

ADMINISTRATIVE RULES STATEMENT OF SCOPE FOR PROPOSED RULES

Subject

The Department of Health and Family Services proposes to modify ch. HFS 92, relating to confidentiality of treatment records, and ch. HFS 94, relating to patient rights and resolution of patient grievances.

Policy Analysis

Chapter HFS 92 implements s. 51.30, Stats., and provides to treatment providers and consumers of mental illness, alcohol or other drug abuse, or developmental disability services, guidance on the confidentiality and release of treatment records. The department created ch. HFS 92 in 1984, and has not revised the rule since its creation.

Since ch. HFS 92 was created, laws and practice relating to the storage and handling of health care records, including mental health treatment records have undergone numerous changes. These changes include the following:

- The eHealth Care Quality and Patient Safety Board was created by Governor Doyle to help develop an ehealth information infrastructure that would support the statewide adoption and exchange of electronic health records.
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) was enacted by Congress.
- The health care industry, nationwide, expanded the use of technology to maintain, share and access health care information among peers and with consumers for treatment purposes.
- The Wisconsin legislature revised ss. 51.30 relating to the confidentiality of treatment records and 146.81 to 146.84, Stats., relating to the confidentiality of patient health care records, with the most recent changes taking place under 2007 Wisconsin Act 108. Act 108 removes several barriers to electronic health information exchange under chs. 51 and 146, Stats., particularly relating to informed consent for release and disclosure and re-disclosure of health care information.

The department intends to revise ch. HFS 92 to align the rules with the changes that have occurred in regulatory, technological and business environments since the department created the rules in 1984. These changes may include the expansion of chs. HFS 92 and 94 to include rules for patient health care records as that phrase is defined under s. 146.81 (4), Stats. The department also intends to revise ch. HFS 94 to ensure that its provisions, including those concerning notification to clients of rights; informed consent, confidentiality of records, provider system requirements; and rights to files grievances, are in agreement with the changes made to ch. HFS 92.

Statutory Authority For Proposed Rule

Sections 51.30 (12), 51.61 (5) (b) and (9), and 227.11 (2) Stats.

Staff Time Required To Develop The Proposed Rule

The department estimates that it will take a cross-functional team approximately 1000 hours to develop the proposed rules through discussion, research, and feedback from stakeholders.

Entities That May Be Affected By The Proposed Rules

Providers and consumers of mental illness, alcohol or other drug abuse, or developmental disability services; and other health care providers, patient advocates, and privacy advocates.

Comparison With Federal Regulations

Federal standards for the privacy and security of health information are codified under 45 CFR Parts 160, 162, and 164. These regulations implement the Health Insurance Portability and Accountability Act of 1996 (HIPAA). 45 CFR Part 164, subpart C includes security standards for protection of electronic protected health information. 42 CFR Part 2 are federal regulations relating to the confidentiality of alcohol and substance abuse patient records.

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APPROVAL SIGNATURES

DHFS Division Administrator	Date Signed
DHFS Secretary	Date Signed