

Confidentiality (Updated: October 2014)

Purpose:

To inform staff of DVR's confidentiality rules.

Rationale:

- Confidentiality rules and standards apply to **all** DVR staff.
- Consumers should never be surprised when information is released.
- DVR is able to define in policy when information can be shared under the administration of the program.
- DVR is not a Health Insurance Portability and Accountability Act (HIPAA) covered entity.
- When information is able to be shared, staff should not create delays in sharing the necessary information.

Background

When can information (verbal or written) be shared without a valid release?

Is a release required to provide copies of the record to the consumer?

Is a release required to provide case information to the Client Assistance Program (CAP)?

Is a release required to share information with an employer or potential employer?

When is a valid release needed?

What is a valid release?

I received a valid release, or am sharing information in the administration of the program - now what?

What needs to be documented in the case record when information from a file is released?

Background:

DVR has various federal and state regulations that we must follow regarding confidentiality such as: 34 CFR 361.38 Code of Federal Regulations, section 47.02 (7)(a) Wisconsin State Statutes, DWD 68 Wisconsin Administrative Code, section 146 Wisconsin State Statutes (the Department of Regulation and Licensing has determined that DVR may define when information can be shared under the administration of the program). **Please note:** *Rehabilitation Service Administration (RSA) has determined that State VR Agencies are not Health Insurance Portability and Accountability Act (HIPAA) covered entities.*

All DVR staff members, regardless of their position, are required to follow these confidentiality standards and should familiarize themselves with them. DVR's confidentiality rules do not necessarily align with other departments or agencies.

Throughout the DVR process counselors and other DVR staff must educate consumers of their confidentiality rights, discuss with consumers when information is being released from their file, and ensure this is documented in the DVR case record (34 CFR 361.38). Consumers should never be surprised when information is released. These discussions should occur starting with the initial meeting, throughout the DVR process as appropriate, and as a reminder when referring for services.

When releasing information, it is the responsibility of the information custodian to determine the appropriate and relevant information to be released. Only the specific records indicated on the release should be provided.

When can information (verbal and written) be shared without a valid release?

1. **In the administration of the VR program** (purchasing services, coordinating services, and securing comparable benefits) with Vendors, DWD programs, and other professionals. The sharing of information must be necessary for the purpose of the VR program and the consumer's VR plan.
 - This information includes contact information, confirmation of receipt of services, functional limitations/barriers to employment, disability information, progress updates, and other case information that is determined necessary. The information shared must be necessary for the provision and purpose of the service.
 - *Only information that is necessary for the purpose at hand can be released.* If the information is not necessary for this purpose a signed release would be necessary.
 - *In situations where sharing information with a family member or advocate, other than the legal guardian; See: [When is a valid release needed](#).*

DVR is responsible for ensuring that consumers are aware of the confidentiality rules and when information is being shared regarding their case. Staff should remind consumers of the confidentiality rules throughout the VR process and when they are being referred for services. Any information the consumer does not want released should not be released. These discussions should be case noted in the DVR case record.

Possible Scenarios:

- We are referring a consumer with a learning disability for a rehabilitation technology assessment. We share the consumer's contact information, employment goal, specific disability diagnosis, and limitation information to assist the vendor in assessing accommodations and equipment to best meet the consumer's specific needs.
- Consumer shares they are receiving W-2 and would like us to coordinate services with their W-2 worker to assist them with their job search requirements as we both have the consumer doing separate job search activities. We can work with the consumer and W-2 worker sharing employment and services information to determine services DVR would cover related to job search and what services W-2 could cover (comparable benefits). We can also share progress updates as

necessary to coordinate the services. **In most cases such as these sharing of disability information may not be necessary.**

- We are referring a consumer to a vendor for job development. We share the consumer's contact information, job interests, and limitations that need to be considered for employment search (e.g., John Doe's goal is to obtain FT employment working as a retail store manager with no lifting above 50 lbs., first shift, and on a bus line). During the provision of services we can also share information regarding the consumer's progress and service (e.g., how services are going, observed behaviors related to service). **In most cases such as these, disability information may not be necessary as they only need to know the limitations/barriers to employment.**

* Consumers can share with vendors and other programs any information they wish related to their disability.

