HIPAA Collaborative of Wisconsin
CHAPTER 51.30
HIPAA Privacy Standards Matrix

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Edits to 51.30 analysis dated 3/2020 [addresses all changes enacted from 2008 to 2020]

Note: The following impacts and permits the use, disclosure, or request for disclosure of a treatment facility covered entity or its business associate

Wisconsin Statute 146.816 Uses and disclosures of protected health information.

(1) In this section:

(a) "Business associate" has the meaning given in 45 CFR 160.103.

(b) "Covered entity" has the meaning given in 45 CFR 160.103.

(c) "Disclosure" has the meaning given in 45 CFR 160.103 and includes redisclosures and rereleases of information.

(d) "Health care operations" has the meaning given in 45 CFR 164.501.

(e) "Payment" has the meaning given in 45 CFR 164.501.

(f) "Protected health information" has the meaning given in 45 CFR 160.103.

(g) "Treatment" has the meaning given in 45 CFR 164.501.

(h) "Treatment facility" has the meaning given in s. 51.01 (19).

(i) "Use" has the meaning given in 45 CFR 160.103.

(2) Sections 51.30 (4) (a) and (e) and 146.82 and rules promulgated under s. 51.30 (12) do not apply to a use, disclosure, or request for disclosure of protected health information by a covered entity or its business associate that meets all the following criteria:

(a) The covered entity or its business associate makes the use, disclosure, or request for disclosure in compliance with 45 CFR 164.500 to 164.534.

(b) The covered entity or its business associate makes the use, disclosure, or request for disclosure in any of the following circumstances:

1. For purposes of treatment.

2. For purposes of payment.

3. For purposes of health care operations.

4. For purposes of disclosing information about a patient in a good faith effort to prevent or lessen a serious and imminent threat to the health or safety of a person or the public.

CHAPTER 51.30
HIPAA Privacy Standards Matrix
***PHI= Protected health information*

State of WI Statutory Ref/ Admin Code	State of WI Description	HIPAA Reference	HIPAA Description	Implementation/ Questions
DHS 92.01(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.			
51.30(1)	(a) "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 which identify 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	160.103	Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and: (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify	According to DHS 92.01(1), the scope of chapter 51.30 is 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 46.23, 51.42, or 51.437, a treatment facility and persons providing services under contract to the department, a board or a treatment facility. 51.30(1) then goes on to define two separate subgroups of records, "registration records" and "treatment records". "Registration records" as defined under state law include PHI as defined by HIPAA and must be treated as such.

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DHS 92.02(16)	dependence that are maintained by the department, by county departments under s. 51.42 or 51.437 and their staffs, and 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 under 51.42 or 51.437, or a treatment facility if the notes or records are not available to others. "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.	164.501	the individual. Protected health information means individually identifiable health information: (1) except as provided in paragraph (2) of this definition, that is: (i) transmitted by electronic media (ii) maintained in any medium described in the definition of electronic media at 162.103 of this subchapter; or (iii) transmitted or maintained in any other form or medium. (2) PHI excludes individually identifiable health information in: (i) education records covered by the Family Educational Right and Privacy Act, as amended, 20 USC 1232g; and (ii) records described at 20 USC 1232g(a)(4)(B)(iv). Electronic media is defined at 45 CFR §162.103 as the mode of electronic transmission. It includes the Internet (wide-open), Extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disk, or compact disk media. Psychotherapy notes are defined as notes recorded (in any medium) by a	"Treatment records" also contain PHI. However, under the definition of treatment record, the definition of therapist records that are excluded is very close to the definition of psychotherapy notes under HIPAA. However, the two definitions are not precisely identical. Specifically, psychotherapy notes under HIPAA are limited to notes of conversations or family therapy sessions, while the excluded records under 51.30(1) include "notes or records". This slight difference may allow some material to be excluded under 51.30(1) and not under HIPAA; for example, counseling stop and start times or medications. This is critical because those records that are excluded under 51.30(1) are not accessible to the patient under 51.30, but may be accessible under HIPAA's access to the designated record set. Note: If provider is not governed by 51.30, there is uncertainty regarding patient access to notes kept separate from the medical record, e.g. personal notes or psychotherapy notes.
DHS 92.03(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			Implementation of DHS 92.03 (a) Follow Both. (b) Follow Both. (c) Follow State. (d) Follow Both generally, although only HIPAA covered direct treatment providers must provide the HIPAA notice. (e) See 51.30 (4)(d) (f)Follow Both (g) Follow 42 CFR

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DHS 92.03(1) cont.	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.	164.502(a)	health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following terms: diagnosis, functional status, the treatment plan, symptoms, prognosis and progress to date. A CE may not use or disclose PHI, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter. (1) Permitted uses and disclosures. A CE is permitted to use or disclose PHI as follows: (h) To the individual; (ii)For treatment, payment, or health care operations, as permitted by and in compliance with §164.506; (iii) Incident to a use or disclosure otherwise permitted or required by this subpart, provided that the CE has compiled with the applicable requirements of §164.502(b), §164.514(d), and §164.530(c) with respect to such otherwise permitted or required use or disclosure. (iv) Pursuant to and in compliance with a valid authorization under §164.508;	

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DHS 92.03(1) cont.	(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.	164.501 164.520(b)(1)(iv)(C) 164.530(c)(2)(i) 164.502(b)(1)	(v) Pursuant to an agreement under, or as otherwise permitted by §164.510; (vi) As permitted by and in compliance with this section, §164.512, or §164.514(e), (f), or (g). (2) Required disclosures. A CE is required to disclose PHI: (i) To an individual, when requested under, and required by §164.524 or §164.528; and (ii) When required by the Secretary under subpart C of part 160 of this subchapter to investigate or determine the CE's compliance with this subpart. No specific HIPAA provision on redisclosure (2) Protected health information excludes individually identifiable health information in: (i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; The notice must contain a statement of the individual's rights with respect to PHI and a brief description of how the individual may exercise these rights, as follows: ... 9 c) The right to inspect and copy PHI as provided by section 164.522(b)... A CE must reasonably safeguard PHI from any intentional or unintentional use or disclosure that is in violation of the standards, implementation specifications or HIPAA requirements.	(h) Follow State regarding redisclosure. State provides greater protection by requiring an informed consent/ authorization to specifically address redisclosure. (i) Follow State (j) Follow State (k) Follow Both. (l) See 51.30(4)(a) See FERPA regulations. (m) Follow State. (n) For disclosures, Follow State incorporating HIPAA minimum necessary standard as applicable. [See 164.502(b)(2)] Note: While 51.30 does not have exceptions to the minimum necessary disclosure/use standard like HIPAA, HIPAA's minimum necessary standard would apply to the use of 51.30 records. Patient access is governed by 51.30(4)(d). (o) See 51.30(2) regarding elements of an informed consent. (p) Follow State.

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DHS 92.03(1) cont.	(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. 164.514(h)(1) (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.	164.514(d) (1)-(5) 164.508(c)(2)(iii)	Minimum necessary applies. When using or disclosing PHI or when requesting PHI from another CE, a CE must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. Minimum necessary requirements. (1) In order to comply with 1654.502(b) and this section, a CE must meet the requirements of paragraphs (d)(2) through (d)(5) of this section with respect to a request for, or the use and disclosure of PHI. (2) Implementation specifications: minimum necessary uses of PHI. (3) Implementation specification: Minimum necessary disclosures of PHI. (4) Implementation specifications: Minimum necessary requests for PHI. (5) Implementation specification: Other content requirement. For all uses, disclosures, or requests to which the requirements in paragraph (d) of this section apply, a CE may not use, discloses or request an entire medical record, except when the entire medical record is specifically justified as the amount that is reasonably necessary to accomplish the purpose of the use, disclosure, or request. When an authorization is required from the individual for use or disclosure of PHI the authorization is required to contain a statement adequate to notify the individual of	

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		164.514(h)(1)	the following: The potential for information to be disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer protected by this rule. Verification requirements. Prior to any disclosure permitted by this subpart, a CE must: (i) Except with respect to disclosures under Sec. 164.510, verify the identity of a person requesting PHI and the authority of any such person to have access to PHI under this subpart, if the identity or any such authority of such person is not known to the CE; and (ii) Obtain any documentation, statements, or representations, whether oral or written, from the person requesting the PHI when such documentation, statement, or representation is a condition of the disclosure under this subpart.	
DHS 92.03(2)(a)	DISCLOSURE OF PATIENT STATUS IS RESPONSE TO INQUIRES. (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.			Follow State. Informed Consent/Authorization is needed unless applying exceptions.
DHS 92.03(2)(b)	(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	164.510(a)	Standard: use and disclosure for facility directories. (1) Permitted uses and disclosure. Except when an objection is expressed in accordance with paragraphs (a)(2) or (3) of this section, a covered health care	Policies and procedures: Follow Both. Noncommittal response to inquiries: Follow State. For example, response to inquiries that do not comply with the statutory exceptions

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DHS 92.03(2)(b) cont.	normally deal with patient status inquiries shall be trained in the procedures.	164.530(i)(1)	provider may: (i) Use the following PHI to maintain a directory of individuals in its facility: (A) The individual's name; (B) The individual's location in the covered health care provider's facility; (C) The individual's condition described in general terms that does not communicate specific medical information about the individual; and (D) The individual's religious affiliation; and (ii) Disclose for directory purposes such information: (A) To members of the clergy; or (B) Except for religious affiliation, to other persons who ask for the individual by name. (2) Opportunity to object. A covered health care provider must inform an individual of the PHI that it may include in a directory and the persons to whom it may disclose such information (including disclosures to clergy of information regarding religious affiliation) and provide the individual with the opportunity to restrict or prohibit some or all of the uses or disclosures permitted by paragraph (a)(1) of this section. Policies and procedures. A CE must implement policies and procedures with respect to PHI that are designed to comply with the standards, implementation specifications, or other requirements of this subpart. The policies and procedures must be reasonably designed, considering the	under 51.30(4) (b)13 will require the noncommittal response. Training: Follow Both

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			size of and the type of activities that relate to PHI undertaken by the CE, to ensure such compliance. This standard is not to be construed to permit or excuse an action that violates any other standard, implementation specification, or other requirement of this subpart.	
51.30(2) DHS 92.03(3) (a)-(e)	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. 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	164.508(a)(1) 164.508(c)(1)	(a) Standard: Authorizations for uses and disclosures. (1) Authorization required: General rule. Except as otherwise permitted or required by this subchapter, a CE may not use or disclose PHI without an authorization that is valid under this section. When a CE obtains or receives a valid authorization for its use or disclosure of PHI, such use or disclosure must be consistent with such authorization. Implementation specifications: Core elements and requirements. (1) Core elements. A valid authorization under this section must contain at least the following elements: (i) A description of the information to be used or disclosed that identifies the information in a specific or meaningful fashion. (ii) The name or other specific identification of the person(s), or class of persons authorized to make the requested use or disclosure. (iii) The name or other specific identification of the person(s), or class of persons, to whom the CE may make the requested use or disclosure. (iv) A description of each purpose of the requested use or disclosure. The	Follow Both. The HIPAA authorization and the Wis Stat 51.30 authorization are similar although not identical. They are not in conflict. Follow both to assure compliance. A form combining the requirements for the HIPAA authorization and a WI informed consent as delineated in 146.81, 51.30, 252.15 and DHS 92 (depending on which laws apply to the provider records) could be developed. See Authorization/Informed Consent for Use and Disclosure of Health care Information grid.

