political subdivision of the state, violating this section shall be liable to any person damaged as a result of the violation for such damages as may be proved, together with exemplary damages of not more than \$1,000 for each violation and such costs and reasonable actual attorney fees as may be incurred by the person damaged.

(b) In any action brought under par. (a) in which the court determines that the violator acted in a manner that was knowing and willful, the violator shall be liable for such damages as may be proved together with exemplary damages of not more than \$25,000 for each violation, together with costs and reasonable actual attorney fees as may be incurred. It is not a prerequisite to an action under this subsection that the plaintiff suffer or be threatened with actual damages.

(c) An individual may bring an action to enjoin any violation of this section or to compel compliance with this section, and may in the same action seek damages as provided in this subsection. The individual may recover costs and reasonable actual attorney fees as may be incurred in the action, if he or she prevails.

(10) **PENALTIES.** (a) Whoever does any of the following may be fined not more than \$25,000 or imprisoned for not more than 9 months or both:

1. Requests or obtains confidential information under this section under false pretenses.

2. Discloses confidential information under this section with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.

3. Violates sub. (4) (dm) 1., 2. or 3.

(b) Whoever negligently discloses confidential information under this section is subject to a forfeiture of not more than \$1,000 for each violation.

(bm) Whoever intentionally discloses confidential information under this section, 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.

(11) **DISCIPLINE OF EMPLOYEES.** Any employee of the department, a county department under s. 51.42 or 51.437 or a public treatment facility who violates this section or any rule promulgated pursuant to this section may be subject to discharge or suspension without pay.

(12) **RULE MAKING.** The department shall promulgate rules to implement this section.

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38; 2005 a. 25, 344, 387, 388, 406, 434; 2005 a. 443 s. 265; 2005

a. 444, 449, 485; 2007 a. 20 ss. 1817, 9121 (6) (a); 2007 a. 45, 97, 108; 2009 a. 28, 258.

Cross-reference: See also chs. DHS 1 and 92, Wis. adm. code.

By entering a plea of not guilty by reason of mental disease or defect, a defendant lost the physician–patient privilege by virtue of s. 905.04 (4) (c) and lost confidentiality of treatment records under s. 51.30 (4) (b) 4. *State v. Taylor*, 142 Wis. 2d 36, 417 N.W.2d 192 (Ct. App. 1987).

Sec. 905.04 supersedes this section with respect to all relationships listed in s. 905.04 and is not strictly limited to the physician–patient relationship. *State v. S.H.* 159 Wis. 2d 730, 465 N.W.2d 238 (Ct. App. 1990).

The release of court records “pursuant to lawful order of the court” under sub. (3) (b) is allowable when access fits within or is comparable to one of the exceptions for treatment records under sub. (4) (b) or when a significant interrelationship exists between the records of the civil commitment proceeding at issue and a criminal proceeding involving a violent felony pending prior to the civil commitment. *Mental condition of Billy Jo W.* 182 Wis. 2d 616, 514 N.W.2d 707 (1994).

Information contained in a treatment record but obtained from another source is not subject to the treatment–records privilege under this section, except that all information that identifies a person as a patient is privileged. *Daniel A. v. Walter H.* 195 Wis. 2d 971, 537 N.W.2d 103 (Ct. App. 1995), 92–1676.

This section provides an exception to the open records law. Nothing in this section or rules adopted under this section suggests that the director is to weigh the harm to the public interest against the benefit to the public in deciding on access to records. *State ex rel. Savinski v. Kimble*, 221 Wis. 2d 833, 586 N.W.2d 36 (Ct. App. 1998), 97–3356.

The subject individual of treatment records is the one who receives treatment. Another person mentioned in the records is not a subject individual and not protected by this section. *Olson v. Red Cedar Clinic*, 2004 WI App 102, 273 Wis. 2d 728, 681 N.W.2d 306, 03–2198.

Statements of emergency detention in the possession of a treatment facility, or a department listed in this section, or in the possession of the police department, are “treatment records” within the meaning of sub. (1) (b), which are expressly exempt from disclosure without written informed consent or a court order under sub. (4) and thus not subject to an open records request. *Watton v. Hegerty*, 2008 WI 74, 311 Wis. 2d 52, 751 N.W.2d 369, 06–3092.

Sub (4) on its face, and as interpreted in *Watton*, prohibits the release of copies of statements of emergency detention, even if in the possession of the police department. Applying *Watton*, it would be absurd to construe the plain language of sub. (4) to permit release of the police incident report when it contains the same information as the expressly confidential statement of emergency detention. Although *Schuster v. Altenberg*, 144 Wis. 2d 223, imposes a duty to warn a person threatened with harm on a psychiatrist who hears the threat from a patient, it does not create a public policy exception to sub. (4). *Milwaukee Deputy Sheriff’s Association v. City of Wauwatosa*, 2010 WI App 95, 327 Wis. 2d 206, 787 N.W.2d 438, 09–1924.