2. Verification to UI that the consumer is participating in a DVR sponsored training program leading to an employment goal as outlined in the [DVR/UI Data Sharing Confidentiality/Agreement](#) (Internal Link). See UI agreement for details of what can be shared
3. **Criminal Investigation** - Public safety officials can be given access to records on a need to know basis without the prior knowledge or consent of the subject if the request is stated as part of a specific criminal investigation.
4. **Child Support Investigation** - Section 49.22(2m), Wisconsin State Statutes, requires disclosure of personal information including employment information to the Child Support Program without prior notice or consent of the subject of a record.
5. **Public Safety** - In most cases, personal information may be disclosed without the prior knowledge or consent of the subject of the record to protect an individual from harming themselves by their own actions, to protect public safety, or to protect specific individuals (34 CFR 361.38 Code of Federal Regulations and DWD 68 Wisconsin Administrative Code).
6. **To Report Child Abuse or Neglect** - In addition to the provisions for protection of public safety, section 48.981, Wisconsin State Statutes require professional medical and human services workers, under certain conditions, to report suspected child abuse. Reporting is mandatory if a vocational rehabilitation counselor sees the abused or neglected child during the course of a counselor's professional duties.
7. **To Report Elder Abuse or Neglect** - The Wisconsin Elder Abuse Law defines four categories of elder abuse, physical abuse, material abuse, neglect, or self-neglect (section 46.90, Wisconsin State Statutes). While mandatory reporting is not required, if a professional counselor becomes aware of an abuse or neglect situation, a voluntary report may be made to the Wisconsin Elder Reporting System.
8. **In response to a valid court order** - Section 146.82(4), Wisconsin State Statutes.
9. **For program monitoring purposes** - If DVR is audited.

* Complete the [Records Notice \(DVR-229-E\)](#) form whenever sharing copies from the record.

Is a release required to provide copies of the record to the consumer?

- **The request for the records must be made in writing.** This does not require a ROI form be completed, but the form would meet this standard. A personal email from the consumer's email address requesting the information is sufficient. The email should be copied into the file as documentation of the request. If there a concern regarding the email, the consumer can be contacted to verify the request.

- In all situations where records are going to be sent electronically a discussion should occur with the consumer upfront ensuring they understand the risk of documents being sent electronically and this conversation and request to send records electronically should be documented in the DVR case record.
- Before records can be released to the consumer, a counselor or manager must review psychological reports, medical records, and other information to determine if any might cause significant harm to the consumer. If so, the consumer must select a third party to receive the records on his/her behalf.

Is a release required to provide case information to the Client Assistance Program (CAP)?

- CAP is a covered entity under the administration of the VR program.
- In situations where CAP is not asking to review the DVR case file, general information can be shared under the administration of the program.
Examples:
 - OOS waitlist number.
 - Case closure letter received and person states they never received any prior contact letters.
 - Clarification of the client's rehabilitation status (open, closed, ineligible, on wait list).
 - Consumer is requesting contact from DVR staff.
 - Status of a purchase order (PO), expense reimbursement log (ERL), etc.
- In situations where CAP is requesting the DVR case file for review, CAP will provide DVR with a *signed consent* form from the consumer.
 - In cases where there is time concern and time does not permit a written consent to be obtained immediately, a consumer can verbally or through email inform DVR that they want their case information shared with CAP. This must be case noted in the DVR file, including a copy of the email, when and how the verbal consent was obtained and the information that was shared with CAP. CAP must follow up with a written consent form within 5 working days.
 - The case file record information can be shared for the duration of the situation for which the consumer requested CAP services. The information provided to CAP may be information which was generated after the date the consumer signed the release of information form.
 - The CAP release form meets the standards of written consent of the consumer.

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Is a release needed to share information with an employer or potential employer?

- **DWD 68.13 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 and/or service provide if the consumer provides informed written consent by completing the Job Placement/Development information section of the release of information. A DVR consumer can give permission to share his or her job application, resume, and /or references. Information sharing is limited to these documents. Disability information cannot be shared without further written consent from the consumer

The consumer can also indicate in this section of the release that he or she must be contacted before client identifying information is shared with employers and/service providers listed; or, if "all is indicated, before sharing information with **any** employers and/or service providers. The discussion with the consumer must be documented in the case record. Verbal permission is acceptable.

- If providing a professional reference or sharing information regarding a consumer with an employer or potential employer DWD 68.13 needs to be followed, which requires a signed release of information.
- DVR can never be a personal reference for someone as we only obtain and know consumers on a professional basis, not personal.
- We can develop a professional letter of reference for a consumer, and they can share this themselves as needed. No release is needed as they are releasing the information.

When is a valid release needed?

1. **When sharing information (verbal and written) regarding a DVR file outside of DVR, including identification of the person as a consumer, except in situations listed above, a valid written release of information must be obtained from the consumer, or if appropriate the consumer's guardian.** *If there is not a valid release you can answer questions regarding procedures on how DVR typically handles those types of situations as well as DVR policy.*

If we receive a signed valid release and question or doubt the consumer intended the information requested to be released we should contact the consumer for clarification on if they want this information released and document the discussion.