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DHS 92.03(1)(o)	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**.** 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.		statement "at the request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose. (v) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statement "end of the research study," "none," or similar language is sufficient if the authorization is for a use or disclosure of PHI for research, including the creation and maintenance of a research database or research repository. (vi) Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided.	
		164.508(c)(2)	(2) Required Statements. In addition to the core elements, the authorization must contain statements adequate to place the individual on	

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			notice of all of the following: (i) The individual's right to revoke the authorization in writing, and either: (A) The exceptions to the right to revoke and a description of how the individual may revoke the authorization; or (B) To the extent that the information in paragraph (c)(2)(i)(A) of this section is included in the notice required by 164.520, a reference to the CE's notice. (ii) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization, by stating either: (A) The CE may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when the prohibition on conditioning of authorizations in par. (b)(4) of this section applies; or (B) The consequences to the individual of a refusal to sign the authorization when, in accordance with par. (b)(4) of this section, the CE can condition treatment, enrollment in the health plan, or eligibility for benefits on failure to obtain such authorization. (iii) The potential for information to be disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by this rule. (3) Plain language requirement. The authorization must be written in plain language.	

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			(4) Copy to the individual. If a CE seeks an authorization from an individual, the CE must provide the individual with a copy of the signed authorization.	
		164.506(b)	Standard. Consent for uses and disclosures permitted. (b)(1) A CE may obtain consent of the individual to use or disclose PHI to carry out treatment, payment or health care operations. (b)(2) Consent, under paragraph (b) of this section, shall not be effective to permit a use or disclosure of PHI when an authorization, under section 164.508, is required or when another condition must be met for such use or disclosure to be permissible under this subpart.	The HIPAA consent and the Wisconsin informed consent for release are not the same type of document and are not comparable. There is no conflict between the HIPAA consent and the Wisconsin informed consent. The HIPAA consent is optional under HIPAA.
DHS 92.03(4) (a)-(c)	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.	164.502(f) 164.502(g)(5)	Deceased individuals. A CE must comply with the requirements of this subpart with respect to the PHI of a deceased individual. Deceased individuals. If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, a CE must treat such person as a personal representative under this subchapter, with respect to PHI relevant to such personal representation.	HIPAA refers to state law for the definition of personal representative. Wis Stat 851.23 defines personal representative. Both HIPAA and state law protect deceased patient records and define who may authorize use/disclosure of deceased records. Both allow the PR to authorize release. HIPAA allows other persons with authority to act on behalf of the deceased and those individuals are defined by state law. If there is no personal representative appointed, State law allows a spouse or responsible member of the patient's family to act on behalf of a deceased patient.
51.30(3)(a)-(d)	ACCESS TO COURT RECORDS (a) 51.30 (3) (a) Except as provided in pars. (b), (bm), (c),			Follow State. Court is not a CE under HIPAA.

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51.30(3)(a)-(d) cont.	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 and family 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			

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	department of health and family 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			
51.30(4)	ACCESS TO REGISTRATION AND TREATMENT RECORDS			
51.30(4)(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).	164.502(a)	Uses and disclosures of PHI: general rules. (a) Standard. A CE may not use or disclose PHI, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter. (1) Permitted uses and disclosures. A CE is permitted to use or disclose PHI as follows: (i) To the individual; (ii) Pursuant to and in compliance with a consent that complies with Sec. 164.506, to carry out treatment, payment, or health care operations; (iii) Without consent, if consent is not required under Sec. 164.506(a) and has not been sought under Sec.	General rule of confidentiality is consistent between HIPAA and State law. Consider Wis. Stat. 146.816 for disclosures and uses for treatment, payment, and health care operations if a covered entity or business associate. Refer to applicable sections of HIPAA and State law.

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DHS 92.03(1)(l)	Note: 118.25(4)—Transfer of pupil records between school districts; 610.70(3) and (5)—Access and Disclosure of insurer records; 905.03—Lawyer-client privilege; 905.04—Healthcare provider-patient privilege 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.		164.506(a)(4), to carry out treatment, payment, or health care operations, except with respect to psychotherapy notes; (iv) Pursuant to and in compliance with a valid authorization under Sec. 164.508; (v) Pursuant to an agreement under, or as otherwise permitted by, Sec. 164.510; and (vi) As permitted by and in compliance with this section, Sec. 164.512, or Sec. 164.514(e), (f), and (g). (2) Required disclosures. A CE is required to disclose PHI: (i) To an individual, when requested under, and required by Sec. 164.524 or Sec. 164.528; and (ii) When required by the Secretary under subpart C of part 160 of this subchapter to investigate or determine the CE's compliance with this subpart	
NOTE: HIPAA and Wis Stat 51.30 use the term "MAY" unlike Wis Stat 146 which uses the term "SHALL". The following exceptions refer to "disclosures". At times, the "disclosure" under State law constitutes a "use" under HIPAA, e.g., "within the department".				
DHS 92.03(2)(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.			Follow State. Informed Consent/Authorization is needed unless applying exceptions.

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51.30(4)(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):			
51.30(4)(b)1 *Audits, Programming Monitoring, Evaluation* DHS 92.04(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. 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.	164.512 (d) 164.501	A CE may disclose PHI to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative or criminal investigation; inspections; licensure or disciplinary action; civil, administrative or criminal proceedings or actions; or other activities necessary for appropriate oversight of the health care system government benefit programs relevant to health information, etc. Health oversight agency means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or person or entity acting under a grant of authority from or contract with such public agency including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.	Follow State. State limits disclosure to designees of the department or required by law. Under state law, the auditors or evaluators must provide written documentation regarding authority. HIPAA does not place specific limits on the information once released, while state law clarifies that the information must remain confidential and non-identifiable.
51.30(4)(b)2	To the department, the director of a	164.506(c)(1)	A CE may use or disclose PHI for its	Follow State. State provides greater

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County Department for billing & collection DHS 92.04(2) (a)-(e)	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. (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	164.530(i)1	own treatment, payment, or health care operations. Policies and procedures. A CE must implement policies and procedures with respect to PHI that are designed to comply with the standards, implementation specifications, or other requirements of this subpart. The policies and procedures must be reasonably designed, considering the size of and the type of activities that relate to PHI undertaken by the CE, to ensure such compliance. This standard is not to be construed to permit or excuse an action that violates any other standard, implementation specification, or other requirement of this subpart	protection regarding the release of PHI, as the release of billing information to payers (other than the department, director of county department, or qualified designee) requires informed consent/authorization. Policies and Procedures: Follow Both.

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	of billing and collection information. These procedures shall be made available to the department upon request.			
51.30(4)(b)3 *Research* DHS 92.04(3)	For purposes of research as permitted in 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. RESEARCH. Treatment records may be released for purposes of research only as authorized under s. 51.30(4)(b) 3., Stats.	164.512(i)	Standard: Uses and disclosures for research purposes. (1) Permitted uses and disclosures. A CE may use or disclose PHI for research, regardless of the source of funding of the research, provided that: (i) Board approval of a waiver of authorization. (ii) Reviews preparatory to research. (iii) Research on decedent's information. (2) Documentation of waiver approval. For a use or disclosure to be permitted based on documentation of approval of an alteration or waiver, under paragraph (i)(1)(i) of this section, the documentation must include all of the following: (i) Identification and date of action. (ii) Waiver criteria. (iii) PHI needed. (iv) Review and approval procedures. (v) Required signature.	Follow Both, apply the approval requirements of both.
51.30(4)(b)4 *Court Order* DHS 92.04(4) (a)-(c)	Pursuant to lawful order of a court of record. 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	164.512(e)	(e) Standard: Disclosures for judicial and administrative proceedings. (1) Permitted disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding: (i) In response to an order of a court or administrative tribunal, provided that the covered entity	Both laws allow disclosure under court order. A subpoena is a court order only if signed by a judge. A subpoena without a court order is sufficient under HIPAA but insufficient under Wisconsin law (except as contemplated in Wis. Stats.

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	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.		discloses only the protected health information expressly authorized by such order; or Summary of 164.512: A CE may disclose PHI in the course of any judicial or administrative proceeding in response to a court order or administrative order provided that the disclosure is only as expressly authorized in the order. A CE may also disclose PHI in response to a subpoena, discovery request, or other lawful process, even without a court or administrative order, if the entity receives assurances from the requester that reasonable efforts have been made to give notice to the individual or the CE receives assurances from the requester that reasonable efforts have been made to secure a protective order	908.03(6m)(c), dealing with legal actions) to compel disclosure. Similarly, an administrative order is sufficient under HIPAA, but insufficient under Wisconsin law to compel disclosure.
51.30(4)(b)5 *County Department for Treatment Progress* DHS 92.04(5)	To qualified staff members of the department, to the director of the county department under 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 51.14. Such information shall remain confidential. The department and county departments under 51.42 or 51.437 shall develop procedures to assure the confidentiality of such information.	164.506(c)(2) 164.530(i)1	A CE may disclose PHI for treatment activities of a health care provider. Policies and procedures. A CE must implement policies and procedures with respect to PHI that are designed to comply with the standards, implementation specifications, or other requirements of this subpart. The policies and procedures must be reasonably designed, considering the size of and the type of activities that relate to PHI undertaken by the CE, to ensure such compliance. This standard is not to be construed to permit or excuse an action that violates any other standard, implementation specification, or	Follow Both. HIPAA and State provide for disclosure of PHI by a CE for treatment activities. Policies and Procedures: Follow Both

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	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.		other requirement of this subpart.	
51.30(4)(b)6 *Employees within Treatment Facility* DHS 92.04(6) (a)-(c) DHS 92.04(6) (a)-(c) cont.	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. 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.	164.506(c)(1) 164.502(a)(1)(ii) 164.508(a)(2)(i)(B) 164.530(c)	A CE may use or disclose PHI for its own treatment, payment, or health care operations. A CE may use or disclose PHI without consent or authorization to carry out TPO as permitted by 164.506. Psychotherapy notes authorization not needed for use or disclosure by the CE for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; Safeguards. (1) A CE must have in place appropriate administrative, technical, and physical safeguards to protect the privacy of PHI. (2) Implementation specification: Safeguards. A CE must reasonably safeguard PHI from any intentional or unintentional use or disclosure that is in violation of the standards, implementation specifications or other requirements of this subpart.	Follow Both.
51.30(4)(b)7	Within the department to the extent	164.506(c)(1)	A CE may use or disclose PHI for its	Follow Both.

