

PETITION TO REPEAL UNAUTHORIZED RULE

The Department of Health Services hereby petitions the Joint Committee for Review of Administrative Rules to use the process provided in s. 227.26 (4), Stats. The Department has determined that passage of 2017 WI Act 252 necessitates a revision to ss. DHS 92.06 (1) and DHS 94.17.

I. ANALYSIS

A. Statute/s that the proposed rule interprets

None.

B. Statute/s that authorizes promulgation

Section 227.26 (4), Stats.

C. Related statute/s

None.

D. Related rule/s

None.

E. Explanation of the agency's authority to promulgate the proposed rule

The proposed rule, which amends ss. DHS 92.06 (1) and DHS 94.17, is authorized by s. 227.26 (4), Stats.

F. Brief summary of the proposed rule

2017 WI Act 252 created s. 51.30 (4) (cg), Stats. This new paragraph authorizes the limited release of mental health information to out-of-home care providers and child welfare agencies.

Section DHS 92.06 (1) requires release of information from treatment records to comply with s. 51.30 (5), but does not cite the new paragraph, s. 51.30 (4) (cg), Stats. The rule therefore states a requirement that is more restrictive than the statute, because it fails to mention grounds for release under s. 51.30 (4) (cg), Stats. To address this problem, the department proposes to strike the reference to subsection (5) in s. DHS 92.06 (1), to clarify that limited releases of health information must comply with s. 51.30, Stats., as a whole.

Section DHS 94.17 states that all treatment records are confidential, and grants access to these records by a patient or guardian in certain circumstances. The rule therefore does not permit releases of treatment records to out-of-home care providers and child welfare agencies as provided in the new paragraph, s. 51.30 (4) (cg), Stats. To address this problem, the department proposed to strike language from DHS 94.17 to clarify that confidentiality of treatment records is governed more generally by s. 51.30 and ch. DHS 92. The department believes these sources will specify more clearly the conditions and parties to whom disclosures may be made.

G. Electronic mail address and telephone number of agency contact person

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II. PROPOSED RULE

SECTION 1. DHS 92.06 (1) is amended to read:

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.

SECTION 2. DHS 94.17 is amended to read:

Confidentiality of records. ~~All treatment~~ Treatment records are confidential. ~~A patient or guardian may inspect, copy and challenge the patient's records as authorized provided~~ provided under s. 51.30, Stats., and ch. DHS 92.

SECTION 3. EFFECTIVE DATE: This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2), Stats.