Possible Scenarios

- A parent or family member calls to check in on the progress of their family member. The person is not the consumer's guardian or legal representative. A valid signed release is needed to share information about the case. If the requestor is the legal guardian, information can be shared with the guardian the same as it may with the consumer.
 - A legislator contacts DVR in regards to a consumer contacting them. All inquiries are to be directed to the Director of Bureau for Consumer Services who will respond on DVR's behalf. Refer to the [Confidentiality Related to Legislator communication \(Internal Link\)](#) for further information.
 - You receive a call from a Job Center staff. We are not trying to coordinate services with them and we do not have a signed release. We are not able to share information about the case.
 - A vendor states that they are CARF accredited and need disability information on consumers for their files related to the accreditation as part of the referral information. The release of the disability information is not needed for the purpose of the VR program - the services they are providing to the consumer. A release would be needed to share this information or the consumer can share the information with the vendor directly.
2. **When you receive a subpoena.** Refer to [Subpoenas & Release of Confidential Information Guidance](#) for further information.

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What is a valid release?

A release is considered valid if it contains all the following information:

1. The name of the consumer whose record is being disclosed.
2. The type of information to be disclosed. Should request specific areas such as medical records, case notes, or have areas marked with such things as check marks. If there is a concern that the consumer may not understand what they consented to (there may be case file information that they may not want released) or it appears the information is not needed for the purpose we should check with the consumer and ask if they do indeed want the information released. If so the information can be released. DVR's concern and the discussion should be documented in the DVR case record.

Using the wording "entire file or entire case record" to describe the type of information to be disclosed is not a valid description. When this occurs we should consult with the consumer and discuss the request and any concerns. After explaining what is included in the case file, if the consumer does want the entire file released the file can be sent. The discussion with the consumer should be case noted in the DVR case file.

3. Who is making the disclosure.
4. The purpose of the disclosure such as whether the disclosure is for further medical care, for an application for insurance, to obtain payment of an insurance claim, for a disability determination, for a vocational rehabilitation evaluation, for a legal investigation or for other specified purposes.
5. The individual, agency or organization to which disclosure may be made.
6. The signature of the consumer or as appropriate legal representative or guardian. If not signed by the consumer, the relationship of that person to the consumer or the authority of the person.
7. The date on which the consent is signed.
8. The time period during which the consent is effective. The expiration date is used in that we will release requested information, obtained prior to the date signed, during that time period.

*** If a release is not valid, the requestor or consumer should be contacted to discuss why it is not valid. When completing the [Records Notice \(DVR-229-E\)](#) form, include this in the response to records request section. If needed a copy of the DVR release form can be provided for them to have completed, or we can contact the consumer to complete our release.**

Please note:

- *DVR can accept another organization's release form when they are requesting DVR file information. The release must meet our standards listed above for information to be released.*
- *When obtaining records from another organization DVR may be requested to have that organization's release form completed as ours does not meet their standards. This is appropriate.*

I received a valid release, or am sharing information in the administration of the program - now what?

Requests for information should be completed as soon as possible but no later than 10 business days. If a request comes in with a turnaround time that cannot be met, the requestor should be notified of how soon it can be completed.

The following is the procedure for providing a printed or electronic copy of information from a DVR case record:

- Do not include any materials stamped not to be re-released (e.g., some medical records). Social Security Administration information, Unemployment Insurance information, and VA information should never be re-released.*
- In response to a valid release check to see if there is any mention of AIDS/HIV, sexually transmitted diseases, mental illness, alcoholism, drug abuse, brain injury, developmental disabilities, genetics testing, sickle cell anemia, domestic violence, or sexual assault in the records. **If so, remove them unless they were specifically requested on the authorization** (Wisconsin State Statutes [Chapter 51](#) & [Chapter 252](#)). *In the administration of the program this information can be shared if necessary for the purpose of DVR and not marked do not re-release.* *
- **Do not include any records generated or gathered after the date the consumer signed the release (except in the case of CAP).** DVR uses the date that the release is signed by the consumer as the cutoff date for releasing newly generated information. This procedure is in place because the information obtained after the signed date did not exist in their file prior to that date. If the information did not exist then the consumer is not aware of what specific information would be released.*
- **Blackout Social Security number if included.**
- Send printed copies of record or send electronically to requester.
- Complete the [Records Notice \(DVR-229-E\)](#) form when sending printed copies and sharing electronically.

*The above guidelines also apply when sharing information verbally.

Completing the Records Notice Form- DVR-229

- Complete this form whenever printed case file information is released or records are shared electronically.
- On a [Records Notice \(DVR-229-E\)](#) form indicate if records were withheld- and the source of those records.
- Calculate out the costs and make arrangements for payment (if any).
- **Send a copy of the [Records Notice \(DVR-229-E\)](#) with the released records.** *This is important as this form informs the recipient that the records cannot be re-released.*
- Have a manager certify the records (if that is what is requested).
- Have the completed form scanned into IRIS.

What needs to be documented in the case record when information from a file is released?

- The name of the person or organization to whom the information was released,
- The identification of the information released,
- The purpose of the release, and
- The date of the release.

***In addition to the case note, send the signed authorization for release of information to the central scanning unit.**