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DHS coordinate treatment DHS 92.04(7)	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. 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.	164.514(d)(2)	own treatment, payment, or health care operations. Minimum Necessary uses of PHI. (i) A CE must identify: (A) Those persons or classes of persons, as appropriate, in its workforce who need access to PHI to carry out their duties; and (B) For each such person or class of persons, the category or categories of PHI to which access is needed and any conditions appropriate to such access. (ii) A CE must make reasonable efforts to limit the access of such persons or classes identified in paragraph (d)(2)(i)(A) of this section to PHI consistent with paragraph (d)(2)(i)(B) of this section.	Note: Apply minimum necessary.
51.30(4)(b)8 *Physician--Medical Emergency* DHS 92.04(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. 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.	164.506(c)(2)	A CE may disclose PHI for treatment activities of a health care provider.	Follow State. State law limits information disclosed pursuant to this section: 1. to a medical emergencies 2. to a health care provider who is unable to obtain the individual's informed consent to that part of the records necessary to meet the medical emergency.

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51.30(4)(b)8g.am *Health Care Provider- Continued Care*	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			This provision provides a definition referenced under 51.30(4)(b) 8g.bm.
51.30(4)(b)8g.bm. *Health Care Provider- Continued Care*	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.	164.506(c)(2)	A CE may disclose PHI for treatment activities of a health care provider.	Mental Health: Follow State. State law limits information that "may" be disclosed pursuant to this section: 1. to a health care provider or health care provider supervisee involved in the individual's care 2. necessary for current treatment 3. to specific elements of information. [Note: this may preclude disclosure of entire progress notes/ consultations] **NOTE**: • The health care provider in this section may or may not be a HIPAA covered entity. • Wis Stat.146.816 is not applicable since Wis Stat 51.30(4)(b). is not reference in Wis Stat 146.816. • SUDS: Follow 42 CFR Part 2, if a healthcare provider meets the definition of a "program."
51.30(4)(b)8m. *Examiners for Commitments* 51.30(4)(b)8m cont.	To appropriate examiners and facilities in accordance with 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 971.17. Note: 971.17—Commitment of persons found not guilty by reason of mental disease or mental defect; 54.36 – Guardianships and Conservatorship medical examinations	164.512(e)(1)	Disclosures for judicial and administrative proceedings. (1) Permitted disclosures. A CE may disclose PHI in the course of any judicial or administrative proceeding: (i) In response to an order of a court or administrative tribunal, provided that the CE discloses only the PHI expressly authorized by such order; or (ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by	Follow State. In the proceedings for commitments, Notice is provided to individual at time of evaluation. In the 980 proceeding, the individual is noticed because it is expected that the individual will be re-evaluated every year. At the time of evaluation, the individual may or may not petition for release. Notice is not given according to HIPAA.

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51.30(4)(b)8m cont.		164.512(e)(1) cont.	an order of a court or administrative tribunal, if: (A) The CE receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the PHI that has been requested has been given notice of the request; or (B) The CE receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section. (iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a CE receives satisfactory assurances from a party seeking protecting health information if the CE receives from such party a written statement and accompanying documentation demonstrating that: (A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address); (B) The notice included sufficient information about the litigation or proceeding in which the PHI is requested to permit the individual to raise an objection to the court or administrative tribunal; and	
		164.512(e)(1) cont.		

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51.30(4)(b)8m cont.		164.512(a)(1)	(C) The time for the individual to raise objections to the court or administrative tribunal has elapsed, and: (1) No objections were filed; or (2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution. (iv) For the purposes of paragraph (e)(1)(ii)(B) of this section, a CE receives satisfactory assurances from a party seeking PHI, if the CE receives from such party a written statement and accompanying documentation demonstrating that: (A) The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or (B) The party seeking the PHI has requested a qualified protective order from such court or administrative tribunal. (v) For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to PHI requested under paragraph (e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that: (A) Prohibits the parties from using or disclosing the PHI for any purpose other than the litigation or proceeding for which such information was requested; and	

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			(B) Requires the return to the CE or destruction of the PHI (including all copies made) at the end of the litigation or proceeding. (vi) Notwithstanding paragraph (e)(1)(ii) of this section, a CE may disclose PHI in response to lawful process described in paragraph (e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the CE makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(iv) of this section. (a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.	
51.30(4)(b) 8s *Sexually violent person commitments*	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	164.512(e)(1)	Disclosures for judicial and administrative proceedings. (1) Permitted disclosures. A CE may disclose PHI in the course of any judicial or administrative proceeding: (i) In response to an order of a court or administrative tribunal, provided that the CE discloses only the PHI expressly authorized by such order; or (ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by	Follow State. In the proceedings for commitments, Notice is provided to individual at time of evaluation. In the 980 proceeding, the individual is noticed because it is expected that the individual will be re-evaluated every year. At the time of evaluation, the individual may or may not petition for release.

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51.30(4)(b) 8s cont.	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 and family 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.	164.512(e)(1) cont.	an order of a court or administrative tribunal, if: (A) The CE receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the PHI that has been requested has been given notice of the request; or (B) The CE receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section. (iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a CE receives satisfactory assurances from a party seeking protecting health information if the CE receives from such party a written statement and accompanying documentation demonstrating that: (A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address); (B) The notice included sufficient information about the litigation or proceeding in which the PHI is requested to permit the individual to raise an objection to the court or administrative tribunal; and	

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51.30(4)(b) 8s cont.		164.512(e)(1) cont.	(C) The time for the individual to raise objections to the court or administrative tribunal has elapsed, and: (1) No objections were filed; or (2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution. (iv) For the purposes of paragraph (e)(1)(ii)(B) of this section, a CE receives satisfactory assurances from a party seeking PHI, if the CE receives from such party a written statement and accompanying documentation demonstrating that: (A) The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or (B) The party seeking the PHI has requested a qualified protective order from such court or administrative tribunal. (v) For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to PHI requested under paragraph (e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that: (A) Prohibits the parties from using or disclosing the PHI for any purpose other than the litigation or proceeding for which such information was requested; and	

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		164.512(a)(1)	(B) Requires the return to the CE or destruction of the PHI (including all copies made) at the end of the litigation or proceeding. (vi) Notwithstanding paragraph (e)(1)(ii) of this section, a CE may disclose PHI in response to lawful process described in paragraph (e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the CE makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(iv) of this section. (a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.	
51.30(4)(b)9 *Facility to receive committed individual*	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 complaints, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals,	164.506(c)(2) 164.512(e)(1)	A CE may disclose PHI for treatment activities of a health care provider. Disclosures for judicial and administrative proceedings. (1) Permitted disclosures. A CE may disclose PHI in the course of any judicial or administrative proceeding	Follow Both. State specifies the information to be disclosed and to whom. DHS 92.04(9)(f): Follow State for voluntary patients transferred. Consent/ Authorization or court order is required.

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DHS 92.04(9) (a)-(f)	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. Note: Ch. 48—Children's Code; 938—Juvenile 971—Criminal Proceedings; 975—Violent Sex Crimes 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.			

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	(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.			
51.30(4)(b)(10) (a)-(c) *Correctional Facility, Probation* 51.30(4)(b)(10) (a)-(d) cont.	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	164.512(k)5 (i)(A-F) (k)5(F) (iii)	Correctional institutions and other law enforcement custodial situations. (i) Permitted disclosures. A CE may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual PHI about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for: (A) The provision of health care to such individuals; (B) The health and safety of such individual or other inmates; (C) The health and safety of the officers or employees of or others at the correctional institution; (D) The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another; (E) Law enforcement on the premises of the correctional institution; and (F) The administration and maintenance of the safety, security, and good order of the	Follow State. HIPAA's definitions of "correctional institutions" and the description under 164.512(k)5 are broader than the circumstances defined in 51.30(4)(b)(10). Ss. 51.30 only allows release of records (without an authorization) for someone who is in a correctional facility -- Federal, State or County (doesn't include in police custody, i.e., under arrest) or on probation, extended supervision (ankle bracelet folks) or parole. The language in 51.30(4)(b)(10) more narrowly defines the circumstances and information that can be released to the designated entities without an authorization. Note: After release from custody all rights are restored.

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DHS 92.04(5)(b) (1)-(4) DHS 92.04(10) (a)-(e) .	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. PROGRESS DETERMINATION AND ADEQUECY OF TREATMENT, b. Treatment information as specified under s. 51.30 (4) 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	164.501	correctional institution. No application after release. For the purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release or otherwise is no longer in lawful custody. Law enforcement official means an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law. Correctional institution means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program center operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody. Other persons held in lawful custody includes juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the	

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	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. 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		criminal justice system, witnesses, or others awaiting charges or trial.	

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	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.			
51.30(4) (b)10m	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.	164.512(a)(1)	(a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.	Follow Both. The entity disclosing information may be a State institution or a correctional facility and may be subject to HIPAA.
51.30 (4)(b)11 *Individual's Counsel or Guardian ad litem, Corporation Counsel* DHS 92.04(11) (a)-(e)	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. Note: Ch. 48—Childrens' Code; Ch. 971—Criminal Procedure Proceedings; Ch. 975—Sex Crimes Law 980—Sexually Violent Persons 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	164.512(e)(1)	Permitted disclosures. A CE may disclose PHI in the course of any judicial or administrative proceeding: (i) In response to an order of a court or administrative tribunal, provided that the CE discloses only the protected health information expressly authorized by such order; or (ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if: (A) The CE receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the	Follow Both. State is limiting to who receives information and what circumstances of disclosure. HIPAA provides greater rights and more protection by requiring that the party be notified and have an opportunity to object. If they object, a court ordered is required. Note: A required by law analysis may not allow an objection for the disclosure during a hearing.