The duty to report suspected cases of child abuse or neglect under s. 48.981 (3) (a) prevails over any inconsistent terms in s. 51.30. 68 Atty. Gen. 342.

Except for those services for which parental consent is necessary under s. 51.47 (2), a physician or health care facility may release outpatient or detoxification services information only with consent of a minor patient, provided the minor is 12 years of age or over. 77 Atty. Gen. 187.

Balancing Federal and Wisconsin Medical Privacy Laws. *Hartin*. Wis. Law. June 2003.

51.35 Transfers and discharges. (1) **TRANSFER OF PATIENTS AND RESIDENTS.** (a) Subject to pars. (b), (d), and (dm), the department or the county department under s. 51.42 or 51.437 may transfer any patient or resident who is committed to it, or who is admitted to a treatment facility under its supervision or operating under an agreement with it, between treatment facilities or from a treatment facility into the community if the transfer is consistent with reasonable medical and clinical judgment, consistent with s. 51.22 (5), and, if the transfer results in a greater restriction of personal freedom for the patient or resident, in accordance with par. (e). Terms and conditions that will benefit the patient or resident may be imposed as part of a transfer to a less restrictive treatment alternative. A patient or resident who is committed to the department or a county department under s. 51.42 or 51.437 may be required to take medications and receive treatment, subject to the right of the patient or resident to refuse medication and treatment under s. 51.61 (1) (g) and (h), through a community support program as a term or condition of a transfer. The patient or resident shall be informed at the time of transfer of the consequences of violating the terms and conditions of the transfer, including possible transfer back to a treatment facility that imposes a greater restriction on personal freedom of the patient or resident.

(b) 1. Except as provided in pars. (c) and (d), a transfer of a patient in a mental health institute by the department is subject to the approval of the appropriate county department under ss. 51.42 and 51.437 to which the patient was committed or through which the patient was admitted to the mental health institute.

2. Except as provided in pars. (c) and (d), a transfer of a resident of a center for the developmentally disabled by the department is subject to the approval of the appropriate county department under s. 51.42 or 51.437 to which the resident was

CLIENT RIGHTS RELATED TO AUTHORIZATION FOR RELEASE OF INFORMATION

YOUR RIGHTS WITH RESPECT TO THIS AUTHORIZATION:

Right to Receive Copy of This Authorization - I understand that if I sign this authorization, I will be provided with a copy of this authorization.

Right to Refuse to Sign This Authorization - I understand that I am under no obligation to sign this form and that Wraparound Milwaukee may not condition treatment, payment, or enrollment on my decision to sign this authorization.

Failure to Sign - I understand that failure to sign this authorization may severely limit the treatment / service options available for my child or family and/or may result in a request to the courts to modify the court order that allows for enrollment in the Wraparound Milwaukee program.

Right to Withdraw This Authorization - I understand that I have the right to withdraw this authorization at any time by providing a written statement of withdrawal to Pamela Erdman, Wraparound Milwaukee Quality Assurance. (The statement must be dated and signed). I am aware that my withdrawal will not be effective until received by Wraparound Milwaukee and will not be effective regarding the uses and/or disclosures of my health information that Wraparound Milwaukee has made prior to receipt of my withdrawal statement

Right to Inspect or Copy the Health Information to Be Used or Disclosed - I understand that I have the right to inspect or copy (may be provided at a reasonable fee) the health information I have authorized to be used or disclosed by this authorization form. I may arrange to inspect my health information or obtain copies of my health information by contacting Pamela Erdman in the Wraparound Milwaukee Quality Assurance Department.

HIV Test Results - I understand my child's HIV test results may be released without authorization to persons/organizations that have access under State law and a list of those persons/organizations is available upon request.

Submit your written requests for withdrawal to:

Ms. Pamela Erdman, Wraparound Milwaukee Quality Assurance Director
Wraparound Milwaukee Administrative Offices
9201 Watertown Plank Road
Milwaukee, WI 53226 Phone: (414) 257-7608

AUTHORIZATION FOR RELEASE OF INFORMATION

PURPOSE OF DISCLOSURE:

Release of Mental Health and AODA (Alcohol and Other Drug Addiction) and physical health information that will be used to plan and provide for the care, treatment and services for:

(Youth's Name)

(Date of Birth)

I authorize Wraparound Milwaukee, its contracted Care Coordination Agencies, and/or the Mobile Urgent Treatment Team to release/exchange health related information including diagnosis, prognosis, treatment and planning related to the above named youth's enrollment in Wraparound Milwaukee to the appropriate staff at the State of Wisconsin/Title 19 Program that authorizes enrollment or provide emergency services for families enrolled in the Wraparound Milwaukee program.

