

## Chapter HSS 258

## CONFIDENTIAL INFORMATION

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**HSS 258.01 Introduction.** Pursuant to s. 47.02 (7), Stats., the purpose of this rule is to insure that the confidentiality of client records is maintained by the division of vocational rehabilitation and to allow access by a client to his or her 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.

**HSS 258.02 Definitions.** In this rule, the term:

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

(2) "Client identifying information" means the name, address, social security number, or similar information by which the identity of the client can be determined with reasonable accuracy and speed, either directly, or by reference to other publicly available information;

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

(4) "Designated representative" means an attorney, physician, parent, guardian, or other adult designated in writing by a client to represent his or her interests;

(5) "In the administration of the vocational rehabilitation program" means:

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

(b) The coordination of programs in the department of health and social services involving the vocational rehabilitation plan of a client, or

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

(6) Subsection (5) does not apply to s. HSS 258.12.

**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.

**HSS 258.03 Applicability.** The provisions of this rule apply to a person who has access to case record information during and after his or her 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.

**HSS 258.04 Administration of this rule.** Release of information in general:

(1) No person, agency, or organization may disclose, directly or indirectly, information from a client case record except in the administration of the vocational rehabilitation program, or as authorized in this rule, or with the informed written consent of the client.

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

**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.

**HSS 258.05 Informed consent of clients.** An informed consent for disclosure of information to an individual, agency, or organization other than the client or a designated representative must be in writing and must contain the following:

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

(2) The name of the client,

(3) The purpose or need for the disclosure,

(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, and

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

**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.

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**HSS 258.06 Notation of release of information.** Each time information is released from a case record, a notation must be made in the record that includes the following:

- (1) The name of the person or organization to whom the information was released,
- (2) The identification of the information released,
- (3) The purpose of the release, and
- (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.

**HSS 258.07 Implementation of this rule.** The administrator of a vocational rehabilitation office shall designate a person to be responsible for the implementation and execution of this rule.

**History:** Cr. Register, June, 1976, No. 246, eff. 7-1-76; renun. from DVR 1.07, Register, April, 1982, No. 316, eff. 5-1-82.

**HSS 258.08 Notification of rights and responsibilities.** The division of vocational rehabilitation shall insure that a person, including an employe, who has access to case records is aware of his or her responsibilities to maintain the confidentiality of the information and the criminal liabilities for violation of this rule. A copy of this rule and any policies created to interpret this rule must be provided without cost to each employe, and upon request, to the client or to any other person. The division of vocational rehabilitation shall notify each client that information he or she gives the division shall be kept confidential and that a client has certain rights of access to his or her case record.

**History:** Cr. Register, June, 1976, No. 246, eff. 7-1-76; renun. from DVR 1.08, Register, April, 1982, No. 316, eff. 5-1-82.

**HSS 258.09 Non-client requests.** A request for information from a case record, by an individual or organization that is neither a client nor included in s. HSS 258.02 (5), must be in writing and must specify the particular information wanted and the purpose for which it is to be used.

**History:** Cr. Register, June, 1976, No. 246, eff. 7-1-76; renun. from DVR 1.09, Register, April, 1982, No. 316, eff. 5-1-82.

**HSS 258.10 Assurances.** An agency, organization, or individual that is not a client must give satisfactory assurances that the information will be used only for the purpose for which it is provided and that it will not be released to any other individual, agency, or organization without the informed written consent of the client.

**History:** Cr. Register, June, 1976, No. 246, eff. 7-1-76; renun. from DVR 1.10, Register, April, 1982, No. 316, eff. 5-1-82.

**HSS 258.11 Notice not to re-release.** Information released from a case record to an agency, organization, or individual that is not a client 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 client.

**History:** Cr. Register, June, 1976, No. 246, eff. 7-1-76; renun. from DVR 1.11, Register, April, 1982, No. 316, eff. 5-1-82.

**HSS 258.12 Release of records for research.** Information from a case record may be released without the consent of the client, to an organization or individual engaged in Register, October, 1994, No. 466

research only for purposes connected with the administration of the vocational rehabilitation program if:

- (1) The information will be used only for the purpose for which it was provided,
- (2) The information will not be released to a person not connected with the study under consideration, and
- (3) The final product of the research will not reveal information that may serve to identify a former, current, or potential client without the informed written consent of the individual and the division.

**History:** Cr. Register, June, 1976, No. 246, eff. 7-1-76; renun. from DVR 1.12, Register, April, 1982, No. 316, eff. 5-1-82.

**HSS 258.13 Release of records to employers.** Relevant information from a client's case record may be released to a potential employer without consent of the client in order to ascertain the possibilities of a job placement for the client if no client identifying information is disclosed. Oral consent of the client must be obtained, whenever possible. Client identifying information may be released to a potential employer only with the informed written consent of the client.

**History:** Cr. Register, June, 1976, No. 246, eff. 7-1-76; renun. from DVR 1.13, Register, April, 1982, No. 316, eff. 5-1-82.

**HSS 258.14 Release of records to clients.** Upon written request of a client, information in the client's case record shall be released to the client, or, upon the written request of the client, to his or her designated representative.

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

(2) If the client's vocational rehabilitation counselor determines that direct disclosure of the client's medical or psychological information may be very detrimental to the mental or physical health of the client or, in the absence of the client's counselor, if the office administrator determines that such disclosure would be very detrimental to the mental or physical health of the client, or if the office administrator does not believe himself or herself qualified to make such a determination, then the information will be released to the designated representative of the client, or released directly to the client by a physician, or by a licensed or certified psychologist.

(3) The client may appeal the determination concerning the release of medical or psychological information to a person who is designated by the director of the bureau of client services to hear appeals. The appeal commences when the client submits a written request for reconsideration. The counselor or office administrator shall, within 10 working days, submit to the client and the person designated to hear appeals, written reasons for the initial determination. These reasons shall include a summary of the nature of the information contained in the case record and the reasons why direct release of the information to the client would be very detrimental to his or her mental or physical health. The client shall be provided an opportunity to rebut the reasons in writing or in person. The person designated to hear appeals shall decide not to grant access to the client only if the counselor or district administrator overcomes a strong presumption in favor of direct access by a client to his or her case records. The

person designated to hear appeals shall make a decision within 20 working days of the commencement of the appeal and his or her decision is final.

**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.

**HSS 258.15 Additions to record by client.** A letter, memorandum, or document submitted by a client for the purpose of correcting alleged misinformation in the client's case record must be included in that record.

**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.

**HSS 258.16 Client's right to photocopy.** A case record is the property of the department of health and social ser-

vices. A client, or a designated representative, may copy, by hand or photocopy, any information in the client's case record if consistent with this rule. The division may request the reimbursement of the cost of each copy it provides.

**History:** Cr. Register, June, 1976, No. 246, eff. 7-1-76; renum. from DVR 1.16, Register, April, 1982, No. 316, eff. 5-1-82.

**HSS 258.17 Penalties.** A person who violates this rule 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.