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51.30(4)(b)11m	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. (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 guardian's 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. 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	164.512(e)(1) cont. 164.512(a)(1)	individual who is the subject of the PHI that has been requested has been given notice of the request; or (B) The CE receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section. (iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a CE receives satisfactory assurances from a party seeking protecting health information if the CE receives from such party a written statement and accompanying documentation demonstrating that: A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address); B) The notice included sufficient information about the litigation or proceeding in which the PHI is requested to permit the individual to raise an objection to the court or administrative tribunal; and C) The time for the individual to raise objections to the court or administrative tribunal has elapsed, and: 1) No objections were filed; or	

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	proceedings under s. 48.133. Note: 48.133—Jurisdiction over unborn children in need of protection or services and the expectant mothers of those unborn children.		2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution. (a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.	
51.30 (4)(b)12 *Correctional Officer* DHS 92.04(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. 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.	164.512(k)(5) A-F	(5) Correctional institutions and other law enforcement custodial situations. (i) Permitted disclosures. A CE may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for: (A) The provision of health care to such individuals; (B) The health and safety of such individual or other inmates; (C) The health and safety of the officers or employees of or others at the correctional institution; (D) The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility,	Mental Health: Follow State. State limits information to disclose. Alcohol & Drug Abuse: Follow 42 CFR Part 2.

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			or setting to another; (E) Law enforcement on the premises of the correctional institution; and (F) The administration and maintenance of the safety, security, and good order of the correctional institution.	
51.30(4)(b)12m. *Unauthorized Absence* DHS 92.04(16)	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. Note: 971.14—Competency Proceedings; 971.17—Commitment of persons found not guilty by reason of mental disease or mental defect; 980.06—Sexually Violent Person Civil Commitments; 975—Sex Crimes Law UNAUTHORIZED ABSENCE. Information from treatment records of patients admitted under s. 971.14 or 917.17, 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**.**	164.512 (f)(2) 164.512 (j)(1)	(2) Permitted disclosures: Limited information for identification and location purposes. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a CE may disclose PHI in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that: (i) The CE may disclose only the following information: (A) Name and address; (B) Date and place of birth; (C) Social security number; (D) ABO blood type and rh factor; (E) Type of injury; (F) Date and time of treatment; (G) Date and time of death, if applicable; and (H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos. Standard: Uses and disclosures to avert a serious threat to health or safety. (1) Permitted disclosures. A	Follow Both. State limits the circumstances of disclosure. HIPAA limits to whom and the specifies the information to disclose. Note: Chapter 980 commitments are civil in nature & provisions 164.512(j)(1) would not apply.

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			CE may, consistent with applicable law and standards of ethical conduct, use or disclose PHI, if the CE, in good faith, believes the use or disclosure: (i)(A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and (B) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or (ii) Is necessary for law enforcement authorities to identify or apprehend an individual: (A) Because of a statement by an individual admitting participation in a violent crime that the CE reasonably believes may have caused serious physical harm to the victim; or (B) Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody, as those terms are defined in Sec. 164.501.	
51.30(4)(b)15 (a)-(c) *County Departments*	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	164.506(c) (1) and (2)	(c) Implementation specifications: Treatment, payment, or health care operations. (1) A CE may use or disclose protected health information for its own treatment, payment, or health care operations. (2) A CE may disclose protected health information for treatment activities of a health care provider.	Follow State. State limits the purpose, recipient, and defines the information to disclose. Follow 42 CFR part 2, if applicable.

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51.30(4)(b)15 (a)-(c) cont. DHS 92.04(13) (a) & (b)	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. Note: 46.22—County Department of Social Services; 51.42—Community mental health, developmental disabilities, alcoholism and drug abuse services Board; 51.437—County Developmental Disabilities Board. 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).			

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51.30(4)(b)16 *Law Enforcement* 51.30(4)(b)16 cont. DHS 92.04(15) (a)-(d)	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). Note: 165.83(1)(b)—Law enforcement agency" means a governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority. 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	164.512(k)(5)	Correctional institutions and other law enforcement custodial situations. (i) Permitted disclosures. A CE may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for: (A) The provision of health care to such individuals; (B) The health and safety of such individual or other inmates; (C) The health and safety of the officers or employees of or others at the correctional institution; (D) The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another; (E) Law enforcement on the premises of the correctional institution; and (F) The administration and maintenance of the safety, security, and good order of the correctional institution. (ii) Permitted uses. A CE that is a correctional institution may use protected health information of individuals who are inmates for any purpose for which such protected health information may be disclosed. (iii) No application after release. For the purposes of this provision, an	Determine purpose for law enforcement request and HIPAA may or may not control. Regardless of whether a HIPAA provision applies, release no more than the information enumerated in State.

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DHS 92.04(15) *cont.*	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) (b) 13., 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		individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.	

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	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.			
51.30(4)(b)17 *Elder Abuse* *Child Abuse*	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 an agency, as defined in s. 48.981 (1)(ag) ~~)~~, 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 initiating contact with the elder-adult-at-risk agency, as defined in s. 48.981 (1)(ag), sheriff or police department, or adult-at-risk agency, without first receiving a request for release of the treatment record. Note: 46.90(2)—Elder Abuse	164.512 (c)	(c) Standard: Disclosures about victims of abuse, neglect or domestic violence. (1) Permitted disclosures. Except for reports of child abuse or neglect permitted by paragraph (b)(1)(ii) of this section, a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence: (i) To the extent the disclosure is required by law and the disclosure complies with and is limited to the	Elder Abuse: Follow Both. Child Abuse: Follow Both. Note: HIPAA requires informing the individual unless it places the individual at risk for elder abuse.

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51.30(4)(b)17 cont.	Reporting to County Agency; 46.90(4)(a) & (5)—Elder Abuse Reporting and Investigation; 48.02(2g)—County Department of Social Services or Human Services; 48.981(2) & (3)—Mandatory Reporting of Child Abuse & Neglect and Investigations; 55.02—Protective Services System; 55.043—Protective Services Investigation	164.512 (c) cont. 164.512 (b)(1)(ii)	relevant requirements of such law; (ii) If the individual agrees to the disclosure; or (iii) To the extent the disclosure is expressly authorized by statute or regulation and: (A) The covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or (B) If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure. (2) Informing the individual. A covered entity that makes a disclosure permitted by paragraph (c)(1) of this section must promptly inform the individual that such a report has been or will be made, except if: (i) The covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or (ii) The covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is	

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		160.203(c)	responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment. Uses and disclosures for public health activities. A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect; The provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.	
51.30(4)(b)18 a. *Protection and Advocacy Agency*	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 s. 54.10 or s. 880.33, 2003 stats. Note: Abuse—act, omission or course of conduct inflicted intentionally or recklessly on an individual with developmental disability or mental illness that results in bodily harm or intimidates/ threatens the individual. Neglect—act, omission or course of conduct that because of failure to provide food, shelter, clothing, medical or dental care creates a significant danger to the physical or mental health of an individual with developmental		Abuse, neglect and parent not defined.	No HIPAA definition; state definition controls.

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	disability or mental illness. Parent—biological or adoptive parent or husband of an artificially inseminated wife, but not the parent of a minor whose custody is transferred to a legal custodian or for whom a guardian is appointed. Legal custodian—a person, other than a parent or guardian, or an agency to whom legal custody of the child has been transferred by a court but does not include a person who has only physical custody of the child. 880.33—Appointment of Guardian			
51.30(4(b)18.b. 51.30(4(b)18b cont.	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). Note: 51.62—Protection and Advocacy System	164.512(a) 164.512(b)(1) (ii) 164.512 (c)	A CE may use or disclose PHI to the extent required by law, although must meet requirements of 164.512(c), (e) or (f). The Developmental Disabilities Bill of Rights Act of 2000, Pub. L. No. 106-402 (DD Act), mandates specific disclosures of IIHI to protection and advocacy systems designated by the chief elected official of the states and territories. CEs may make these disclosures under 164.512(a) without authorization unless the DD Act requires authorization. (65 Fed. Reg. 82594) Uses and disclosures for public health activities. A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect; Disclosures about victims of abuse, neglect or domestic violence. (1) Permitted disclosures. Except for reports of child abuse or neglect permitted by paragraph (b)(1)(ii) of this section, a CE may disclose protected health information about an individual whom the CE reasonably	Disclosure to protection and advocacy agencies is consistent with HIPAA to the extent it is required by the DD Act. The DD Act allows state protective agencies to have access to records of individuals with disabilities in the following situations: • All records of any DD individual in the system, if individual or authorized person has provided authorization; • Any DD individual where individual is unable to provide authorization and does not have an authorized representative and a complaint is received by the system about the individual's care and treatment; • Any DD individual in a situation where the individual has an authorized representative, a complaint has been received, the representative has been contacted but failed to respond; or • Any of the individuals described above or any DD individual where an incident of abuse or neglect has been reported to the system or there is probable cause to believe that the incidents occurred where the records are relevant to conducting an investigation not later than three business days after the system makes a written request; or • Immediate access not later than 24 hours after the system makes such a request to the records without consent

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		164.512 (c) cont.	believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence: (i) To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law; (ii) If the individual agrees to the disclosure; or (iii) To the extent the disclosure is expressly authorized by statute or regulation and: (A) The CE, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or (B) If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure. (2) Informing the individual. A CE that makes a disclosure permitted by paragraph (c)(1) of this section must promptly inform the individual that such a report has been or will be made, except if: (i) The CE, in the	from another party in a situation where services supports and other assistance are provided to a DD individual if the system determines there is probable cause to believe that the health or safety of the individual is in serious and immediate jeopardy or in any case of death of an individual with a developmental disability. (Pub. L. No. 106-402 § 143(a)(2)(I, J)). HIPAA, via the DD Act, allows disclosure where there is some threat of abuse or neglect or other risk to health and safety. Wisconsin's scope of disclosure seems broader and thus less stringent. Follow HIPAA. Note: State law is intended to meet Federal requirements. Enforcement of Wisconsin provisions will be consistent with Federal provisions.

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			exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or (ii) The CE would be informing a personal representative, and the CE reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the CE, in the exercise of professional judgment.	
51.30(4)(b)18c	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	164.502(g)(1) 164.502(g)(2) 160.203(c)	Standard: Personal representatives. As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter. Implementation specification: adults and emancipated minors. If under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation. The provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.	Follow State. Note: Other Federal laws may be applicable.

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	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. Note: 48.831—Appointment of guardian for child without a living parent for adoptability finding.			
51.30(4)(b)18d	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.	160.203(c)	The provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.	Follow State. Note: Other Federal laws may be applicable.
51.30(4)(b)18e	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	160.203(c)	The provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.	Follow State. Note: Other Federal laws may be applicable.