In addition, I authorize release of information related to the above named youth to the following agencies identified below for the purpose of planning for and the delivery of ongoing mental health care, physical health care and education services.

PLACE AN "X" IN THE BOX NEXT TO AGENCY NAME TO AUTHORIZE INFORMATION RELEASE

AGENCY NAME

INFORMATION TO BE RELEASED

- Families United of Milwaukee, Inc. *(Family Advocate)* Demographic Information Only
- Wraparound Education Advocate Chris Shafer, Kay Frederick, Shirley Fishman Plan of Care, Diagnostic, Progress and School Reports
- Milwaukee Public Schools _____ Plan of Care, Diagnostic, Progress and School Reports
(Enter Name of School)
- Other School _____ Plan of Care, Diagnostic, Progress and School Reports
(Enter Name of School)
- Primary Care Physician _____ Plan of Care, Diagnostic and Progress Reports
(Enter Physician or Clinic Name)
- Dental Service Provider _____ Plan of Care, Diagnostic and Progress Reports
(Enter Dentist or Clinic Name)
- Psychiatrist _____ Plan of Care, Diagnostic and Progress Reports
(Enter Physician or Clinic Name)
- Other _____ Plan of Care, Diagnostic and Progress Reports
(Enter Agency or Individual Provider Name)

CONSENT FOR INFORMATION TO BE USED IN RESEARCH

I give my consent for non-identifying evaluation data obtained during my enrollment in Wraparound to be used for research to evaluate the effectiveness of the program. I understand that this research may be presented at conferences, universities and in publications. I understand that information collected for this research is part of the usual Wraparound evaluation procedures. I understand that my family's confidentiality will be protected. No information that is presented to the public will contain any identifying information such as name, address or telephone number.

EXPIRATION OF AUTHORIZATION / WITHDRAWAL OF AUTHORIZATION

If not specified below, I understand that **this Authorization for Release of Information EXPIRES 12 MONTHS from the date it was signed.** I understand that **I may cancel this authorization at any time** (see back of sheet for instructions). This does not include any information that has been shared between the time I gave my consent to share information and the time that the consent was canceled.

This authorization expires on the _____ day of _____, 20_____.

REDISCLASURE NOTICE: I understand that information used or disclosed based on this authorization may be subject to re-disclosure and no longer protected by Federal privacy standards.

_____ Parent or Legal Guardian Signature	_____ Date
_____ Youth Signature <i>(age 14 and older should sign)</i>	_____ Date
_____ Witness Signature	_____ Date

CLIENT RIGHTS RELATED TO AUTHORIZATION FOR RELEASE OF INFORMATION

YOUR RIGHTS WITH RESPECT TO THIS AUTHORIZATION:

Right to Receive Copy of This Authorization - I understand that if I sign this authorization, I will be provided with a copy of this authorization.

Right to Refuse to Sign This Authorization - I understand that I am under no obligation to sign this form and that Wraparound Milwaukee may not condition treatment, payment, or enrollment on my decision to sign this authorization.

Failure to Sign - I understand that failure to sign this authorization may severely limit the treatment / service options available for my child or family and/or may result in a request to the courts to modify the court order that allows for enrollment in the Wraparound Milwaukee program.

Right to Withdraw This Authorization - I understand that I have the right to withdraw this authorization at any time by providing a written statement of withdrawal to Pamela Erdman, Wraparound Milwaukee Quality Assurance. (The statement must be dated and signed). I am aware that my withdrawal will not be effective until received by Wraparound Milwaukee and will not be effective regarding the uses and/or disclosures of my health information that Wraparound Milwaukee has made prior to receipt of my withdrawal statement

Right to Inspect or Copy the Health Information to Be Used or Disclosed - I understand that I have the right to inspect or copy (may be provided at a reasonable fee) the health information I have authorized to be used or disclosed by this authorization form. I may arrange to inspect my health information or obtain copies of my health information by contacting Pamela Erdman in the Wraparound Milwaukee Quality Assurance Department.

HIV Test Results - I understand my child's HIV test results may be released without authorization to persons/organizations that have access under State law and a list of those persons/organizations is available upon request.

Submit your written requests for withdrawal to:

Ms. Pamela Erdman, Wraparound Milwaukee Quality Assurance Director
Wraparound Milwaukee Administrative Offices
9201 Watertown Plank Road
Milwaukee, WI 53226 Phone: (414) 257-7608



WRAPAROUND MILWAUKEE – Project O’YEAH AUTHORIZATION FOR RELEASE OF INFORMATION

PURPOSE OF DISCLOSURE:

Release of Mental Health and AODA (Alcohol and Other Drug Addiction) and physical health information that will be used to plan and provide for the care, treatment and services for:

_____ (Enrollee’s Name)

_____ (Date of Birth)

I authorize Wraparound Milwaukee-Project O’YEAH to release/exchange health related information including diagnosis, prognosis, treatment and planning related to my enrollment in Project O’YEAH to the appropriate staff at the State of Wisconsin/Title 19 Program that authorizes enrollment in the Wraparound Milwaukee program.

