

**ACCESS TO eWiSACWIS AND INFORMATION CONTAINED IN eWiSACWIS:
CONFIDENTIALITY POLICY OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES**

I. Introduction

Access to information contained in child welfare records, generally, and child protective services records, specifically, is controlled by statutes, administrative code, state and federal policies, and governmental and professional standards. Over time, the system for sharing information under these standards has worked well to both share and protect information. It is the position of the Department that simply because some or all of those records have now been transferred from county paper or electronic records to a statewide automated record system, there is no inherent need to change the overall concept of access to those records, except as mandated by federal law and regulation.

Under the federal laws and regulations related to statewide child welfare automated systems, there is a need to expand, to a limited extent, the access to certain records without resorting to the non-automated processes that were required when the information was not maintained on a statewide electronic system. At the same time, the basic confidentiality laws remain fully intact in the sense that access to information is prohibited except as provided by law. It is only the manner of access that has changed. Laws, policies, certification standards, and professional ethics require that information be maintained in confidence except as provided by law or regulation.

II. Statement of Philosophy

It is the intent of this policy to identify where there are needs for the sharing of information maintained in the Wisconsin Statewide Automated Child Welfare Information System (eWiSACWIS) and where there is no such need. The policy is based on the position that agencies and individuals providing for the safety, care, and treatment of children and families must have certain information in order to assure that their efforts are effective and efficient. The policy is also based on the position that children and families have a right to privacy and confidentiality that should not be compromised except in the instances identified in this policy as allowed by law to promote effective and efficient program administration and service provision.

III. Statutory Requirements

Under Wisconsin law, public records are presumed to be open records, except where specifically noted and when the right to privacy or confidentiality is deemed to be more important than the public's "right to know." Implementation of this law requires careful balancing of these two perspectives. The state statutes applicable to information contained in eWiSACWIS include:

- Ch. 19, regarding records in general
- s. 46.215 regarding county departments
- s. 46.22 regarding county departments
- s. 46.23 regarding county departments
- s. 48.195(2) regarding relinquishment of newborns
- s. 48.35 regarding the effect of judgment and disposition
- s. 48.371 regarding information for physical custodians
- s. 48.38 regarding information in permanency plans
- s. 48.396(2) regarding confidentiality of child welfare records of the court
- s. 48.432 regarding access to medical information

- s. 48.433 regarding access to identifying information about parents
- s. 48.93 regarding closed adoption records
- s. 48.78 regarding confidentiality of agency child welfare records
- s. 48.981(7) regarding confidentiality of child protective services investigation records
- s. 51.30 regarding treatment records
- s. 938.35 regarding effect of judgment and disposition
- s. 938.371 regarding information for physical custodians
- s. 938.38 regarding information in permanency plans
- s. 938.396(2) regarding confidentiality of juvenile justice records of the court
- s. 938.51 regarding notification of escape of juveniles from correctional custody
- s. 938.78 regarding confidentiality of agency juvenile justice records

In addition, the confidentiality of records maintained in eWiSACWIS may be controlled by a number of federal laws and other state laws (e.g., HIPAA, Titles IV-B and IV-E, Ch. 118) which affect how information can be released or re-released from records maintained within eWiSACWIS.

IV. Notification

In order to assure the appropriate interpretation of and access to information maintained in open cases on eWiSACWIS, any agency or individual with an agency other than the agency that created the document or record who has direct access to eWiSACWIS shall notify the case worker or supervisor of the agency which created a document or record or to whom a record belongs of the following information within 24 hours after obtaining that information from an open case record:

- The name of the individual whose record was accessed.
- The nature of the information which was sought in accessing the record.
- The use or potential use of any information obtained from the record.

If the information was obtained in order to determine whether a person should be licensed, certified, employed, or contracted with, no final decision on such a determination shall be made prior to direct communication between the person making the decision and a person representing the agency which created a document or to whom the record belongs. The person representing the agency shall be knowledgeable about the record to be used in order to assure that information used from the record is being interpreted in the appropriate manner. If information obtained from eWiSACWIS is not used in making such a determination, direct communication is not required, but the notification requirements must still be met.

V. Scope of Agreements

Any agreement or policies related to sharing information maintained within eWiSACWIS or to providing access to eWiSACWIS must specifically identify the following:

- The statutory authorization for such disclosure;
- The allowable purpose(s) of such disclosure;
- The manner in which the factors identified in Section VI below (if access to the system is to be granted) are met;
- Any limitations on redisclosure; and
- Penalties for violating any established confidentiality provisions related to disclosed information.

A. Agency Agreement on Access to eWiSACWIS (Individuals and agencies that have direct access to eWiSACWIS) (CFS-2276)

Any individual not employed by the Department, a county department, or a tribal social services department of a tribe located in Wisconsin, or any individual who is employed by any agency or governmental entity other than the Department, a county department, or a tribal social services department (or any equivalent) which is directly either obtaining information from eWiSACWIS or entering data into eWiSACWIS must sign an Agency Agreement on Access to eWiSACWIS with either the Department or a county department.

Any such agreement shall use the format of the Agency Agreement attached to this policy as Appendix 1. The signed agreement shall be submitted to the Department and shall be entered into only after Department approval as described in Section VII of this policy is granted. The Agency Agreement submitted to the Department shall have attached to it a copy of any contract, memorandum of understanding, or memorandum of agreement between the parties or, if such contract or memorandum does not yet exist, a letter from the Department or county department outlining the purpose of the agreement and the intended use of any information obtained from eWiSACWIS.