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	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.			
51.30(4)(b)19 *Law Enforcement*	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.	164.512(f)(5)	Permitted disclosure: Crime on premises. A CE may disclose to a law enforcement official protected health information that the CE believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the CE.	Follow State. State is more protective & restrictive because it applies only to inpatient treatment facilities or nursing homes. The information disclosed is limited to identifying information and information related to apparent crime.
51.30(4)(b)20 *Spouse, Parent,*	Except with respect to the treatment records of a subject individual who is receiving or has received services for	164.510(b)(1)	Standard: uses and disclosures for involvement in the individual's care and notification purposes.	Follow Both. Both allow disclosure only to a family member directly involved in care. State

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Adult Child, Sibling 51.30(4(b)20 cont.	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.	164.510(b)(2)	(1) Permitted uses and disclosures. (i) A CE may, in accordance with paragraphs (b)(2) or (3) of this section, disclose to a family member, other relative, or a close personal friend of the individual, or any other person identified by the individual, the protected health information directly relevant to such person's involvement with the individual's care or payment related to the individual's health care. (ii) A CE may use or disclose protected health information to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general condition, or death. Any such use or disclosure of protected health information for such notification purposes must be in accordance with paragraphs (b)(2), (3), or (4) of this section, as applicable. (2) Uses and disclosures with the individual present. If the individual is present for, or otherwise available prior to, a use or disclosure permitted by paragraph (b)(1) of this section and has the capacity to make health care decisions, the CE may use or disclose the protected health information if it: (i) Obtains the individual's agreement; (ii) Provides the individual with the opportunity to object to the disclosure, and the individual does	requires determination of family member involvement by specified parties and requires the request to be in writing. State limits the information to disclose. HIPAA requires that the individual, if present and capable, have the opportunity to agree or object to the disclosure.

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		164.510(b)(3)	not express an objection; or (iii) Reasonably infers from the circumstances, based the exercise of professional judgment, that the individual does not object to the disclosure. (3) Limited uses and disclosures when the individual is not present. If the individual is not present for, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the CE may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the individual and, if so, disclose only the protected health information that is directly relevant to the person's involvement with the individual's health care. A CE may use professional judgment and its experience with common practice to make reasonable inferences of the individual's best interest in allowing a person to act on behalf of the individual to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.	
51.30(4)(b)21 *Mental Health Review Officer*	To a mental health review officer for the purposes of s. 51.14. Note: 51.14—Outpatient treatment of minors	164.12(e) 1	Standard: Disclosures for judicial and administrative proceedings. (1) Permitted disclosures. A CE may disclose protected health information in the course of any judicial or administrative proceeding: (i) In response to an order of a court or administrative tribunal, provided that the CE discloses only	Follow Both. CE may disclose in this type of administrative proceeding provided by WI law. HIPAA may impose additional notification requirements.

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51.30(4)(b)21 cont.		164.512(e)1 cont.	the protected health information expressly authorized by such order; or (ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if: (A) The CE receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or (B) The CE receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section. (iii) For the purposes of paragraph (e)(1)(ii)(A) of this section, a CE receives satisfactory assurances from a party seeking protecting health information if the CE receives from such party a written statement and accompanying documentation demonstrating that: (A) The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known	

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51.30(4)(b)21 cont.		164.512(e)1 cont.	address); (B) The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and (C) The time for the individual to raise objections to the court or administrative tribunal has elapsed, and: (1) No objections were filed; or (2) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution. (iv) For the purposes of paragraph (e)(1)(ii)(B) of this section, a CE receives satisfactory assurances from a party seeking protected health information, if the CE receives from such party a written statement and accompanying documentation demonstrating that: (A) The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or (B) The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal. (v) For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to protected health information	

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51.30(4)(b)21 cont.		164.512(a)(1)	requested under paragraph (e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that: (A) Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and (B) Requires the return to the CE or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding. (vi) Notwithstanding paragraph (e)(1)(ii) of this section, a CE may disclose protected health information in response to lawful process described in paragraph (e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the CE makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(iv) of this section. **(**2) Other uses and disclosures under this section. The provisions of this paragraph do not supersede other provisions of this section that otherwise permit or restrict uses or disclosures of protected health information.	

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			Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.	
51.30(4)(b)22 *Board on Aging & Long-term Care*	To a representative of the board on aging and long-term care, in accordance with s.49.498(5)(e). Note: 49.498(5)(e)—Access to Resident's records by Long-term Care Ombudsman	164.512(d)(1) (iii)	Standard: Uses and disclosures for health oversight activities. (1) Permitted disclosures. A CE may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of: (iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards;	Follow State. Wisconsin Stat. 49.498(5)(e) requires resident giving permission for the disclosure of clinical records. 164.512(d) allows disclosure to health oversight agencies and to the long-term care ombudsman without authorization and therefore is less protective. Note: Long Term Care Ombudsman is established by Federal law. Older American Act of Federal law applies in this situation. Administration on Aging has issued Federal guidance relating to HIPAA and Older American Act.
51.30(4)(b)23 *Law Enforcement*	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) Note: 51.64(2)(a)—Death Reporting to the Department	164.512((d) (1)(iii)	Standard: Uses and disclosures for health oversight activities. (1) Permitted disclosures. A CE may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:	Follow State. State restricts the circumstances in which disclosure may be made.

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		164.512(f)(4) 164.512(f)(5)	(iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; Standard: Disclosures for law enforcement purposes. A CE may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable. (4) Permitted disclosure: Decedents. A CE may disclose protected health information about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the CE has a suspicion that such death may have resulted from criminal conduct. (5) Permitted disclosure: Crime on premises. A CE may disclose to a law enforcement official protected health information that the CE believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the CE.	
51.30(4)(b)24 *Corrections*	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. Note: 301.45—Sex Offender Registration; 301.46—Access to Information Concerning Sex Offenders	164.512(a)(1)	Standard: Uses and disclosures required by law. (1) A CE may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.	Follow Both. Disclosure is required by State law and HIPAA allows the disclosure.

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51.30(4)(b)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.	164.514 (a) 164.514(b) 164.514(e)(1)	Standard: de-identification of protected health information. Health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information. Implementation specifications: A CE may determine that information is de-identified either by having an expert using generally accepted statistical and scientific principles and methods or by removing all 18 specified identifiers. Limited Data Set. A CE may use or disclose a limited data set that meets the requirements of 164.514(e)(2) and 164.514(e)(3), if the CE enters into a data use agreement with the limited data set recipient in accordance with 164.514(e)(4).	The definitions appear to be consistent. However, we suggest following HIPAA because it sets forth a method/ standard for de-identification. A limited data set, as defined by HIPAA, may be disclosed without an authorization if it meets the requirements of State law, i.e. the information and the circumstances of the disclosure cannot identify an individual.
51.30(4)(b)26 *Corrections, Law Enforcement* 51.30(4)(b)26 cont.	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). Note: 343.30—Suspension and Revocation by the Courts	164.512(f)(1)(ii)(C) 164.512(f)(1)(ii)(C) cont.	Standard: Disclosures for law enforcement purposes. A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable. (1) Permitted disclosures: Pursuant to process and as otherwise required by law. A CE may disclose protected health information: (ii)In compliance with and as limited by the relevant requirements of: (C)An administrative request, including an administrative subpoena or summons, a civil or an authorized	Follow Both. State law permits disclosure and HIPAA allows disclosure to the sheriff but probably not to department of corrections without an authorization. Applicability to Department of Corrections is not known.

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			investigative demand, or similar process authorized under law, provided that: (1) The information sought is relevant and material to a legitimate law enforcement inquiry; (2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and (3) De-identified information could not reasonably be used.	
51.30(4)(b)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).	164.512(a)(1)	(a) Standard: Uses and disclosures required by law. (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.	Follow State. Wis. Chapter 48 mandates disclosure.
51.30(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			42 CFR preempts HIPAA as stated in 12/2000 preamble on pages 82482 and 82483. Refer to State Administrative Code DHS 92.03(1)(g) for directive to follow 42 CFR when more restrictive.

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	they apply.			
51.30(4)(cm) *Parents, Sibling, Children, Spouse, Mental Health Professionals , Law Enforcement for unauthorized absence*	*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	164.512(a) 164.512(f)(1)	Standard: *Use*s and disclosures *required by law*. (1) A covered entity may *use* or disclose *protected health information* to the extent that such *use* or disclosure is *required by law* and the *use* or disclosure complies with and is limited to the relevant requirements of such law. (2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law. (f) Standard: Disclosures for law enforcement purposes. A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable. (1) Permitted disclosures: Pursuant to process and as otherwise required by law. A covered entity may disclose protected health information: (i) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii) or (c)(1)(i) of this section; or (ii) In compliance with and as limited by the relevant requirements of: (A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer; (B) A grand jury subpoena; or (C) An administrative request, including an administrative subpoena or summons, a civil or an authorized --*investigative demand, or similar	If the request is made to an inpatient facility for the location of the individual and there is no reasonable cause to believe the disclosure would result in danger to the individual: Follow State and release location to parents, sibling, children, or spouse, unless the individual has requested the information be withheld from those individuals. Disclosure of the information is limited to the patient's location-- in the facility or other location, if known. Follow State and release to law enforcement who are seeking to determine whether the individual is on an unauthorized absence from the facility Disclosure of the information is limited to the patient's location-- in the facility or other location, if known. Follow State and release to mental health professionals providing *treatment* at the time of the unauthorized absence. Disclosure of the information is limited to the patient's location-- in the facility or other location, if known.

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51.30(4)(cm) cont.	inpatient facility, there is reasonable cause to believe that disclosure of the information would result in danger to the individual.	164.512(f)(2)	process authorized under law, provided that: (1) The information sought is relevant and material to a legitimate law enforcement inquiry; (2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and (3) De-identified information could not reasonably be used. (2) Permitted disclosures: Limited information for identification and location purposes. Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that: (i) The covered entity may disclose only the following information: (A) Name and address; (B) Date and place of birth; (C) Social security number; (D) ABO blood type and rh factor; (E) Type of injury; (F) Date and time of treatment; (G) Date and time of death, if applicable; and (H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.	

