

Chapter DWD 68

CONFIDENTIAL INFORMATION

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Note: Chapter HSS 258 was renumbered chapter DWD 68 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., *Register*, December, 1996, No. 492.

DWD 68.01 Introduction. Pursuant to s. 47.02 (7), Stats., the purpose of this chapter is to ensure that the confidentiality of consumer records is maintained by the division and to allow access by a consumer to the consumer's case record.

History: Cr. *Register*, June, 1976, No. 246, eff. 7-1-76; renun. from DVR 1.01, *Register*, April, 1982, No. 316, eff. 5-1-82; correction made under s. 13.93 (2m) (b) 7., Stats., *Register*, May, 1994, No. 461; CR 22-008: am. *Register* June 2022 No. 798, eff. 7-1-22; correction made under s. 35.17, Stats., *Register* June 2022 No. 798.

DWD 68.02 Definitions. In this chapter:

(1) "Case record" or "record" means information, whether written or not, relating to a consumer, received or acquired in connection with the performance of a vocational rehabilitation function.

(3) "Consumer" means a person who has been referred to or has applied for, is currently receiving, or has received in the past, vocational rehabilitation services.

(3m) "Consumer identifying information" means the name, address, social security number, or similar information by which the identity of the consumer can be determined with reasonable accuracy and speed, either directly, or by reference to other publicly available information.

(4) "Designated representative" means an attorney, physician, parent, guardian, or other adult designated in writing by a consumer to represent the consumer's interests.

(4m) "Division" means the division of vocational rehabilitation.

(5) Except as provided in sub. (6), "in the administration of the vocational rehabilitation program" means any of the following:

(a) The direction and coordination of consumer services within the division, including contracts with the division for purchased rehabilitation services that are part of the consumer's rehabilitation program.

(b) The coordination of programs in the department of workforce development involving the vocational rehabilitation plan of a consumer.

(c) The auditing, planning, or evaluation of vocational rehabilitation programs by lawfully authorized governmental agencies if the resulting report does not contain consumer identifying information.

(6) Subsection (5) does not apply to s. DWD 68.12.

History: Cr. *Register*, June, 1976, No. 246, eff. 7-1-76; renun. from DVR 1.02, *Register*, April, 1982, No. 316, eff. 5-1-82; CR 22-008: am. (1) to (4), cr. (4m), am. (5) *Register* June 2022 No. 798, eff. 7-1-22; renun. (2) to (3m) under s. 13.92 (4) (b) 1., Stats., *Register* June 2022 No. 798.

DWD 68.03 Applicability. The provisions of this chapter

apply to any person who has access to information about consumers. The provisions apply both during and after a person's employment or other relationship giving rise to the access.

History: Cr. *Register*, June, 1976, No. 246, eff. 7-1-76; renun. from DVR 1.03, *Register*, April, 1982, No. 316, eff. 5-1-82; CR 22-008: am. *Register* June 2022 No. 798, eff. 7-1-22.

DWD 68.04 Administration of this chapter. (1) No person, agency, or organization may disclose, directly or indirectly, any information concerning a consumer except in the administration of the vocational rehabilitation program, or as authorized in this chapter, or with the informed written consent of the consumer.

(2) The release of information concerning a consumer obtained from the records of a private or public agency or individual is subject to the law applicable to or rules of the agency or individual concerning the release of the information. If no law or rule exists, the information is subject to the provisions of this chapter.

History: Cr. *Register*, June, 1976, No. 246, eff. 7-1-76; renun. from DVR 1.04, *Register*, April, 1982, No. 316, eff. 5-1-82; CR 22-008: am. (title), r. (intro.), am. (1), (2) *Register* June 2022 No. 798, eff. 7-1-22.

DWD 68.05 Informed consent of consumers. An informed consent for disclosure of information to an individual, agency, or organization other than the consumer or a designated representative must be in writing and must contain all of the following:

(1) The name of the person or organization to which the disclosure is to be made.

(2) The name of the consumer.

(4) The specific type of information to be disclosed.

(5) The time period during which the consent is effective.

(6) The date on which the consent is signed.

(7) The signature of the consumer or person legally authorized to give consent for the consumer.

Note: A form for providing informed consent for disclosure of information may be accessed online at <https://dwd.wisconsin.gov/dwd/forms/dvr/dvr-199-e.htm>.

History: Cr. *Register*, June, 1976, No. 246, eff. 7-1-76; renun. from DVR 1.05, *Register*, April, 1982, No. 316, eff. 5-1-82; CR 22-008: am. (intro.), (1), (2), r. (3), am. (4) to (7) *Register* June 2022 No. 798, eff. 7-1-22.

DWD 68.06 Notation of release of information. Each time information about a consumer is released pursuant to the consumer's informed consent under s. DWD 68.05, a notation must be made in the consumer's record that includes all of the following:

(1) The name of the person or organization to whom the information was released.

(2) The identification of the information released.

(4) The date of the release.

History: Cr. *Register*, June, 1976, No. 246, eff. 7-1-76; renun. from DVR 1.06,

Register, April, 1982, No. 316, eff. 5-1-82; CR 22-008: am. (intro.), (1), (2), r. (3) Register June 2022 No. 798, eff. 7-1-22.

DWD 68.08 Notification of rights and responsibilities. (1) The division shall ensure that a person, including an employee, who has access to information about consumers, including consumer case records, is aware of the person's responsibilities to maintain the confidentiality of the information and the criminal liabilities for violation of this chapter.

