

Informed Consent, Confidentiality of Treatment Records, and Releasing Confidential Treatment Records

INFORMED CONSENT

[DHS 94.02\(22\)](#)

"Informed consent" or "consent" means written consent voluntarily signed by a patient who is competent and who understands the terms of the consent, or by the patient's legal guardian or the parent of a minor, as permitted under s. [51.61 \(6\)](#) and [\(8\)](#), Stats., without any form of coercion, or temporary oral consent obtained by telephone in accordance with s. [DHS 94.03 \(2m\)](#).

[DHS 94.03](#)

DHS 94.03 Informed consent.

- (1) Any informed consent document required under this chapter shall declare that **the patient** or the person acting on the patient's behalf **has been provided with specific, complete and accurate information and time to study the information or to seek additional information concerning the proposed treatment or services** made necessary by and directly related to the person's mental illness, developmental disability, alcoholism or drug dependency, including:
 - (a) The **benefits of the proposed treatment and services**;
 - (b) The **way the treatment is to be administered and the services are to be provided**;
 - (c) The **expected treatment side effects or risks of side effects** which are a reasonable possibility, including side effects or risks of side effects from medications;
 - (d) **Alternative treatment modes and services**;
 - (e) The **probable consequences of not receiving the proposed treatment and services**;
 - (f) The **time period for which the informed consent is effective, which shall be no longer than 15 months from the time the consent is given**; and
 - (g) **The right to withdraw informed consent at any time**, in writing.
- (2) An informed consent document is not valid unless the subject patient who has signed it is competent, that is, is substantially able to understand all significant information which has been explained in easily understandable language, or the consent form has been signed by the legal guardian of an incompetent patient or the parent of a minor, except that the patient's informed consent is always required for the patient's participation in experimental research, subsection to drastic treatment procedures or receipt of electroconvulsive therapy.
- (2m) In emergency situations or where time and distance requirements preclude obtaining written consent before beginning treatment and a determination is made that harm will come to the patient if treatment is not initiated before written consent is obtained, informed consent for treatment may be temporarily obtained by telephone from the parent of a minor patient or the guardian of a patient. Oral consent shall be documented in the patient's record, along with details of the information verbally explained to the parent or guardian about the proposed treatment. Verbal consent shall be valid for a period of 10 days, during which time informed consent shall be obtained in writing.
- (3) The patient, or the person acting on the patient's behalf, shall be given a copy of the completed informed consent form, upon request.
- (4) When informed consent is refused or withdrawn, no retaliation may be threatened or carried out.

CONFIDENTIALITY OF TREATMENT RECORDS and INFORMED CONSENT TO RELEASE RECORDS

[DHS 94.17](#)

DHS 94.17 Confidentiality of records. All treatment records are confidential. A patient or guardian may inspect, copy and challenge the patient's records as authorized under s. [51.30](#), Stats., and ch. [DHS 92](#).

CONFIDENTIALITY OF TREATMENT RECORDS

DHS 92.03 General requirements.

(1) TREATMENT RECORDS.

(a) All treatment records or spoken information which in any way identifies a patient are considered confidential and privileged to the subject individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) DISCLOSURE OF PATIENT STATUS IN RESPONSE TO INQUIRIES.

(a) No person may disclose information or acknowledge whether an individual has applied for, has received or is receiving treatment except with the informed consent of the individual, as authorized under s. [51.30 \(4\) \(b\)](#), Stats., or as otherwise required by law and as governed by this subsection.

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

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

(a) Informed consent shall be valid only if voluntarily given by a patient who is substantially able to understand all information specified on the consent form. A guardian may give consent on behalf of the guardian's ward. If the patient is not competent to understand and there is no guardian, a temporary guardian shall be sought in accordance with s. [54.50](#), Stats.

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

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

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

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

[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 \(7\) \(a\)](#).

[51.30\(2\)](#)

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

[51.30\(10\)](#)

PENALTIES.

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

1. Requests or obtains confidential information under this section under false pretenses.
2. Discloses confidential information under this section with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.
3. Violates sub. [\(4\) \(dm\) 1](#), [2](#), or [3](#).

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

(bm) Whoever intentionally discloses confidential information under this section, knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than \$100,000 or imprisoned not more than 3 years and 6 months, or both.

Name-Individual Who is Subject of Record FULL NAME OF CCS PARTICIPANT	Date of Birth	COMPREHENSIVE COMMUNITY SERVICES CONSENT FOR RELEASE OF CONFIDENTIAL INFORMATION
Address STREET ADDRESS OF CCS PARTICIPANT	City, State, Zip Code CITY, STATE & ZIP OF CCS PARTICIPANT ADDRESS	
Name and Address of Person/Agency Authorized to Release and Receive Information: Dane County Dept. of Human Services Comprehensive Community Services Program 1202 Northport Drive Madison, WI 53704	Name and full Address of Person/Agency Authorized to Release and Receive Information:	

Specific Records Authorized for Release: **Check all applicable boxes.**

Complete copy of the medical records specified below:

<input type="checkbox"/> Immunization records	<input type="checkbox"/> Diagnostic and treatment records	<input type="checkbox"/> Discharge summaries
<input type="checkbox"/> Lab reports	<input type="checkbox"/> HIV/AIDS diagnostic and treatment records	<input type="checkbox"/> Outpatient notes

Other (specify):

Alcohol and drug abuse evaluation and treatment records

Mental health diagnostic and treatment records including attendance, progress, goals, impressions and recommendations

Vocational records

Human services/Social services records

Child protective services records; Juvenile justice services records

Juvenile court records

Education records, including attendance, behavior, progress, pupil, and Individual Education Plan (I.E.P.) records

Law enforcement records

Other (specify):

This consent will expire on the earliest of the following: **Check one of the boxes and fill in the applicable date/event!**

One year from the date of the signature below

On the following date:

After the following event takes place:

Purpose for Release of Information:
 To permit communication related to my CCS Plan to take place between the members of my CCS Team and other treatment providers/individuals.

Right to Copy and Inspect: If records regarding medical treatment or treatment for mental illness, developmental disabilities, alcoholism, or drug abuse are disclosed pursuant to this authorization, you may have the right to inspect and, upon paying any applicable fees, obtain a copy of the records disclosed.

Voluntary Consent: My consent to the release of the confidential records described above is voluntarily given. Refusal to sign this authorization may affect my right to receive CCS Services.

Right to revoke: I understand that I may revoke this authorization at any time, except where information has already been released pursuant to this authorization, by sending a written notice of my revocation to the individual/agency hereby authorized to release information. Unless so revoked, this authorization will remain in effect until the expiration event indicated above.

As evidenced by my signature, I hereby authorize disclosure of the confidential records described above to the person(s) or agency(s) specified above. Information disclosed may be subject to redisclosure if the person or entity named is not a health care provider subject to confidentiality laws.

Signature – (Subject of Record)	Date Signed
----------------------------------------	--------------------

Signature – (Parent, Guardian, or Authorized Representative)	Date Signed	Title or Relationship to Individual who is Subject of Record
---------------------------------------------------------------------	--------------------	---------------------------------------------------------------------