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			(ii) Except as permitted by paragraph (f)(2)(i) of this section, the covered entity may not disclose for the purposes of identification or location under paragraph (f)(2) of this section any protected health information related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.	
51.30(4)(d)	*Individual access:*	164.524	Standard: use and disclosure for facility directories. (1)Permitted uses and disclosure. Except when an objection is expressed in accordance with paragraphs (a)(2) or (3) of this section, a covered health care provider may: (i) Use the following PHI to maintain a directory of individuals in its facility: (A) The individual's name; (B) The individual's location in the covered health care provider's facility; (C) The individual's condition described in general terms that does not communicate specific medical information about the individual; and (D) The individual's religious affiliation; and (ii) Disclose for directory purposes such information: (B) To members of the clergy; or (B) Except for religious affiliation, to other persons who ask for the individual by name. (2) Opportunity to object. A covered health care provider must inform an individual of the PHI that it may include in a directory and the persons to whom it may disclose such	

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			information (including disclosures to clergy of information regarding religious affiliation) and provide the individual with the opportunity to restrict or prohibit some or all of the uses or disclosures permitted by paragraph (a)(1) of this section. Policies and procedures. A CE must implement policies and procedures with respect to PHI that are designed to comply with the standards, implementation specifications, or other requirements of this subpart. The policies and procedures must be reasonably designed, considering the size of and the type of activities that relate to PHI undertaken by the CE, to ensure such compliance. This standard is not to be construed to permit or excuse an action that violates any other standard, implementation specification, or other requirement of this subpart.	
51.30(4)(d)1 DHS 92.05(1)	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. 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.	164.524(a)(1)	Standard: Access to protected health information. (1) Right of access. Except as otherwise provided in paragraph (a)(2) or (a)(3) of this section, an individual has a right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained in the designated record set, except for: (i) Psychotherapy notes; (ii) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and (iii) Protected health information	During Treatment (before discharge): Follow State which requires access to medications and somatic treatment information. Access may be provided to the designated record set. Except for meds and somatic treatments, Denial may be made. Denial of access can only occur if a determination has been made and documented that disadvantages outweigh benefits [92.05 (1)(b)1] and: 1) the criteria of a HIPAA unreviewable exception [164.524(a)(1) and (2)] have been met; or 2) the criteria of a HIPAA reviewable

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DHS 92.05(1) cont.	(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	164.524(a)(2)	maintained by a CE that is: (A) Subject to the Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. 263a, to the extent the provision of access to the individual would be prohibited by law; or (B) Exempt from the Clinical Laboratory Improvements Amendments of 1988, pursuant to 42 CFR 493.3(a)(2). (2) Unreviewable grounds for denial. A CE may deny an individual access without providing the individual an opportunity for review, in the following circumstances. (i) The protected health information is excepted from the right of access by paragraph (a)(1) of this section. (ii) A CE that is a correctional institution or a covered health care provider acting under the direction of the correctional institution may deny, in whole or in part, an inmate's request to obtain a copy of protected health information, if obtaining such copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or of other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate. (iii) An individual's access to protected health information created or obtained by a covered health care provider in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided	exception have been met. In this situation, the individual must be provided a review of the denial under HIPAA and denial may be made if upheld by the reviewer. [164.524(a)(3)]. 51.30 provides individuals access to the treatment record. HIPAA provides individuals access to the Designated Record Set. Follow whichever provides access to more information. Note: If provider is not governed by 51.30, there is uncertainty regarding patient access to notes kept separate from the medical record, e.g. personal notes or psychotherapy notes.

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DHS 92.05(1) cont.	notified of any variance.	164.524(a)(3) 164.524(a)(3) cont.	that the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the covered health care provider has informed the individual that the right of access will be reinstated upon completion of the research. (iv) An individual's access to protected health information that is contained in records that are subject to the Privacy Act, 5 U.S.C.552a, may be denied, if the denial of access under the Privacy Act would meet the requirements of that law. (v) An individual's access may be denied if the protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information. (3) Reviewable grounds for denial. A CE may deny an individual access, provided that the individual is given a right to have such denials reviewed, as required by paragraph (a)(4) of this section, in the following circumstances: (i) A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person; (ii) The protected health information refers to another person (unless such other person is a health care provider) and a licensed health care	

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DHS 92.05(1) cont.		164.524(a)(4)	professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or (iii) The request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the individual or another person. (4) Review of a denial of access. If access is denied on a ground permitted under paragraph (a)(3) of this section, the individual has the right to have the denial reviewed by a licensed health care professional who is designated by the CE to act as a reviewing official and who did not participate in the original decision to deny. The CE must provide or deny access in accordance with the determination of the reviewing official under paragraph (d)(4) of this section.	
51.30(4)(d)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.	164.524(a) 164.524(c)(4)	See above Fees. If the individual requests a copy of the protected health information or agrees to a summary or explanation of such information, the CE may impose a reasonable, cost-based fee, provided that the fee includes only the cost of: (i) Copying, including the cost of supplies for and labor of copying, the	Follow State. Individual has access to discharge summary, somatic treatments, and medications without restrictions after discharge. 51.30 allows "reasonable charge" while HIPAA provides limitations on what to include in cost-based fee. CE may need to follow HIPAA if the cost-based fee is less than the otherwise "reasonable charge" and therefore provides greater privilege to

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			protected health information requested by the individual; (ii) Postage, when the individual has requested the copy, or the summary or explanation, be mailed; and (iii) Preparing an explanation or summary of the protected health information, if agreed to by the individual as required by paragraph (c)(2)(ii) of this section.	the patient.
51.30(4)(d)3 DHS 92.05 (2)	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. ACCESS AFTER DISCHARGE FOR	164.524(b) 164.524(b)(1) 164.524(b)(2)	Implementation specifications: requests for access and timely action. (1) Individual's request for access. The CE must permit an individual to request access to inspect or to obtain a copy of the protected health information about the individual that is maintained in a designated record set. The CE may require individuals to make requests for access in writing, provided that it informs individuals of such a requirement. (2)Timely action by the CE. (i) Except as provided in paragraph (b)(2)(ii) of this section, the CE must act on a request for access no later than 30 days after receipt of the request as follows. (A) If the CE grants the request, in whole or in part, it must inform the individual of the acceptance of the request and provide the access requested, in accordance with paragraph (c) of this section. (B) If the CE denies the request, in whole or in part, it must provide the individual with a written denial, in accordance with paragraph (d) of this section. (ii) If the request for access is for protected health information that is	Right of Access: Follow State, which gives the individual access rights that cannot be denied. Type of Information: 51.30 provides individuals access to the treatment record. HIPAA provides individuals' access to the Designated Record Set. Follow whichever provides access to more information. Form of Access: Follow Both. HIPAA allows individual to request access to PHI in formats other than paper copies if CE agrees which 51.30 does not address. [164.524(c)(2)(i)] HIPAA allows information to be given in summary form if both CE and individual agree (164.524(c)(2)(ii) which 51.30 does not address. Response Time: Follow State. 51.30 grants access to an individual more quickly than HIPAA. Inspection under State is within one day and copies are within 5 days[92.05(3)(b)] except for discharge summary. Note: Other Administrative Codes may be even more stringent. Fees:

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DHS 92.05(3)	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.	164.524(c)	not maintained or accessible to the CE on-site, the CE must take an action required by paragraph (b)(2)(i) of this section by no later than 60 days from the receipt of such a request. (iii) If the CE is unable to take an action required by paragraph (b)(2)(i)(A) or (B) of this section within the time required by paragraph (b)(2)(i) or (ii) of this section, as applicable, the CE may extend the time for such actions by no more than 30 days, provided that: (A) The CE, within the time limit set by paragraph (b)(2)(i) or (ii) of this section, as applicable, provides the individual with a written statement of the reasons for the delay and the date by which the CE will complete its action on the request; and (B) The CE may have only one such extension of time for action on a request for access.	51.30 allows "reasonable charge" while HIPAA provides limitations on what to include in cost-based fee. CE may need to follow HIPAA if the cost-based fee is less than the otherwise "reasonable charge" and therefore provides greater privilege to the patient. Modifications Prior to Disclosure: Follow State. HIPAA allows unreviewable denial for confidentiality. State allows only modification of source. Therefore, State provides greater rights of access. Modifications may be made to the record to protect the identities of those to whom confidentiality was promised; however, entire documents cannot be withheld. Supervision of Inspection: Both allow supervision of inspection by the individual, so the integrity of the record remains, and nothing is removed.
DHS 92.05(4)	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	164.524(c)(1) 164.524(c)(2)	(c) Implementation specifications: Provision of access. If the CE provides an individual with access, in whole or in part, to protected health information, the CE must comply with the following requirements. (1) Providing the access requested. The CE must provide the access requested by individuals, including inspection or obtaining a copy, or both, of the protected health information about them in designated record sets. If the same protected health information that is the subject of a request for access is maintained in more than one designated record set or at more than one location, the	

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DHS 92.05(4) cont.	those clients who establish inability to pay. (d) The copy service may be restricted to normal working hours. 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	164.524(c)(3) 164.524(d) 164.524(d)(1)	CE need only produce the protected health information once in response to a request for access. (2) Form of access requested. (i) The CE must provide the individual with access to the protected health information in the form or format requested by the individual, if it is readily producible in such form or format; or, if not, in a readable hard copy form or such other form or format as agreed to by the CE and the individual. (ii) The CE may provide the individual with a summary of the protected health information requested, in lieu of providing access to the protected health information or may provide an explanation of the protected health information to which access has been provided, if: (A) The individual agrees in advance to such a summary or explanation; and (B) The individual agrees in advance to the fees imposed, if any, by the CE for such summary or explanation. (3) Time and manner of access. The CE must provide the access as requested by the individual in a timely manner as required by paragraph (b)(2) of this section, including arranging with the individual for a convenient time and place to inspect or obtain a copy of the protected health information or mailing the copy of the protected health information at the individual's request. The CE may discuss the scope, format, and other aspects of	

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DHS 92.05(4) cont.	available to the patient although the identity of the informant will not be revealed. (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.	164.524(d)(2) 164.524(d)(3) 164.524(d)(4)	the request for access with the individual as necessary to facilitate the timely provision of access. (d) Implementation specifications: Denial of access. If the CE denies access, in whole or in part, to protected health information, the CE must comply with the following requirements. (1) Making other information accessible. The CE must, to the extent possible, give the individual access to any other protected health information requested, after excluding the protected health information as to which the CE has a ground to deny access. (2) Denial. The CE must provide a timely, written denial to the individual, in accordance with paragraph (b)(2) of this section. The denial must be in plain language and contain: (i) The basis for the denial; (ii) If applicable, a statement of the individual's review rights under paragraph (a)(4) of this section, including a description of how the individual may exercise such review rights; and (iii) A description of how the individual may complain to the CE pursuant to the complaint procedures in Sec. 164.530(d) or to the Secretary pursuant to the procedures in Sec. 160.306. The description must include the name, or title, and telephone number of the contact person or office designated in Sec. 164.530(a)(1)(ii). (3) Other responsibility. If the CE	

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			does not maintain the protected health information that is the subject of the individual's request for access, and the CE knows where the requested information is maintained, the CE must inform the individual where to direct the request for access. (4) Review of denial requested. If the individual has requested a review of a denial under paragraph (a)(4) of this section, the CE must designate a licensed health care professional, who was not directly involved in the denial to review the decision to deny access. The CE must promptly refer a request for review to such designated reviewing official. The designated reviewing official must determine, within a reasonable period of time, whether or not to deny the access requested based on the standards in paragraph (a)(3) of this section. The CE must promptly provide written notice to the individual of the determination of the designated reviewing official and take other action as required by this section to carry out the designated reviewing official's determination.	
51.30(4)(d)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.			Follow State. HIPAA has no requirement for notice at discharge.