In addition, I authorize release of this information to the agencies identified below for the purpose of planning for and the delivery of ongoing mental health care, physical health care and education services.

PLACE AN “X” IN THE BOX TO AUTHORIZE INFORMATION RELEASE

AGENCY NAME

INFORMATION TO BE RELEASED

- | | |
|--|--|
| <input type="checkbox"/> Primary Care Physician _____
<i>(Enter Physician or Clinic Name)</i> | Future Plan, Diagnostic and Progress Reports |
| <input type="checkbox"/> Dental Service Provider _____
<i>(Enter Dentist or Clinic Name)</i> | Future Plan, Diagnostic and Progress Reports |
| <input type="checkbox"/> Psychiatrist _____
<i>(Enter Physician or Clinic Name)</i> | Future Plan, Diagnostic and Progress Reports |
| <input type="checkbox"/> Other _____
<i>(Enter Agency or Individual Provider Name)</i> | Future Plan, Diagnostic and Progress Reports |
| <input type="checkbox"/> Other _____
<i>(Enter Agency or Individual Provider Name)</i> | Future Plan, Diagnostic and Progress Reports |
| <input type="checkbox"/> Other _____
<i>(Enter Agency or Individual Provider Name)</i> | Future Plan, Diagnostic and Progress Reports |
| <input type="checkbox"/> Other _____
<i>(Enter Agency or Individual Provider Name)</i> | Future Plan, Diagnostic and Progress Reports |

CONSENT FOR INFORMATION TO BE USED IN RESEARCH

I give my consent for non-identifying evaluation data obtained during my enrollment in Wraparound Project O’YEAH to be used for research to evaluate the effectiveness of the program. I understand that this research may be presented at conferences, universities and in publications. I understand that information collected for this research is part of the usual program evaluation procedures. I understand that my confidentiality will be protected. No information that is presented to the public will contain any identifying information such as name, address or telephone number.

EXPIRATION OF AUTHORIZATION / WITHDRAWAL OF AUTHORIZATION

If not specified below, I understand that **this Authorization for Release of Information EXPIRES 12 MONTHS from the date it was signed.** I understand that **I may cancel this authorization at any time** (see back of sheet for instructions). This does not include any information that has been shared between the time I gave my consent to share information and the time that the consent was canceled.

This authorization expires on the _____ day of _____, 20_____.

REDISCLASURE NOTICE: I understand that information used or disclosed based on this authorization may be subject to re-disclosure and no longer protected by Federal privacy standards.

Enrollee Signature

Date

Witness Signature

Date

CLIENT RIGHTS RELATED TO AUTHORIZATION FOR RELEASE OF INFORMATION

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Milwaukee, WI 53226 Phone: (414) 257-7608

WRAPAROUND MILWAUKEE
**AUTHORIZATION FOR RELEASE
OF HEALTH INFORMATION**

(May be used following completion of Enrollment Packet Authorization Form)

PURPOSE OF DISCLOSURE:

Release of Mental Health, AODA (Alcohol and Other Drug Addiction) and physical health information that will be used to plan and provide for the care, treatment and services for:

_____ (Youth's Name) _____ (Date of Birth)

I authorize Wraparound Milwaukee, its contracted Care Coordination Agencies, and/or the Mobile Urgent Treatment Team to release/exchange health related information including diagnosis, prognosis, treatment and planning related to the above named youth's enrollment in Wraparound Milwaukee to the appropriate staff at the following agency/s:

SHARED DOCUMENTS/INFORMATION

(Check those that apply.)

AGENCY NAME / INDIVIDUAL NAME	Demographic Information Only	Plan of Care	Referral for Services	Other * (Specify Below)
Agency/Individual: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*Identify Other Document/s: _____				
Agency/Individual: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*Identify Other Document/s: _____				
Agency/Individual: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*Identify Other Document/s: _____				
Agency/Individual: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*Identify Other Document/s: _____				
Agency/Individual: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*Identify Other Document/s: _____				

EXPIRATION OF AUTHORIZATION / WITHDRAWAL OF AUTHORIZATION

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This authorization expires on the _____ day of _____, 20_____.

REDISCLASURE NOTICE: I understand that information used or disclosed based on this authorization may be subject to re-disclosure and no longer protected by Federal privacy standards.

Parent or Guardian Signature _____ Date

Youth Signature _____ Date

Witness Signature _____ Date

CLIENT RIGHTS RELATED TO AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION

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