

CONFIDENTIALITY OF INFORMATION REGARDING ADULTS-AT-RISK

Wisconsin Adults-at-Risk Conference
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A. COMMON SENSE:

1. Two heads are better than one, usually. So when you are uncertain about release of confidential information, consult with your peers, supervisors, and even professionals in other agencies (without identifying clients) to gather their advice on how to proceed.
2. Attend training seminars.
3. Research the applicable laws, regulations, and policies of DHFS and your agency.
4. For particularly important or complex questions, consult your agency's legal counsel. Follow your agency's protocol for such consultation.
5. For important or unusual situations, document the advice you received, and why you did or did not follow that advice.

B. RESOURCES:

1. DHFS Elder Adults/Adults-at-Risk Web Page: <http://dhfs.wisconsin.gov/Aps>
2. CWAG website: <http://www.cwag.org/legal/>
3. Your agency policies.

C. IMMUNITY FROM LIABILITY FOR ACTIONS IN GOOD FAITH

1. Paragraphs 46.90(6)(by) and 55.043(6)(by), Wis. Stats., provide the custodians of records and reports under these sections with immunity from civil and criminal liability (and from findings of unprofessional conduct) "for the release or nonrelease of records or departmental report forms in accordance with this subsection while acting in good faith and within the scope of his or her authority."
2. Who is your agency's "custodian of records?" Check your agency policies and practices. Consult your supervisor. You may be the custodian, or maybe it is someone else.
3. Additional protection is provided in section 895.46, Wis. Stats., which requires state and county agencies to reimburse each employee for any civil liability imposed on the employee in court lawsuits, and to provide legal representation (or reimbursement for retaining a private attorney) for actions of the employee while acting within the scope of employment.

- D. The confidentiality statute for Elders-at-Risk is in subsection 46.90(6), and for Adults-at-Risk is in 55.043(6), Wis. Stats. Read them. Read them often, especially when you are confronting particular questions about releasing information.
1. Note that these laws differentiate between “reports” and “records,” specifying to which individuals and agencies reports and records may be released. “Records” include the entire case file. “Reports” include documentation of an agency’s response to (and investigation of) the report of abuse (etc.), including a summary of the case (and is the information required to be submitted to DHFS).
 2. Generally, reports may be released to [see 46.90(6)(a), (b), (bd), & (br) and 55.043(6)(a), (b), (bd), & (br)]:
 - a. government agencies that need the reports to carry out the responsibilities of protecting adults at risk, and
 - b. reporters of abuse (etc.) who made the report in a professional capacity, to inform the reporter of the actions taken to protect or provide services to the victim.
 - c. However, the holder of the report may not release it if to do so might cause harm to the subject individual, or jeopardize an on-going civil or criminal investigation. See 46.90(6)(br), and 55.043(6)(br)1.
 3. Generally, **records** may be released only to [see 46.90(6)(bt) and 55.043(6)(bt)]:
 - a. the elder or adult-at-risk who is the named victim or the guardian of the victim (unless the guardian is the alleged perpetrator)
 - b. state DHFS and law enforcement for required death investigations,
 - c. the county Dept. of Community Programs under 51.42 (or HSD) providing services to the victim or services to the alleged perpetrator,
 - d. the victim’s attorney or guardian-ad-litem,
 - e. DHFS for audits and monitoring, etc.,
 - f. Disability Rights-Wisconsin, as the advocacy agency,
 - g. Coroners, etc., for death investigations,
 - h. Probation or parole officers supervising the perpetrator,
 - i. Grand juries,
 - j. Pursuant to the “lawful order of a court of record.”
 4. The identity of the reporter must be deleted from any record or report before release, except the original report to DHFS. See 46.90(6)(bv) and 55.043(6)(bv).
 5. Further redisclosure of reports and records by the recipient is prohibited except to the persons and for the purposes allowed in 46.90(6) and 55.043(6).