B. eWiSACWIS User Agreement (Employees of agencies who have direct access to eWiSACWIS) (CFS-2275)

All employees of the Department, a county department, a tribal social services department (or any equivalent), or any individual or employee of an agency or governmental entity which enters into an Agency Agreement who will have direct access to eWiSACWIS shall sign the User Agreement attached to this policy as Appendix 2. The signed original of this User Agreement shall be maintained by the employing agency of the person in that person's personnel file. In addition, any agency which enters into an Agency Agreement with the Department or a county department shall submit a copy of the signed User Agreement for each of its employees to the Department or county department, whichever entity with which the agency has entered into the Agency Agreement.

C. Child Welfare Information Sharing Agreement (Agencies that obtain information from eWiSACWIS but do not have direct access to eWiSACWIS)

Any individual or agency that receives data from eWiSACWIS but does not have direct access to eWiSACWIS shall enter into an Information Sharing Agreement with either the Department or a county department. The Information Sharing Agreement, attached to this policy as Appendix 3, shall specifically state the nature of the data to be shared, the intended uses of the data, and a statement that the person obtaining the data is aware of and will subscribe to all applicable state and federal confidentiality policies, regulations, and laws.

VI. Direct Access to eWiSACWIS

The Wisconsin Division of Children and Family Services shall be the sole determiner of which agencies or individuals may have access to eWiSACWIS, either in part or in whole. Within the parameters established by statutes, administrative rules, and policies of the Division of Children and Family Services, county and tribal security delegates shall grant access in a manner in accordance with those parameters.

In all circumstances, county agencies, tribal social services departments, and the Division of Children and Family Services shall require that all staff of those agencies who will have access to eWiSACWIS sign a User Agreement (see Section V.B.) for both client data and network security that includes, at a minimum, a notice of any restrictions on access, appropriate restrictions on redisclosure of

information, and personnel actions or civil and criminal penalties that may be imposed for violations of those restrictions. Subject to the oversight responsibility of the Division of Children and Family Services, the level of access of any employee or contractor of a county or tribal agency shall be determined through consultation by the county or tribal security delegate and the employee's supervisor or a contract administrator.

No agency or individual will be considered for direct access to eWiSACWIS if that agency or individual does not, at a minimum, meet all of the following factors:

1. The person or agency is an employee of or under contract with a County Department of Human or Social Services, a Tribal Social Services Department or the Department of Health and Family Services.
2. The person or agency is providing services to a County Department of Human or Social Services, a Tribal Social Services Department, or the Department of Health and Family Services that, absent the employment or contractual arrangement, county, tribal, or state staff would be required to provide.
3. The person or staff of the agency, in order to fulfill the employment or contractual responsibilities, is required to view information on eWiSACWIS; or, the person or staff of the agency, in order to fulfill contractual responsibilities, is required to enter information into eWiSACWIS.
4. In order to accomplish Factor #3, on-line access to eWiSACWIS is the most practical manner of accomplishing the responsibility.

The Division of Children and Family Services reserves the right to deny access, for good cause as determined by the Division, even if the criteria above are met. In addition, the Division of Children and Family Services reserves the right to limit access to certain cases only to individuals approved by the Division.

VII. Exceptions

Exceptions to the limitations on access to eWiSACWIS as described in Section VI. may be granted only by the Division of Children and Family Services at its discretion and as allowed by law. A county agency requesting an exception shall submit to the Division a written request signed by the county agency Director or his or her designee which shall include a detailed justification for the request, a description of the role of the person or agency on whose behalf the exception is being requested, an explanation of the use of any information obtained from eWiSACWIS, an indication that the person or agency has signed the appropriate confidentiality agreement under Section V., and a detailed description of the level of access to eWiSACWIS which the person or agency will be granted.

VIII. eWiSACWIS Production Access Security System (ePASS)

The web-based ePASS is a tool to be used by DHFS/DCFS and its key business partners to facilitate the security and access request processing needs. The system automates:

- Requests for security access for new agency staff
- Changes in information for existing agency staff

- Deletion from the system of an inactive agency staff person

Supervisors create or update agency staff person information in eWiSACWIS. County or Tribal Security Delegates then submit requests in ePASS on behalf of their staff. The DHFS eWiSACWIS Security Officer will review and approve the requests and forward the request to DHFS network staff for appropriate set-up. Once a request is complete, e-mail notifications are automatically sent to the county or tribal staff person, supervisor, and Security Delegate. The Security Delegate can also view the status of all requests he or she has submitted through ePASS.

IX. Audit Tracking Capacity

The Department or a county agency has the capacity to conduct an audit of access to any case in eWiSACWIS. This means that a case record can be checked to determine if an individual has accessed the case record without proper authorization or without a need for such access. The Department will conduct random audits of cases to determine if there has been any such unauthorized access and will conduct targeted audits of specific cases that are or may be controversial, high-profile, or otherwise of interest to individuals who have no legitimate reason to access them. If it is determined that an individual accessed a record without an apparently legitimate reason, the Department will notify the director of the agency employing that person. Any violation of this confidentiality provision may subject the person to criminal or civil penalties and may result in that person being denied access to eWiSACWIS or other personnel or professional licensing penalties.