

Chapter DHS 92

CONFIDENTIALITY OF TREATMENT RECORDS

| | |
|-----------|--------------------------------------|
| DHS 92.01 | Introduction. |
| DHS 92.02 | Definitions. |
| DHS 92.03 | General requirements. |
| DHS 92.04 | Disclosure without informed consent. |
| DHS 92.05 | Patient access to treatment records. |
| DHS 92.06 | Minors and incompetents. |
| DHS 92.07 | Privileged communications. |

| | |
|-----------|------------------------------|
| DHS 92.08 | Criminal commitments. |
| DHS 92.09 | Grievance procedure. |
| DHS 92.10 | Discipline of employees. |
| DHS 92.11 | Employee orientation. |
| DHS 92.12 | Retention periods. |
| DHS 92.13 | Certification of compliance. |

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.

(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 or 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.

(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

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.

(c) 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.