

**Polk County Wisconsin
USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR
JUDICIAL AND ADMINISTRATIVE PROCEEDINGS**

Policy 601.M

Effective Date: August 19, 2003

Current Revision Date:

Purpose

To ensure that Polk County employees understand when and how to disclose a client's personal health information (PHI) in relation to judicial and administrative proceedings.

Background

There may be instances where a client is involved with a legal proceeding, either conducted by a court of law (such as a state trial court or federal district court) or a government agency (such as the Wisconsin Department of Health and Family Services, the Wisconsin Department of Workforce Development, or the Federal Centers for Medicare & Medicaid Services).

In these legal proceedings, lawyers, judges and others involved with the proceeding may contact Polk County to access the client's PHI. Examples of health information these proceedings may require include information about a certain medical procedure the client underwent to determine whether the procedure is covered under a health plan or the outcome of that procedure, results of blood or genetic tests in child custody or similar proceedings, medical records that document disabling conditions in discrimination cases, or health information that documents serious illnesses for conflicts pertaining to medical leave. *These are only some examples of cases where health information may be sought in judicial or administrative proceedings; there are likely many more situations where PHI may be requested to be released.*

Preemption Issues: Sections 146.82(2)(a) and 51.30(4)(b) of Wisconsin Statutes cover the circumstances under which a client's health care record or mental health/substance treatment record (respectively) may be released upon request without informed consent of the client. This could include requests related to judicial and administrative proceedings. Specifically, sections 146.82(2)(a)4. and 51.30(4)(b)4. permit the client's health care or treatment record to be released under a lawful order of a court of record. However, those sections do not expressly permit release under a discovery request or an administrative order.

Policy

Polk County may disclose PHI in the course of any judicial or administrative proceeding:

- a. in response to an order from a court or administrative tribunal.
- b. in response to a subpoena, discovery request, or other lawful process that is not accompanied by an order of a court or administrative tribunal.¹

¹ See "Preemption Issues" section above.

[**Note:** There may be other instances under Wisconsin law where a provider may release PHI without the informed consent of the client. These include disclosures to the state Department of Health and Family Services (DHFS), police or prosecutors when they are investigating certain reports of death or to designated long term care ombudsmen who are working on behalf of older persons living in long term care facilities. Provider organizations should consult Wis. Stats. s. 146.82. Also, mental health treatment records allow certain disclosures without informed consent, such as to prosecutors in sexually violent person proceedings, to a client's lawyer or guardian ad litem in certain proceedings. Providers should consult Wis. Stats. s. 51.30(4)(b) to determine when it is appropriate to disclose mental health records without informed consent. If informed consent is required, Polk County should follow its procedure for obtaining a client's written informed consent.]

Procedure for disclosing PHI in response to a court/administrative order:

If Polk County receives an order from a court or administrative judge, then release only the PHI which the order expressly authorizes to be disclosed.

Procedure for disclosing PHI in response to a subpoena, discovery request or other lawful process (other than a court order):

[NOTE: UNDER WISCONSIN LAW, PROVIDERS MAY NEED TO GET A CLIENT'S WRITTEN INFORMED CONSENT (AS DEFINED IN WIS. STATS. S. 146.81(2)) BEFORE DISCLOSING PHI. THERE ARE A FEW EXCEPTIONS AND PROVIDERS SHOULD CONSULT WIS. STAT. S. 146.82 AND 51.30 (SEE "PREEMPTION ISSUES" SECTION ABOVE). THUS, THE PROCEDURE BELOW SHOULD BE USED FOR REFERENCE TO WHAT HIPAA DICTATES ONLY.]

Polk County may only release PHI in such instances if at least **one of the following three** events has occurred:

- I. Polk County may release PHI if we receive *written* "satisfactory assurance" from the party requesting the information that reasonable efforts have been made by such party to ensure that the client who is the subject of the PHI has been given notice of the request.
 - A. "Satisfactory assurance" that the requesting party has tried to notify the client of the PHI request means the following:
 - i. the requesting party has given Polk County a *written statement and accompanying documentation* demonstrating that:

1. the requesting party has made a good faith attempt to provide written notice to the client (if the client's location is unknown, documentation showing that a notice was mailed to the client's last known address);
 2. the notice provided by the requesting party to the client contained enough information to allow the client to make an informed objection to the court or administrative tribunal regarding the release of the client's PHI.
 3. the time for the client to raise objections to the court or administrative tribunal has passed and either no objections were filed, or all objections filed by the client have been resolved and the disclosures being sought are consistent with the court's resolution.
- II. We may also release PHI to a requesting party if we receive *written* satisfactory assurance from the requesting party that reasonable efforts have been made by such party to secure a *qualified protective order*. A *qualified protective order* is an order of a court or administrative tribunal or a stipulation by the parties to the proceeding that prohibits the parties from using or disclosing PHI for any purpose other than the proceeding for which the information was requested and requires the parties to return the PHI (including all copies made) to Polk County at the end of the proceeding.
- A. "Satisfactory assurance" in this instance means that we have received from the requesting party a written statement and accompanying documentation demonstrating that:
1. the parties to the dispute giving rise to the request for PHI have *agreed* to a qualified protective order and have presented it to a court or administrative tribunal with jurisdiction over the dispute; **OR**
 2. the requesting party has asked for a qualified protective order from such court or administrative tribunal.
- III. We may release PHI to a requesting party even without satisfactory assurance from that party if we, Polk County, either:
- A. Make reasonable efforts to provide notice to the client about releasing his or her PHI, so long as the notice meets all of the following requirements:
1. the notice is written and given to the client (if the client's location is unknown, we should establish documentation showing that a notice was mailed to the client's last known address);
 2. the notice contained enough information to allow the client to make an informed objection to the court or administrative tribunal regarding the

- release of the client's PHI;
3. the time for the client to raise objections to the court or administrative tribunal has elapsed and either no objections were filed, or all objections filed by the client have been resolved and the disclosures being sought are consistent with the court's resolution;

OR

- B. Seek a qualified protective order from the court or administrative tribunal or convince the parties to stipulate to such order.

References

- 45 CFR § 164.512(e)
- Wis. Stats. s. 146.82
- Wis. Stats. s. 51.30
- WHA HIPAA Privacy Manual, Michael Best & Friedrich, LLP, 2001

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