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51.30(4)(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.	164.530(c) 164.524	(1) Safeguards. A CE must have in place appropriate administrative, technical, and physical safeguards to protect the privacy of PHI. (2)(i) A covered entity must reasonably safeguard protected health information from any intentional or unintentional use or disclosure that is in violation of the standards, implementation specifications or other requirements of this subpart. (ii)A CE must reasonably safeguard PHI to limit incidental uses or disclosures made pursuant to an otherwise permitted or required use or disclosure. Access of the Individual to the Record	Follow State, which protects the integrity of the record. HIPAA Privacy Rule safeguards privacy but is silent regarding the integrity of the record. HIPAA Security Rule 45 CFR 164.306(a)(1), 164.312(c), and 164.312 (e)(2)(i) refer to integrity of electronic information. 51.30(4)(dm)2—Follow Both which provide access to the record. State provides prohibitions against concealing or withholding the record from the individual, guardian or persons authorized by the individual.
51.30(4)(e) 51.30(4)(e) cont.	*Notation on 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 purpose of the release; and the date of the release. The subject individual shall have access to such release data as provided in par. (d).	164.528(b)	Accounting of Disclosures. Implementation specifications: Content of the accounting. The CE must provide the individual with a written accounting that meets the following requirements. (1) Except as otherwise provided by paragraph (a) of this section, the accounting must include disclosures of protected health information that occurred during the six years (or such shorter time period at the request of the individual as provided in paragraph (a)(3) of this section) prior to the date of the request for an accounting, including disclosures to or by business associates of the CE. (2) The accounting must include for each disclosure: (i) The date of the disclosure; (ii) The name of the entity or person who received the protected health	Implementation requires providers to comply with two separate obligations: (1) documenting certain information about the disclosures and (2) accounting for certain disclosures. HIPAA HITECH ACT 2013 requires covered entities with an EHR to account for disclosures of HIPAA-defined treatment, payment, and healthcare operations. Prior to EHR, HIPAA-defined treatment, payment, and healthcare operations disclosures are exempt for accounting of the disclosure. Documenting Certain Information About the Disclosures: Requirement for Documenting Disclosure—Follow State, which requires documentation each time information is disclosed from the record. See Wis Stat 51.30(4)(g) which covers all forms of

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		164.528(b) cont.	information and, if known, the address of such entity or person; (iii) A brief description of the protected health information disclosed; and (iv) A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure; or, in lieu of such statement: (A) A copy of the individual's written authorization pursuant to Sec. 164.508; or (B) A copy of a written request for a disclosure under Secs. 164.502(a)(2)(ii) or 164.512, if any. (3) If, during the period covered by the accounting, the CE has made multiple disclosures of protected health information to the same person or entity for a single purpose under Secs. 164.502(a)(2)(ii) or 164.512, or pursuant to a single authorization under Sec. 164.508, the accounting may, with respect to such multiple disclosures, provide: (i) The information required by paragraph (b)(2) of this section for the first disclosure during the accounting period; (ii) The frequency, periodicity, or number of the disclosures made during the accounting period; and (iii) The date of the last such disclosure during the accounting period.	treatment records. When Documentation is Required to be Made—Follow State which requires documentation at the time of disclosure. What Has to be Documented—Follow Both. HIPAA and State requires 4 elements and HIPAA requires an additional element — address, if known. To assure compliance with both laws, record all 5 elements at the time of disclosure. Accounting for Certain Disclosures: Follow State. State requires documentation of all **written** disclosures at the time of disclosure, the documentation is considered by State law part of the record and the record by State law is accessible by the individual. HIPAA's accounting requirement is narrower and exempts disclosures delineated in 164.528(a)1(i) to (ix). Therefore, follow State law, which provides greater rights and more information. In implementing these two obligations, providers must consider whether to document disclosures in the record, create a separate disclosure log, or both. Response Time: Follow State. 51.30 requires release of this information within 5 days of request and therefore provides quicker access rights to the individual.
		164.528(c)	(c) Implementation specifications: Provision of the accounting. (1) The CE must act on the individual's request for an accounting, no later	Charges: Follow HIPAA which requires the facility to waive any fee for one accounting request per year. If this accounting is made by producing copies

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51.30(4)(e) cont.			than 60 days after receipt of such a request, as follows: (i) The CE must provide the individual with the accounting requested; or (ii) If the CE is unable to provide the accounting within the time required by paragraph (c)(1) of this section, the CE may extend the time to provide the accounting by no more than 30 days, provided that: (A) The CE, within the time limit set by paragraph (c)(1) of this section, provides the individual with a written statement of the reasons for the delay and the date by which the CE will provide the accounting; and (B) The CE may have only one such extension of time for action on a request for an accounting. (2) The CE must provide the first accounting to an individual in any 12-month period without charge. The CE may impose a reasonable, cost-based fee for each subsequent request for an accounting by the same individual within the 12 month period, provided that the CE informs the individual in advance of the fee and provides the individual with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee.	of the record rather than a log, the provider is not permitted to charge for those copies. Access Time Period: Follow State. 51.30 allows the patient access to this information for a longer period of time since the notations are part of the record and therefore available as long as the record information is available.
51.30(4)(f) 51.30(4)(f) cont.	*Correction of Information.* A subject individual, ~~or~~ 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	164.526 164.526 cont.	Amendment of PHI. (a) Standard: Right to amend. (1) Right to amend. An individual has the right to have a CE amend protected health information or a record about the individual in a designated record set for as long as	Timeframe: Follow State—limits response time to 30 days. Who Can Request Correction: Follow Both. State defines who can request correction including attorney[92.05(5)(a)] and HIPAA allows these individuals as

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DHS 92.05(5) DHS 92.05(5) cont.	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. 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	164.526 cont.	the protected health information is maintained in the designated record set. (2) Denial of amendment. A CE may deny an individual's request for amendment, if it determines that the protected health information or record that is the subject of the request: (i) Was not created by the CE, unless the individual provides a reasonable basis to believe that the originator of protected health information is no longer available to act on the requested amendment; (ii) Is not part of the designated record set; (iii) Would not be available for inspection under Sec. 164.524; or (iv) Is accurate and complete. (b) Implementation specifications: requests for amendment and timely action. (1) Individual's request for amendment. The CE must permit an individual to request that the CE amend the protected health information maintained in the designated record set. The CE may require individuals to make requests for amendment in writing and to provide a reason to support a requested amendment, provided that it informs individuals in advance of such requirements. (2) Timely action by the CE. (i) The CE must act on the individual's request for an amendment no later than 60 days after receipt of such a request, as follows. (A) If the CE grants the requested amendment, in whole or in part, it	well as any other legally defined personal representative under other law. Process Request in Writing: Follow Both. 51.30 only contemplates written requests. In contrast, HIPAA allows CE discretion in determining how request is received provided that if CE requires request to be in writing, the CE must inform the individual of this requirement in advance. If CE requires the written request, include it in notice. Investigation 0-30 days: Follow State—include a copy of the individual's request for information change. Written Request Content: Both allow a reason. Follow HIPAA. If CE requires a written request as noted above, the CE may require the individual to state a reason for the correction. Records Subject to Challenge/ Amendment Request: An individual may request to amend or challenge information to which he/she has been provided access. 51.30 provides individuals access to the treatment record. HIPAA provides individuals access to the Designated Record Set. Follow whichever provides access to more information. Right of Correction: Follow Both. Both allow correction of record. Follow HIPAA in diagnosis change because HIPAA grants greater

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DHS 92.05(5) cont.	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.	164.526 cont.	accordance with paragraph (b) of this section, the CE must timely inform the individual that the amendment is accepted and obtain the individual's identification of and agreement to have the CE notify the relevant persons with which the amendment needs to be shared in accordance with paragraph (c)(3) of this section. (3) Informing others. The CE must make reasonable efforts to inform and provide the amendment within a reasonable time to: (i) Persons identified by the individual as having received protected health information about the individual and needing the amendment; and (ii) Persons, including business associates, that the CE knows have the protected health information that is the subject of the amendment and that may have relied, or could foreseeably rely, on such information to the detriment of the individual. (d) Implementation specifications: Denying the amendment. If the CE denies the requested amendment, in whole or in part, the CE must comply with the following requirements. (1) Denial. The CE must provide the individual with a timely, written denial, in accordance with paragraph (b)(2) of this section. The denial must use plain language and contain: (i) The basis for the denial, in accordance with paragraph (a)(2) of this section; (ii) The individual's right to submit a written statement disagreeing with the denial and how the individual	treatment record. Not Accessible—Follow Both which are consistent in allowing a request to be denied if the CE determines the information is not accessible under State or Federal record. Accurate & Complete—Follow Both which are consistent in allowing a request to be denied if the CE determines the information is accurate and complete. Note—Although HIPAA allows denial if the information was not created by the CE, State does not allow denial for this reason and permits correction of all information. Note—Although the State allows challenges based on timeliness and relevance, HIPAA doesn't permit a denial for these reasons. Follow HIPAA. Right to Request: Follow Both because both allow the individual or personal representative to initiate the correction/amendment request.