(2) The division shall provide without cost a copy of this chapter and any policies created to interpret this chapter to each employee and, upon request, to a consumer or any other person.

(3) The division shall notify each consumer that information that the consumer gives to the division shall be kept confidential and that a consumer has certain rights of access to the consumer's case record.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76; renum. from DVR 1.08, Register, April, 1982, No. 316, eff. 5-1-82; CR 22-008: renum. DWD 68.08 to (1) to (3) and am. Register June 2022 No. 798, eff. 7-1-22.

DWD 68.09 Non-consumer requests. A request for information from a case record, by an individual or organization that is neither a consumer nor included in s. DWD 68.02 (5), must be in writing and must specify the particular information wanted.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76; renum. from DVR 1.09, Register, April, 1982, No. 316, eff. 5-1-82; CR 22-008: am. Register June 2022 No. 798, eff. 7-1-22.

DWD 68.11 Notice not to re-release. Information released from a case record to an agency, organization, or individual that is not the consumer must be accompanied by a written notice that it shall not release the information to any other individual, agency, or organization without the informed written consent of the consumer.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76; renum. from DVR 1.11, Register, April, 1982, No. 316, eff. 5-1-82; CR 22-008: am. Register June 2022 No. 798, eff. 7-1-22.

DWD 68.12 Release of records for an audit, evaluation, or research. Information from a case record may be released without the consent of the consumer to an organization or individual engaged in an audit, evaluation, or research only for purposes connected with the administration of the vocational rehabilitation program if all of the following are satisfied:

(1) The information will be used only for the purpose for which it was provided.

(2) The information will be released only to persons officially connected with the audit, evaluation, or research.

(2g) The information will not be released to the consumer.

(2r) The information will be managed in a manner to safeguard confidentiality.

(3) The final product of the research will not reveal any consumer identifying information without the informed written consent of the consumer.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76; renum. from DVR 1.12, Register, April, 1982, No. 316, eff. 5-1-82; CR 22-008: am. (intro.), (1), (2), cr. (2g), (2r), am. (3) Register June 2022 No. 798, eff. 7-1-22.

DWD 68.13 Release of records to employers. Relevant information from a consumer's case record may be released to a potential employer without consent of the consumer in order to ascertain the possibilities of a job placement for the consumer

if no consumer identifying information is disclosed. Consumer identifying information may be released to a potential employer only with the informed written consent of the consumer.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76; renum. from DVR 1.13, Register, April, 1982, No. 316, eff. 5-1-82; CR 22-008: am. Register June 2022 No. 798, eff. 7-1-22.

DWD 68.14 Release of records to consumers. (1e)

A case record is the property of the department of workforce development and may be released to clients as provided in this section.

(1m) Except as provided in sub. (2), upon request of a consumer, information in the consumer's case record shall be released to the consumer, or, upon the request of the consumer, to the consumer's designated representative.

(1s) The consumer or the designated representative shall present valid identification or be identified by a vocational rehabilitation employee before information is released.

(2) (a) Medical, psychological, or other information that the division determines may be harmful to a consumer may not be released directly to the consumer, but must be provided to the consumer through a third party chosen by the consumer, including an advocate, family member, or qualified medical or mental health professional, except that if a representative has been appointed by a court to represent the consumer, the information must be released to the court-appointed representative.

(b) If the division makes a determination under par. (a) about a consumer, the division shall provide the consumer with written notice of the determination.

(3) A consumer may appeal a determination under sub. (2) (a) by submitting a request for a hearing to the department within 180 days after the date of the written notice under sub. (2) (b). Appeals shall be heard by impartial hearing officers under the procedures established by the department in ch. DWD 75.

Note: To obtain a hearing request form, or for questions relating to filing a hearing request, contact the Hearing Coordinator, Division of Vocational Rehabilitation, P.O. Box 7852, Madison, Wisconsin 53707, telephone (800) 442-3477 or access the form online at <http://dwd.wisconsin.gov/dvr/>.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76; renum. from DVR 1.14, Register, April, 1982, No. 316, eff. 5-1-82; correction in (2) made under s. 13.93 (2m) (b) 5., Stats., Register, May, 1994, No. 461; CR 22-008: am. (title), renum. (intro.), (1) to (1m), (1s) and am., renum. (1e) from DWD 68.16 and am., r. and recr. (2), (3) Register June 2022 No. 798, eff. 7-1-22.

DWD 68.15 Record amendments and additions. A consumer who believes that information in the consumer's case record is inaccurate or misleading may request that the division amend the information. A letter, memorandum, or document submitted by a consumer for the purpose of correcting alleged inaccurate or misleading information in the consumer's case record shall be included in that record. The division shall document in the case record the consumer's request under this section and the division's response to the request.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76; renum. from DVR 1.15, Register, April, 1982, No. 316, eff. 5-1-82; CR 22-008: am. Register June 2022 No. 798, eff. 7-1-22.

DWD 68.17 Penalties. A person who violates this chapter shall, pursuant to s. 47.02 (7), Stats., be fined not exceeding \$500 or imprisoned not exceeding 6 months or both.

History: Cr. Register, June, 1976, No. 246, eff. 7-1-76; renum. from DVR 1.17, Register, April, 1982, No. 316, eff. 5-1-82; correction made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1994, No. 461; CR 22-008: am. Register June 2022 No. 798, eff. 7-1-22.