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DHS 92.05(5) cont.		164.526 cont	may file such a statement; (iii) A statement that, if the individual does not submit a statement of disagreement, the individual may request that the CE provide the individual's request for amendment and the denial with any future disclosures of the protected health information that is the subject of the amendment; and (iv) A description of how the individual may complain to the CE pursuant to the complaint procedures established in Sec. 164.530(d) or to the Secretary pursuant to the procedures established in Sec. 160.306. The description must include the name, or title, and telephone number of the contact person or office designated in Sec. 164.530(a)(1)(ii). (2) Statement of disagreement. The CE must permit the individual to submit to the CE a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement. The CE may reasonably limit the length of a statement of disagreement. (3) Rebuttal statement. The CE may prepare a written rebuttal to the individual's statement of disagreement. Whenever such a rebuttal is prepared, the CE must provide a copy to the individual who submitted the statement of disagreement. (4) Recordkeeping. The CE must, as appropriate, identify the record or protected health information in the designated record set that is the	

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			subject of the disputed amendment and append or otherwise link the individual's request for an amendment, the CE's denial of the request, the individual's statement of disagreement, if any, and the CE's rebuttal, if any, to the designated record set. (5) Future disclosures. (i) If a statement of disagreement has been submitted by the individual, the CE must include the material appended in accordance with paragraph (d)(4) of this section, or, at the election of the CE, an accurate summary of any such information, with any subsequent disclosure of the protected health information to which the disagreement relates. (ii) If the individual has not submitted a written statement of disagreement, the CE must include the individual's request for amendment and its denial, or an accurate summary of such information, with any subsequent disclosure of the protected health information only if the individual has requested such action in accordance with paragraph (d)(1)(iii) of this section. (iii) When a subsequent disclosure described in paragraph (d)(5)(i) or (ii) of this section is made using a standard transaction under part 162 of this subchapter that does not permit the additional material to be included with the disclosure, the CE may separately transmit the material required by paragraph (d)(5)(i) or (ii) of this section, as applicable, to the	

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			recipient of the standard transaction. (e) Implementation specification: Actions on notices of amendment. A CE that is informed by another CE of an amendment to an individual's protected health information, in accordance with paragraph (c)(3) of this section, must amend the protected health information in designated record sets as provided by paragraph (c)(1) of this section. (f) Implementation specification: Documentation. A CE must document the titles of the persons or offices responsible for receiving and processing requests for amendments by individuals and retain the documentation as required by sec.164.530(j).	
51.30(4)(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.	160.103	Health Information means any information, whether oral or recorded in any form or medium that is created or received by a health care provider, health plan, *public health authority*, employer, life insurer, school or university, or health care clearing ho*use* and relates to the past, present, or future physical or mental health or condition of an *individual*; the provision of health care to an *individual*; or the past, present, or future *payment* for the provision of health care to an *individual*.	Follow HIPAA. HIPAA provides a broader definition of the record and includes all forms and includes records created or received/maintained [51.30(1)(b)] Note: HIPAA includes *payment* information which may not be included in the *treatment* record.
51.30(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	164.502(g)	(1) Standard: Personal representatives. As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter.	Follow State. Except for Chapter 48.375 (2)(e) (parental consent for abortion), the definition for emancipation of minors in Wisconsin is a question of common law. Under 51.30, minors age 14 and older can consent to disclosures and access records (unless drug and alcohol—see 51.47

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51.30(5) cont.	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	164.502(g) cont.	(2) Implementation specification: adults and emancipated minors. If under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation. (3) Implementation specification: unemancipated minors. (i) If under applicable law a parent, guardian, or other person acting in loco parentis has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation, except that such person may not be a personal representative of an unemancipated minor, and the minor has the authority to act as an individual, with respect to protected health information pertaining to a health care service, if: (A) The minor consents to such health care service; no other consent to such health care service is required by law, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative; (B) The minor may lawfully obtain	analysis). HIPAA only allows minors to act as personal representative if they are legally able to obtain such health care services on their own. 51.30 provides the minor with greater rights of consenting/authorizing disclosures in cases where the minor cannot receive treatment without parental consent. HIPAA requires legal guardians to be treated as personal representative which includes some restrictions to accessing information, i.e., same restrictions that individuals can face—Reviewable and Unreviewable grounds for denial (164.524(a)(1)-(2). 51.30 states guardians will have access to all information at all times. Therefore, 51.30 provides greater rights of access to the guardian than HIPAA does. 51.30 requires minors under age 14 accessing own records be accompanied by another party. HIPAA does not require this. HIPAA: 164.502 (a) (3) states if under applicable law a person has authority to act on behalf of an unemancipated minor…; under 51.30 (5) (bm), parents in these situations do not have authority to act. Follow 51.30. Cases of abuse, neglect, or endangerment situations: Follow HIPAA. 164.502(g)(5) allows a CE to restrict disclosure to a personal representative in these situations in spite of any other State law. DHS 92.05 (1)(b)(1) would allow a similar restriction, but only during treatment. Personal representative for an adult is

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DHS 92.06 .	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. Note: Chapter 767—Parental Custody and Physical Placement (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 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	164.502(g) cont.	such health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the minor, a court, or another person authorized by law consents to such health care service; or (C) A parent, guardian, or other person acting in loco parentis assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service. (ii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section: (A) If, and to the extent, permitted or required by an applicable provision of State or other law, including applicable case law, a covered entity may disclose, or provide access in accordance with Sec. 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis; (B) If, and to the extent, prohibited by an applicable provision of State or other law, including applicable case law, a covered entity may not disclose, or provide access in accordance with Sec. 164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis; and (C) Where the parent, guardian, or other person acting in loco parentis, is not the personal representative under paragraphs (g)(3)(i)(A), (B), or (C) of this section and where there is no applicable access provision under State or other law, including case	addressed under HIPAA at 164.502 (g)(1)—"under applicable law" would refer back to 51.30 and requirement for temporary guardian For Alcohol and Drug Abuse record disclosures in cases of minors, follow 42 CFR 2.14 which requires addressing integration of State requirements for consent to treatment and authorization for release of information. Notice to Developmentally Disabled of Written Objection to Access: Follow State. Notice must be given. HIPAA does not address this right.

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	information is recorded or preserved, regardless of physical form or characteristics. Note: Exception exists for information disclosure regarding outpatient or detoxification services under 51.47 (2) (services that can be provided without parental consent) which may be disclosed by minor age 12 and over. 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		law, a covered entity may provide or deny access under Sec.164.524 to a parent, guardian, or other person acting in loco parentis, if such action is consistent with State or other applicable law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment.	

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	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.			
51.30(6) DHS 92.07	PRIVILEGES. Sections 905.03 and 905.04 supersede this section with respect to communications between physicians and patients and between attorneys and clients. Note—905.03: Attorney-client privilege; 905.04: provider-patient privilege 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.	164.512(e)(1) 164.512(e)(1) cont	(1) Permitted disclosures. A covered entity may disclose PHI in the course of any judicial or administrative proceeding: (i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the PHI expressly authorized by such order; or (ii) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if: (A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the PHI that has been requested has been given notice of the request; or (B) The covered entity receives	Alcohol and Drug Abuse information is governed by 42 CFR Part 2. Defer to State law. HIPAA permits disclosures in judicial and administrative proceedings when allowed by State law. Therefore, disclosure is allowed under State law when there is an exception to the physician/ provider-patient privilege [905.04(4)] 905.04(4) does not allow privilege for the following situations: (a) Proceedings for hospitalization, guardianship, protective services or protective placement— (am) Proceedings for guardianship— (b) Examination by order of judge— (c) Condition an element of claim or defense— (d) Homicide trials— (e) Abused or neglected child or abused unborn child— (f) Tests for intoxication— (g) Paternity proceedings— (h) Reporting wounds & burn injuries—

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			satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.	(i) Providing services to court in juvenile matters—
51.30(7) DHS 92.08	CRIMINAL COMMITMENTS. Except as otherwise specifically provided, this section applies to the *treatment* records of persons who are committed under chs. 971 and 975. 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.			Follow State. This section clarifies that records of persons committed under Wis Stat 971 or 975 are protected under Wis. Stat. 51.30. Refer to the applicable section for guidance.
51.30(8) DHS 92.09	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 be 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. Grievance procedure. Any failure to comply with provisions of s. 51.30,	164.530(d)	Standard: Complaints to the covered entity. (1) A covered entity must provide a process for individuals to make complaints concerning the covered entity's policies and procedures required by this subpart or its compliance with such policies and procedures or the requirements of this subpart. (2) Implementation specification: Documentation of complaints. As required by paragraph (j) of this section, a covered entity must document all complaints received, and their disposition, if any.	Follow Both. State law requires a process for filing complaint/ grievances as outlined in Wis Stat 51.61 which may be used for privacy complaints but does not prevent an individual from filing a complaint with OCR. An individual may pursue other actions under State law.

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	Stats., or this chapter may be processed as a grievance under s. 51.61 (5), Stats., as provided in s. 51.30 (8), Stats.			
51.30(9) (a)-(c)	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		HIPAA does not provide a private right of action for violations.	Follow State for criminal or civil actions for a privacy violation because HIPAA does not have a private right of action.

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	may be incurred in the action, if he or she prevails.			
51.30(10)	PENALITIES (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.		HIPAA specific noncompliance with privacy regulations: $50,000 fine and imprisonment for one year if we knowingly obtain or disclose individually identifiable health information; $100,00 fine and imprisonment for 5 years if we knowingly obtain or disclose PHI under false pretenses and a maximum fine of $250,000 and/or up to 10 years imprisonment if we obtain or disclose PHI with the intent to sell, transfer or use health information for commercial advantage, personal gain or malicious harm	
51.30(11) DHS 92.10	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.	164.530(e)(1)	Sanctions. A covered entity must have and apply appropriate sanctions against members of its workforce who fail to comply with the privacy policies and procedures of the covered entity or the requirements of this subpart.	Follow Both.

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	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.			
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.	164.530(b)	Standard: Training. (1) A covered entity must train all members of its workforce on the policies and procedures with respect to protected health information required by this subpart, as necessary and appropriate for the members of the workforce to carry out their function within the covered entity. (2) Implementation specifications: Training. (i) A covered entity must provide training that meets the requirements of paragraph (b)(1) of this section, as follows: (A) To each member of the covered entity's workforce by no later than the compliance date for the covered entity; (B) Thereafter, to each new member of the workforce within a reasonable period of time after the person joins the covered entity's workforce; and (C) To each member of the covered entity's workforce whose functions are affected by a material change in the policies or procedures required by this subpart, within a reasonable period of time after the material change becomes effective in accordance with paragraph (i) of this section. (ii) A covered entity must document that the training as	Follow Both. HIPAA requires all workforce members and State requires additional specific training to employees who request, distribute, or grant access to treatment records.

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			described in paragraph (b)(2)(i) of this section has been provided, as required by paragraph (j) of this section.	
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 106.	164.530(j) 164.530(j) cont.	(1) Standard: Documentation. A covered entity must: (i) Maintain the policies and procedures provided for in paragraph (i) of this section in written or electronic form; (ii) If a communication is required by this subpart to be in writing, maintain such writing, or an electronic copy, as documentation; and (iii) If an action, activity, or designation is required by this subpart to be documented, maintain a written or electronic record of such action, activity, or designation. (2) Implementation specification: Retention period. A covered entity must retain the documentation required by paragraph (j)(1) of this section for six years from the date of its creation	HIPAA is silent on retention of treatment records. HIPAA only mandates retention of HIPAA required documentation.
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.			
51.30(12)	RULEMAKING. The department shall promulgate rules to implement this section.			Reference Wis. Statute 146.816(2)

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